

304.38-240 Solicitation of proposals designating medical necessity criteria for Medicaid managed care organizations -- Administrative regulation.

- (1) (a) The commissioner shall promulgate an administrative regulation to establish procedures for conducting a competitive process to solicit proposals from publishers of medical necessity criteria to designate for each category of services which medical necessity criteria Medicaid managed care organizations, as defined in KRS 205.532, shall use to determine the medical necessity and clinical appropriateness of proposed services pursuant to the utilization review plan required by KRS 205.536.
- (b) The procedures shall require:
 1. The department to provide adequate public notice of the deadline for publishers of medical necessity criteria to submit proposals; and
 2. a. The commissioner to issue a final order at the conclusion of the competitive process.
 - b. The order shall designate, for each category of services, one (1) set of medical necessity criteria determined by the commissioner to be the most advantageous to the Commonwealth.
 - c. Nothing in this section shall preclude the commissioner from designating the same set of medical necessity criteria for two (2) or more categories of service if the commissioner determines, in accordance with the procedures required by this subsection, that the designation would be the most advantageous to the Commonwealth.
- (c) The procedures shall permit any person who is aggrieved in connection with the solicitation of proposals or the commissioner's final order to request a hearing pursuant to KRS 304.2-310.
- (2) (a) For purposes of this subsection, "objective and evidence-based" includes:
 1. Methods or systems where:
 - a. The publisher evaluates and grades the sufficiency of medical evidence incorporated into the criteria;
 - b. The publisher reviews and updates the criteria periodically as appropriate, but no less frequently than annually; and
 - c. The criteria are evaluated annually by a panel of one (1) or more physicians not directly employed by the publisher of the criteria; and
 2. Sufficient unique citations to published medical research and other peer-reviewed literature to substantiate the criteria's evidentiary basis.
- (b) In conducting the competitive process required by subsection (1) of this section, the commissioner shall only accept proposals from publishers of medical necessity criteria if the criteria:
 1. Are nationally recognized;
 2. Are objective and evidence-based; and

3. Are not proprietary property of a Medicaid managed care organization or a subsidiary of a Medicaid managed care organization, or a corporation which a Medicaid managed care organization controls or owns more than five percent (5%) of the stock.
- (3) The categories of service shall be limited to:
 - (a) Physical health services;
 - (b) Behavioral health services; and
 - (c) Any other categories of service required under federal law for Medicaid managed care.
 - (4)
 - (a) Notwithstanding KRS 13A.3102, any administrative regulation promulgated under this section shall expire two (2) years from the last effective date, as defined in KRS 13A.010, unless the department follows the certification or amendment process established in KRS 13A.3104.
 - (b) If the department files a certification letter pursuant to KRS 13A.3104, and does not intend to amend an administrative regulation promulgated under this section, it shall allow for a public comment period and public hearing on the certification letter meeting the requirements of KRS 13A.270.
 - (5) In promulgating any administrative regulation under this section, the commissioner shall:
 - (a) Collaborate with the Department for Medicaid Services to ensure that the regulation is consistent with:
 1. Federal requirements relating to Medicaid managed care medical necessity review criteria; and
 2. Any administrative regulation promulgated by the Department for Medicaid Services that is not inconsistent with this section, relating to the processes Medicaid managed care organizations are required to follow when using the medical necessity criteria designated pursuant to this section;
 - (b) Set forth in any federal mandate analysis comparison for an administrative regulation promulgated under this section:
 1. A description of any federal requirements relating to Medicaid managed care medical necessity review criteria; and
 2. A summary of all input provided by the Department for Medicaid Services to the commissioner relating to the form and content of the regulation; and
 - (c) Receive from the Department for Medicaid Services the input of healthcare professionals, which shall include members of the Advisory Council for Medical Assistance established pursuant to KRS 205.540, in each category of care in accordance with subsection (3) of this section.

Effective: July 14, 2018

History: Created 2018 Ky. Acts ch. 106, sec. 10, effective July 14, 2018.