

AN ACT relating to emergency departments and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Department" means the Department for Medicaid Services;*

(b) *"Emergency medical condition" has the same meaning as in KRS 304.17A-640;*

(c) *"Enrollee" has the same meaning as in KRS 304.17A.500;*

(d) *"Medical screening examination" means a medical examination process performed by one (1) or more qualified medical professionals to reach, with reasonable clinical confidence, a determination as to whether an individual who comes to a hospital's emergency department has an emergency medical condition, which may include any examination or ancillary services that a qualified medical professional determines is reasonable and necessary given the individual's presenting signs and symptoms;*

(e) *"Medicaid managed care organization" means a managed care organization that provides or administers Medicaid benefits pursuant to this chapter; and*

(f) *"Nonemergency medical condition" means a condition that does not constitute an emergency medical condition as determined by a qualified medical professional who performs a medical screening examination on an individual in an emergency department.*

(2) (a) *A Medicaid managed care organization shall cover and pay for health care services performed for, and items provided to, an enrollee pursuant to a medical screening examination.*

(b) *Hospitals in a Medicaid managed care organization's network shall be*

reimbursed pursuant to the negotiated rates contained in its provider contract.

(c) Hospitals that are not in a Medicaid managed care organization's network shall be paid at the published Medicaid fee-for-service rate.

(d) An enrollee copayment shall not be deducted from the payment for a medical screening examination.

(3) The determination of whether an enrollee has a nonemergency medical condition shall be made solely by a qualified medical professional who performed a medical screening examination on an enrollee at a hospital's emergency department.

(4) If a medical screening examination leads to a clinical determination by a qualified medical professional that an emergency medical condition exists, the Medicaid managed care organization shall pay for both the services involved in the medical screening examination and the services required to stabilize the patient pursuant to 42 C.F.R. sec. 422.113(c).

(5) If a medical screening examination leads to a clinical determination by a qualified medical professional that an emergency medical condition does not exist, the Medicaid managed care organization shall not pay for all services involved in the medical screening examination.

(6) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of this section within ninety (90) days of the effective date of this Act.

➔Section 2. KRS 205.6334 is amended to read as follows:

The Cabinet for Health and Family Services shall request any waivers of federal law that are necessary to implement the provisions of KRS 205.6312~~[205.6310]~~ to 205.6332.

➔Section 3. KRS 205.6336 is amended to read as follows:

(1) The secretary of the Finance and Administration Cabinet, after consultation with the secretary for the Cabinet for Health and Family Services, shall on a quarterly basis,

certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by KRS ~~205.6312~~~~[205.6310]~~ to 205.6332 and any other procedures adopted by the Cabinet for Health and Family Services to control the cost of health care.

- (2) The certification shall indicate the following:
 - (a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and
 - (b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.
- (3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for Health and Family Services to provide health-care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.
- (4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:
 - (a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.
 - (b) To the extent that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not eligible for certification under this section.

- (5) Savings in the general fund appropriation to the Department for Behavioral Health, Developmental and Intellectual Disabilities shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (6) Savings in the general fund appropriation to the Department for Public Health shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (7) Savings in the general fund appropriation to the Department for Community Based Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.

➔Section 4. The following KRS section is repealed:

205.6310 Cabinet to establish system to reduce unnecessary hospital emergency room utilization and costs.

➔Section 5. Whereas the Department for Medicaid services obtained a State Plan Amendment approved by the Centers for Medicare and Medicaid Services on December 31, 2014, requiring hospital emergency department personnel to determine whether enrollees that present to an emergency room have a nonemergency condition, yet some Medicaid managed care organizations are not following the State Plan Amendment which is causing harm to hospitals and patients, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise

becoming law.