

STATEMENT OF EMERGENCY

907 KAR 7:015E.

This emergency amendment to an existing administrative regulation is being promulgated to implement reimbursement methodology that reflects the approval by the U.S. Centers for Medicare and Medicaid Services of new federal waivers issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c), also called "1915(c) waivers", effective January 1, 2025. The approval allows for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement. This emergency amendment to an existing administrative regulation is being filed pursuant to KRS 13A.190(1)(a)2., to preserve state and federal funding and ensure the most efficient use of funds, and also pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients who qualify for a federal waiver issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c).

This emergency amendment will be filed with an ordinary amendment that is identical to this emergency amendment.

ANDY BESHEAR, Governor

ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Emergency Amendment)

907 KAR 7:015E. Reimbursement for home and community based waiver services version 2.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program reimbursement requirements and provisions for home and community based waiver services version 2.

Section 1. Definitions.

- (1) "ADHC" means adult day health care.
- (2) "ADHC center" means an adult day health care center that is:
 - (a) Licensed in accordance with 902 KAR 20:066; and
 - (b) Certified for Medicaid participation by the department.
- (3) "Department" means the Department for Medicaid Services or its designee.
- (4) "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.
- (5) "HCB" means home and community based waiver.
- (6) "Participant" means a recipient who:
 - (a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and
 - (b) Meets the eligibility criteria for HCB services established in 907 KAR 7:010.
- (7) "Recipient" is defined by KRS 205.8451(9).

Section 2. HCB Service Reimbursement.

- (1)
 - (a) Except as provided in Section 3, 4, or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service or item at the lesser of the billed charges or the fixed upper payment limit for each unit.
 - (b) The base payment rate, unit amounts, and reimbursement maximums established in the following table shall apply:

Service	Unit	Base Rate Effective January 1, 2025
Adult Day Health Care - Level I	15- Minute	\$3.82
Adult Day Health Care - Level II	15- Minute	\$4.15
Attendant Care - Traditional	15- Minute	\$7.26
Attendant Care - PDS	15- Minute	\$7.26
Conflict Free Case Management	Per Month	\$425.92

Environmental and Minor Home Modifications	Per Year	Up to \$3,025
Financial Management	Per Month	\$196.63
Goods and Services - Traditional	Per Year	Up to \$4,235
Goods and Services - PDS	Per Year	Up to \$4,235
Home Delivered Meals	Per Meal	\$9.08
Non-Specialized Respite - Traditional	15-Minute	\$5.92
Non-Specialized Respite - PDS	15-Minute	\$5.92
Specialized Respite - Level I	15-Minute	\$5.92
Specialized Respite - Level II	15-Minute	\$12.10
Specialized Respite - Level I (Congregate Setting)	15-Minute	\$5.92
Specialized Respite - Level II (Congregate Setting)	15-Minute	\$12.10

(2)

(a) Reimbursement for a service provided as a PDS shall not exceed the department's allowed reimbursement for the same service as established in the table in subsection (1) of this section.

(b) Participants receiving services through the PDS option shall have three (3) months from the date of level of care recertification to comply with the reimbursement limit established in paragraph (a) of this subsection.

(3)

(a) Three (3) quotes from a prospective provider shall be required for:

1. An environmental or minor home adaptation; or
2. Goods and services.

(b) Documentation justifying the need for the following shall be uploaded into the MWMA:

1. An environmental or minor home adaptation; or
2. Goods and services.

(4) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

Section 3. Local Health Department HCB Service Reimbursement.

(1) The department shall reimburse a local health department for HCB services:

- (a) Pursuant to Section 2 of this administrative regulation; and
- (b) Equivalent to the local health department's HCB services cost for a fiscal year.

- (2) A local health department shall:
 - (a) Each year complete a Home Health and Home and Community Based Cost Report completed in accordance with the Home Health and Home and Community Based Cost Reporting Instructions; and
 - (b) Submit the Home Health and Home and Community Based Cost Report to the department at fiscal year's end.
- (3) The department shall determine, based on a local health department's most recently submitted annual Home Health and Home and Community Based Cost Report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.
- (4) If a local health department's HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:
 - (a) Payments received for HCB services provided during a fiscal year; and
 - (b) The estimated cost of providing HCB services during the same time period.
- (5) If a local health department's HCB service cost as estimated from its most recently submitted annual Home Health and Home and Community Based Cost Report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.
- (6) The department shall audit a local health department's Home Health and Home and Community Based Cost Report if it determines an audit is necessary.

Section 4. Reimbursement for an ADHC Service.

- (1) Reimbursement for an ADHC service shall:
 - (a) Be made:
 - 1. Directly to an ADHC center; and
 - 2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;
 - (b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and
 - (c) Be limited to 200 units per calendar week per participant.
- (2) Level I reimbursement shall be the lesser of:
 - (a) The provider's usual and customary charges; or
 - (b) The base payment rate established for this service in the table established in Section 3.
- (3)
 - (a) Except as established in paragraph (b) of this subsection, Level II reimbursement shall be the lesser of:
 - 1. The provider's usual and customary charges; or
 - 2. The base payment rate established for this service in the table established in Section 3.
 - (b)
 - 1. The department shall pay a Level II reimbursement for specialized respite provided by a:
 - a. Registered nurse; or
 - b. Licensed practical nurse under the supervision of a registered nurse.
 - 2. The Level II reimbursement for specialized respite shall be the lesser of:
 - a. The ADHC center's usual and customary charges; or
 - b. The base payment rate established for this service in the table established in Section 3.
 - (c) An ADHC center's reimbursement for Level II services shall be:
 - 1. Per participant; and

2. Based upon the participant's assessed level of care and most recent person-centered service plan.
- (4) An ADHC basic daily service shall constitute care for one (1) participant.
- (5) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.
- (6) The level of and reimbursement rate for any ADHC service provided to a participant shall be determined by an assessment of the participant using the Kentucky Home Assessment Tool (K-HAT).

Section 5. Criteria for High Intensity Level II Reimbursement and Home Health Level II Reimbursement.

- (1) Any ADHC service provided to a participant by an ADHC center shall qualify for Level II reimbursement if the participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT).
- (2)
 - (a) Specialized respite care provided to a participant by a home health agency shall qualify for Level II reimbursement if:
 1. The participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT); and
 2. Provided by a:
 - a. Registered nurse; or
 - b. Licensed practical nurse under the supervision of a registered nurse.
 - (b) The Level II reimbursement for specialized respite provided by a home health agency shall be the reimbursement established in Section 4(3)(b) of this administrative regulation.
- (3) If a participant's assessment determines that:
 - (a) ADHC services to the participant do not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center for services provided to the participant; or
 - (b) Specialized respite care to the participant does not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center or home health agency for the specialized respite care service.

Section 6. Applicability. The reimbursement provisions and requirements established in this administrative regulation shall:

- (1) Apply to services or items provided to individuals who receive home and community based services version 2 pursuant to 907 KAR 7:010; and
- (2) Not apply to services or items provided to individuals receiving home and community based services version 1 pursuant to 907 KAR 1:160.

Section 7. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 8. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015;
 - (b) "The Home Health and Home and Community Based Cost Report", November 2007; and
 - (c) "The Home Health and Home and Community Based Cost Report Instructions", November 2007.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
 - (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at
<https://www.chfs.ky.gov/agencies/dms/dca/Pages/hcb-waiver.aspx>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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