

## **907 KAR 1:180. Freestanding birth center services.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.170, 42 U.S.C. 1396a, b, d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) empowers 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 coverage provisions for services provided by freestanding birth centers for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

### **Section 1. Definitions.**

- (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).
- (2) "Department" means the Department for Medicaid Services or its designee.
- (3) "Enrollee" means a recipient who is enrolled with a managed care organization.
- (4) "Freestanding birth center" means a:
  - (a) Freestanding birth center as defined by 42 U.S.C. 1396d(l)(3)(B); and
  - (b) Facility that is:
    1. Licensed as an alternative birth center in accordance with 902 KAR 20:150; and
    2. Accredited by the Commission for the Accreditation of Birth Centers.
- (5) "Freestanding birth center services" is defined by 42 U.S.C. 1396d(28) and 42 U.S.C. 1396d(l)(3)(A).
- (6) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.
- (7) "Participating freestanding birth center" means a freestanding birth center that is:
  - (a) Currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;
  - (b) Currently participating in the Medicaid program pursuant to 907 KAR 1:671;
  - (c) Licensed in accordance with 902 KAR 20:150; and
  - (d) Authorized to provide the service in accordance with this administrative regulation.
- (8) "Provider" is defined by KRS 205.8451(7).
- (9) "Recipient" is defined by KRS 205.8451(9).
- (10) "Registered nurse" is defined by KRS 314.011(5).
- (11) "Rendering provider" means a provider who:
  - (a) Provides a service for which reimbursement is:
    1. Made to the provider; and
    2. Not made to a freestanding birth center; and
  - (b) Is:
    1. A physician who provides a service associated with a freestanding birth center;
    2. A physician assistant who provides a service associated with a freestanding birth center;
    3. An advanced practice registered nurse who provides a service associated with a freestanding birth center; or
    4. A registered nurse who provides a service associated with a freestanding birth center.

### **Section 2. General Provisions and Requirements.**

- (1) For the department to reimburse for a freestanding birth center service, the service shall:
  - (a) Be provided:
    1. To a recipient; and

2. By a:
    - a. Participating freestanding birth center that is currently licensed and operating in accordance with 902 KAR 20:150; or
    - b. Rendering provider;
  - (b) Be covered in accordance with this administrative regulation; and
  - (c) Be medically necessary.
- (2)
- (a) A participating freestanding birth center shall comply with:
    1. 907 KAR 1:671;
    2. 907 KAR 1:672;
    3. 902 KAR 20:150; and
    4. All applicable state and federal laws.
  - (b) A rendering provider shall comply with:
    1. 907 KAR 1:671;
    2. 907 KAR 1:672; and
    3. All applicable state and federal laws.
- (3)
- (a) If a participating freestanding birth center or rendering provider receives any duplicate payment or overpayment from the department, regardless of reason, the participating freestanding birth center or rendering provider shall return the payment to the department.
  - (b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:
    1. Interpreted to be fraud or abuse; and
    2. Prosecuted in accordance with applicable federal or state law.
  - (c) Non-duplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.
  - (d)
    1. A freestanding birth center shall comply with KRS 205.622.
    2. A rendering provider shall comply with KRS 205.622.

Section 3. Covered Services. The following services may be provided by a freestanding birth center:

- (1) Prenatal visits, to include one (1) initial visit and follow-up visits as appropriate;
- (2) Standby services, with the rendering provider physically present throughout the course of the labor;
- (3) Delivery including the actual delivery, necessary supplies and material for the delivery, and the post-delivery examination;
- (4) Postnatal visits:
  - (a) Not to exceed two (2); and
  - (b) Which shall be accomplished within six (6) weeks of the delivery; or
- (5) Laboratory services directly related to the provision of a freestanding birth center service.

Section 4. Records, Reporting and Monitoring. A freestanding birth center shall:

- (1) Maintain complete and legible records of services provided and in a manner that ensures the confidentiality of the recipient of the service; and
- (2) Provide the records referenced in subsection (1) of this section, upon request, to:
  - (a) The department;
  - (b) The Cabinet for Health and Family Services, Office of the Inspector General or its designee;
  - (c) The Office of the Auditor of Public Accounts or its designee;
  - (d) The Office of the Attorney General or its designee;

- (e) The Centers for Medicare and Medicaid Services or its designee;
- (f) The Office of Inspector General of the United States Department of Health and Human Services or its designee; or
- (g) The United States Government Accountability Office or its designee.

Section 5. Federal Financial Participation. A provision or requirement established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the provision or requirement; or
- (2) Disapproves the provision or requirement.

Section 6. Appeal Rights. An appeal of a negative action regarding a Medicaid recipient who is:

- (1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or
- (2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(9 Ky.R. 1183; eff. 5-4-1983; 11 Ky.R. 1002; eff. 1-7-1985; Recodified from 904 KAR 1:180, 5-2-1986; 18 Ky.R. 1642; eff. 1-10-1992; 40 Ky.R. 717; 1307; 1402; eff. 2-3-2014; Crt eff. 12-6-2019.)