

STATEMENT OF EMERGENCY

907 KAR 17:040E

(1) This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)3. to establish appeal and administrative hearing post external independent third-party review policy in order to comply with a deadline established in KRS 205.646(5).

(2) This action must be taken on an emergency basis to comply with the requirements of KRS 205.646(5). An ordinary administrative regulation would not allow the cabinet to satisfy the deadline provision in KRS 205.646(5).

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative is identical to this emergency administrative regulation.

Matthew G. Bevin
Governor

Vickie Yates Brown Glisson, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Commissioner's Office

4 (New Emergency Administrative Regulation)

5 907 KAR 17:040E. Appeal and administrative hearing post external independent
6 third-party review.

7 RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438

8 STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2),
9 194A.050(1), 205.646, 42 C.F.R. Part 438

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services has responsibility to administer the
12 Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation,
13 to comply with a requirement that may be imposed or opportunity presented by federal
14 law to qualify for federal Medicaid funds. In accordance with KRS 205.646, this
15 administrative regulation establishes provisions regarding a Medicaid provider's and
16 managed care organization's right to an administrative hearing following an external
17 independent third-party review.

18 Section 1. Administrative Hearing Notice and Preliminary Requirements. (1) Upon the
19 issuance of a final decision by an external independent third-party reviewer pursuant to
20 907 KAR 17:035, the department shall notify in writing the MCO and the provider of the

1 right of the party that received an adverse final decision to appeal the decision by
2 requesting an administrative hearing pursuant to this administrative regulation.

3 (2)(a) A written request for an administrative hearing referenced in subsection (1) of
4 this section shall be sent to the department within thirty (30) calendar days of receipt of
5 the department's written notice referenced in subsection (1) of this section.

6 (b) The request for an administrative hearing may be sent to the department:

- 7 1. Electronically;
- 8 2. By fax; or
- 9 3. By postal mail.

10 (3) A provider or MCO request for an administrative hearing shall:

11 (a) Identify each specific issue and dispute directly related to the adverse final decision
12 issued by the external independent third-party reviewer;

13 (b) State the basis on which the external independent third-party reviewer's decision on
14 each issue is believed to be erroneous;

15 (c) State the name, mailing address, and telephone number of individuals who may be
16 contacted about the request for an administrative hearing; and

17 (d) State the mailing address, fax number, email address, or other contact information
18 to which the MCO's confirmation of receipt of the request shall be sent.

19 (4) The department shall forward to the hearing officer an administrative record that
20 shall include:

21 (a) The notice of action taken;

22 (b) The statutory or regulatory basis for the action take;

23 (c) The decision following the external third party review; and

1 (d) All documentary evidence provided by:

2 1. The provider;

3 2. The provider's billing agent;

4 3. The provider's subcontractor;

5 4. The provider's fiscal agent; or

6 5. Another provider-authorized individual.

7 (5) The department shall deny a request to initiate the administrative hearing appeal
8 process, or a part thereof, if a party fails to:

9 (a) Exhaust the external third-party review process in accordance with 907 KAR
10 17:035; or

11 (b) Submit a timely request for administrative hearing in accordance with subsection
12 (2) of this section.

13 Section 2. Administrative Hearing. (1)(a) A hearing officer shall establish the date,
14 time, and location of an administrative hearing.

15 (b) The administrative hearing shall be held in Frankfort, Kentucky.

16 (c) The hearing officer shall comply with the notice requirements established in KRS
17 13B.050.

18 (d) An administrative hearing date shall be scheduled to occur no later than sixty (60)
19 calendar days from the date that the administrative hearing request was received by the
20 department.

21 (e) An administrative hearing date may be extended beyond sixty (60) calendar days
22 upon agreement of both parties.

23 (2) If a pre-hearing conference is requested by a party and granted by the hearing

1 officer, the conference shall comply with KRS 13B.070.

2 (3) An administrative hearing may be withdrawn if:

3 (a) The hearing officer receives a written statement from the appealing party
4 requesting the withdrawal; or

5 (b) The appealing party makes a statement on the record at the hearing withdrawing
6 the request for an administrative hearing.

7 (4) Upon the agreement of all parties, an administrative hearing may be conducted
8 telephonically or by other electronic means.

9 (5) A hearing officer shall preside over an administrative hearing and shall conduct
10 the administrative hearing in accordance with:

11 (a) KRS 13B.080; and

12 (b) KRS 13B.090.

13 (6) The issue considered at the hearing shall be limited to the specific records and
14 disputes raised or presented in the provider's initial appeal to the MCO.

15 (7) The hearing officer's decision shall be issued within sixty (60) calendar days after
16 the close of the official record of the administrative hearing and shall include:

17 (a) The findings of facts, conclusions of law, and the final order solely based on the
18 evidence on the record;

19 (b) The party that shall pay an administrative hearing fee in accordance with Section
20 3 of this administrative regulation; and

21 (c) Notice that judicial review on a final order is available to the parties in accordance
22 with Section 4 of this administrative regulation.

23 (8) A hearing officer's decision shall constitute the final order in the matter for

1 purposes of appeal.

2 Section 3. Administrative Hearing Fee. The party that receives an adverse final order
3 shall pay a fee of \$600 to the department within thirty (30) calendar days of the
4 issuance of the final order.

5 Section 4. Judicial Review of the Final Order. (1) Judicial review of the hearing
6 officer's final order is available pursuant to KRS 13B.140 and KRS 13B.150.

7 (2) Within twenty (20) days after the service of the petition for judicial review under
8 subsection (1) of this section, the administrative hearings branch shall transmit a
9 certified copy of the official record of the proceeding under review.

907 KAR 17:040E

REVIEWED:

Date

Stephen P. Miller, Commissioner
Department for Medicaid Services

APPROVED:

Date

Vickie Yates Brown Glisson, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 17:040E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Sharley Hughes (502) 564-4321, extension 2010;

sharleyj.hughes@ky.gov or Tricia Orme (502) 564-7905; tricia.orme@ky.gov.

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the requirements regarding administrative hearings conducted by the Cabinet for Health and Family Services following an external independent third-party review. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that “denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization.” The party that receives an adverse decision from the external independent third-party review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. This administrative regulation is being promulgated concurrently with the administrative regulation (907 KAR 17:035) that establishes external independent third-party review provisions.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to grant administrative hearings to either Medicaid providers or MCOs who receive an adverse decision from an external independent third-party review.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

- (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
- (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid providers and all five managed care organizations will be affected by this administrative regulation.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A Medicaid provider or MCO that receives an adverse decision from an external independent third-party review and that wishes to appeal the decision may do so by submitting a request to the Department for Medicaid Services (DMS) – within thirty (30) days of receiving from DMS a notice of the right to such an administrative hearing – for an administrative hearing.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the provider or MCO to file an appeal, i.e. – staff to gather the necessary information. However, the losing party in every appeal will have to pay \$600 to the state.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.
- (b) On a continuing basis: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DMS was not allocated any funds to implement the functions required by this this administrative regulation. KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed one thousand dollars (\$1,000), to defray expenses associated with an administrative hearing. The Department has set the fee at \$600, which will be paid by the party that does not prevail, which will help offset the added costs.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed one thousand dollars (\$1,000), to defray expenses associated with an administrative hearing. The Department has set the fee at \$600, which will be paid by the party that does not prevail.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)
Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 17:040E

Contact Person: Sharley Hughes (502) 564-4321, extension 2010;

sharleyj.hughes@ky.gov or Tricia Orme (502) 564-7905; tricia.orme@ky.gov.

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services and the Division of Administrative Hearings will be affected by this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that party receiving an adverse determination should pay \$600.00 to defray some of the cost associated with increasing the number of hearings in the Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than \$1000.00 would help cover costs while not chilling the parties right to appeal the external third party reviewer's determination.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that party receiving an adverse determination should pay \$600.00 to defray some of the cost associated with increasing the number of hearings in the Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than \$1000.00 would help cover costs while not chilling the parties right to appeal the external third party reviewer's determination.
 - (c) How much will it cost to administer this program for the first year? The Department was not allocated any funds for this program. However, without knowing the number of appeals to be filed, it the Department is not able to determine a cost.
 - (d) How much will it cost to administer this program for subsequent years? The Department was not allocated any funds for this program. However, without

knowing the number of appeals to be filed, it the Department is not able to determine a cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: