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Donna Little
REGULATIONS COMPILER

STATEMENT OF EMERGENCY

907 KAR 15:065E

(1) This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:060E, Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability - to comply with a federal mandate. The Affordable Care Act mandates coverage of behavioral health services and federal law requires Medicaid Programs to ensure that recipients have access to services. These two (2) administrative regulations will help ensure that individuals are able to access mandated behavioral health services.

(2) Targeted case management ensures that Medicaid recipients with a severe mental illness or with a severe emotional disability are monitored to ensure that they receive the services most beneficial to their particular illnesses. As mental illness can be life-threatening and require long-term treatment, targeted case management gives continuity of care to a Medicaid recipient whose illness needs long-term monitoring. This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds, to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation, and so as not to delay providing this service to Medicaid recipients at risk.

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

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

Steven L. Beshear
Governor

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Emergency Administrative Regulation)

5 907 KAR 15:065E. Reimbursement provisions and requirements regarding targeted

6 case management for individuals with a severe mental illness and children with a se-

7 vere emotional disability.

8 RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family

11 Services, Department for Medicaid Services, has a responsibility to administer the Med-

12 icaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to

13 comply with any requirement that may be imposed or opportunity presented by federal

14 law to qualify for federal Medicaid funds. This administrative regulation establishes the

15 reimbursement provisions and requirements regarding Medicaid Program targeted case

16 management services for individuals with a severe mental illness and children with a

17 severe emotional disability who are not enrolled with a managed care organization.

18 Section 1. General Requirements. For the department to reimburse for a service cov-

19 ered under this administrative regulation, the service shall be:

20 (1) Medically necessary;

21 (2) Provided:

1 (a) To a recipient;

2 (b) By a provider that meets the provider participation requirements established in

3 907 KAR 15:060; and

4 (c) In accordance with the requirements established in 907 KAR 15:060; and

5 (3) Covered in accordance with 907 KAR 15:060.

6 Section 2. Reimbursement. (1) The department shall reimburse a monthly rate of

7 $334 in total for all targeted case management services provided to a recipient during

8 the month.

9 (2) To qualify for the reimbursement referenced in subsection (1) of this section, a

10 targeted case management services provider shall provide services to a recipient con-

11 sisting of at least four (4) targeted case management service contacts including:

12 (a) At least two (2) face-to-face contacts with the recipient; and

13 (b) At least two (2) additional contacts which shall be:

14 1.a. By telephone; or

15 b. Face-to-face; and

16 2. With the recipient or with another individual on behalf of the recipient.

17 Section 3. No Duplication of Service. (1) The department shall not reimburse for a

18 service provided to a recipient by more than one (1) provider of any program in which

19 the service is covered during the same time period.

20 (2) For example, if a recipient is receiving targeted case management services from

21 an independent behavioral health provider, the department shall not reimburse for the

22 targeted case management services provided to the same recipient during the same

23 time period by a behavioral health services organization.

1 Section 4. Not Applicable to Managed Care Organizations. A managed care organi-
2 zation shall not be required to reimburse in accordance with this administrative regula-
3 tion for a service covered pursuant to:
4 (1) 907 KAR 15:060; and
5 (2) This administrative regulation.
6 Section 5. Federal Approval and Federal Financial Participation. The department's
7 reimbursement for services pursuant to this administrative regulation shall be contingent
8 upon:
9 (1) Receipt of federal financial participation for the reimbursement; and
10 (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

907 KAR 15:065E

REVIEWED:

8/19/14
Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

9/9/14
Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 15:065E
Contact person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program targeted case management services for individuals with a severe mental illness and children with a severe emotional disability. This administrative regulation is being promulgated in conjunction with 907 KAR 15:060E (Coverage provisions and requirements regarding targeted case management for individuals with a severe mental illness and children with a severe emotional disability.) Targeted case management services are services that assist Medicaid recipients in accessing needed medical, social, educational, and other services. The components of targeted case management include assessing the individual's need for services by taking the individual's history, identifying the individual's needs, and gathering information from other sources (family members, medical providers, social workers, and educators) to form a complete assessment; developing a customized care plan for the individual; referring the individual or related activities to help the individual obtain needed services; and monitoring activities to ensure that the individual's care plan is implemented effectively and adequately addresses the individual's needs. For these services the Department for Medicaid Services (DMS) will pay a monthly rate (encompassing all services provided to the recipient during the given month) of $334.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to help ensure that children who have a severe emotional disability or individuals who have a severe mental illness receive necessary services and care. The targeted case manager provider is the individual or entity responding for coordinating the individual's services/care, facilitating access to services/care, and monitoring individual's progress or difficulties while receiving services/care. Targeted case management helps ensure that the individual receives the appropriate and necessary services and care they need rather than randomly receive services/care or fail to receive any services/care at all.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by helping ensure that children who have a severe emotional disability and individuals who have a severe mental illness receive necessary services and care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by helping ensure that children who have a severe emotional disability and individuals who have a severe mental illness receive necessary services and care.

(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 rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities eligible to provide targeted case management services (such as community mental health centers, individual behavioral health service providers/provider group, behavioral health provider groups, or behavioral health services organizations) will be affected by this administrative regulation as well as the various professionals who are authorized to provide services either independently or via the aforementioned providers. Medicaid recipients who qualify for targeted case management services will also 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. Entities that qualify and wish to provide targeted case management services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation [complete and application and submit it to the Department for Medicaid Services (DMS)] and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. The professionals authorized to provide services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of targeted case management will benefit from having the option to receive these services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat

when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund 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. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 907 KAR 15:065E
Contact person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different re-

sponsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 907 KAR 15:065E
Contact person: Stuart Owen (502) 564-4321

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 will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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? The amendment is not expected to generate revenue for state or local government.

(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? The amendment is not expected to generate revenue for state or local government.

(c) Initially: DMS estimates that implementing the administrative regulation will cost approximately $1.05 million state funds/$3.87 million federal funds initially.

(d) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $1.79 million state funds/$6.64 million federal funds for the second year of implementation. The federal matching percent will decrease somewhat when the federal matching percent for individuals eligible under "Medicaid expansion" recedes from its current 100% to 90%.

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: