



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Health Care Policy

4 (Amendment)

5 907 KAR 1:023. Review and approval of selected therapies as ancillary services in nursing facilities.

6 RELATES TO: 42 C.F.R. Parts 430, [431, 432, 433, 435, 440, 442,] 447, 455, 456, 482, 42 U.S.C. 1396a,

7 b, d, c, r

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[, ~~EO 2004-726~~]

9 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the~~  
10 ~~Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program~~  
11 ~~under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services,  
12 Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS  
13 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may  
14 be imposed or opportunity presented by federal law for the provision of Medical Assistance to Kentucky's  
15 indigent citizenry. This administration regulation establishes the provisions relating to the review and  
16 approval of selected therapies as ancillary services for Medicaid recipients in nursing facilities.

17 Section 1. Definitions.

18 (1) [~~"Adult recipient" means an individual who is:~~

19 ~~(a) Eligible to participate in Kentucky's Medicaid Program; and~~

20 ~~(b) Age twenty-one (21) or over.~~

21 (2) "Ancillary service" means a direct therapy service [~~for which a separate charge is customarily made~~]

22 pursuant to Section 2 of this administrative regulation.

1 ~~[(3) "Attending physician" means the physician of record identified in the recipient's nursing facility~~  
2 ~~medical record.]~~

3 ~~(2)~~[(4)] "Department" means the Department for Medicaid Services or its designee.

4 ~~(3)~~[(5)] "Nursing facility" or "NF" means:

5 (a) A facility:

6 1. To which the state survey agency has granted an NF license;

7 2. For which the state survey agency has recommended to the department certification as a Medicaid  
8 provider; and

9 3. To which the department has granted certification for Medicaid participation; or

10 (b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the  
11 swing bed is certified to the department as meeting requirements for the provision of swing bed services  
12 in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.66.

13 ~~[(6) "Pediatric recipient" means an individual who is:~~

14 ~~(a) Eligible to participate in Kentucky's Medicaid Program; and~~

15 ~~(b) Under twenty-one (21) years of age.]~~

16 Section 2. Covered Ancillary Services.

17 (1) Oxygen therapy shall be a covered ancillary service if ~~[the department determines that]~~ the therapy[:

18 ~~(a)] is medically necessary[; and~~

19 ~~(b) Meets criteria pursuant to Section 3 of this administrative regulation].~~

20 (2) The following therapies shall be covered ancillary services if medically necessary~~[the department~~  
21 ~~determines that the therapies meet the criteria established in Section 3 of this administrative regulation]:~~

22 (a) Physical therapy;

23 (b) Occupational therapy; or

24 (c) Speech and language therapy.

1 ~~[Section 3. On-site Review Approval and Denial Criteria.~~

2 ~~(1) The department shall approve a therapy as an ancillary service if, through an on-site review, the~~  
3 ~~department determines that:~~

4 ~~(a) The nature and extent of functional deficiency requires a qualified therapist, as determined through~~  
5 ~~chart evaluation and resident contact;~~

6 ~~(b) The care setting is appropriate for treatment planned;~~

7 ~~(c) The therapy frequency, duration and intensity shall be reasonable and necessary for the resident's~~  
8 ~~current active diagnosis;~~

9 ~~(d) The following documentation is complete:~~

10 ~~1. Referral request;~~

11 ~~2. Therapy assessment;~~

12 ~~3. Action plan;~~

13 ~~4. Progress report; and~~

14 ~~5. Service discontinuance;~~

15 ~~(e) The progress of the resident can be verified against baseline and stated goals and time frames;~~

16 ~~(f) The therapy is not duplicative of other services that the resident is receiving;~~

17 ~~(g) The condition of the resident requires a registered therapist to:~~

18 ~~1. Evaluate the resident's active daily intervention program;~~

19 ~~2. Supervise trained staff to carry out a therapy regimen;~~

20 ~~3. Use assistive or adaptive equipment;~~

21 ~~4. Train staff to use assistive or adaptive equipment;~~

22 ~~5. Train the resident to use assistive or adaptive equipment during goal setting;~~

23 ~~6. Supervise and certify a therapy assistant who is participating in a treatment program;~~

24 ~~7. Establish a nursing care plan program to be performed by:~~

1       a. ~~Nursing staff;~~

2       b. ~~Restorative aide; or~~

3       c. ~~A resident; and~~

4       8. ~~Be responsible for the timely discharge of a service level;~~

5       (h) A therapist has a:

6       1. ~~Specific diagnosis;~~

7       2. ~~Specific treatment plan that relates to a condition of the resident;~~

8       3. ~~Specific modality for intervention that relates to a condition of the resident; and~~

9       4. ~~Reasonable expectation for gain based on reasonable goals and time frames; and~~

10      (i) A resident is:

11      1. ~~An adult recipient who meets the approval criteria of the "Technical Criteria for Reviewing~~  
12      ~~Ancillary Services for Adults"; or~~

13      2. ~~A pediatric recipient who meets the "Technical Criteria for Reviewing Ancillary Services for~~  
14      ~~Pediatrics".~~

15      (2) ~~The department shall deny a request for a therapy as an ancillary service pursuant to Section 2 of this~~  
16      ~~administrative regulation if, through an on-site review, the department determines that:~~

17      (a) ~~Services of a registered therapist are not needed on a daily basis because:~~

18      1. ~~Lack of progress of the patient;~~

19      2. ~~Goals have been met;~~

20      3. ~~A patient is unable to participate;~~

21      4. ~~Lack of ability of nursing staff or resident to conduct or perform care;~~

22      5. ~~The Nursing care plan program has been designed and will be performed by staff other than a~~  
23      ~~therapist;~~

24      6. ~~Nursing staff or the resident is able to safely;~~

1 a. Perform the following:

2 (i) Repetitious exercise;

3 (ii) Nonrestorative exercise; or

4 (iii) Drills; and

5 b. Use equipment or devices;

6 ~~7. The frequency or intensity of the services exceeds the benefits;~~

7 ~~8. No further gains are reasonably achievable; or~~

8 ~~9. A resident is:~~

9 a. Independent; or

10 b. Needs only minimal assistance for performance;

11 (b) The resident is:

12 ~~1. An adult recipient who meets the "Indication for Denial" criteria established in the "Technical~~  
13 ~~Criteria for Reviewing Ancillary Services for Adults"; or~~

14 ~~2. A pediatric recipient who meets the "Indication for Denial" criteria established in the "Technical~~  
15 ~~Criteria for Reviewing Ancillary Services for Pediatrics"; and~~

16 (c) If applicable, oxygen therapy is not medically necessary.

17 ~~Section 4. Certification and Recertification Process for a Therapy as an Ancillary Service.~~

18 ~~(1) Within two (2) workdays of the date that a recipient's attending physician orders administration of a~~  
19 ~~therapy pursuant to Section 2 of this administrative regulation, an NF shall:~~

20 (a) Notify the department by telephone; and

21 (b) Request an on-site review of the therapy.

22 ~~(2) Within five (5) workdays of receipt of notification pursuant to subsection (1) of this section, the~~  
23 ~~department shall:~~

24 (a) Perform an on-site review pursuant to Section 3 of this administrative regulation; and

~~(b) Render a certification decision.~~

~~(3) The department shall issue a written notice of approval or denial relating to:~~

~~(a) A request for oxygen therapy to the:~~

~~1.~~

~~a. Resident; or~~

~~b. Guardian;~~

~~2. NF; and~~

~~3. Attending physician; or~~

~~(b) A request for a therapy pursuant to Section 2(2) of this administrative regulation to the NF.~~

~~(4) If a therapy pursuant to Section 2(2) of this administrative regulation is approved as an ancillary service, the department shall establish a certification period that includes:~~

~~(a) A start date of up to two (2) workdays prior to the date of notification by an NF pursuant to subsection (1) of this section; and~~

~~(b) An end date that the department determines to be a reasonable time period for an individual to meet goals established by an individualized therapy program.~~

~~(5) Prior to the last day of a certification period for an approved therapy as an ancillary service, the department shall:~~

~~(a) Recertify a therapy as an ancillary service for the extended period of time, if an individual continues to meet criteria pursuant to Sections 2 and 3 of this administrative regulation; and~~

~~(b) Issue a written notice pursuant to subsection (3) of this section.~~

~~(6) If the department denies a request for certification or recertification of a therapy as an ancillary service, the NF may request that the department reconsider a request pursuant to Section 5 of this administrative regulation.~~

~~Section 5. Reconsideration and Appeal of a Denial of a Therapy as an Ancillary Service.~~

1 ~~(1) The department shall reconsider its decision to deny a request for oxygen therapy as an ancillary~~  
2 ~~service if, within thirty (30) days of the date on a notice of adverse action, a written request for~~  
3 ~~reconsideration is submitted to the department by the:~~

4 ~~(a) Resident; or~~

5 ~~(b) Resident's legal guardian.~~

6 ~~(2) If the department receives a request for reconsideration pursuant to subsection (1) of this section, the~~  
7 ~~department shall:~~

8 ~~(a) Conduct a reconsideration on site review within three (3) workdays from the receipt of the request;~~

9 ~~(b) Employ a physician who was not involved with the initial on site review or determination to conduct~~  
10 ~~a reconsideration on site review;~~

11 ~~(c) Base its reconsideration decision solely upon information that is:~~

12 ~~1. Contained in the resident's medical records; and~~

13 ~~2. Submitted with the written request pursuant to subsection (1) of this section; and~~

14 ~~(d) Issue a notification of approval or denial within two (2) workdays of a reconsideration on site~~  
15 ~~review.~~

16 ~~(3) The department shall reconsider its decision to deny a request for a therapy as an ancillary service~~  
17 ~~pursuant to Section 2(2) of this administrative regulation if:~~

18 ~~(a) Form MAP 703, "Request for Reconsideration of Ancillary Therapy Billing" is submitted to the~~  
19 ~~department by an NF; and~~

20 ~~(b) Form MAP 703 is received by the department within seven (7) days of the date on the notice of~~  
21 ~~adverse action.~~

22 ~~(4) If the department receives a request for reconsideration pursuant to subsection (3) of this section, the~~  
23 ~~department shall:~~

24 ~~(a) Conduct a reconsideration on site review within seven (7) workdays from receipt of the request;~~

~~(b) Employ a registered nurse who was not involved with the initial on-site review or determination to conduct the reconsideration on-site review;~~

~~(c) Base its reconsideration decision solely upon information that is:~~

~~1. Contained in the resident's medical records; and~~

~~2. Submitted with the request pursuant to subsection (3)(a) of this section; and~~

~~(d) Issue a notification of approval or denial within three (3) workdays of a reconsideration on-site review.~~

~~(5) If an outcome of a reconsideration on-site review results in the denial of a therapy as an ancillary service, the department shall grant an appeal as follows:~~

~~(a) An appeal of the denial of oxygen therapy as an ancillary service shall be granted pursuant to 907 KAR 1:563; and~~

~~(b) An appeal of the denial of a therapy pursuant to Section 2(2) of this administrative regulation as an ancillary service shall be granted pursuant to 907 KAR 1:671.~~

#### ~~Section 6. Incorporation by Reference.~~

~~(1) The following material is incorporated by reference:~~

~~(a) The "Technical Criteria for Reviewing Ancillary Services for Adults", Department for Medicaid Services, November 2003 edition;~~

~~(b) The "Technical Criteria for Reviewing Ancillary Services for Pediatrics", Department for Medicaid Services, November 2003 edition; and~~

~~(c) Form "MAP 703, Request for Reconsideration of Ancillary Therapy Billing", Department for Medicaid Services, April 2000 edition.~~

~~(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~



907 KAR 1:023

REVIEWED:

8/1/2025  
Date

DocuSigned by:  
*Lisa Lee*  
7CB973D215D941E  
Lisa D. Lee, Commissioner  
Department for Medicaid Services

APPROVED:

8/1/2025  
Date

Signed by:  
*Steven Stack*  
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Steven J. Stack, MD, MBA, Secretary  
Cabinet for Health and Family Services

## **PUBLIC HEARING AND PUBLIC COMMENT PERIOD:**

A public hearing on this administrative regulation shall, if requested, be held on November 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 November 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 through November 30, 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.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

907 KAR 1:023

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Subject Headings: *{Provide at least 3 headings from the [subject headings list](#).}* Cognitive Decline and Impairment; Disability and Disabilities; Health and Medical Services; Medicaid, Nursing Facilities

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to the review and approval of selected therapies as ancillary services for Medicaid recipients in nursing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions relating to the review and approval of selected therapies as ancillary services for Medicaid recipients in nursing facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the provisions relating to the review and approval of selected therapies as ancillary services for Medicaid recipients in nursing facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statute by establishing the provisions relating to the review and approval of selected therapies as ancillary services for Medicaid recipients in nursing facilities.

(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: The administrative regulation removes various provisions relating to ancillary therapy reviews, documentation, and services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect a change to the Medicaid state plan that transitions ancillary therapies to a per diem payment instead of separate reimbursement.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms by ensuring that current state plan and reimbursement policy aligns with the relevant administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that current reimbursement policy surrounding ancillary therapies is updated.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? No

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 257 nursing facilities currently participating in the Medicaid Program.

(5) Provide an analysis of how the entities identified in question (4) 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 (4) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4): DMS does not anticipate additional costs for regulated entities in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): Entities will be able to participate in ancillary services and receive reimbursement as part of the per diem reimbursement.

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

(a) Initially: The department does not anticipate any additional costs in implementing this administrative regulation.

(b) On a continuing basis: The department does not anticipate any additional costs in implementing this administrative regulation.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal and state general and restricted funds.

(8) 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: No increase in fees or funding will be necessary to implement this amendment.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees directly or indirectly.

(10) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL IMPACT STATEMENT

907 KAR 1:023. Review and approval of selected therapies as ancillary services in nursing facilities.

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Contact Person: Krista Quarles

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(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 431.153, 431.154, 447.280, 482.58, 42 U.S.C. 1396r

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, Department for Medicaid Services, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: The department does not anticipate additional expenses as a result of the amendment.

Revenues: The department does not anticipate additional revenues as a result of the amendment.

Cost Savings: The department does not anticipate cost savings as a result of the amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS does not anticipate additional expenditures, revenues, or cost savings as a result of this amendment.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):  
N/A this regulation does not impact local entities.

(a) Estimate the following for the first year:

Expenditures: N/A there is no impact on local entities

Revenues: N/A there is no impact on local entities

Cost Savings: N/A there is no impact on local entities

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The department does not anticipate that this administrative regulation will have a fiscal impact on local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): Nursing facilities.

(a) Estimate the following for the first year:

Expenditures: The department does not anticipate additional expenses for nursing facilities as a result of incorporating ancillary therapies into per diem payment rates.

Revenues: The department does not anticipate additional revenues for nursing facilities as a result of incorporating ancillary therapies into per diem payment rates.

Cost Savings: The department does not anticipate cost savings for nursing facilities as a result of incorporating ancillary therapies into per diem payment rates.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The department does not anticipate additional expenditures, additional revenues, or cost savings for nursing facilities as a result of incorporating ancillary therapies into per diem payment rates.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will not have a fiscal impact on the department or regulated entities. DMS does not anticipate a change to reimbursement amounts for ancillary therapies as a result of this change.

(b) Methodology and resources used to determine the fiscal impact: The department has worked with an external contractor to complete a fiscal analysis. This information has also been relayed to the federal government.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion: The department has worked with an external contractor to complete a fiscal analysis. This information has also been relayed to the federal government.

## FEDERAL MANDATE ANALYSIS COMPARISON

907 KAR 1:023. Review and approval of selected therapies as ancillary services in nursing facilities.

Contact Person: Jonathan Scott

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1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1395tt, 1396l, 1396r
2. State compliance standards. KRS 194A.030(2), 194A.050(1), 205.520(3)
3. Minimum or uniform standards contained in the federal mandate. 42 USC 1396R establishes requirements for nursing facilities.
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 responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.