

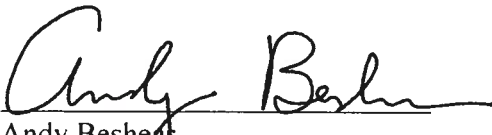
STATEMENT OF EMERGENCY

907 KAR 3:320E *EO*

This new emergency administrative regulation is being promulgated to establish a Beneficiary Advisory Council and modify the Advisory Council for Medical Assistance to conform to new federal requirements effective July 9, 2025.

This new emergency 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 will benefit from having expanded beneficiary participation in the policy advising initiatives of the department.

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


Andy Beshear
Governor

Signed by:

A6C077BED9A2471
Stephen J. Stack, M.D., MBA. 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 3:320E. Beneficiary Advisory Council and modifications to the Advisory Council for
6 Medical Assistance to establish the Kentucky Medicaid Advisory Committee.

7 RELATES TO: 42 C.F.R. 431.12, KRS 61.800-884, 205.540

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

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,
10 Department for Medicaid Services, is required to administer the Medicaid program. KRS
11 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement
12 that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid
13 funds. This administrative regulation establishes the Beneficiary Advisory Council and
14 implements additional requirements for the Advisory Council for Medical Assistance, referred to
15 federally as the Medicaid Advisory Committee, following changes to federal law.

16 Section 1. Beneficiary Advisory Council membership.

17 (1) The Department for Medicaid Services shall establish a Beneficiary Advisory Council
18 consistent with 42 C.F.R. 431.12.

19 (2) Members of the Beneficiary Advisory Council shall be appointed by the commissioner of
20 the Department for Medicaid Services.

21 (3) The Beneficiary Advisory Council shall consist of fifteen (15) members as follows:

(a) Ten (10) current or former Medicaid beneficiaries; and

(b) Five (5) individuals who are parents, guardians, or paid or unpaid caregivers of a Medicaid beneficiary.

(c) The three (3) medical assistance recipients serving as of July 8, 2025 on the Advisory Council for Medical Assistance pursuant to KRS 205.540, shall be appointed for a term that aligns the remainder of their term to a new term in subsection 4 of this section, to the extent possible.

(d) Appointments shall ensure representation of member experience with Medicaid managed care, the foster care system, 1915(c) home and community based waivers, or maternal, child, or behavioral health services.

(4) Members of the Beneficiary Advisory Council shall hold office for a term of four (4) years, except that the terms for members appointed upon council creation shall be as follows:

(a) One-third (1/3) of the members shall be appointed for two (2) years;

(b) One-third (1/3) of the members shall be appointed for three (3) years;

(c) One-third (1/3) of the members shall be appointed for four (4) years; and

(d) The respective terms of the members first appointed shall be designated by the commissioner of the Department for Medicaid Services at the time of their appointments.

(5) The following requirements shall apply to the terms of members of the Beneficiary Advisory Council:

(a) A member shall not serve a consecutive term but may be reappointed after a period of at least four (4) years following the end of their term;

(b) A vacancy shall be filled for an unexpired term in the same manner as the original appointment; and

(c) Members whose term has expired may serve until their successor is appointed.

(6) The Beneficiary Advisory Council shall elect a chair, vice-chair, and secretary from among its members at its first regular meeting, and annually thereafter.

(7)(a) Upon appointment to the Beneficiary Advisory Council, members shall indicate to the commissioner their interest in appointment to the Medicaid Advisory Committee pursuant to Section 4(3)(b) and to comply with 42 CFR 431.12.

(b) The current chair of the Beneficiary Advisory Council shall serve as one (1) of the appointments to the Medicaid Advisory Committee.

(c) The three (3) medical assistance recipients serving as of July 8, 2025 on the Advisory Council for Medical Assistance pursuant to KRS 205.540 shall be appointed pursuant to subsection (3)(c).

(8) To permit meaningful participation, members of the Beneficiary Advisory Council, including members who also serve on the Medicaid Advisory Committee, may receive, if requested:

(a) Compensation for time and appropriate expenses in an amount consistent with similar services reimbursed by Medicaid or as reimbursed by other boards and commissions; and

(b) Reasonable accommodations including language services, personal assistance, communication supports, and any other supports or resources based on the individual member's needs.

Section 2. Confidentiality and privacy applicable to members of the Beneficiary Advisory Council.

(1) To the extent that a conflict exists between 42 C.F.R. 431.12 and the Kentucky Open Meetings and Kentucky Open Records statutes, KRS 61.800-884, members of the Beneficiary

1 Advisory Council may participate in the work of the Beneficiary Advisory Council as consistent
2 with this section.

3 (2) A member of the Beneficiary Advisory Council shall have the option to exclude their name
4 from documents published or posted by the Department for Medicaid Services that include a list
5 of members of the Beneficiary Advisory Council, the Medicaid Advisory Committee, or the
6 actions of members recorded in publicly published or posted meeting minutes.

7 (3) Meetings of the Beneficiary Advisory Council are not required to be open to the public
8 unless a majority of the members decide otherwise.

9 (4) A member of the Beneficiary Advisory Council may opt-in to participate and vote by
10 telephone.

11 Section 3. Beneficiary Advisory Council duties and authority.

12 (1) The Beneficiary Advisory Council shall advise the Department for Medicaid Services on:

13 (a) Their experiences with the program;

14 (b) Matters related to policy development and effective administration of the program; and

15 (c) Other issues that impact the provision or outcomes of health and medical care services in
16 the program.

17 (2) The Beneficiary Advisory Council shall:

18 (a) Be separate from the Medicaid Advisory Committee pursuant to 42 CFR 431.12;

19 (b) Meet separately from the Medicaid Advisory Committee;

20 (c) Meet at least once per quarter; and

21 (d) Meet in advance of each Medicaid Advisory Committee meeting to prepare Beneficiary
22 Advisory Council members.

(3) The Beneficiary Advisory Council shall adhere to bylaws developed and published by the department for governance.

Section 4. Medicaid Advisory Committee. KRS 205.540 created the Advisory Council for Medical Assistance in 1960 to meet a federal requirement for an advisory council to assist the state Medicaid program. KRS 205.540 now conflicts with changes to federal regulations that take effect July 9, 2025. Therefore, it is the department's intention that the Advisory Council for Medical Assistance established in KRS 205.540 shall be modified in this Section to meet the requirements of 42 CFR 431.12 and function as Kentucky's Medicaid Advisory Committee.

(1) On or after July 9, 2025, the Medicaid Advisory Committee shall consist of members appointed by the commissioner of the Department for Medicaid Services.

(2) The membership appointed to the Advisory Council for Medical Assistance pursuant to KRS 205.540 as of July 8, 2025 shall be appointed by the commissioner for the Department for Medicaid Services to the new Medicaid Advisory Committee pursuant to 42 CFR 431.12 as follows:

(a) For a member with an unexpired term, for a term that aligns the remainder of the member's term with a new term in subsection (4)(b) of this section, to the extent possible;

(b) For a member serving as a medical assistance recipient, to both the Medicaid Advisory Committee and the Beneficiary Advisory Council for the same term that aligns the remainder of their term with a new term in subsection (4)(b) of this section, to the extent possible;

(c) For a member serving in an expired term, that member's term shall end on July 8, 2025, and appointment shall follow the nomination process of KRS 205.540; and

(d) For a vacancy, appointment shall follow the nomination process of KRS 205.540.

(3) The Medicaid Advisory Committee shall consist of the following members:

1 (a) Members appointed by the commissioner of the Department for Medicaid Services
2 according to the membership established in KRS 205.540.

3 (b) Ex-officio, non-voting members as follows:

4 1. The commissioner of the Department for Medicaid Services, or his or her designee;

5 2. The commissioner of the Department for Community Based Services, or his or her
6 designee;

7 3. The commissioner of the Department for Public Health, or his or her designee;

8 4. The commissioner of the Department for Behavioral Health, Developmental and
9 Intellectual Disabilities, or his or her designee;

10 (c) The appointment by the commissioner of the Department for Medicaid Services of a
11 sufficient number of members of the Beneficiary Advisory Council so that at least twenty-five
12 percent (25%) of the Medicaid Advisory Committee consists of members serving on the
13 Beneficiary Advisory Council; and

14 (d) A member appointed by the commissioner for the Department for Medicaid Services from
15 a list of three (3) nominees submitted by the Kentucky Association of Health Plans, or its successor
16 organization, to represent a current contracted Medicaid Managed Care Organization, if
17 beneficiaries are enrolled in managed care.

18 (4) A member shall have a non-consecutive term of four (4) years except that:

19 (a) The member appointed pursuant to subsection (3)(d) of this section shall serve a term of one
20 (1) year.

21 (b) The other members first appointed according to subsections (1), (2), and (3) of this section
22 shall serve as follows:

23 1. One-third (1/3) of the members shall be appointed for a term of two (2) years;

2. One-third (1/3) of the members shall be appointed for a term of three (3) years; and

3. One-third (1/3) of the members shall be appointed for a term of four (4) years.

(c) A member may be reappointed after a period of at least four (4) years following the end of their term.

(d) A vacancy shall be filled for an unexpired term in the same manner as the original appointment.

(e) At the first meeting after July 9, 2025, the new Medicaid Advisory Committee shall elect a chair, vice-chair and secretary from among its members, and annually thereafter.

(5) The Medicaid Advisory Committee shall adhere to bylaws developed and published by the department for governance.

(6) On or after July 9, 2027, the Medicaid Advisory Committee shall submit an annual report to be published on the Medicaid Advisory Committee's website, with support from the Department for Medicaid Services, as follows:

(a) Describes the activities, topics discussed, and recommendations of the Medicaid Advisory Committee and the Beneficiary Advisory Council;

(b) Includes the department's review and responses to recommended actions; and

(c) Is published to the department's website thirty (30) days after it is final.

Section 5. Duties of the Department for Medicaid Services. The department shall comply with the requirements in 42 CFR 431.12 as follows:

(1) Provide staff who attend and facilitate meetings and member engagement for the Medicaid Advisory Committee and Beneficiary Advisory Council;

(2) Develop and publish on the department's website a process for Medicaid Advisory Committee and Beneficiary Advisory Council member recruitment and selection;

1 (3) Develop and publish on the department's website bylaws for the governance of the Medicaid
2 Advisory Committee and Beneficiary Advisory Council;

3 (4) Develop and publish on the department's website a meeting schedule that maximizes
4 member attendance and an agenda with a 30-calendar day notice of a meeting date, location, and
5 time of each public meeting of the Medicaid Advisory Committee and Beneficiary Advisory
6 Council;

7 (5) Publish on the department's website past meeting minutes and list of meeting attendees
8 within 30 calendar days following a meeting of the Medicaid Advisory Committee and Beneficiary
9 Advisory Council, except that members of the Beneficiary Advisory Council shall have the option
10 to exclude their names;

11 (6) Offer a variety of meeting options including in-person, virtual, and hybrid (in-person and
12 virtual), and at a minimum a telephone dial-in option for members and the public, if the meeting
13 is open to the public;

14 (7) Ensure meetings are accessible to people with disabilities and provide financial support and
15 reasonable accommodations to members of the Beneficiary Advisory Council to support
16 participation; and

17 (8) Support the Medicaid Advisory Committee with the development of an annual report, and
18 publish it on the department's website.

907 KAR 3:320E
REVIEWED:

8/1/2025

Date

DocuSigned by:

Lisa Lee

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Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

8/1/2025

Date

Signed by:

Steven Stack

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Stephen J. Stack, M.D., 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 October 21, 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 October 14, 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 October 31, 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 3:320E: Beneficiary Advisory Council and modifications to the Advisory Council for Medical Assistance to establish the Kentucky Medicaid Advisory Committee.

Agency Contact: Jonathan Scott

Phone Number: (502) 564-4321, ext. 2015

Email: jonathant.scott@ky.gov

Contact Person: Krista Quarles

Phone Number: (502) 564-7476

Email: CHFSregs@ky.gov

Subject Headings: Advisory Entities; Health and Medical Services; Medicaid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Beneficiary Advisory Committee and implements additional requirements for the Advisory Council for Medical Assistance following changes to federal law.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Beneficiary Advisory Council and make additional federally required updates to the Advisory Council for Medical Assistance.

(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 ensuring federally required representation on existing committees and processes and a new Beneficiary Advisory Council.

(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 statutes by establishing federally required updates to existing advisory councils and a new required advisory council.

(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) 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: DMS anticipates the appointment of

fifteen (15) members to the new Beneficiary Advisory Council.

(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: No action is required, except individuals will need to inform DMS of their interest in serving.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4): Regulated entities will experience no new costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): Recipients will be able to participate in the Beneficiary Advisory Council and provide advice and policy development assistance to DMS.

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

(a) Initially: The department anticipates expenses of less than \$50,000 in introducing the Beneficiary Advisory Council and implementing a new structure and members into the Medicaid Advisory Committee. The expenses will consist of per diems for Medicaid recipients who will begin to participate more broadly in the Medicaid Advisory Committee and the new Beneficiary Advisory Council. In addition, transportation costs and beneficiary supports – if needed – would be included in this estimate.

(b) On a continuing basis: DMS anticipates that the cost of \$50,000 will continue into the future, and would be impacted only by increases in state mileage rates, and increases in other transportation and labor costs of recipient participants.

(7) 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.

(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: Neither an increase in fees nor funding will be necessary to implement the administrative regulation.

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

(10) TIERING: Is tiering applied? 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 3:320E: Beneficiary Advisory Council and modifications to the Advisory Council for Medical Assistance to establish the Kentucky Medicaid Advisory Committee.

Contact Person: Jonathan Scott

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Contact Person: Krista Quarles

Phone Number: (502) 564-7476

Email: CHFSregs@ky.gov

(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. 431.12

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

(a) Estimate the following for the first year:

Expenditures: The department anticipates expenses of less than \$50,000 in introducing the Beneficiary Advisory Council and implementing a new structure and members into the Medicaid Advisory Committee. The expenses will consist of per diems for Medicaid recipients who will begin to participate more broadly in the Medicaid Advisory Committee and the new Beneficiary Advisory Council. In addition, transportation costs and beneficiary supports – if needed – would be included in this estimate.

Revenues: The department does not anticipate revenues as a result of this administrative regulation.

Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS anticipates that the cost of \$50,000 will continue into the future, and would be impacted only by increases in state mileage rates, and increases in other transportation and labor costs of recipient participants.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs for local entities.

Revenues: The department does not anticipate revenues for local entities as a result of this administrative regulation.

Cost Savings: The department does not anticipate cost savings for local entities as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS does not expect additional expenditures, revenues, or cost savings for local entities as a result of this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Medicaid recipients, provider representatives, or other interested parties participating in the Medicaid Advisory Committee or the Beneficiary Advisory Committee.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities, as per diems and travel costs – if any – will be reimbursed.

Revenues: DMS does not anticipate revenues for other participating individuals.

Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS anticipates that any new participating individuals will continue to be eligible for some travel costs and per diems.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. The Beneficiary Advisory Council – similar to the technical advisory committees, Advisory Council on Medical Assistance, and the new Medicaid Advisory Committee is anticipated to be primarily conducted electronically for participant convenience. The department anticipates expenses of less than \$50,000 in introducing the Beneficiary Advisory Council and implementing a new structure and members into the Medicaid Advisory Committee. The expenses will consist of per diems for Medicaid recipients who will begin to participate more broadly in the Medicaid Advisory Committee and the new Beneficiary Advisory Council. In addition, transportation costs and beneficiary supports – if needed – would be included in this estimate

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives. In addition, DMS also worked with an external contractor in order to assess, analyze, and implement the federal final rule established in 42 C.F.R. 431.12.

(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): The 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: An assessment of the scope, meeting frequency, and expected participation of the board.

FEDERAL MANDATE ANALYSIS COMPARISON

907 KAR 3:320E. Beneficiary Advisory Council and modifications to the Advisory Council for Medical Assistance to establish the Kentucky Medicaid Advisory Committee.

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- (1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.12
- (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. State Medicaid agencies are required to establish and operate beneficiary advisory councils. In addition, a Medicaid Advisory Committee is required that includes members appointed by the Medicaid commissioner. The Medicaid Advisory Committee is also required to include additional types of members and additional beneficiary members.
- (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 will 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 will not impose stricter than federal requirements.