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| JAN 12 2022 |
| Emily B. Gaudill REGULATIONS DIVISION |

**STATEMENT OF CONSIDERATION RELATING TO
907 KAR 1:005.**

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Program Integrity

Not Amended After Comments

I. A public hearing on 907 KAR 1:005 was not requested, and therefore, not held. However, written comments were received during the public comment period.

II. The following individuals submitted comments during the public comment period:

| <u>Name and Title</u> | <u>Agency/Organization/Entity/Other</u> |
|---------------------------------------------|-----------------------------------------|
| Rebecca Randall, Senior Manager, Operations | WellCare Health Plans of Kentucky |

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 1:005.

| <u>Name and Title</u> | <u>Agency/Organization/Entity/Other</u> |
|----------------------------------------------------|-----------------------------------------------------------------|
| Lisa Lee, Commissioner | Department for Medicaid Services, Commissioner's Office |
| Veronica Cecil, Senior Deputy Commissioner | Department for Medicaid Services, Commissioner's Office |
| Jennifer Dudinskie, Director | Department for Medicaid Services, Division of Program Integrity |
| Teresa Shields, Branch Manager | Department for Medicaid Services, Division of Program Integrity |
| Jonathan Scott, Regulatory and Legislative Advisor | Department for Medicaid Services, Commissioner's Office |

IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Codes exempt from Medicare Explanation of Benefits (EOB)

(a) Comment: Rebecca Randall, Senior Director, Operations, WellCare Health Plans of

Kentucky, submitted comments discussing the requirement that providers are required to bill any other payer if a member has other insurance coverage. Providers typically submit proof via an EOB that the provider billed any other insurer first. However, the Medicare Program does not provide an EOB for claims that are not Medicare covered. The Department for Medicaid Services (DMS) maintains a list of those non-covered codes. The comment's request is that DMS agrees to be responsible for the list and that the list will be the "source of truth related to whether or not a Medicare EOB is required".

(b) Response: DMS cannot influence Medicare coverage policy. As a result, DMS' list is necessarily maintained as an informational document and may not be current if the Medicare program were to make changes. The department will endeavor to update the list regularly; however, because DMS does not control the list, it is not possible for DMS to generate the "source of truth" in this area. The department will not be amending the document in response to the comment.

V. SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 1:005. This administrative regulation is not being amended after comments.