



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Fiscal Management

4 (Amended after Comments)

5 907 KAR 10:815. Per diem inpatient hospital reimbursement.

6 RELATES TO: KRS 13B.140, 205.510(16), 205.637, 205.639, 205.640, 205.6405, 205.6406,
7 205.6407, 205.6408~~[205.641]~~, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-
8 447.280, 42 U.S.C. 1395f(l), 1395tt, 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2),
10 ~~[205.637(3), 205.640(1), 205.641(2), 216.380(13)]~~, 42 C.F.R. 447.252, 447.253, 42 U.S.C. 1396a,
11 ~~[1396r-4]~~

12 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,
13 Department for Medicaid Services has responsibility to administer the Medicaid program. KRS
14 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that
15 may be imposed, or opportunity presented by federal law for the provision of medical assistance to
16 Kentucky's indigent citizenry. This administrative regulation establishes provisions related to per di-
17 em inpatient hospital reimbursement including provisions necessary to enhance reimbursement pur-
18 suant to KRS ~~[142.308 and]~~ 205.638.

19 Section 1. Definitions. (1) "Base year" means the state fiscal year cost reporting period used to es-
20 tablish a per diem rate.

21 (2) "Capital costs" means capital related expenses including insurance, taxes, interest, and depre-

1 ciation related to plant and equipment.

2 (3) "CMS" means Centers for Medicare and Medicaid Services.

3 (4) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements es-
4 tablished in 906 KAR 1:110.

5 (5) "Department" means the Department for Medicaid Services or its designee.

6 (6) "Diagnosis related group" or "DRG" means a clinically-similar grouping of services that can
7 be expected to consume similar amounts of hospital resources.

8 (7) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifi-
9 cations established in 42 C.F.R. 412.25.

10 (8) "DRG service" means a discharge, excluding crossover claims or no pay claims, assigned a
11 discharge classification by the diagnosis related group grouper used by the department pursuant to
12 907 KAR 10:830~~[825]~~, whether the discharge is reimbursed by discharge or via a per diem basis.

13 (9) "GII" means Global Insight, Incorporated.

14 (10) "Indexing factor" means the percentage that the cost of providing a service is expected to in-
15 crease during the universal rate year.

16 (11) "Inflation factor" means the percentage that the cost of providing a service has increased, or
17 is expected to increase, for a specific period of time.

18 (12) "Long-term acute care hospital" or "LTAC hospital" means a hospital that meets the require-
19 ments established in 42 C.F.R. 412.23(e).

20 (13) "Medical education cost" means a direct cost that is:

21 (a) Associated with an approved intern and resident program; and

22 (b) Subject to limits established by Medicare.

23 (14) "Operating cost" means allowable routine, ancillary service, or special care unit cost related

to inpatient hospital care.

(15) "Parity factor" means a factor applied to a per diem rate to establish cost coverage parity with diagnosis related group hospital reimbursement.

(16) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.

(17) "Psychiatric hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:180.

(18) "Rebase" means to redetermine per diem rates using more recent data.

(19) "Rehabilitation hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:240.

(20) "State-designated free-standing rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:

(a) Provides at least 3,000 days of rehabilitation care to Medicaid-eligible recipients in a fiscal year;

(b) Provides at least fifty-one (51) percent of the statewide total of inpatient acute rehabilitation care to Medicaid-eligible recipients;

(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution post-discharge;

(d) Is licensed as an acute hospital limited to rehabilitation; and

(e) Is a teaching hospital.

(21) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a recipient.

(22) "Third party ~~payor~~" means a payor of a third party pursuant to KRS 205.510(18)~~(16)~~.

(23) "Trending factor" means the inflation factor as applied to that period of time between a facili-

ty's base fiscal year end and the beginning of the universal rate year.

(24) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(25) "Weighted average" means an average that reflects an individual element's proportionality to all elements.

Section 2. Payment for Rehabilitation or Psychiatric Care in an In-State Acute Care Hospital. (1) For rehabilitation care in an in-state acute care hospital that has a Medicare-designated rehabilitation or psychiatric distinct part unit, the department shall reimburse:

(a) A facility specific per diem rate based on the most recently received Medicare cost report received prior to the rate year, trended and indexed to the current state fiscal year; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

(2) The department shall reimburse for rehabilitation or psychiatric care provided in an in-state hospital that does not have a Medicare-designated distinct part unit:

(a) On a facility specific per diem basis equivalent to its aggregate projected payments for DRG services divided by its aggregate projected Medicaid paid days.

Aggregate projected payments and projected Medicaid paid days shall be the sum of:

1. Aggregate projected payments and aggregate projected Medicaid paid days for non-per diem DRG services as calculated by the model established in 907 KAR 10:830[825];

2. Actual prior year payments inflated by the GII; and

3. Per diem DRG service Medicaid days; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

Section 3. Payment for Long-term Acute Care Hospital Care, In-State Freestanding Psychiatric

Hospital Care, and In-State Freestanding Rehabilitation Hospital Care. (1) The department shall reimburse for inpatient care provided to eligible Medicaid recipients in an in-state freestanding psychiatric hospital, in-state freestanding rehabilitation hospital, or LTAC hospital on a per diem basis.

(2) The department shall calculate a per diem rate by:

(a) Using a hospital's state fiscal year 2005 cost report, allowable cost and paid days to calculate a base cost per day for the hospital;

(b) Trending and indexing a hospital's specific cost, excluding capital cost, per day to the current state fiscal year;

(c) Calculating an average base cost per day for hospitals within similar categories, for example rehabilitation hospitals, using the indexed and trended base cost per day;

(d) Assigning no hospital a base cost per day equaling less than ninety-five (95) percent of the weighted average trended and indexed base cost per day of hospitals within the corresponding category;

(e) Applying a parity factor equivalent to aggregate cost coverage established by the DRG reimbursement methodology established in 907 KAR 10:830[825]; and

(f) Applying available provider tax funds on a pro-rata basis to the pre-provider tax per diem calculated in paragraphs (a) through (e) of this subsection.

Section 4. Payment to a Newly-participating In-State Freestanding Psychiatric Hospital, Free-standing Rehabilitation Hospital or a Long-Term Acute Care Hospital. (1) The department shall reimburse a newly-participating in-state freestanding psychiatric hospital, freestanding rehabilitation hospital or long-term acute care hospital the minimum per diem rate paid to hospitals in their category until the first fiscal year cost report submitted by the hospital has been finalized.

(2) Upon finalization of the first fiscal year cost report for a facility, the department shall reim-

1 burse the facility a per diem rate in accordance with Section 3 of this administrative regulation.

2 Section 5. Payment for Critical Access Hospital Care. (1) The department shall pay a per diem
3 rate to a critical access hospital equal to the hospital's Medicare rate.

4 (2) A critical access hospital's final reimbursement for a fiscal year shall reflect any adjustment
5 made by CMS.

6 (3)(a) A critical access hospital shall comply with the cost reporting requirements established in
7 Section 10 of this administrative regulation.

8 (b) A cost report submitted by a critical access hospital to the department shall be subject to audit
9 and review.

10 (4) An out-of-state critical access hospital shall be reimbursed under the same methodology as an
11 in-state critical access hospital.

12 (5) The department shall reimburse for care in a federally defined swing bed in a critical access
13 hospital pursuant to 907 KAR 1:065.

14 Section 6. Reimbursement Limit. Total reimbursement to a hospital, other than to a critical access
15 hospital, shall be subject to the limitation established in 42 C.F.R. 447.271.

16 Section 7. In-State Hospital Reimbursement Updating Procedures. (1) The department shall adjust
17 an in-state hospital's per diem rate annually according to the following:

18 (a) An operating and professional component per diem rate shall be inflated from the midpoint of
19 the previous universal rate year to the midpoint of the current universal rate year using the GII; and

20 (b) A capital per diem rate shall not be adjusted for inflation.

21 (2) The department shall, except for a critical access hospital, rebase an in-state hospital's per di-
22 em rate every four (4) years.

23 (3) Except for an adjustment resulting from an appeal in accordance with Section 21 of this ad-

1 ministrative regulation, the department shall make no other adjustment.

2 Section 8. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1
3 through June 30 to coincide with the state fiscal year.

4 (2) A hospital shall not be required to change its fiscal year to conform to a universal rate year.

5 Section 9. Cost Basis. (1) An allowable Medicaid cost shall:

6 (a) Be a cost allowed after a Medicaid or Medicare audit;

7 (b) Be in accordance with 42 C.F.R. Parts 412 and 413;

8 (c) Include an in-state hospital's provider tax; and

9 (d) Not include a cost listed in Section 11 of this administrative regulation.

10 (2) A prospective rate shall include both routine and ancillary costs.

11 (3) A prospective rate shall not be subject to retroactive adjustment, except for:

12 (a) A critical access hospital; or

13 (b) A facility with a rate based on un-audited data.

14 (4) An overpayment shall be recouped by the department as follows:

15 (a) A provider owing an overpayment shall submit the amount of the overpayment to the depart-
16 ment; or

17 (b) The department shall withhold the overpayment amount from a future Medicaid payment due
18 the provider.

19 Section 10. In-State Hospital Cost Reporting Requirements. (1) An in-state hospital participating
20 in the Medicaid program shall submit to the department a copy of each Medicare cost report it sub-
21 mits to CMS, an electronic cost report file (ECR), and the Supplemental Medicaid Schedule KMAP-
22 1 [~~and the Supplemental Medicaid Schedule KMAP-4 as required by this subsection~~]:

23 (a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and

2. Within five (5) months after the close of the hospital's fiscal year.

(b) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report.

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit a final Medicare-audited cost report upon completion by the Medicare intermediary to the department.

Section 11. Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services.

A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the pur-

pose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1. and 2. of this paragraph:

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Trending of an In-state Hospital's Cost Report Used for Rate Setting Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or un-audited, shall be trended to the beginning of the universal rate year to update an in-state hospital's Medicaid cost.

(2) The trending factor, referenced in subsection (1) of this section, to be used shall be the inflation factor prepared by GII for the period being trended.

Section 13. In-State Hospital Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The department shall apply the inflation factor prepared by GII for the universal rate year as the indexing factor.

Section 14. In-State Hospital Minimum Occupancy Factor. (1) If an in-state hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

(a) Artificially increasing the occupancy factor to the minimum factor; and

(b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:

(a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer total licensed beds;

(b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more total licensed beds; and

(c) A newly-constructed in-state hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 15. Reduced Depreciation Allowance. The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

Section 16. Reimbursement for Out-of-state Hospitals. (1) For inpatient psychiatric or rehabilitation care provided by an acute out-of-state hospital, the department shall reimburse a per diem rate comprised of an operating per diem rate and a capital per diem rate.

(a) The psychiatric operating per diem rate shall be the median operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180.

(b) The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate paid for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180[~~Psychiatric hospitals; operation and services~~].

(c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252.

(2) For care provided by an out-of-state freestanding psychiatric hospital, the department shall re-

1 reimburse a per diem rate comprised of a psychiatric operating per diem rate and a capital per diem
2 rate.

3 (a) The psychiatric operating per diem rate shall equal seventy (70) percent of equal the median
4 operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-
5 state freestanding psychiatric hospitals.

6 (b) The psychiatric capital per diem rate shall equal seventy (70) percent of the median psychiatric
7 capital per diem cost for all in-state freestanding psychiatric hospitals.

8 (c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to
9 2006 Ky Acts ch. 252.

10 (3) For care in an out-of-state rehabilitation hospital, the department shall reimburse a per diem
11 rate equal to the median rehabilitation per diem rate for all in-state rehabilitation hospitals minus any
12 adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts. ch. 252.

13 (4) The department shall apply the requirements of 42 C.F.R. 447.271 on a claim-specific basis to
14 payments made via this section of this administrative regulation.

15 Section 17. Supplemental Payments. In addition to a payment based on a rate developed under
16 Section 2, 3, or 4 of this administrative regulation, the department shall:

17 (1)(a) Make quarterly supplemental payments to an in-state hospital which qualifies as a psychiat-
18 ric access hospital in an amount:

19 1. ~~(a)~~ Equal to the hospital's uncompensated costs of providing care to Medicaid recipients and
20 individuals not covered by a third party payor, not to exceed \$6 million annually; and

21 2. ~~(b)~~ Consistent with the requirements of 42 C.F.R. 447.271; or

22 (b) The department may allow an in-state hospital that qualifies as a psychiatric access hospital to
23 participate in and receive enhanced funding under the Hospital Rate Improvement Program described

1 in 907 KAR 10:840 to provide funding for payments described in Section 17(1) if an average com-
2 mercial rate methodology is available for that program, provided that:

3 1. Upon request of the Department for Behavioral Health, Developmental, and Intellectual Disa-
4 bilities, the qualifying hospital or hospital system agrees to provide behavioral health care for Medi-
5 caid recipients and uninsured individuals with no third party coverage;

6 2. The hospital functions as the state hospital for state mental health in District IV pursuant to 908
7 KAR 2:040; **[and]**

8 3. The payments described in Section 17(1) are not duplicated within the fee-for-service or Hospi-
9 tal Rate Improvement Programs; **and**

10 4. The hospital complies with the qualifying hospital requirements established in 907 KAR
11 10:840; and

12 (2) Make an annual payment to an in-state state-designated free-standing rehabilitation teaching
13 hospital that is not state-owned or operated in an amount:

14 (a) Determined on a per diem or per discharge basis equal to the nonreimbursed costs of providing
15 care to Medicaid recipients. Costs shall be the amount of cost identified on a hospital's most recent
16 cost report received by the department for a fiscal year reduced by the cost of care covered by third
17 parties; and

18 (b) Equal to the amount of per diem payments pursuant to this administrative regulation or per
19 discharge diagnosis related group payments pursuant to 907 KAR 10:830[825] received by the hospi-
20 tal for Medicaid recipients not covered by third parties.

21 Section 18. Certified Public Expenditures. (1) The department shall reimburse an in-state public
22 government-owned hospital the full cost of inpatient care via a certified public expenditure (CPE)
23 contingent upon approval by CMS.

(2) To determine the amount of costs eligible for a CPE, an in-state hospital's allowed charges shall be multiplied by the hospital's operating cost-to-total charges ratio.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted cost remains, the department shall reconcile any difference with the provider.

Section 19. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at \$10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 20. New Provider, Change of Ownership, or Merged Facility. (1) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

(2) Until a fiscal year end cost report is available, a newly constructed or newly participating hospital shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.

(a) A prospective per diem shall be set based on the operating budget and projected number of patient days for care not subject to a diagnosis related group method of reimbursement.

(b) A prospective per diem rate set in accordance with paragraph (a) of this subsection shall be

1 tentative and subject to settlement at the time the first audited fiscal year end report is available to the
2 department.

3 (c) During the projected rate year, the budget shall be adjusted if indicated and justified by the
4 submittal of additional information.

5 (3) If two (2) or more separate entities merge into one (1) organization, the department shall:

6 (a) Merge the latest available data used for rate setting;

7 (b) Combine bed utilization statistics, creating a new occupancy ratio;

8 (c) Combine costs using the trending and indexing figures applicable to each entity in order to ar-
9 rive at correctly trended and indexed costs;

10 (d) Compute on a weighted average the rate of increase control applicable to each entity, based on
11 the reported paid Medicaid days for each entity taken from the cost report previously used for rate
12 setting;

13 (e) If one (1) of the entities merging has disproportionate status and the other does not, retain for
14 the merged entity the status of the entity which reported the highest number of Medicaid days paid;

15 (f) Recognize an appeal of the merged per diem rate in accordance with 907 KAR 1:671; and

16 (g) Require each provider to submit a Medicaid cost report for the period:

17 1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal
18 year end; and

19 2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in ac-
20 cordance with Section 10 of this administrative regulation.

21 Section 21. Appeals. (1) An administrative review shall not be available for a facility or service
22 reimbursed via the per diem methodology for the determination of the requirement, or the propor-
23 tional amount, of any budget neutrality adjustment used in the calculation of the per diem rate.

(2) An administrative review shall be available for a calculation error in the establishment of a per diem rate.

(3) An appeal shall comply with the review and appeal provisions established in 907 KAR 1:671.

Section 22. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

~~[(a)] "Supplemental Medicaid Schedule KMAP-1", January 2007 edition[; and~~

~~—(b) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at:

<https://chfs.ky.gov/agencies/dms/MAPForms/KMAP1.XLS>.

907 KAR 10:815

REVIEWED:

11/9/2021

Date

DocuSigned by:

Lisa Lee

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Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

11/9/2021

Date

DocuSigned by:

Eric Friedlander

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Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 10:815

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov;
and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the Medicaid program per diem reimbursement policies for hospitals.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program reimbursement policies for per diem hospitals.
 - (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 establishing the Medicaid program reimbursement policies for per diem hospitals.
 - (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 establishing the Medicaid program reimbursement policies for per diem hospitals.
- (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 amendment establishes that certain psychiatric access hospitals can participate in 907 KAR 10:840's Hospital Rate Improvement Program, provided that certain conditions relating to maintained psychiatric admissions are met. The amendment also removes a form – titled the KMAP-4 – that is no longer used, but still submitted.

The Amended After Comments version of the administrative regulation clarifies that any psychiatric access hospital that participates in the HRIP program must comply with the qualifying hospital requirements established in DMS' administrative regulation that addresses the HRIP program.

- (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the parameters by which these hospitals can participate in the hospital rate improvement program.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by allowing another private hospital provider to participate in the hospital rate improvement program.
- (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing a method of participation in the hospital rate improvement program for a specific type of private hospital.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to those psychiatric hospitals that may participate in the hospital rate improvement program. DMS anticipates that the modifications will apply only to one (1) hospital system.
- (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 hospital designated as a psychiatric access hospital will need to continue meeting psychiatric admissions criteria in order to participate in the hospital rate improvement program.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The psychiatric access hospitals will receive additional, higher reimbursement by participating in the hospital rate improvement program.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: DMS does not anticipate any costs in implementing this administrative regulation.
 - (b) On a continuing basis: DMS anticipates no continuing cost resulting from the amendment.
- (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. Some hospital rate improvement funds will be paid by the private hospitals via a provider assessment.
- (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 will be necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the amendment applies to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 10:815

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)
2. State compliance standards. KRS 205.520(3) states, “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. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 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. Shall this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This 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 policy is not stricter or different than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 10:815

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Krista Quarles, (502) 564-6746, CHFSRegs@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 (DMS) will be impacted by the amendment.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.6405 to .6408 and 907 KAR 10:840 authorize 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? DMS anticipates no revenue being generated for the first year for state or local government due to the amendment to this administrative regulation.
 - (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? DMS anticipates no revenue being generated in subsequent years for state or local government due to the amendment to this administrative regulation.
 - (c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs to the department in administering this program in the first year as the hospital rate improvement program assessment is paid by hospitals subject to the assessment.
 - (d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs to the department in administering this program in subsequent years as the hospital rate improvement program assessment is paid by hospitals subject to the assessment.

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:

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 10:815.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management

Amended After Comments

I. A public hearing on 907 KAR 10:815 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>
Thomas Stephens, Executive Director	Kentucky Association of Health Plans

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 10:815.

<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
Steve Bechtel, Chief Financial Officer	Department for Medicaid Services, Commissioner's Office
Amy Richardson, Director	Department for Medicaid Services, Division of Fiscal Management
John Hay, Branch Manager	Department for Medicaid Services, Division of Fiscal Management

Jacob Wilson, Branch Manager	Department for Medicaid Services, Division of Fiscal Management
Jonathan Scott, Regulatory and Legislative Advisor	Department for Medicaid Services, Commissioner's Office

IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Require compliance with 907 KAR 10:840 within regulation.

(a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments recommending that DMS add a reference to 907 KAR 10:840, the department's hospital rate improvement program (HRIP) administrative regulation, to clarify that a psychiatric access hospital must comply with the requirements of that administrative regulation.

(b) Response: The department agrees with the request to include a reference to 907 KAR 10:840 and will amend the administrative regulation in Section 17(1)(b) to require compliance with 907 KAR 10:840.

(2) Subject: Timeline of implementation.

(a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments inquiring as to whether the department has a timeline for obtaining federal approval to add psychiatric access hospitals to the hospitals participating in the HRIP.

(b) Response: The department is in the process of requesting approval to include psychiatric access hospitals to the hospitals participating in HRIP. The department has requested approval from the federal government with a starting date of July 1, 2021. The department will not be amending the administrative regulation in response to the comment.

(3) Subject: Per diem rate for freestanding psychiatric hospitals.

(a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments seeking clarification as to whether this statement is correct: "[T]he per diem rate for a freestanding psychiatric hospital, even if owned by an acute care hospital, would be based on the freestanding psychiatric hospital's costs rather than the acute care hospital's costs."

(b) Response: Freestanding psychiatric hospital rates are based on their own costs, subject to various rate-setting adjustments established in this administrative regulation. Under a hypothetical example where a freestanding hospital was purchased by an acute care hospital, it is likely that future costs would be impacted by the entity's new cost structure and corporate-level overhead costs which are customarily allocated to applicable locations and factored into the cost utilized for rate development. Additionally, the facility licensure would determine the applicable rate-setting process, as a psych distinct part unit (DPU) follows different rate-setting methodology than a freestanding psychiatric hospital. The department will not be amending the administrative regulation in response to the comment.

(4) Subject: Change of ownership of a hospital.

(a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments asking about ongoing reimbursement when a change of ownership occurs. "Please indicate if the per diem rate for a freestanding psychiatric hospital that was acquired by an acute care hospital would continue to be the freestanding psychiatric hospital's per diem rate".

(b) Response: This is correct. The historical rate would transfer to the new owners and would be effective until the time of the next rebasing when updated cost and claims data would be utilized to establish updated rates. The administrative regulation will not be amended in response to the comment.

(5) Subject: Federal Upper Payment Limit (UPL).

(a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments asking about the federal upper payment limit for inpatient services. The comment cites 42 C.F.R. 447.272 and asks about the applicability of that statute.

(b) Response: The department would point out that the upper payment limit of a reasonable estimate of Medicare reimbursement is only applicable to fee-for-service Medicaid payments. Federal UPL requirements for fee-for-service Medicaid payments require providers to be grouped into three (3) classes by ownership type, state owned, non-state government owned, and privately owned. A UPL test is applied in aggregate to all providers in the class to determine compliance with the UPL and is only applicable to fee-for-service Medicaid payments. Furthermore, the test is not limited to freestanding psychiatric hospitals only. The regulation will not be amended in response to the comment.

(6) Subject: Occupancy based costs

(a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments asking whether DMS' current per diem rates incorporate the minimum occupancy factors addressed in Section 14 of the administrative regulation.

(b) Response: The current July 1, 2021, per diem rates do include minimum occupancy adjustments for freestanding psychiatric, rehabilitation, and long-term acute care hospitals, if applicable. The regulation will not be amended 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 10:815. This administrative regulation is being amended after comments. DMS is amending the administrative regulations as follows:

Section 17(1)(b)2.

Page 12

Line 5

After "2:040;" delete "and".

Section 17(1)(b)3.

Page 12

Line 7

After "Rate Improvement Programs;" insert the following:

and

4. The hospital complies with the qualifying hospital requirements established in 907 KAR 10:840;