

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 1:104. Reimbursement for advanced practice registered nurse services.

RELATES TO: KRS 205.520, 314.011, 42 C.F.R. 438.2, 42 U.S.C. 1396s

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

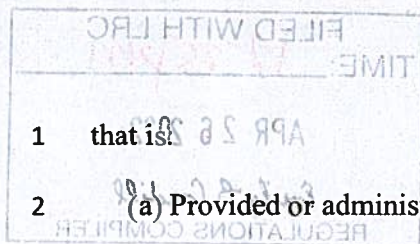
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Department" means the Department for Medicaid Services or its designated agent.

(3) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(4) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug



1 that is:

2 (a) Provided or administered to a Medicaid recipient;

3 (b) Billed by a provider other than a pharmacy provider through the medical benefit, including
4 a provider that is a physician office or another outpatient clinical setting; and

5 (c) An injectable or non-injectable drug furnished incident to provider services that are billed
6 separately to Medicaid.

7 (5) "Provider group" means a group of at least two (2) individually licensed APRNs who:

8 (a) Are enrolled with the Medicaid program individually and as a group; and

9 (b) Share the same Medicaid group provider number.

10 (6) "Usual and customary charge" means the uniform amount the provider charges in the ma-
11 jority of cases for the service or procedure.

12 Section 2. Reimbursement. (1) The department's reimbursement under this administrative
13 regulation shall be for a service or procedure:

14 (a) Covered pursuant to 907 KAR 1:102; and

15 (b) Provided by an APRN or APRN provider group that:

16 1. Meets the condition of participation requirements established in 907 KAR 1:102, Section 2;
17 and

18 2. Is the billing provider for the service or procedure.

19 (2) Except as specified in subsection (3) of this section or Section 3 of this administrative reg-
20 ulation, the department shall reimburse for a service or procedure that is covered pursuant to 907
21 KAR 1:102 at the lesser of:

22 (a) The APRN's or APRN provider group's usual and customary charge for the service or
23 procedure; [Ø]

(b) Seventy-five (75) percent of the amount reimbursable to a Medicaid participating physician for the same service or procedure pursuant to 907 KAR 3:010; or

(c) For anesthesia and related services delivered by a certified registered nurse anesthetist, at one-hundred (100) percent of the amount reimbursable to a Medicaid participating physician for the same service or procedure pursuant to 907 KAR 3:010.

(3) The department's reimbursement for a behavioral health service covered pursuant to 907 KAR 15:010 that is provided by an APRN or APRN provider group that is the billing provider for the service shall be pursuant to 907 KAR 15:015.

Section 3. Reimbursement Limitations. (1) The department shall reimburse an APRN or APRN provider group:

(a) A three (3) dollar and thirty (30) cent fee for each vaccine administered to a Medicaid recipient under the age of nineteen (19) up to a maximum of three (3) administrations per APRN, per recipient, per date of service; and

(b) The cost of each vaccine administered in accordance with paragraph (a) of this subsection, except as established in subsection (2) of this section.

(2) The department shall not reimburse for the cost of a vaccine that is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(3) The department shall reimburse for a PAD in accordance with 907 KAR 23:020.

(4)(a) Payment for a cast or splint applied in conjunction with a surgical procedure shall be included in the payment for the surgical procedure.

(b) Except as provided by paragraph (c) of this subsection, the department shall not reimburse for a cast or splint application for the same injury or condition within ninety (90) calendar days:

1. From the date of the surgical service; or

2. If surgery is not performed, from initial application of the cast or splint.

(c) The department shall reimburse for a second cast or splint applied for a subsequent injury or condition within ninety (90) calendar days of the first cast or splint application if the claim contains documentation demonstrating that the injury or condition occurred subsequent to the initial cast or splint application.

(d) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

1. A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

2. The initial cast or splint applied during or following the surgical procedure; and

3. A replacement cast or splint needed as a result of the surgical procedure if:

a. Provided within ninety (90) calendar days of the procedure by the same physician; and

b. Applied for the same injury or condition.

(5) Reimbursement for an anesthesia service provided during a procedure shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of intravenous fluids, blood, or blood products incidental to the anesthesia or surgery;

(d) Postoperative pain management; and

(e) Monitoring services.

(6) The department's reimbursement for a laboratory service provided in an office setting shall include the fee for collecting and analyzing a specimen.

(7) A fee for a laboratory test requiring an arterial puncture or a venipuncture shall include the

1 fee for the puncture.

2 Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall
3 not be required to reimburse in accordance with this administrative regulation for a service cov-
4 ered pursuant to:

5 (1) 907 KAR 1:102; and

6 (2) This administrative regulation.

7 Section 5. Federal Approval and Federal Financial Participation. The department's reim-
8 bursement of services pursuant to this administrative regulation shall be contingent upon:

9 (1) Receipt of federal financial participation for the coverage; and

10 (2) Centers for Medicare and Medicaid Services' approval for the coverage.

11 Section 6. Appeal Rights. An appeal of a negative action taken by the department regarding a
12 Medicaid provider shall be in accordance with 907 KAR 1:671.

907 KAR 1:104

REVIEWED:

4/25/2022

Date

DocuSigned by:

Lisa Lee

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Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

4/25/2022

Date

DocuSigned by:

Eric Friedlander

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Eric C. Friedlander, 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 July 25, 2022, 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 July 18, 2022, 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 until July 31, 2022. 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: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:104

Cabinet for Health and Family Services

Department for Medicaid Services

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 reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(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 reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(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 authorizing statutes by establishing reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(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 changes the administrative regulation to allow certified registered nurse anesthetist services and related services to be reimbursed at 100% of the amount on the Medicaid Physician Fee Schedule.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to expand reimbursement for nurse anesthetist services.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding nurse anesthetist services covered by the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by implementing reimbursement changes for nurse anesthetist services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects nurse anesthetists. Currently, there are 2,300 individual nurse anesthetists enrolled in Kentucky's Medicaid Program.

(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: They will need to follow existing reimbursement provisions and service policy requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will receive a 25% higher reimbursement for fee-for-service Medicaid services.

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

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) 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.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 1:104

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

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: _____

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year. This administrative regulation will result in higher reimbursement for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years. This administrative regulation will result in higher reimbursement for regulated entities.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. DMS anticipates that this amendment will result in additional reimbursement for CRNAs.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 1:104

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1. Federal statute or regulation constituting the federal mandate. 42 USC 1396a(a)(19); 42 USC 1396a(a)(30); 42 CFR 447.26 and 42 CFR 447.204.
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. 42 USC 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients. 42 USC 1396a(a)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area. 42 CFR 447.204 requires Medicaid reimbursement to be sufficient to enlist enough providers to ensure that services are available to Medicaid recipients at least to the extent that they are available to the general population.
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 or different responsibilities than the 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 or different responsibilities than the federal requirements.