



STATEMENT OF CONSIDERATION RELATING TO
907 KAR 1:104.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy

Not Amended After Comments

- I. A public hearing on 907 KAR 1:104 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>
Russ Ranallo, Chief Financial Officer, Technical Advisory Committee Chairman	Owensboro Health Hospital TAC
Curtis Koons, M.D. President	Kentucky Society of Anesthesiologists
Rebecca Randall, Vice President, Operations	WellCare Health Plans of Kentucky
Dina Velocci, DNP, CRNA, APRN, AANA President	American Association of Nurse Anesthetists
Libby Milligan, Principal	McCarthy Strategic Solutions, LLC Kentucky Association of Nurse Anesthetists
Wade R. Stone, Executive Vice President	Med Center Health
Patrick T. Padgett, Executive Vice President	Kentucky Medical Association
Ashley G. Herrington, CEO	Owensboro Health Twin Lakes Medical Center
Dr. Gerald T. O'Daniel, M.D., Medical Director	Louisville Surgery Center
A Concerned Kentucky CRNA and Anesthesia Group Owner	
Michael Shannon, Chief Executive Officer	Louisville Surgery Center

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 1:104:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
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Lisa Lee, Commissioner	Department for Medicaid Services, Commissioner's Office
Veronica Judy-Cecil, Senior Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Leslie Hoffman, Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Justin Dearing, Assistant Director	Department for Medicaid Services, Division of Health Policy
Angela Parker, Director	Department for Medicaid Services, Division of Program Quality and Outcomes
Jonathan Scott, Regulatory and Legislative Advisor	Department for Medicaid Services, Commissioner's Office

IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

- (1) Subject: Importance of Certified Registered Nurse Anesthetists (CRNAs) to rural hospitals
- (a) Comment: Russ Ranallo, Chief Financial Officer, Owensboro Health and Hospital Technical Advisory Committee Chairman; Ashley G. Herrington, CEO, Owensboro Health Twin Lakes Medical Center; Wade R. Stone, Executive Vice President, Med Center Health; Dina Velocci, DNP, CRNA, APRN, President, American Association of Nurse Anesthetists; and Libby Milligan, Principal, McCarthy Strategic Solutions, LLC on behalf of the Kentucky Association of Nurse Anesthetists, provided comments highlighting the importance of utilizing CRNAs to improve access to anesthesia care within financially strained hospitals and medically underserved areas. Comments highlighted that CRNAs provide anesthesia services in all 75 Kentucky counties with hospitals or surgery centers with surgical, obstetrical, and pain management services. In nearly half of these counties the sole providers of anesthesia services are CRNAs.
- (a) Comment: Dina Velocci, DNP, CRNA, APRN, President, American Association of Nurse Anesthetists, submitted comments stating that CRNAs are the primary providers of anesthesia care in rural America and that these providers enable healthcare facilities in these medically underserved areas to offer obstetrical, surgical, and trauma stabilization services.
- (b) Response: The department agrees that access to care in rural hospitals and other healthcare deserts is a significant concern. To this end, DMS has taken steps to improve reimbursement for multiple provider groups and other stakeholders. These steps include pursuing multiple directed payment opportunities such as the Ambulance Provider Assistance Program, multiple Hospital Rate Improvement Programs, and full implementation of Senate Bill 50 to ensure access to pharmacy care throughout the commonwealth. In addition, diligent work has been completed to

sustain expanded access to telehealth services and improve cost reporting for federally qualified health centers and rural health clinics. This amendment further addresses this departmental goal of improved access to care. The department expects that this amendment will provide Medicaid members with increased access to anesthesia care throughout the entirety of the state by allowing additional services to be offered and maintained in rural hospitals. The department will not be amending the administrative regulation in response to the comment.

(2) Subject: Kentucky has one of lowest CRNA reimbursement rates in entire country

(a) Comment: Libby Milligan, Principal, McCarthy Strategic Solutions, LLC on behalf of the Kentucky Association of Nurse Anesthetists, submitted comments stating that Kentucky has one of the lowest QZ reimbursement rates in the entire country. Twenty-four (24) states currently reimburse their QZ rate at one hundred (100) percent of the Physician Fee Schedule, and almost all other states reimburse at a rate that is greater than the current seventy-five (75) percent.

(b) Response: The department finds this difference in rates, with Kentucky having a very low reimbursement rate comparatively, to be a significant issue. Medicaid recipients deserve adequate networks and adequate access to qualified providers. Making a change to elevate CRNAs to a level of reimbursement that is consistent with their counterparts in other states should significantly help provider retention. The department will not be amending the administrative regulation in response to the comment.

(3) Subject: The amendment will likely produce savings for DMS

(a) Comment: Libby Milligan, Principal, McCarthy Strategic Solutions, LLC on behalf of the Kentucky Association of Nurse Anesthetists, submitted comments indicating that Medicaid “would likely financially benefit from reimbursing the QZ rate at 100% instead of reimbursing a lump-sum subsidy at cost plus one percent...The QZ reimbursement at 100% of the Physician Fee Schedule, mirroring Medicare rates, would incentivize more economical practice models with a dollar-for-dollar reimbursement recuperation to the group.”

(b) Response: The department has primarily made this change in order to ensure that rural hospitals and rural counties are able to continue accessing high quality anesthesia care. It very well may be the case that this is a financially beneficial change. However, the department intends to more fully study this updated reimbursement before officially declaring that savings have been achieved. The department will not be amending the administrative regulation in response to the comment.

(4) Subject: The proposed amendment will likely result in increased costs for DMS

(a) Comment: Curtis Koons, M.D., President, Kentucky Society of Anesthesiologists, submitted comments arguing that the proposed amendment would not add value to patients or the healthcare system. The argument is that additional CRNAs providing coverage could result in additional expenses because “non-physicians are more likely to make unnecessary referrals and imaging orders”.

(b) Response: The provided comments provide no specific evidence that CRNAs are among the non-physicians that are more likely to issue additional unnecessary referrals and imaging orders. In addition, CRNAs already provide high quality care throughout the healthcare system in Kentucky. DMS’ information continues to suggest that nearly half of rural hospitals and counties utilize CRNAs for all of their anesthesia care. Furthermore, the department is already operationalized to assess expenditures for fraud, waste, and abuse and will continue efforts to

monitor reimbursements. The department will not be amending the administrative regulation in response to the comment.

(5) Subject: Paying CRNAs diminishes anesthesiologists

(a) Comment: Patrick T. Padgett, Executive Vice President, Kentucky Medical Association submitted comments describing the training and experience of physician anesthesiologists. The argument highlights that CRNAs have no equivalent to a medical residency and that their clinical experience is more limited. The further argument is that CRNAs are trained to be a part of a physician-led team that is led by physician supervision. This difference in training and education should not result in reimbursement rates that are equal.

(b) Response: CRNAs provide high quality care throughout the healthcare system in Kentucky and have done so for decades. DMS' information continues to suggest that nearly half of rural hospitals and counties utilize CRNAs for all of their anesthesia care. The department will not be amending the administrative regulation in response to the comment.

(6) Subject: Pay equity could exacerbate Kentucky's physician shortage

(a) Comment: Patrick T. Padgett, Executive Vice President, Kentucky Medical Association submitted comments arguing that paying non-physicians the same rate as physician will disincentivize physicians from locating and remaining in Kentucky.

(b) Response: The department fully values the important contributions of both physician anesthesiologists and CRNAs. It appears that Kentucky has had one of the lower reimbursement rates for CRNAs in the country for some time. Physicians have long had the option of relocating from states with a higher reimbursement rate to Kentucky. This migration does not appear to have occurred. The information that DMS has continues to suggest that nearly half of rural hospitals and counties utilize CRNAs for all of their anesthesia care. It appears that physician anesthesiologists are not currently competing for rural anesthesia care, and the department does not anticipate that a substantially rural based pay adjustment will strongly impact physician retention. In addition, recent changes to 907 KAR 3:010 have allowed for medical direction to be practiced by physician anesthesiologists within the Medicaid program. The department will not be amending the administrative regulation in response to the comment.

(7) Subject: Medicaid recipients are diminished when an equal rate is paid to CRNAs and anesthesiologists

(a) Comment: Patrick T. Padgett, Executive Vice President, Kentucky Medical Association submitted comments arguing that this sends a message that the Medicaid population is not valued. The commenter further argues that greater access to anesthesia services must be produced by increasing Medicaid reimbursement rates, establishing loan forgiveness, seeking a greater number of residency slots, pursuing preceptor tax credits, and liability reform to promote a physician-led team-based approach.

(b) Response: The department has recently strongly promoted a physician-led team-based approach by making recent changes to 907 KAR 3:010 that allowed for medical direction to be practiced by physician anesthesiologists within the Kentucky Medicaid program for the first time. The department also is convinced that CRNAs provide high quality throughout the healthcare system in Kentucky and have done so for decades. The information that DMS has continues to suggest that nearly half of rural hospitals and counties utilize CRNAs for all of their anesthesia care. The department will not be amending the administrative regulation in response

to the comment.

(8) Subject: Provider nondiscrimination and medical direction

(a) Comment: Libby Milligan, Principal, McCarthy Strategic Solutions, LLC, on behalf of the Kentucky Association of Nurse Anesthetists; and Dina Velocci, DNP, CRNA, APRN, President, American Association of Nurse Anesthetists, submitted comments arguing that the federal nondiscrimination requirement in a recently amended section of the Public Health Service Act requires equal payment for nurse anesthetists and anesthesiologists.

(b) Response: The provider nondiscrimination clauses in various federal laws have not yet been implemented or clarified by the Centers for Medicare and Medicaid Services. As such, the department will wait for additional federal guidance before implementing any necessary changes based on the existing provider nondiscrimination clauses. The department will not be amending the administrative regulation in response to the comment.

(9) Subject: Reimbursement for physician anesthesiologists should be increased

(a) Comment: Curtis Koons, M.D., President, Kentucky Society of Anesthesiologists, submitted comments requesting that DMS raise reimbursement for physicians in parallel if DMS is to move forward with raising Medicaid reimbursement for services provided by CRNAs.

(b) Response: Recent changes to 907 KAR 3:010 have allowed for medical direction to be practiced by physician anesthesiologists within the Kentucky Medicaid program for the first time. This is a significant financial commitment by the department to the physician anesthesiologist community. Furthermore, hospital rate improvement programs have improved hospital finances and Medicaid reimbursement to most Kentucky hospitals by increasing reimbursement to 95% of the average commercial rate. The department expects that anesthesia care will be addressed by hospital facilities by the substantially increased funding. The department will not be amending the administrative regulation in response to the comment.

(10) Subject: Inclusion of medical direction

(a) Comment: Rebecca Randall, Vice President, Operations, WellCare Health Plans of Kentucky, submitted comments asking that CRNA reimbursement under medical direction be addressed in the administrative regulation.

(b) Response: It is the department's position that medical direction instructions are appropriately addressed in 907 KAR 3:010 and in that administrative regulation's reference to current Medicare billing standards. In order to avoid duplication, the department prefers for medical direction to not be addressed in this administrative regulation as well. The department will not be amending the administrative regulation in response to the comment.

(11) Subject: Anesthesia Conversion Factor

(a) Comment: Rebecca Randall, Vice President, Operations, WellCare Health Plans of Kentucky, submitted comments inquiring if the anesthesia conversion factor used in 907 KAR 3:010 should be equally applied for anesthesia services performed by a CRNA.

(b) Response: That is correct, the anesthesia conversion factor in 907 KAR 3:010 should be applied to all anesthesia services established within the Medicaid program. The department would like to reiterate that this administrative regulation only addresses fee-for-service reimbursement, and that managed care organizations remain free to establish other

reimbursement rates with APRN providers. The department will not be amending the administrative regulation in response to the comment.

(12) Subject: Laboratory and Radiology Reimbursement

(a) Comment: Rebecca Randall, Vice President, Operations, WellCare Health Plans of Kentucky, submitted comments inquiring as to whether Advanced Practice Registered Nurses (APRNs) are paid seventy-five (75) percent of the rate on the DMS Physician Fee Schedule for laboratory and radiology services.

(b) Response: The department reimburses in accordance with this administrative regulation for APRNs and pays seventy-five (75) percent for laboratory and radiology services performed by an APRN. The department would like to reiterate that this administrative regulation only addresses fee-for-service reimbursement, and that managed care organizations remain free to establish other reimbursement rates with APRN providers. The department will not be amending the administrative regulation in response to the comment.