



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amendment)

5 907 KAR 1:604. ~~[Recipient]~~ Cost-sharing prohibited within the Medicaid program.

6 RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020,
7 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, 447.54, 447.55, 447.56,
8 447.57, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42
9 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396o, 1396r-6, 1396r-8, 1396u-1, 1397aa -1397jj

10 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), ~~[205.6312(5)]~~,
11 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90, 457.535, 457.560, 42 U.S.C. 1396r-
12 6(b)(5)

13 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Ser-
14 vices, Department for Medicaid Services has responsibility to administer the Medicaid Program.
15 KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any re-
16 quirement that may be imposed, or opportunity presented, by federal law to qualify for federal
17 Medicaid funds. ~~[KRS 205.6312(5) requires the cabinet to promulgate administrative regulations~~
18 ~~that implement copayments for Medicaid recipients.]~~ This administrative regulation prohibits
19 cost-sharing within the Medicaid program, and extends the KRS 205.6312 prohibition of cost-
20 sharing to providers as well as the department and managed care organizations~~[establishes the~~
21 ~~provisions relating to Medicaid Program copayments].~~

Section 1. Definitions. (1) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

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

(3) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(4) "Managed care organization" or "MCO" 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.

(5) [~~"Medicaid Works individual" means an individual who:~~

~~—(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;~~

~~—(b) Is at least sixteen (16), but less than sixty-five (65), years of age;~~

~~—(c) Is engaged in active employment verifiable with:~~

~~—1. Paycheck stubs;~~

~~—2. Tax returns;~~

~~—3. 1099 forms; or~~

~~—4. Proof of quarterly estimated tax;~~

~~—(d) Meets the income standards established in 907 KAR 20:020; and~~

~~—(e) Meets the resource standards established in 907 KAR 20:025.~~

~~—(6)] "Recipient" is defined by KRS 205.8451(9).~~

Section 2. [~~Copayments. (1) Except as provided by subsection (4) of this section, the following table shall establish the copayment amounts that a recipient shall pay, unless the recipient is otherwise exempt from cost sharing.~~

Benefit	Copay

	ment Amount
Emergency room for a nonemergency visit	\$1
Prescription and over-the-counter drugs	\$1
Ambulance services provided to individuals in need of nonemergency health transportation services	\$1

~~(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement, unless the recipient has already met any copayment obligation for the year pursuant to Section 3(1)(b) of this administrative regulation.~~

~~(3) The maximum amount of cost sharing shall not exceed five (5) percent of a family's income for a quarter.~~

~~(4) A prescription co-payment shall not apply to:~~

~~(a) Certain antipsychotic medications;~~

~~(b) Contraceptives for family planning;~~

~~(c) Tobacco cessation medications;~~

~~(d) All covered diabetes or diabetic supplies;~~

~~(e) Pregnant recipients;~~

~~(f) Long-term care residents; or~~

~~(g) Any recipient exempted pursuant to Sections 3 or 5 of this administrative regulation.~~

~~Section 3.] Copayment General Provisions and Exemptions. (1) Pursuant to KRS 205.6312,~~

1 the department or any MCO shall not utilize or require cost-sharing or copayments within any
2 component of the Medicaid program~~[(a) Cost-sharing or copayments for the delivery of Medi-~~
3 ~~caid services within the Commonwealth shall not exceed the amounts established in the table in~~
4 ~~Section 2 of this administrative regulation.~~

5 ~~—(b) After paying for one (1) copayment each calendar year for any service or product within~~
6 ~~the table established in Section 2 of this administrative regulation, a recipient shall not be subject~~
7 ~~to additional copayments or cost-sharing for that service or any other Medicaid covered service~~
8 ~~or product for the remainder of that calendar year].~~

9 (2) ~~[A Medicaid beneficiary who is younger than nineteen (19) years of age shall be exempt~~
10 ~~from the copayment or cost-sharing requirements established pursuant to this administrative reg-~~
11 ~~ulation.~~

12 ~~—(3) A copayment shall not be imposed for a service, prescription, item, supply, equipment, or~~
13 ~~any type of Medicaid benefit provided to a foster care child or a pregnant woman.~~

14 ~~—(4) The department shall impose no cost sharing for an individual or recipient who is exempt~~
15 ~~pursuant to 42 C.F.R. 447.56.~~

16 ~~—(5) A provider shall not deny services to a recipient who cannot pay any required cost-sharing.~~

17 ~~—(6) Any amount of uncollected copayment by a provider from a recipient shall not be consid-~~
18 ~~ered a debt to the provider.~~

19 ~~—(7)] A provider shall not collect[:~~

20 ~~—(a)] a copayment from an enrollee for a service or item [if a copayment is not imposed for that~~
21 ~~service or item; or~~

22 ~~—(b) Any copayment or cost sharing from an enrollee that is greater than the copayment~~
23 ~~amounts established in the table in Section 2 of this administrative regulation.~~

~~—(8) Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.~~

~~—(9) In response to a declared emergency relating to or rationally related to healthcare or public health, the department may waive or direct the waiving of all required cost sharing for all Medicaid beneficiaries or any subpopulation of Medicaid beneficiaries not already exempted from this administrative regulation, including a geographic or age-related subpopulation.~~

~~—Section 4. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:~~

~~—1. Based on income used to determine eligibility for the program; and~~

~~—2. Established in paragraph (b) of this subsection.~~

~~—(b) The monthly premium shall be:~~

~~—1. Thirty five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;~~

~~—2. Forty five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and~~

~~—3. Fifty five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.~~

~~—(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.~~

~~—(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.~~

~~—(4) Benefits shall be effective with the date of application if the premium specified in subsec-~~

~~tion (1) of this section has been paid.~~

~~—(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.~~

~~—(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.~~

~~—(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.~~

~~—(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.~~

~~—Section 5. Provisions for Enrollees. A managed care organization:~~

~~—(1) Shall not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation; and~~

~~—(2) May impose on an enrollee:~~

~~—(a) A lower copayment than established in this administrative regulation, if possible; or~~

~~—(b) No copayment.]~~

Section ~~3.~~~~[6.]~~ Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 4.~~[7.]~~ Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

Section 5.~~[8.]~~ Federal Approval and Federal Financial Participation. The department's co-payment provisions and any coverage of services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

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

Section 6.~~[9.]~~ This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

907 KAR 1:604

REVIEWED:

8/23/2021
Date

DocuSigned by:
Lisa Lee
7CB973D215D941E
Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

8/23/2021
Date

DocuSigned by:
Eric Friedlander
0AFA1D6C13D6431
Eric 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 November 22, 2021, 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 November 15, 2021, 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 November 30, 2021. 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 1:604

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 cost sharing requirements and provisions for the Kentucky Medicaid program.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cost sharing requirements and provisions for the Kentucky Medicaid program.
 - (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 cost sharing requirements and provisions for the Kentucky 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 statutes by establishing the cost sharing requirements and provisions for the Kentucky 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 to this administrative regulation removes all copays and cost-sharing from the Medicaid program, and changes the title of the administrative regulation. This regulation now contains a clear prohibition on charging copayments for providers, managed care organizations, and the department. This change is being made to comply with SB 55 of the 2021 Regular Session. In addition, references to a premium for Medicaid Works individuals has been removed, an existing federal clarification has removed a premium requirement for this population. Furthermore, DMS is currently reviewing the possibility of ending the Medicaid Works program and transitioning this population to the general Medicaid expansion population.
 - (b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove copayments within the Medicaid program in response to SB 55 of the 2021 Regular Session.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by removing copayments and establishing certain protections for members and providers relating to copayment obligations in order to improve access to care and facilitate a more efficient and responsive Medicaid 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 instituting a clear policy prohibiting the use of copayments in the Medicaid program as required by SB 55 of the 2021 Regular Session.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who may be subject to cost sharing may be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied. The department estimates that up to 800,000 Medicaid members may be impacted by this administrative regulation. By removing all co-pays, DMS also anticipates that 46,000 Medicaid providers will no longer experience reduced rates or administrative costs in pursuing payment for nominal co-pays.
- (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. The department, managed care organizations and providers will need to not assess or collect copayments in order to comply with the changes made to the administrative regulation.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Enrollees and recipients will incur no costs in complying with this administrative regulation.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees, recipients, and providers will be able to participate fully in the Medicaid program.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The Department for Medicaid Services (DMS) has recently implemented changes that reduce all cost-sharing to no more than \$1 per year. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.
 - (b) On a continuing basis: The Department for Medicaid Services (DMS) is already working to continue substantial reductions in cost-sharing, due to recent regulatory and COVID-19 pandemic changes. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.
- (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 Title XIX of the Social Security Act and matching funds from general fund 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 will be necessary to implement the amendment.

- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation neither establish nor increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is no longer appropriate in this administrative regulation as cost sharing obligations have been removed for all members.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 1:604

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)(14), 42 U.S.C. 1396o, 42 C.F.R. 447.50 through 447.90, 42 C.F.R. 447.15 and 447.20, and 42 C.F.R. 438.108
2. State compliance standards. KRS 205.520(3), KRS 205.6312, and KRS 194A.050(1).
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(14) authorizes a state's Medicaid program to impose cost sharing only as allowed by 42 U.S.C. 1396o. 42 U.S.C. 1396o establishes categories of individuals for whom a state's Medicaid program may not impose cost sharing as well as cost sharing and premium limits.

42 C.F.R. 447.50 through 447.60 also establish limits on cost sharing (based on income of the given Medicaid eligibility group); Medicaid populations exempt from cost sharing (children, pregnant women, institutionalized individuals for example); services exempt from cost sharing (emergency services, family planning services to child-bearing age individuals); prohibition against multiple cost sharing for one (1) service; a requirement that state Medicaid programs do not increase a provider's reimbursement by the amount of cost sharing; and a requirement that managed care organizations' cost sharing must comply with the aforementioned federal regulations.

42 C.F.R. 438.108 establishes that a managed care organization's cost sharing must comply with the federal cost sharing requirements for Medicaid established in 42 C.F.R. 447.50 through 42 C.F.R. 447.90.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 1:604

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 affected by the amendment to this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal regulations 42 C.F.R. 447.50 through 42 C.F.R. 447.90, 42 C.F.R. 447.15 and 447.20, 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 does not expect the amendment to this administrative regulation 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? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) has recently implemented changes that reduce all cost-sharing to no more than \$1 per year. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.
 - (d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) is already working to continue substantial reductions in cost-sharing, due to recent regulatory and COVID-19 pandemic changes. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.

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: