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**STATEMENT OF EMERGENCY
907 KAR 20:075E**

This emergency administrative regulation is being promulgated to modify the Medicaid eligibility renewal standard for individuals formerly in foster care. The department has the opportunity to implement a continuous eligibility standard for individuals formerly in foster care pursuant to the mandate of the federal Consolidated Appropriations Act of 2023 which requires all state Medicaid programs to provide this coverage by January 1, 2024. At this time the following states have already implemented this coverage in advance of the federal mandate, and are providing 12 month continuous eligibility for Medicaid: Alabama, Alaska, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, West Virginia and Wyoming. This emergency administrative regulation will provide sustained access to healthcare for individuals formerly in foster care and provide continued support to the network of providers who treat them. This emergency regulation will also ease the anticipated administrative burden of the COVID-19 Public Health Emergency unwinding process. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2 to preserve state and federal funding and ensure the most efficient use of funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1 to preserve the welfare of Medicaid recipients who were formerly in foster care.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.


Andy Beshear
Governor

DocuSigned by:

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

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Health Care Policy

4 (Emergency Amendment)

5 907 KAR 20:075E. Eligibility provisions and requirements regarding former foster care individu-
6 als, and individuals who were in out-of-state equivalents to foster care.

7 RELATES TO: KRS 205.520, 42 C.F.R. 435.150

8 STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42
9 U.S.C. 1396a(a)(10)(A)(i)(IX).

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,
11 Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS
12 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that
13 may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This
14 administrative regulation establishes the Medicaid eligibility provisions and requirements for an in-
15 dividual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster
16 care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time that
17 the individual aged out of foster care, or the out-of-state equivalent.

18 Section 1. Former Foster Care Eligibility Criteria. An individual between the age of nineteen (19)
19 and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster
20 care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care,
21 or out-of-state equivalent, age limit shall be eligible for Medicaid benefits if the individual meets the

1 requirements of this administrative regulation.

2 Section 2. Income Standard. There shall be no income standard for individuals between the age of
3 nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state
4 equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

5 Section 3. Resource Standard. There shall be no resource standard for individuals between the age
6 of nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state
7 equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

8 Section 4. Attestation of Having Aged Out of Foster Care. (1) An individual between the age of
9 nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equiva-
10 lent to foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the
11 foster care, or out-of-state equivalent to foster care, shall attest, during the application process, that
12 the individual was receiving Medicaid benefits at the time that the individual reached the age which
13 exceeded the foster care, or out-of-state equivalent to foster care, age limit.

14 (2) An individual who does not attest as established in subsection (1) of this section shall not be
15 eligible for Medicaid benefits under this administrative regulation.

16 Section 5. Citizenship and Residency Requirements. (1) The citizenship requirements established
17 in 42 C.F.R. 435.406 shall apply.

18 (2) To satisfy the Medicaid:

19 (a) Citizenship requirements, an applicant or recipient shall be:

20 1. A citizen of the United States as verified through satisfactory documentary evidence of citizen-
21 ship or nationality presented during initial application or if a current recipient, upon next redetermi-
22 nation of continued eligibility;

23 2. A qualified alien who entered the United States before August 22, 1996, and is:

- 1 a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;
- 2 b. Granted asylum pursuant to 8 U.S.C. 1158;
- 3 c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
- 4 d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1)
- 5 year;
- 6 e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to
- 7 April 1, 1997, or 8 U.S.C. 1231(b)(3);
- 8 f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;
- 9 g. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;
- 10 h. A battered alien pursuant to 8 U.S.C. 1641(c);
- 11 i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an
- 12 honorable discharge and not on account of alienage;
- 13 j. On active duty other than active duty for training in the Armed Forces of the United States and
- 14 who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
- 15 k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this
- 16 subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this
- 17 subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or
- 18 l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
- 19 3. A qualified alien who entered the United States on or after August 22, 1996 and is:
 - 20 a. Granted asylum pursuant to 8 U.S.C. 1158;
 - 21 b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
 - 22 c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to
 - 23 April 1, 1997, or 8 U.S.C. 1231(b)(3);

- 1 d. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;
- 2 e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an
- 3 honorable discharge and not on account of alienage;
- 4 f. On active duty other than active duty for training in the Armed Forces of the United States and
- 5 who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
- 6 g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this
- 7 subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this
- 8 subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;
- 9 h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
- 10 i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has
- 11 earned forty (40) quarters of Social Security coverage; and

12 (b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets

13 the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

14 Section 6. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and

15 (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number

16 as a condition of eligibility.

17 (2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in

18 receipt of a Social Security number from the United States Social Security Administration if appro-

19 priate application for the number has been made.

20 (3) An individual who refuses to obtain a Social Security number due to a well-established reli-

21 gious objection shall not be required to provide a Social Security number as a condition of eligibility.

22 Section 7. Institutional Status. (1) An individual shall not be eligible for Medicaid if the individu-

23 al is a:

1 (a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of
2 this section;

3 (b) Patient in a mental hospital or psychiatric facility unless the individual is:

4 1. Under age twenty-one (21) years of age; or

5 2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st
6 birthday; or

7 (c) Patient in a nursing facility classified by the Medicaid program as an institution for mental
8 diseases.

9 (2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a
10 hospital if the inmate:

11 (a) Has been admitted to a hospital;

12 (b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

13 (c) Meets the Medicaid eligibility criteria established in this administrative regulation.

14 Section 8. Application Process, Initial and Continuing Eligibility Determination. (1) An individu-
15 al may apply for Medicaid benefits by:

16 (a) Using the Web site located at www.kynect.ky.gov;

17 (b) Applying over the telephone by calling:

18 1. 1-855- 459-6328; or

19 2. 1-855-326-4654 if deaf or hearing impaired;

20 (c) Faxing an application to 1-502-573-2007;

21 (d) Mailing a paper application to Office of Health Benefits Exchange, 12 Mill Creek, Frankfort,
22 Kentucky 40601; or

23 (e) Going to the applicant's local Department for Community Based Services Office and applying

1 in person.

2 (2) An individual shall attest in accordance with Section 4 of this administrative regulation when
3 applying for Medicaid benefits.

4 (3)(a) An application shall be processed (approved, denied, or a request for additional information
5 sent) by the department or other entity involved in processing the given application within forty-five
6 (45) days of application submittal.

7 (b) If a trusted source indicates that an applicant is incarcerated, a request for additional infor-
8 mation shall be generated by the department or other entity involved in processing the application
9 requesting verification of the applicant's incarceration dates or status.

10 (c) If an applicant fails to provide information in response to a request for additional information
11 within forty-five (45) days of the receipt of the request, the application shall be denied.

12 Section 9. Continuous Eligibility for Children. (1) An individual who is between the age of nine-
13 teen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care,
14 while receiving Medicaid coverage shall receive continuous eligibility, consistent with 42 C.F.R.
15 435.926.

16 (2) The continuous eligibility period for an individual who is between the age of nineteen (19)
17 and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while re-
18 ceiving Medicaid coverage recipient shall be for a period of twelve (12) months.

19 (3) The eligibility during a continuous eligibility period of an individual who is between the age
20 of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to fos-
21 ter care, while receiving Medicaid coverage shall only be terminated under the following circum-
22 stances:

23 (a) The individual becomes older than twenty (26) during the continuous eligibility period.

1 (b) The individual voluntarily requests that the eligibility be terminated;

2 (c) The individual ceases to be a resident of the Commonwealth;

3 (d) The agency determines that the eligibility was granted due to:

4 1. Agency error; or

5 2. Fraud, abuse, or perjury attributed to the individual; or

6 (e) The death of the individual.

7 Section 10. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provi-
8 sions established in 907 KAR 20:060 shall apply to former foster care, or out-of-state equivalent, in-
9 dividuals between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an
10 out-of-state equivalent to foster care, while receiving Medicaid coverage.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on June 26, 2023, 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 June 19, 2023, 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 June 30, 2023. 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 20:075E

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 provisions and requirements regarding Medicaid eligibility for a new eligibility group mandated by the Affordable Care Act. The new group is comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid coverage at the time of aging out of foster care. To qualify for Medicaid coverage the individuals have to attest to having received Medicaid benefits at the time they aged out of foster care but there is no income standard or resource standard/test for this population as the Affordable Care Act prohibits such standards from being applied to this population. Additionally, the individuals have to meet residency and citizenship requirements that other Medicaid applicants/recipients have to meet.
- (b) The necessity of this administrative regulation:** This administrative regulation is necessary to comply with an Affordable Care Act mandate to establish Medicaid eligibility for a new eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care and aged out of foster care while receiving Medicaid benefits at the time of aging out of foster care.
- (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 eligibility requirements for former foster youth.
- (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 eligibility requirements for former foster youth.

(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 by including individuals who were in out-of-state foster care as eligible foster care individuals. The amendment also implements a continuous eligibility requirement for former foster care youth. The continuous eligibility period will last for twelve (12) months and may only be terminated if the individual becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury.

(b) The necessity of the amendment to this administrative regulation: This population has already

been eligible for coverage within the Medicaid program. The federal government has directed that this eligibility group should be included within the state plan. This conforming change is being made as a result of that direction. In addition, a new continuing eligibility requirement is needed.

(c) How the amendment conforms to the content of the authorizing statutes: DMS has been instructed to utilize the state plan to cover individuals who were in out-of-state foster care. The authorizing statutes establish a framework for DMS to negotiate the Medicaid program with the federal government. The amendment also conforms to the content of the authorizing statutes by implementing a continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies eligibility policy for a specific population of Medicaid recipients and clearly adopts a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will impact a group of adult recipients in the 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. Regulated entities will be required to take no new actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The members will continue to have access to Medicaid services.

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

(a) Initially: DMS does not anticipate additional costs as a result of this amendment.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of this 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 Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.

(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: This administrative regulation neither imposes nor increases any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applied in this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 20:075E

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) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 435.150

(2) State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

KRS 205.520(3) states: ". . . 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.

Requires states to cover former foster care children. Former foster youth from other states are allowed to be covered under the Medicaid state plan or under Section 1115 waivers.

(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. The requirements are not stricter than federal requirements.

FISCAL NOTE

Administrative Regulation Number: 907 KAR 20:075E

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 this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520 and 42 C.F.R. 435.150.

(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 will generate no revenue for DMS.

(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 will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? DMS anticipates no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional costs to administer this program in subsequent years.

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.

(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.

(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.

