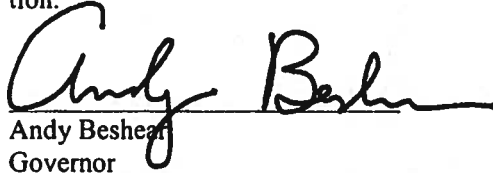
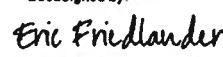


STATEMENT OF EMERGENCY  
907 KAR 4:020E

This emergency administrative regulation is being promulgated to incorporate and fully implement multiple state plan amendments to the Medicaid state plan and Kentucky Children's Insurance Program (KCHIP). This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with an administrative regulation restructuring made pursuant to the legislative mandate established in SB 178 of the 2022 General Session. This emergency administrative regulation is also needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding. Failure to implement the expanded postpartum population and modify the KCHIP program to reflect additional federal approvals could result in a loss of federal funds. Finally, 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. The received federal approvals will meaningfully expand healthcare access for thousands of postpartum pregnant women within the 138-218% income bracket, and the modification to the KCHIP program will ensure that no gaps in healthcare coverage can occur for the 80,000-105,000 children served by the KCHIP program.

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:  
  
0AEA108C15D8431  
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 Policy and Operations

4 (Emergency Amendment)

5 907 KAR 4:020E. Kentucky Children's Health Insurance Program Medicaid Expansion Title  
6 XXI of the Social Security Act.

7 RELATES TO: KRS 205.510-205.647, 205.6481-205.6497, [~~211.461—211.466,~~] 304.5-040,  
8 304.17A-005(8), (14), 42 C.F.R. 432, 433, 435, 436, 440.230, 457, 42 U.S.C. 1396, 1396a,  
9 1397aa-jj, 9902

10 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3) 205.6485, 42  
11 U.S.C. 1397aa-jj

12 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(2) requires the Cabinet  
13 for Health and Family Services, Department for Medicaid Services, to administer Title XIX of  
14 the Federal Social Security Act, 42 U.S.C. 1396 to 1396v. KRS 194A.050(1) requires the secre-  
15 tary of the cabinet to promulgate administrative regulations necessary to protect, develop, and  
16 maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the  
17 commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and  
18 to implement programs mandated by federal law or to qualify for the receipt of federal funds.

19 KRS 205.6485 authorizes the cabinet to establish the Kentucky Children's Health Insurance Pro-  
20 gram (KCHIP) to provide health care coverage and other coordinated health care services to  
21 children of the commonwealth who are uninsured and otherwise not eligible for health insurance

1 coverage. This administrative regulation establishes the KCHIP eligibility criteria, covered  
2 services, application requirements, grievance and appeal rights for recipients, and the require-  
3 ments for providers who wish to participate with the commonwealth to provide health care cov-  
4 erage to KCHIP members through an expansion of the Title XIX Medicaid Program.

5 Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Ser-  
6 vices or its designee.

7 (2) "Child" means an individual under the age of nineteen (19) years.

8 (3) "Creditable coverage" is defined by KRS 304.17A-005(8)(a)1-3 and 5-10.

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

10 (5) "Excepted benefits" is defined by KRS 304.17A-005(14).

11 (6) "Health insurance" is defined by KRS 304.5-040.

12 (7) "KCHIP" means the Kentucky Children's Health Insurance Program administered in ac-  
13 cordance with 42 U.S.C. 1397aa to jj.

14 Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if the child:

15 (a) Is a resident of Kentucky meeting the conditions for determining state residency under 42  
16 C.F.R. 435.403;

17 (b) Is a noncitizen~~[an alien]~~ who meets the requirement established in 907 KAR 20:005;

18 (c) Meets the technical requirements of 907 KAR 20:005;

19 (d) Provides to the department the information required in Section 4 of this administrative  
20 regulation;

21 (e) Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2;

22 (f) Meets the relative responsibility requirements established in 907 KAR 20:040;

23 (g) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

1 (h) Is an optional targeted low-income child as defined in 42 U.S.C. 1397jj(b) who:

2 1. Has family income that does not exceed two-hundred and thirteen (213)[159] percent of the  
3 federal poverty guidelines updated annually in the Federal Register by the United States Depart-  
4 ment of Health and Human Services under authority of 42 U.S.C. 9902(2); ~~and~~

5 2. Does not have creditable coverage and may be covered by excepted benefits; and

6 3.a. If an eligibility determination indicates that an individual's income exceeds two hundred  
7 and thirteen (213) percent of the federal poverty level established annually by the United States  
8 Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall  
9 apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility  
10 determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

11 b. If after the five (5) percent adjustment, the individual's income is under the adjusted in-  
12 come threshold, the individual shall meet the modified adjusted gross income standard.

13 (2) Eligibility for KCHIP shall be determined by the department. Upon receipt of eligibility  
14 information defined in subsection (1) of this section, the department shall determine if a child is  
15 eligible for benefits pursuant to 42 U.S.C. 1396 or 1397aa to jj.

16 Section 3. Covered Services. (1) Health services shall be considered medically necessary in  
17 accordance with:

18 (a) 907 KAR 3:130; and

19 (b) 42 C.F.R. 440.230.

20 (2) Amount and duration of benefits covered by KCHIP shall be as established in Title 907  
21 KAR.

22 (3) A medical service shall be covered through KCHIP Phase II if an individual is determined  
23 eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(4) Preventive and remedial public health services shall be provided to KCHIP Phase II members in accordance with 907 KAR 1:360.

(5) KCHIP Phase II shall be the payor of last resort.

Section 4. KCHIP Application Requirements. The following information shall be required from a child or responsible party for KCHIP enrollment:

(1) A child's demographics that shall include:

(a) Name;

(b) Address;

(c) Sex;

(d) Date of birth;

(e) Race; and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a recipient~~[child]~~ for whom information is being submitted;

(3) An employer type and address, if any;

(4) Frequency of income;

(5) Name and address of a health insurance provider who currently provides creditable coverage;

(6) Creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(7) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(8) Name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(9) Signature, date, and telephone number of a person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP shall meet the requirements of:

(1) 907 KAR 1:671; and

(2) 907 KAR 1:672.

Section 6. Grievance, Hearing, and Appeal Rights. (1) If dissatisfied with an action taken by the department as to the application of Sections 1 through 5 of this administrative regulation, a child, the child's parent, or the child's guardian shall be entitled to a grievance, hearing, or appeal with the department, to be conducted in accordance with:

(a) 907 KAR 1:560, if pertaining to initial eligibility; or

(b) 907 KAR 1:563, if pertaining to a covered service.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's parent, or the child's guardian shall be in accordance with:

~~—(a) KRS 211.461 through 211.466; and~~

~~—(b) 907 KAR 17:010.~~

(3) A KCHIP Phase II eligible child or a responsible party shall be informed in writing of the right to and procedures for due process by the cabinet:

(a) At the time information to obtain KCHIP Phase II approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following on a continuing basis:

(1) Access to services;

- 1 (2) Continuity of care;
- 2 (3) Health outcomes; and
- 3 (4) Services arranged or provided as established in 907 KAR Chapter 17.

907 KAR 4:020E  
REVIEWED:

7/11/2022

Date

DocuSigned by:

*Lisa Lee*

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Lisa D. Lee, Commissioner  
Department for Medicaid Services

APPROVED:

7/11/2022

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 September 26, 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 September 19, 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 September 30, 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 Specialist, 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 4:020E

Cabinet for Health and Family Services

Department for Medicaid Services

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

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the Kentucky Children's Health Insurance Program (KCHIP) eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights. KCHIP offers health care coverage to children whose parents' income exceeds the income thresholds for the Medicaid Program but is under 218 percent of the federal poverty level.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.
- (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 KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.
- (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 KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(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 moves all KCHIP children under the requirements of this administrative regulation, clarifies how a five (5) percent income disregard is to be calculated, and deletes references to certain repealed legislation.
- (b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to move all children under one income standard. This will allow for the program to ensure fund availability throughout each fiscal year.
- (c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing a state plan amendment to KCHIP and ensuring the availability of KCHIP for children.
- (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing a state plan amendment to KCHIP.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: DMS estimates that between 80,000-105,000 children will participate in the KCHIP program over the course of the year.
- (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. Recipients who could be eligible will need to apply for KCHIP services.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate any expenses for this population.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question. This technical change is a best practice nationwide and will allow for full coverage to be assured all year for all KCHIP income levels.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS does not anticipate additional expenses to the KCHIP program in implementing this change.
  - (b) On a continuing basis: DMS does not anticipate additional expenses to the KCHIP program in implementing this change.
- (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 will be necessary to implement the amendments.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 4:020E

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(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).
2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. 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."

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 457 establishes requirements relating to state Children's Health Insurance Programs.
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. N/A

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 4:020E

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. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560
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? DMS does not anticipate additional costs in administering this program in the first year.
  - (d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in administering 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.