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REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (New Administrative Regulation)

5 907 KAR 7:020. 1915(c) Home and community based services waiting list and waiting list
6 placement appeal processes.

7 RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42
8 C.F.R. 431 Subpart E, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1),
10 205.6317

11 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
12 Services, Department for Medicaid Services, has responsibility to administer the Medicaid
13 Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any
14 requirement that may be imposed, or opportunity presented, by federal law to qualify for federal
15 Medicaid funds. This administrative regulation establishes the policies governing 1915(c) waiver
16 waiting lists, and governs the circumstances under which an appeal will be granted if emergency
17 status is not granted for a waiting list for the Supports for Community Living waiver.

18 Section 1. Definitions.

19 (1) "1915(c) waiver program" means a Kentucky Medicaid program established pursuant to,
20 and in accordance with, 42 U.S.C. 1396n(c).

1 (2) “Department” means the Department for Medicaid Services.

2 (3) “Emergency category of need” means an order of waiting list placement, including the
3 placement described in 907 KAR 12:010, Section 12(3)(b), for the Supports for Community Living
4 (SCL) waiver.

5 (4) “Good cause” means a circumstance that:

6 (a) Is beyond the control of an individual and affects the individual’s ability to access funding
7 or services; and

8 (b) Includes:

9 1. An illness or hospitalization of the individual that is expected to last sixty (60) days or less;

10 2. The required paperwork and documentation for processing in accordance with Section 2 of
11 this administrative regulation has not been completed but is expected to be completed in two (2)
12 weeks or less; or

13 3. The individual or his or her guardian has made diligent contact with a potential provider to
14 secure placement or access services but has not been accepted within the sixty (60) day time period.

15 (5) “MWMA” means the Kentucky Medicaid Waiver Management Application internet portal
16 administered by the department.

17 (6) “Slot” means an allocation of funding available for placing an individual in a 1915(c) waiver
18 program.

19 Section 2. Waiting Lists. (1) Notwithstanding other provisions established in Title 907 KAR,
20 the provisions of this section and Section 3 of this administrative regulation shall control in relation
21 to the department’s policy relating to 1915(c) waiting lists and appeals relating to waiting list
22 placement.

23 (2) As appropriate, each 1915(c) waiver program shall maintain a statewide waiting list.

1 (3) If an applicant for a 1915(c) waiver program meets that waiver's criteria for waiting list
2 placement and there are no available slots at the time, the applicant shall be placed on the waiting
3 list for that waiver.

4 (4) The department shall send a written notification of placement on the waiting list to the
5 applicant, the applicant's legal guardian, or authorized representative.

6 (5) At least annually, the department shall contact each individual, the individual's legal
7 guardian, or authorized representative, on any 1915(c) waiver waiting list program to verify:

8 (a) The accuracy of the individual's information; and

9 (b) Whether the individual wishes to continue to pursue enrollment in the applicable waiver
10 program.

11 (6) The department shall remove an individual from a waiting list if:

12 (a) The individual is deceased;

13 (b) A review of documentation reveals that the individual does not have a diagnosis that
14 qualifies for the applicable 1915(c) waiver;

15 (c) The individual has relocated to a primary residence outside of the Commonwealth of
16 Kentucky; or

17 (d) The department notifies the individual, the individual's legal guardian, or authorized
18 representative of potential funding approved to enroll the individual in the applicable waiver
19 program and the individual, individual's legal guardian, or authorized representative:

20 1. Within sixty (60) calendar days of the potential funding notice, declines the potential
21 funding for enrollment in the program:

22 a. Expressly;

23 b. By not completing the enrollment process, or

1 c. By not asking for a good cause extension to complete the enrollment process within sixty
2 (60) calendar days of the potential funding notice date; and

3 2. Does not request to remain on the waiting list.

4 (7) After being notified by the department of potential funding approved to enroll the
5 individual in the waiver program, the individual shall maintain his or her current position on the
6 waiting list if the individual and, if applicable, the individual's legal guardian or authorized
7 representative:

8 (a) Declines the potential funding; and

9 (b) Requests to remain on the waiver waiting list.

10 (8) If the department denies a request for emergency category of need, the department shall
11 send written notice of the denial, including a notice of appeal rights, in accordance with 42
12 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

13 (a) The individual and, if applicable, the individual's legal guardian or authorized
14 representative; and

15 (b) The individual's case manager, waiver case manager, or participant directed services case
16 manager if the individual has a waiver case manager or participant directed services case
17 manager.

18 (9) The removal of an individual from a 1915(c) waiting list shall not preclude the individual
19 from applying for participation with any 1915(c) waivers in the future.

20 (10) If the department removes an individual from a 1915(c) waiver program waiting list, the
21 department shall send written notice of the removal, including a notice of appeal rights in
22 accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

23 (a) The individual, and, if applicable, the individual's legal guardian or authorized

1 representative; and

2 (b) The individual's waiver case manager or participant directed services case manager if the
3 individual has a waiver case manager or participant directed services case manager.

4 (11)(a) If requested the department shall grant an appeal regarding an application of this
5 administrative regulation.

6 (b) All appeals shall, as appropriate, be in accordance with 907 KAR 1:563.

7 (12) The hearing shall be conducted in accordance with 907 KAR 1:563.

8 Section 3. Waiting List Emergency Category Within the Supports for Community Living
9 Waiver. An individual shall be placed on the waiting list for the Supports for Community Living
10 waiver in the order of receipt of application in the MWMA. An individual on a waiting list shall
11 be categorized as established in this section.

12 (1)(a) Notwithstanding the emergency criteria established in 907 KAR 12:010, Section
13 12(3)(b), an individual's category of need shall be in the emergency category if the supporting
14 documentation requirements and request for emergency category of need in the 1915(c) waiver
15 program submitted to the department, indicate that an immediate service is needed due to any of
16 the following, if all other applicable and appropriate service options have been exhausted or
17 deemed inappropriate:

18 1. Abuse, neglect, or exploitation of the individual as substantiated by the Department of
19 Community Based Services;

20 2. The death of the individual's primary caregiver and lack of an alternative primary
21 caregiver;

22 3. The lack of appropriate living arrangement placement due to:

23 a. Loss of housing;

1 b. Loss of funding sources including 1915(c) waiver funding sources; or

2 c. Imminent discharge from a temporary placement;

3 4. Jeopardy to the health and safety of the individual due to the primary caregiver's inability
4 to provide all care needed due to the primary caregiver's:

5 a. Physical health status; or

6 b. Mental health status;

7 5. Imminent or threat of imminent institutionalization if 1915(c) home and community based
8 waiver program services are not provided; or

9 6. Present institutionalization and the applicant is not opposed to community placement in the
10 most integrated setting appropriate to the applicant's needs; and

11 (b) The individual:

12 1. Does not have a combination of care needs beyond the capability of the supports for
13 community living waiver program; or

14 2. Does not pose a serious potential danger to the health, safety, and welfare of the individual,
15 other participants, or staff.

16 (2) An individual on the waiting list who does not meet the requirements for the emergency
17 category of need pursuant to subsection (1) of this section shall be placed in the future planning
18 or urgent category of the Supports for Community Living waiting list, in accordance with 907
19 KAR 12:010.

20 (3) Priority on a waiting list shall first be given to those on the emergency category, then to
21 others on the waiting list. However, within each category, the order shall remain the same, based
22 on when the recipient applied for Supports for Community Living waiver services.

23 Section 4. Federal Approval and Federal Financial Participation. The department's coverage

- 1 of any services established in this administrative regulation shall be contingent upon:
- 2 (1) Receipt of federal financial participation; and
- 3 (2) Centers for Medicare and Medicaid Services' approval.

907 KAR 7:020
REVIEWED:

November 19, 2020

Date



Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

2/8/2021

Date

DocuSigned by:
Eric Friedlander
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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 April 26, 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 April 19, 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 April 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: Donna Little, Deputy Executive Director, 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 7:020

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov, and Donna Little, (502) 564-6746, CHFSRegs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes waiting list policies for all 1915(c) waiver programs within the Kentucky Medicaid program. This administrative regulation also establishes and expands appeal rights if there is a denial of a request for a placement on the emergency category waitlist of the Supports for Community Living Waiver.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program provisions and requirements regarding waiting list placement and appeals within the 1915(c) waiver programs.

(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 clarifying appeal rights and processes relating to waiting lists within the 1915(c) waiver programs, including emergency category waitlist placement for the Supports for Community Living Program.

(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 helping individuals, stakeholders, and providers to more easily navigate and understand the provisions relevant to 1915(c) waiver waiting list 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: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Applicants of 1915(c) waiver programs that have an emergency category within their waiting lists. Over the last calendar year, DMS received 7,575 applications for 1915(c) waiver applications. Each application is sent to each waiver for which the applicant may meet target criteria.

(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: An applicant that is denied for the emergency category of a waiting list will need to comply with existing administrative regulations that address appeals in order to appeal a denial of emergency category placement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither participants nor providers will incur additional costs as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit by being able to appeal a denial of emergency placement on a waiting list.

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

(a) Initially: The Department for Medicaid Services anticipates that this administrative regulation will be budget neutral on an initial basis.

(b) On a continuing basis: DMS anticipates that this administrative regulation will be budget neutral on a continuing basis.

(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 the Social Security Act, Title XIX, and matching funds of 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 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 neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was applied in that the action of denying a placement on the emergency category of the SCL waiting list is being granted appeal rights. The emergency category appeal rights are being applied equally to all those individuals who may be eligible for emergency status within the SCL waiver.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 907 KAR 7:020

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov, and Donna Little, (502) 564-6746, CHFSRegs@ky.gov

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(3)

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 U.S.C. 1396a(a)(3) requires the state plan to "provide for granting an opportunity for a fair hearing before the state agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different requirements than those required by the federal mandate.

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

Administrative Regulation #: 907 KAR 7:020

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov, and Donna Little, (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? This administrative regulation will affect the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3); and 42 U.S.C. 1396a(a)(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? This administrative regulation will not generate any additional revenue for state or local governments during the first year of implementation.

(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? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that this administrative regulation will be budget neutral for the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that this administrative regulation will be budget neutral for 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: