State Kentucky

Requirements for Third Party Liability
Identifying Liable Resources

The Title XIX single state agency is committed to compliance with all third party recovery requirements, including those shown in 42 CFR 433, Subpart D, Third Party Liability. For purposes of clarification, we state herein that the $250 threshold applies only regarding accident/trauma claims. The Kentucky Department for Medicaid Services may look back three (3) years for payment for any healthcare item or services submitted not later than three (3) years after the date such item or service was provided.

(b) (1) An agreement has been developed with the Department for Community Based Services (DCBS) for collecting and forwarding health insurance information for Kentucky's Title XIX recipients. The local DCBS field worker collects TPL data during initial application and during the redetermination process. The information collected includes the name of the policy holder, relationship of policy holder to recipient, the social security number of the policy holder, the policy number, and type of coverage held and name and address of insurance company. The information is added daily to the TPL data base and claims are edited against the data each processing cycle. Social Security Numbers of absent parents are being obtained from Title IV-D agencies. Addresses of employers of absent parents are obtained from unemployment insurance.

Data exchanges have been arranged with Kentucky Department of Income Support (DIS) to receive the Worker's Compensation and will be done quarterly. SWICA information is obtained during application and at least quarterly. SSA information is obtained during the application process from recipients for whom the information was not previously requested.

Data exchanges have been, and will continue to be, attempted as required by regulation with Motor Vehicle Registration.

(2) The state follows up within 30 days on all information obtained from SWIC, SSA wage and earnings files, and Title IV- A by entering any valid or appropriate data into the TPL avoidance file, or by utilizing the data for collection. The state will follow up the data exchanges with health insurers and worker's compensation files within sixty (60) days from the date of receipt of the files.

(3) The state has attempted, and will continue its efforts, to develop a state motor vehicle accident report file.

(4) Claims involving trauma diagnosis codes are processed in accordance with 42 CFR 433.138(3) and 433.139 with accumulated claims in excess of $250 pursued for possible third party payment or recovery. A weekly report is produced which identifies all recipients for whom $250 or more has been paid within a prior ninety (90) day period with an indicator of trauma or accident. Each case is actively pursued for possible collection. The time frames within which incorporation of information from accident/trauma diagnosis code TPL procedures must be accomplished is thirty (30) days.

(5) Providers are required to bill the third party in situations where the third party liability is derived from a parent whose obligation to pay support is being enforced by the State Title IV-D agency. Kentucky uses the pay and chase method.

(6) The state assures that the requirements of 42 CFR 433.145 through 433.148 are met for assignment for rights to benefits. Kentucky's statue KRS 205.624 (see Attachment 4.22-A, Exhibit A) requires assignment of third party payments. The application for Medical Assistance/TANF (AFDC) has a statement notifying the applicant/recipient of the third party assignment.

205.624. Assignment to cabinet by recipient of rights to third party payments - Right of recovery by cabinet. –

(1) An applicant or recipient shall be deemed to have made to the cabinet an assignment of his rights to third party payments to the extent of medical assistance paid on behalf of the recipient under title XIX of the Social Security Act. The applicant or recipient shall be informed in writing by the cabinet of such assignment.

(2) The cabinet shall have the right of recovery which a recipient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not to exceed the amount of funds expended by the cabinet for such care and treatment of the recipient under the provisions of title XIX of the Social Security Act.

(a) If a payment for medical assistance is made, the cabinet, to enforce its right, may:

1. Intervene or join in an action or proceeding brought by the injured, diseased, or disabled person, his guardian, personalrepresentative, estate, dependents, or survivors against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court; or
2. Institute and prosecute legal proceedings against a third party who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled recipient, in state or federal court, either alone or in conjunction with the injured, diseased, or disabled person, his guardian, personal representative, estate, dependents, or survivors; or
3. Institute the proceedings in its own name or in the name of the injured, diseased, or disabled person, his guardian, personal representative, estate, dependents, or survivors.

(b) The injured, diseased, or disabled person may proceed in his own name, collecting costs without the necessity of joining the cabinet or the Commonwealth as a named party, provided the injured, diseased, or disabled person shall notify the cabinet of the action or proceeding entered into upon commencement of the action or proceeding. The injured, diseased, or disabled person must notify the cabinet of any settlement or judgment of his or her claim.

(c) In the case of an applicant for or recipient of medical assistance whose eligibility is based on deprivation of parental care or support due to absence of a parent from the home, the cabinet may:

1. Initiate a civil action or other legal proceedings to secure repayment of medical assistance expenditures for which the absent parent is liable; and
2. Provide for the payment of reasonable administrative costs incurred by such other state or county agency requested by the cabinet to assist in the enforcement of securing repayment from the absent parent. Enact. Acts 1980, ch. 252, § 4.

(3) Each insurer issuing policies or contracts under Subtitle 17, 18, 32, or 38 of KRS Chapter 304 shall cooperate fully with the Cabinet for Health and Family Services or an authorized designee of the cabinet in order for the cabinet to comply with the provisions of subsection (1) of this section.

STATE LAWS REQUIRING THIRD PARTIES TO PROVIDE
COVERAGE ELIGIBILITY AND CLAIMS DATA

1902(a)(25)(I) The State has in effect laws that require third parties to comply with the provisions, including those which require third parties to provide the State with coverage, eligibility and claims data, of 1902(a)(25)(I) of the Social Security Act.

205.623 Information on claims paid for insurance policyholders and dependents -- Use of data -- Confidentiality of information -- Prohibited fees.

(1) All health insurers and administrators as defined under KRS Chapter 304 shall provide upon request to the Department for Medicaid Services, by electronic means and in the format prescribed by the department, policy and coverage information and claims paid data on Medicaid-eligible policyholders and dependents. Any request from the department shall include a list of data elements that shall be included on the electronic file from the insurer or administrator.

(2) All health insurers and administrators as defined under KRS Chapter 304 shall provide upon request to the department, by electronic means and in the format prescribed by the department, identifying information on all policyholders and dependents to match with the Medicaid management information system to determine which policyholders and dependents also participate in the Kentucky Medical Assistance Program. The identifying information shall include the name, address, date of birth, and Social Security number as these items appear in the companies' files and as the department may require.

(3) No health insurer or administrator shall be required to provide information under this section if doing so would violate any provision of federal law.

(4) All information obtained by the department pursuant to this section shall be confidential and shall not be open for public inspection.

(5) The department shall not be charged a fee by a third party for information requested under this section, nor shall the department be charged a fee by a third party for the processing and adjudication of the department's claim for recovery, reclamation, or validation of eligibility.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kentucky

Requirements for Third Party Liability -
Payment of Claims

1. For accident/trauma claims, the state has established a two hundred and fifty dollar threshold amount in determining whether to seek reimbursement from liable third parties based on an accumulation of claims processed within a prior ninety day period, but with recoupment applied to all accumulated accident/trauma claims processed within a prior two year period. Audits of past claim recoveries have shown when a tort case totals less than $250 and no response has been received from recipient, it is not cost effective to pursue these cases after sending two letters unless recipient or attorney makes contact to the State Medicaid Agency.

2. The exception to the above policy is accident cases in litigation over $250 (two hundred and fifty dollars). These cases will be pursued from the date the accident occurred, regardless of the ninety day period and two year time period.

3. The provider's compliance with the billing requirement in situations involving medical support enforcement by the state Title IV-D agency is determined by having the liable third parties notify the state at the time of the state's weekly billing if the provider has not complied with the billing requirement. Duplicate payments will be recouped. If the claim is related to medical support enforcement, providers must submit proof they billed the third party within a 100-day period and not received payment. The provider must have waited up to 100 days from the date the provider of such services has initially submitted a claim and not received payment from the third party before the state will pay, except that the State may make such payment within 30 days after such date if the State determines doing so is cost-effective and necessary to ensure access to care.

4. For preventive pediatric services, including early and periodic screening, diagnosis, and treatment services (EPSDT) payments are made without regard to potential third party liability for preventive pediatric services, including early and periodic screening, diagnosis, and treatment services (EPSDT), except if it is determined doing so is cost-effective and will not adversely affect access to care, will only make such payment if a third party so liable has not made payment within 90 days after the date the provider of such services has initially submitted a claim.

5. For prenatal services, including labor, delivery, and postpartum care services there are cost avoidance procedures in place for claims. The provider is required to bill the third party as primary. If the provider bills Medicaid as primary the claim is returned to the provider with the third party information that Medicaid believes to have legal responsibility for payment. If after the provider bills the third party and a balance remains or the claim is denied for a substantive reason, the provider can submit a claim to Medicaid for payment up to the maximum amount established for the service.