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REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Fiscal Management

4 (Amendment)

5 907 KAR 1:008. Ambulatory surgical center services and reimbursement.

6 RELATES TO: KRS 205.520(3), 205.560(2), 42 C.F.R. 416.164 and 416.166, 447.271, Part 441

7 Subpart E or F

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[, ~~EO 2004-726~~]

9 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reor-~~
10 ~~ganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Med-~~
11 ~~icaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family
12 Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabi-
13 net, by administrative regulation, to comply with a requirement that may be imposed or opportunity
14 presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This
15 administrative regulation establishes the coverage provisions and method for establishing payment for
16 an ambulatory surgical center.~~

17 Section 1. Scope of Coverage. The Medicaid Program shall cover medically necessary, medically
18 appropriate services rendered by a participating ambulatory surgical center (ASC) licensed by its re-
19 spective state and certified for Medicare participation.

20 Section 2. Basis for Reimbursement. (1) Beginning with the effective date of this regulation, the
21 Department for Medicaid Services shall utilize the January 1, 2022, ASC fee schedule published by

MAISON

1 the Centers for Medicare and Medicaid Services (CMS) to determine the ASC rates, subject to the
2 following adjustments and updating procedures:

3 (a) Reimbursement for a procedure shall be the rate specific to that procedure as assigned by
4 CMS, adjusted by the wage index utilized by CMS for the Cincinnati, OH, Core-Based Statistical
5 Area, or its equivalent.

6 (b) Procedure codes that are considered a packaged service by CMS with a Medicare rate of \$0
7 shall be reimbursed at a rate of \$0.

8 (c) Medicaid covered procedures not included on the Medicare fee schedule shall be reimbursed
9 at forty-five (45) percent of billed charges.

10 (d) Bilateral procedures shall be reimbursed at one hundred and fifty (150) percent of billed
11 charges.

12 (e) Reimbursement shall follow applicable Medicare rules for multiple endoscopy discounting and
13 multiple procedure discounting. In the event that both discounts apply to a single claim, the multiple
14 endoscopy discount shall be applied first.

15 (f) Effective January 1, 2023, and each January 1 thereafter, the ASC fee schedule utilized for
16 payment purposes shall be updated to reflect the latest January 1 Medicare ASC fee schedule pub-
17 lished by CMS, inclusive of any applicable correction notices.

18 (2) Ambulatory surgical center coverage provisions shall be as established in 42 C.F.R. 416
19 Subpart F, including 42 C.F.R. 416.164 and 416.166. [1996 Medicare ambulatory surgical center
20 group rates for the federal Cincinnati, Ohio-Kentucky region to reimburse for an ambulatory
21 surgical center service. The following chart establishes the ambulatory surgical center
22 reimbursement rate for each corresponding surgical group:

Ambulatory Surgical	Reimbursement
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Center Group	Rate
Group 1	\$307.38
Group 2	\$412.79
Group 3	\$471.90
Group 4	\$582.25
Group 5	\$664.02
Group 6	\$775.59
Group 7	\$921.15
Group 8	\$911.55

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~~(2) Reimbursement for a procedure shall be the surgical group rate specific to that procedure as assigned by the Centers for Medicare and Medicaid Services.~~

~~(3) Reimbursement for a procedure which does not have a surgical group rate shall be forty five (45) percent of charges.~~

~~(4) Ambulatory surgical center group surgical and covered provisions are established in the Ambulatory Surgical Centers Manual.]~~

Section 3. Reproductive Services. (1) A reproductive service shall be reimbursable when performed in compliance with this administrative regulation and 42 C.F.R. Part 441 Subpart E or F, as relevant:

(2) The appropriate certification form or forms shall be completed and signed by the physician. A copy of the completed form and an operative report shall accompany each claim submitted for payment.

(3) If a sterilization is performed in conjunction with another surgical procedure and federal regulations governing payment for the sterilization have not been met, the department shall only make

1 payment for the covered non-sterilization procedure.

2 (4) Claims for unilateral or laparoscopic surgical procedures that could result in sterilization
3 shall be submitted with documentation verifying that the recipient was not sterilized as a result of
4 the performed procedure.

5 Section 4. Documentation Requirements. (1) All services reimbursed by the department shall be:

6 (a) Medically necessary;

7 (b) Medically appropriate; and

8 (c) Related to the diagnosis or treatment of:

9 1. Illness;

10 2. Injury;

11 3. Impairment; or

12 4. Maternity care.

13 (2) Documentation in recipient medical records shall support necessity and substantiate the level of
14 service billed.

15 (3) Medical necessity shall be determined in accordance with 907 KAR 3:130.

16 (4) The department shall have the authority to audit any:

17 (a) Claim;

18 (b) Medical record; or

19 (c) Documentation associated with any claim or medical record.

20 Section 5. Federal Approval and Federal Financial Participation. The cabinet's coverage and reim-
21 bursement of services pursuant to this administrative regulation shall be contingent upon:

22 (1) Receipt of federal financial participation for the coverage and reimbursement; and

23 (2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as
24 relevant.

1 **Section 6. Not Applicable to Managed Care Organizations. A managed care organization shall**
2 **not be required to reimburse in accordance with this administrative regulation for a service cov-**
3 **ered pursuant to this administrative regulation**~~[Incorporation by Reference. (1) "The Ambulatory~~
4 ~~Surgical Centers Manual", October 2002 edition, Department for Medicaid Services, is incorporated by~~
5 ~~reference.~~
6 ~~—(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Department~~
7 ~~for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Ken-~~
8 ~~tucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m].~~

907 KAR 1:008
REVIEWED:

10/11/2022

Date

DocuSigned by:
Lisa Lee
7CB973D215D941E

Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

10/12/2022

Date

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:008

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 reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.
 - (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 reimbursement rates and coverage provisions for ambulatory surgical centers as authorized by KRS 194A.030(3), 194A.050(1), and 205.560(2).
 - (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 reimbursement rates and coverage provisions for ambulatory surgical centers.

- (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 amendment moves certain requirements that were previously located within the ambulatory surgical centers manual into the body of the administrative regulation. The administrative regulation is further amended to update to the 2022 ambulatory surgical center fee schedule, and to establish an ongoing updating process to the most currently available ambulatory surgical center fee schedule. The administrative regulation also adds a new section relating to reproductive services. This language previously existed within the ambulatory surgical center manual and is being moved to the administrative regulation with the deletion of the manual. Another new section relating to documentation requirements is being included that contains requirements that were previously located in the Ambulatory Surgical Centers Manual. Language relating to the 1996 fee schedule is being deleted and the section relating to material incorporated by reference is also being deleted.

The Amended After Comments version adds a new section that clarifies that MCOs are not required to reimburse pursuant to this administrative regulation.

- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the clinical criteria established by 907 KAR 3:130.
- (c) How the amendment conforms to the content of the authorizing statutes: This

amendment conforms to the content of the authorizing statutes by updating ambulatory surgical center reimbursement policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by updating reimbursement policies and documentation requirements for services provided in ambulatory surgical centers.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Seventy-four (74) enrolled ambulatory surgical centers will be impacted by the amendment to the administrative regulation.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:
 - (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 need to comply with documentation procedures.
 - (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.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to a process for updating and modernizing documentation and reimbursement.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: No additional expenditures are necessary to implement this amendment.
 - (b) On a continuing basis: No additional expenditures are necessary to implement 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 the Social Security Act, Title XIX and state matching funds.
- (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: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation 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

Administrative Regulation #: 907 KAR 1:008

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. 416 Subpart F.
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. Subpart F of 42 C.F.R. 416 establishes and describes the broader categories of covered services and limitations of ambulatory surgical centers.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 907 KAR 1:008

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. 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 will be affected by the amendment to this administrative regulation.

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).

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 is not expected 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? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This amendment is expected to cost approximately an additional \$108,494 total annually, \$30,194 of which would be the state's responsibility. Estimate could vary depending on CMS updates to the fee schedule and utilization.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to cause additional costs in administering this program in subsequent years. This amendment is expected to cost approximately an additional \$108,494 total annually, \$30,194 of which would be the state's responsibility. Estimate could vary depending on CMS updates to the fee schedule and utilization.

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:

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 1:008.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management

Amended After Comments

I. No request to be heard at a public hearing was received in relation to 907 KAR 1:008, and therefore, a public hearing was not held. However, written comments were received during the public comment period.

II. The following individuals submitted comments during the public comment period:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Rebecca Randall, Director of Operations	WellCare Health Plans of Kentucky
Amanda Vespasiano, Associate, Kentucky MCD Operations	Humana Kentucky Medicaid

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 1:008.

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Lisa Lee, Commissioner	Department for Medicaid Services, Commissioner's Office
Veronica Cecil, Senior Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Steve Bechtel, Chief Financial Officer	Department for Medicaid Services, Commissioner's Office
Amy Richardson, Director	Department for Medicaid Services, Division of Fiscal Management
John Hay, Assistant Director	Department for Medicaid Services, Division of Fiscal Management

Jacob Wilson, Assistant Director	Department for Medicaid Services, Division of Fiscal Management
Jonathan Scott, Regulatory and Legislative Advisor	Department for Medicaid Services, Commissioner's Office

IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Bilateral Procedure Reimbursement

(a) Comment: Rebecca Randall, Director, Operations, WellCare Health Plans of Kentucky submitted comments requesting clarification about bilateral procedure reimbursement. The commenter points out that "Per CMS guidelines, bilateral procedures are reimbursed at the lesser of actual billed charges or 150% of the Medicare fee schedule amount. We recommend that the Department for Medicaid Services (DMS) revise the language to appropriately reflect the CMS rate."

(b) Response: The department is implementing a 150% reimbursement for this service. The department will not be amending the administrative regulation in response to the comment.

(2) Subject: Caveat Regarding Managed Care Reimbursement

(a) Comment: Rebecca Randall, Director, Operations, WellCare Health Plans of Kentucky submitted comments requesting that DMS include standard language establishing that MCOs are not required to reimburse pursuant to this regulation.

(b) Response: The department agrees with this comment and will amend the administrative regulation to add a new Section 6 that clarifies that managed care organizations are not required to reimburse pursuant to this administrative regulation.

(3) Subject: Multiple Endoscopy and Multiple Procedure Reimbursement

(a) Comment: Rebecca Randall, Director, Operations, WellCare Health Plans of Kentucky submitted comments inquiring as to whether DMS will incorporate all Medicare rules relating to multiple endoscopy and multiple procedure reimbursement or if there are some rules that DMS will not apply.

(b) Response: It is the department's intent to follow all requirements within the Medicare rules that relate to the Medicaid program. As DMS interprets the Medicare rules, it appears that some requirements do not apply within a Medicaid context. DMS is therefore implementing the Medicare rules to the extent possible. The department will not be amending the administrative regulation in response to the comment.

(4) Subject: Service Rate Clarification

(a) Comment: Amanda Vespasiano, Associate, Kentucky MCD Operations, Humana Kentucky Medicaid, submitted comments inquiring as to whether service rates within ASCs will be commensurate with Medicare.

(b) Response: That is correct, rates are being synchronized to Medicare to the rate possible. However, a Medicaid specific fee schedule will continue to be generated. The Medicaid-specific fee schedule generated pursuant to this administrative regulation will be the document of truth for ASC services provided to the Medicaid Fee-For-Service population. The administrative regulation is not being amended in response to the comment.

V. SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 1:008. This administrative regulation is being amended after comments. DMS is amending the administrative regulations as follows:

Section 5
Page 5
Line 1

After "as relevant", insert the following:

±
Section 6. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to this administrative regulation