

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 East 12th Street, Suite 0300
Kansas City, Missouri 64106-2898



Medicaid and CHIP Operations Group

January 20, 2023

Ms. Lisa Lee
Commissioner, Department for Medicaid Services
Commonwealth of Kentucky
Cabinet for Health and Human Services
275 East Main Street, 6 West A
Frankfort, KY 40601

RE: Kentucky State Plan Amendment (SPA) Transmittal Number 22-0012

Dear Ms. Lee:

We have reviewed the proposed amendment to add section 7.4 Medicaid Disaster Relief for the COVID-19 National Emergency to your Medicaid state plan, as submitted under transmittal number (TN) KY 22-0012. This amendment proposes to implement temporary policies, which are different from those policies and procedures otherwise applied under your Medicaid state plan, during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak (or any renewals thereof).

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and this state plan provision will no longer be in effect, upon termination of the public health emergency, including any extensions.

Pursuant to section 1135(b)(5) of the Social Security Act (Act), for the period of the public health emergency, CMS is modifying the requirement at 42 C.F.R. §430.20 that the state submit SPAs related to the COVID-19 public health emergency by the final day of the quarter, to obtain a SPA effective date during the quarter, enabling SPAs submitted after the last day of the quarter

to have an effective date in a previous quarter, but no earlier than the effective date of the public health emergency.

The State of Kentucky also requested a waiver to modify the public notice requirements applicable to the SPA submission process. Pursuant to section 1135(b)(5) of the Act, CMS is modifying public notice requirements applicable to the SPA submission process. Public notice for SPAs is required under 42 C.F.R. §447.205 for changes in statewide methods and standards for setting Medicaid payment rates, 42 C.F.R. §447.57 for changes to premiums and cost sharing, and 42 C.F.R. §440.386 for changes to Alternative Benefit Plans (ABPs). Pursuant to section 1135(b)(5) of the Act, CMS is approving the state's request to modify these notice requirements otherwise applicable to SPA submissions.

These waivers or modifications of the requirements related to SPA submission timelines and public notice apply only with respect to SPAs that meet the following criteria: (1) the SPA provides or increases beneficiary access to items and services related to COVID-19 (such as by waiving or eliminating cost sharing, increasing payment rates or amending ABPs to add services or providers); (2) the SPA does not restrict or limit payment or services or otherwise burden beneficiaries and providers; and (3) the SPA is temporary, with a specified sunset date that is not later than the last day of the declared COVID-19 public health emergency (or any extension thereof). We nonetheless encourage states to make all relevant information about the SPA available to the public so they are aware of the changes.

We conducted our review of your submittal according to the statutory requirements at section 1902(a) of the Act and implementing regulations. This letter is to inform you that Kentucky Medicaid SPA Transmittal Number 22-0012 is approved effective the first day after the expiration of the Public Health Emergency.

Enclosed is a copy of the CMS-179 summary form and the approved state plan pages.

Please contact Keri Toback at (312) 353-1754 or by email at Keri.Toback@cms.hhs.gov if you have any questions about this approval. We appreciate the efforts of you and your staff in responding to the needs of the residents of the State of Kentucky and the health care community.

Sincerely,

Alissa Mooney DeBoy
On Behalf of Anne Marie Costello, Deputy Director
Center for Medicaid and CHIP Services

Enclosures

cc: Erin Bickers, KY DMS

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 2 — 0 0 1 2

2. STATE

KY

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT

XIX XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

First day after PHE ends

5. FEDERAL STATUTE/REGULATION CITATION

1902 of the Social Security Act

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY _____ \$ _____
b. FFY _____ \$ _____

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

7.4.B

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

New

9. SUBJECT OF AMENDMENT

The state will disregard any excess resources for LTC members following the end of the month in which the COVID-19 public health emergency ends.

10. GOVERNOR'S REVIEW (Check One)

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED:

11. SIGNATURE OF STATE AGENCY OFFICIAL

12. TYPED NAME
Lisa Lee

13. TITLE
Commissioner

14. DATE SUBMITTED
11/30/2022

15. RETURN TO

Lisa Lee
275 E. Main St.
Frankfort, KY 40601

FOR CMS USE ONLY

16. DATE RECEIVED

17. DATE APPROVED

01/20/2023

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL

First day after PHE ends

19. SIGNATURE OF APPROVING OFFICIAL

20. TYPED NAME OF APPROVING OFFICIAL

Alissa Mooney DeBoy on Behalf of Anne Marie Costello

21. TITLE OF APPROVING OFFICIAL

Deputy Director, Center for Medicaid and CHIP Services

22. REMARKS

State/Territory: KENTUCKY

Section 7 – General Provisions

7.4.B. Temporary Extension to the Disaster Relief Policies for the COVID-19 National Emergency

Effective the day after the end of the PHE until twelve months after, the agency temporarily implements the following election of section 7.4 (approved on 03/23/2021 in SPA Number KY-20-0011) of the state plan.

Eligibility:

The agency applies less restrictive financial methodologies to individuals excepted from financial methodologies based on modified adjusted gross income (MAGI) as follows.

Less restrictive resource methodologies:

Income that would have otherwise been part of an individual's liability for his or her institutional or home and community based waiver services based on application of the post-eligibility treatment of income (PETI) rules but which became countable resources on or after March 18, 2020.

TN: 22-012
Supersedes TN: New

Approval Date: 01/20/2023
Effective Date: the first day
After the end of the PHE