907 KAR 1:675. Program integrity.

RELATES TO: KRS 205.8451, 205.8453, 42 C.F.R. 431 Subpart E, 455.12, 455.13, 455.16(c)(4)
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.8453(4), EO 2004-726
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.8453(4) directs the Cabinet for Health Services to institute other measures necessary or useful in controlling fraud and abuse. This administrative regulation establishes an administrative process which provides due process prior to disqualification or request for repayment of Medicaid benefits paid on behalf of a recipient. This administrative regulation establishes the provisions relating to enhanced program integrity of the Medicaid Program and applies to all Kentucky Medicaid recipients.

Section 1. Definitions. (1) "Benefit" is defined in KRS 205.8451(1).
(2) "Department" means the Department for Medicaid Services or its designated agent.
(3) "Disqualification hearing" means a hearing conducted by a Cabinet for Health Services hearing officer if:
(a) An adult recipient or responsible party has been found, through an investigative process, to have committed MA IPV; and
(b) The individual has appealed the finding.
(4) "Extraordinary circumstance" means a medical condition other than pregnancy or postpartum which results from a communicable disease or other condition that creates a risk to public health, or a condition which, if not treated, could result in immediate grave bodily harm.
(5) "Judicial review" means a review of a final agency order by the appropriate circuit court, plus further appeal to the Kentucky Court of Appeals or Kentucky Supreme Court.
(6) "Medicaid intentional program violation" or "MA IPV" means an action in which a recipient or responsible party makes a false or misleading statement, or misrepresents, conceals or withholds a fact or commits a violation of a state or federal law relating to the Medicaid program which results in a financial loss to the department.
(7) "Penalty" means an administrative action taken by the department which restricts or revokes a recipient's participation in the Medicaid Program or requires the repayment of the value of the benefits received.
(8) "Recipient" is defined in KRS 205.8451.
(9) "Responsible party" means an individual who is either:
(a) A parent or legal guardian of a minor child who is a Medicaid recipient;
(b) A Medicaid recipient who is eighteen (18) years old or older;
(c) A spouse aged eighteen (18) years old or older of a Medicaid recipient;
(d) An individual who possesses a power of attorney for the Medicaid recipient; or
(e) A legal guardian for an incompetent adult Medicaid recipient.

Section 2. Medicaid Intentional Program Violation. A Medicaid intentional program violation shall be deemed to occur if the Medicaid recipient or responsible party, age eighteen (18) or older, caused a financial loss to Medicaid by:
(1) Making a false or misleading statement to obtain a Medicaid benefit;
(2) Misrepresenting, concealing, or withholding a fact to obtain a Medicaid benefit;
(3) Committing a violation of a state or federal law or regulation relating to the Medicaid Program;
(4) Defrauding the department during the Medicaid eligibility process;
(5) Abusing the Medicaid Program by allowing an individual other than the one (1) listed on the MAID card to obtain a health care benefit by use of the household's card; or
(6) Inappropriately obtaining a covered service.

Section 3. Medicaid Intentional Program Violation Identification Procedures. (1) The department shall notify a Medicaid Program recipient of a change in Medicaid policy for which he shall be held liable with respect to a Medicaid intentional program violation in accordance with the criteria specified in this administrative regulation.
(2) The department shall provide a Medicaid recipient with a toll free number to report an allegation of possible fraud or abuse of the Medicaid Program by a recipient or provider.
(3) The department shall identify that a possible Medicaid intentional program violation occurred through:
(a) Computer matches;
(b) Collateral contacts;
(c) Hotline referrals;
(d) Quality control reviews; or
(e) Other valid reports or information previously unknown to the department.

Section 4. Medicaid Intentional Program Violation Referral Procedures. (1) If a finding from a preliminary investigation in accordance with Section 3 of this administrative regulation warrants a full investigation, the department shall:

(a) Interview the responsible party and request verification of information previously unknown to the department for the specified period of time that the alleged Medicaid intentional program violation occurred;
(b) Allow the responsible party the opportunity to review and refute evidence obtained by the department; and
(c) Calculate the value of the covered services rendered based on Medicaid payments made on behalf of the recipient for the time period that the recipient received covered services through an alleged Medicaid intentional program violation.
(2) Within ten (10) days of the date of the interview, the following shall occur:
(a) The department shall provide the recipient or responsible party the opportunity to review and refute findings of the investigation;
(b) The responsible party shall be allowed to reimburse the Medicaid Program in full for the money expended for benefits by the department during the period of noneligibility based on the Medicaid intentional program violation;
(c) If the responsible party does not agree to the repayment or with the evidence he reviews, and wishes to request a disqualification hearing, he shall sign form MAP-800 and the disqualification hearing shall be scheduled, in accordance with Section 6 of this administrative regulation; and
(d) If the responsible party does not appear for the interview identified in subsection (1)(a) and (b) of this section or request a disqualification hearing, he shall be disqualified effective with the first administratively feasible month.

Section 5. Continued Participation in the Medicaid Program While Awaiting a Disqualification Hearing. A pending hearing shall not affect the recipient's right to participate in the Medicaid Program unless the hearing officer:
(1) Rules that the responsible party committed a Medicaid intentional program violation; and
(2) Revokes the recipient's current eligibility.

Section 6. Disqualification Hearing Process. (1) The recipient or responsible party shall have thirty (30) days from the date listed on form MAP-800 to request a hearing through the department.
(2) Upon receipt of the hearing request, the Cabinet for Health Services shall conduct the disqualification hearing for a responsible party suspected of a Medicaid intentional program violation in accordance with the requirements of KRS Chapter 13B and 42 CFR Part 431, Subpart E.
(3) The department shall:
(a) Provide written notice in accordance with KRS 13B.050 to the responsible party suspected of a Medicaid intentional program violation at least twenty (20) days before the date the disqualification hearing is scheduled;
(b) Arrange the time and place of the hearing so that the hearing is accessible to the responsible party accused of a Medicaid intentional program violation;
(c) Indicate on the advance written notice an individual or organization who may be available to provide free legal representation; and
(d) Conduct a telephonic hearing if the responsible party and a party or witness required to testify under oath or affirmation consents.
(4) If requested by the responsible party, another designated person or his legal counsel, the department shall provide one (1) free copy of the portions of the case file that are relevant to the hearing.
(5) Pursuant to KRS 13B.110, within sixty (60) days of the date the responsible party requests a hearing in writing, the department shall:
(a) Schedule the hearing;
(b) Conduct the hearing;
(c) Arrive at a recommended decision; and
(d) Notify the responsible party and the Cabinet for Families and Children, Department for Community-Based Services of the decision.
(6) The hearing decision shall comply with federal law and regulation and shall be based on the hearing record. The hearing record shall:
(a) Comply with the requirements of KRS 13B.130;
(b) Be binding on the department in that the department shall bear the burden of proof based on the preponderance of evidence;
(c) Summarize the facts of the case;
(d) Specify the reasons for the decision; and
(e) Identify:
1. The supporting evidence;
2. Kentucky Revised Statutory citations, if applicable;
3. Kentucky administrative regulations; and
4. Corresponding federal law.
(7) A final order shall be issued by the commissioner of the department to the responsible party or legal counsel and the Department for Community-Based Services pursuant to KRS 13B.120. The final order shall include the following:
(a) The disqualification hearing decision;
(b) The reasons for the decision; and
(c) If a current recipient, the continuance or revocation of the Medicaid benefits for the recipient, and the amount of repayment

due to the department as determined by the hearing officer.

(8) The hearing record shall be retained:

(a) For a period of five (5) years from the month of origin of each record, for program records; and

(b) For a period of five (5) years from the date of fiscal or administrative closure, for a fiscal record or accountable document.

(9) The hearing record shall be available to the responsible party, designated person or legal counsel during the normal business week, Monday through Friday, excluding state holidays from 8 a.m. through 4:30 p.m. (eastern standard time) for copying and inspection.

(10) One (1) copy of the hearing material shall be provided to the responsible party. If additional copies are required, an appropriate fee which approximates cost shall be paid by the responsible party in accordance with KRS 61.872.

Section 7. Failure to Appear or Postponement of the Hearing. (1) If the responsible party fails to attend a disqualification hearing and is determined to have committed a Medicaid intentional program violation, and a hearing officer later determines that the responsible party or representative had good cause for not appearing, pursuant to subsection (2) of this section:

(a) The previous decision shall be void; and

(b) The department shall conduct a new disqualification hearing. The hearing officer who originally ruled on the case may conduct the new disqualification hearing.

(2) The responsible party shall have ten (10) days after the date of the scheduled hearing to present good cause for failure to appear. Reasons for good cause shall include:

(a) The responsible party was away from home during the entire hearing advance notice time period;

(b) The responsible party is unable to read or to comprehend the hearing notice;

(c) The responsible party moved resulting in inadequate notice;

(d) Serious illness of the responsible party or immediate family member;

(e) The failure to appear for the disqualification hearing was determined to be no fault of the responsible party; or

(f) Failure on the part of the responsible party to receive notification.

(3) A hearing officer shall enter a decision for good cause into the record in addition to the date and time of the rescheduled hearing as specified in subsection (2) of this section.

(4) The responsible party or legal representative shall be entitled to one (1) postponement not to exceed thirty (30) days from the date the disqualification hearing was originally scheduled. The request for postponement shall be made at least ten (10) days in advance of the date of the scheduled hearing.

(5) If the hearing is postponed, the time limits specified in Section 6(5) of this administrative regulation shall be extended for as many days as the hearing is postponed.

Section 8. Penalties for Medicaid Intentional Program Violations. (1) If the disqualification hearing officer determines that the responsible party committed a Medicaid intentional program violation, the department shall:

(a) Disqualify the recipient from participation in the Medicaid Program for a period not to exceed one (1) year or until the money expended by the department for benefits obtained by Medicaid intentional program violation is repaid, whichever comes first;

(b) Provide to the responsible party a written notice prior to imposing the disqualification;

(c) Inform the responsible party of the period of time for which the recipient shall be disqualified;

(d) Advise the responsible party when the disqualification shall take effect; and

(e) Inform the responsible party of the final value of the benefits received, as calculated at the time of the disqualification hearing, which shall be repaid to the department.

(2) If during a preliminary investigation a criminal offense is suspected, a case shall be referred for possible prosecution. In order to facilitate criminal investigative action, the department shall, at the request of the state agency conducting the criminal investigation, provide:

(a) Access to, and free copies of, any records or information kept by the department or its contractors;

(b) Computerized data stored by the department or its contractors; and

(c) Access to any information, kept by providers, to which the agency is authorized as specified in 907 KAR 1:672.

(3) If the recipient is no longer receiving Medicaid benefits, the department shall inform the responsible party in writing that the period of disqualification shall begin with the first administratively feasible month and shall continue for eleven (11) consecutive months.

(4) A notice of their rights and eligibility status shall be provided to other Medicaid recipients residing in a household with a responsible party determined to have committed a Medicaid intentional program violation.

(5) If more than one (1) Medicaid intentional program violation determination has been made, the twelve (12) month periods of disqualification shall be served consecutively.

(6) If the responsible party committed the Medicaid intentional program violation, the responsible party shall be disqualified. The recipient shall not be disqualified.

Section 9. Exemptions from Disqualifications. (1) A recipient who shall be exempt from disqualification for a Medicaid intentional program violation shall include:

(a) A child under eighteen (18) years of age; and

(b) A pregnant woman through postpartum.

(2) An Individual meeting the criteria for extraordinary circumstances, as determined by the department's peer review organization, shall be permitted to participate in the Medicaid Program on a restricted basis, in accordance with Section 10 of this administrative regulation.

Section 10. Consideration of Extraordinary Circumstances during the Eligibility Revocation Period. (1) If a recipient, who is the responsible party for the Medicaid case has his eligibility revoked as a result of a Medicaid intentional program violation, the remaining family members shall have eligibility determined for potential Medicaid benefits, in accordance with eligibility criteria contained in 907 KAR 1:011, 907 KAR 1:605, 907 KAR 1:640, 907 KAR 1:645, and 907 KAR 1:660.

(2) The department shall reinstate within ten (10) working days a recipient whose eligibility has been revoked due to a Medicaid intentional program violation and who has reapplied for benefits under extraordinary circumstances.

(3) If a recipient's eligibility has been revoked and then reinstated under extraordinary circumstances as specified in subsection (2) of this section, that person shall serve the balance, if any, of the disqualification period, when the extraordinary circumstance no longer exists. If the disqualification time period expires during the extraordinary circumstance period, an additional ineligibility period shall not be imposed on the individual.

(4) A determination of extraordinary circumstances due to pregnancy shall be made at the local Department for Community-Based Services office for a recipient who provides a written statement from a physician verifying pregnancy.

Section 11. Judicial Review. (1) After notification of a final hearing decision which upholds the department’s action, the department shall:

(a) Notify the responsible party of the right to pursue judicial review of the decision in accordance with KRS 13B.140; and

(b) Impose the Medicaid intentional program violation disqualification regardless of a pending action by the judicial review.

(2) Reversal of a hearing decision by judicial review shall result in:

(a) Medicaid benefits of the recipient being restored to the date of discontinuance; and

(b) All repayment collected from the responsible person being returned by the department within ninety (90) days of the decision.

Section 12. Collecting Claims Against the Responsible Party. The department shall, upon receipt of the hearing decision or voluntary agreement to repay signed by the recipient or responsible party, initiate collection action against the recipient or responsible party unless the recipient or responsible party is unable to be located or has repaid the value of benefits owed to the department.

Section 13. Repayment of Medicaid Benefits. (1) A recipient or responsible party shall be liable for the repayment of the value of the benefits to the department if a determination is made that the benefits were obtained by committing a Medicaid intentional program violation.

(2) Repayment of the value of benefits shall be accomplished by:

(a) Lump sum payments.

1. If the recipient or responsible party states he is financially able to pay the entire amount of the claim at one (1) time, the department shall collect a lump sum payment by cashier's check, money order or personal check; and

2. The recipient or responsible party shall not be required to liquidate all of his resources to make this lump sum payment;

(b) Installments.

1. The department shall negotiate a payment schedule with the recipient or responsible party for repayment of an amount of the claim not repaid through a lump sum payment.

2. Payment shall be accepted by the department in regular installments and shall be paid no later than the tenth day of each month;

(c) Civil action for garnishment or liens in a court of competent jurisdiction; or

(d) A lien on property owned by the recipient or the responsible party in accordance with KRS 205.8471.

(3) If the benefits are not repaid within thirty (30) days of notice from the department, disqualification shall be applied in accordance with Section 8(1) of this administrative regulation.

Section 14. Incorporation by Reference. (1) Form Map-800, Notice of Fraud and/or Abuse Committed Against The Medicaid Program, Department for Medicaid Services, 8/99 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (22 Ky.R. 1916; Am. 2304; eff. 7-5-96; 26 Ky.R. 908; 1175; eff. 12-15-99.)