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REGULATIONS COMPILER

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amendment)

907 KAR 3:210. Acquired brain injury long-term care waiver services and reimbursement.

RELATES TO: KRS 17.165, 202A.011, 205.5605, 205.5607, 205.8451, 205.8477, 314.011, 319.010(8), 319A.010, 319.056, 327.010, 334A.020, 335.300(2), 335.500(3), 620.030, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~the provision of medical assistance to Kentucky's indigent citizenry~~]. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a participant[~~consumer~~]-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-

based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a participant[~~consumer~~]-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury long term care waiver services is to provide an alternative to institutional care to individuals with an acquired brain injury who require maintenance services.

Section 1. Definitions. (1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "ABI" means an acquired brain injury.

(3)[~~(2)~~] "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

[~~(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.~~]

(4) "ABIB" means the Acquired Brain Injury Branch in the Division of Community Alternatives, in the Cabinet for Health and Family Services.

(5) "Acquired brain injury long term care waiver service" means a home and community based waiver service for an individual who requires long term maintenance and has acquired a brain injury involving the central nervous system that resulted from:

(a) An injury from a physical trauma;

(b) Anoxia or a hypoxic episode; or

(c) Allergic condition, toxic substance, or another acute medical incident.

(6) "ADHC services" means adult day health care services provided on a regularly scheduled basis that ensure optimal functioning of a participant[~~an ABI recipient~~] who

does not require twenty-four (24) hour care in an institutional setting.

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that [~~is~~]:

(a) Serves as the basis [~~Completed on a MAP 351; and~~

~~(b) Submitted to the department:~~

~~1.~~] for a level of care determination;

(b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MWMA portal; and

(c) Occurs at least once [~~2. No less than~~] every twelve (12) months thereafter.

(8) "Axis I diagnosis" means a clinical disorder or other condition which may be a focus of clinical attention.

(9) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for a participant[~~an ABI recipient~~].

(10) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 6[4] of this administrative regulation and participant-[~~consumer~~] directed [~~option~~] services identified in Section 10[~~8~~] of this administrative regulation provided in accordance with the participant's[~~recipient's~~] approved person-centered service plan [~~of care~~].

(11) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(12) "Case manager" means an individual who manages the overall development and monitoring of a participant's person-centered service [~~recipient's~~] plan [~~of care~~].

(13) [~~"Consumer" is defined by KRS 205.5605(2).~~

~~(14) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows a recipient to:~~

~~(a) Assist with the design of their programs;~~

~~(b) Choose a provider of services; and~~

~~(c) Direct the delivery of services to meet the recipient's needs.~~

~~(15)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(14)[~~(16)~~] "Crisis prevention and response plan" means a plan developed to identify any potential risk to a participant[~~recipient~~] and to detail a strategy to minimize the risk.

(15)[~~(17)~~] "DCBS" means the Department for Community Based Services.

(16)[~~(18)~~] "Department" means the Department for Medicaid Services or its designee.

(17)[~~(19)~~] "Family training" means providing to the family or other responsible person:

(a) Interpretation or explanation of medical examinations and procedures;

(b) Treatment regimens;

(c) Use of equipment specified in the person-centered service plan [~~of care~~]; or

(d) Advising the family how to assist the participant.

(18)[~~(20)~~] "Good cause" means a circumstance beyond the control of an individual which affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Sec-

tion 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual not having been accepted for services or placement by a potential provider despite the individual or individual's legal representative having made diligent contact with the potential provider to secure placement or access services within sixty (60) days.

(19)[~~(21)~~]"Human rights committee" means a group of individuals established to protect the rights and welfare of a participant[~~an ABI recipient~~].

(20)[~~(22)~~]"Human rights restriction" means the denial of a basic right or freedom to which all humans are entitled, including the right to life and physical safety, civil and political rights, freedom of expression, equality before the law, social and cultural justice, the right to participate in culture, the right to food and water, the right to work, and the right to education.

(21)[~~(23) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI recipient's plan of care consisting of:~~

~~(a) The ABI recipient and legal representative if appointed;~~

~~(b) A chosen ABI service provider;~~

~~(c) A case manager; and~~

~~(d) Others as designated by the ABI recipient.~~

~~(24)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(22) "Licensed medical professional" means:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A physician assistant;

(d) A registered nurse;

(e) A licensed practical nurse; or

(f) A pharmacist.

(23)[~~(25)~~] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(24)[~~(26)~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(25)[~~(27)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(26) "MWMA portal" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(27)[~~(28)~~] "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.

(28)[~~(29)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(29)[~~(30)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(30) "Participant" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(31) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs which allows participants to receive non-medical services in which the individual:

(a) Assists with the design of the program;

(b) Chooses the providers of services; and

(c) Directs the delivery of services to meet their needs.

(32) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 4 of this administrative regulation.

(33) "Person-centered team" means the participant, the participant's guardian or representative and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;

(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and

(c) Include providers who receive payment for services who shall:

1. Be active contributing members of the person centered team meetings;

2. Base their input upon evidence-based information; and

3. Not request reimbursement for person centered team meetings.

(34)[~~(31)~~] "Physical therapist" is defined by KRS 327.010(2).

(35)[~~(32)~~] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist

(36)[~~(33)~~] "Pro re nata" or "PRN" means as needed.

(37)[~~(34)~~] "Psychologist" is defined by KRS 319.010(8).

(38)[~~(35)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39)[~~(36)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

(40)[~~(37)~~] "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(41)[~~(38)~~] "Representative" is defined by KRS 205.5605(6).

(42)[~~(39)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(43)[~~(40)~~] "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance, and support to a participant[~~consumer~~]; and

(b) Assist a participant[~~consumer~~] in any other aspects of participant-directed services[~~CDO~~].

Section 2. Non-PDS [~~CDO~~] Provider Participation Requirements. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a participant[~~consumer~~]-directed [~~option~~] service, an ABI provider shall [~~be~~]:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;

(b) Be located within an office in the Commonwealth of Kentucky; and

(c)1. Be a licensed provider in accordance with:

a. 902 KAR 20:066, if an adult day health care provider;

b. 902 KAR 20:081, if a home health service provider; or

c. 902 KAR 20:091, if a community mental health center; or

2. Be certified by the department in accordance with 907 KAR 12:010[~~1:145~~], Section 3, or 907 KAR 3:090, Section 2, if a provider type is not listed in subparagraph 1. of this paragraph; and

(d) Complete and submit a MAP-4100a to the department.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; [~~and~~]

(c)[~~(b)~~] 907 KAR 1:673;

(d) 907 KAR 7:005;

(e) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; and

(f) 42 U.S.C. 1320d to 1320d-8.

(3) An ABI provider shall have a governing body that shall be:

(a) A legally-constituted entity within the Commonwealth of Kentucky; and

(b) Responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety, and welfare of a participant[~~an ABI recipient~~] served by the agency.

(4) An ABI provider shall:

(a) Unless providing participant-directed services[~~participating in the CDO program~~], ensure that an ABI waiver service is not provided to a participant[~~an ABI recipient~~] by a staff member of the ABI provider who has one (1) of the following blood relationships to the participant[~~ABI recipient~~]:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll a participant[~~an ABI recipient~~] for whom the ABI provider cannot meet the service needs; and

(c) Have and follow written criteria in accordance with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) [~~An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 pursuant to 42 U.S.C. 1320d to 1320d-8.~~

~~(6)~~] An ABI provider shall meet the following requirements if responsible for the management of a participant's[~~an ABI recipient's~~] funds:

(a) Separate accounting shall be maintained for each participant[~~ABI recipient~~] or for the participant's[~~recipient's~~] interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the participant[~~ABI recipient~~] or legal representative on a quarterly basis; and

(c) The participant[~~ABI recipient~~] or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(6)[~~(7)~~] An ABI provider shall have a written statement of its mission and values.

(7)[~~(8)~~] An ABI provider shall have written policies and procedures for communication and interaction with a family and legal representative of a participant[~~an ABI recipient~~] which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the participant[~~ABI recipient~~] at a reasonable time and with due regard for the participant's[~~ABI recipient's~~] right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language, and socioeconomic characteristics of the participant[~~ABI recipient~~].

(8)(a)[~~(9)~~] An ABI provider shall have written policies and procedures for all settings that assure the participant has:

1. Rights of privacy, dignity, respect, and freedom from coercion and restraint; and

2. Freedom of choice:

a. As defined by the experience of independence, individual initiative, or autonomy in making life choices, both in small everyday matters (what to eat or what to wear), and in large, life-defining matters (where and with whom to live and work); and

b. Including the freedom to choose:

(i) Services;

(ii) Providers;

(iii) Settings from among setting options including non-disability specific settings; and

(iv) Where to live with as much independence as possible and in the most community-integrated environment.

(b) The setting options and choices shall be:

1. Identified and documented in the person-centered service plan; and

2. Be based on the participant's needs and preferences.

(c) For a residential setting, the resources available for room and board shall be documented in the person-centered service plan.

(9) An ABI provider shall have written policies and procedures for residential settings that assure the participant has:

(a) Privacy in the sleeping unit and living unit in a residential setting;

(b) An option for a private unit in a residential setting;

(c) A unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors;

(d) A choice of roommate or housemate;

(e) The freedom to furnish or decorate their sleeping or living units within the lease or other agreement;

(f) Visitors of the participant's choosing at any time and access to a private area for visitors;

(g)1. Physical accessibility, defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability.

2. Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting.

3. All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e. keys, security codes, etc.).

4. Bedrooms shall be accessible to the appropriate persons;

5.a. Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed need and

justified in the participant's person-centered service plan.

b. Regarding a modification, the following shall be documented in a participant's person-centered service plan:

(i) That the modification is the result of an identified specific and individualized assessed need;

(ii) Any positive intervention or support used prior to the modification;

(iii) Any less intrusive method of meeting the participant's need that was tried but failed;

(iv) A clear description of the condition that is directly proportionate to the specific assessed need;

(v) Regular collection and review of data used to measure the ongoing effectiveness of the modification;

(vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated;

(vii) Informed consent by the participant or participant's representative for the modification; and

(viii) An assurance that interventions and supports will cause no harm to the participant [~~ensure the rights of an ABI recipient by:~~

~~(a) Making available a description of the rights and the means by which the rights may be exercised, including the right:~~

~~1. To time, space, and opportunity for personal privacy;~~

~~2. To retain and use personal possessions; and~~

~~3. For a supervised residential care, personal care, companion, or respite provider to~~

communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system;

(c) Complying with the Americans with Disabilities Act pursuant to 28 C.F.R. Part 35; and

(d) Prohibiting the use of:

1. Prone or supine restraint;

2. Corporal punishment;

3. Seclusion;

4. Verbal abuse; or

5. Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility.]

(10) [An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service was provided and all records and reports shall be made available to the:

(a) Department;

(b) ABI recipient's selected case manager;

(c) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee;

~~(f) Office of the Attorney General or its designee; and~~

~~(g) Centers for Medicare and Medicaid Services.~~

~~(11)~~] An ABI provider shall cooperate with monitoring visits from monitoring agents.

(11)[~~(12)~~] An ABI provider shall maintain a record for each participant[~~ABI recipient~~] served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through for each error which is initialed and dated; and

(d) Contain no blank lines between each entry.

(12)[~~(13)~~] A record of each participant[~~ABI recipient~~] who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry;

(d) Contain the following specific information:

1. The participant's[~~ABI recipient's~~] name and Medical Assistance Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The person-centered service plan [~~of care, MAP 109~~];

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The participant's[~~ABI recipient's~~] history of any allergies with appropriate allergy alerts for severe allergies;

5. The training objective for any service which provides skills training to the participant[~~ABI recipient~~];

6. The participant's[~~ABI recipient's~~] medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

7. Legally-adequate consent for the provision of services or other treatment including consent for emergency attention which shall be located at each service site;

8. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form[~~, MAP-350,~~] updated at recertification; and

9. Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the participant's[~~ABI recipient's~~] record and other personal information and to allow the participant[~~ABI recipient~~] or legal representative to determine when to share the information;

(f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider; and

(g) Be available to the participant[~~ABI recipient~~] or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(13)[~~(14)~~] An ABI provider [~~shall~~]:

(a) Shall ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;

(b) Shall maintain documentation of the annual TB risk assessment or negative TB test result described in paragraph (a) of this subsection for:

1. Existing staff; or

2. A volunteer, if the volunteer performs direct care or a supervisory function;

(c) Shall ensure that an employee or volunteer who tests positive for TB, or has a history of a positive TB skin test, shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;

(d) Shall if it is determined that signs and symptoms of active TB are present, ensure that the employee or volunteer has follow-up testing administered by the employee's or volunteer's physician and that the follow-up test results indicate the employee or volunteer does not have active TB disease;

(e) Shall not permit an individual to work for or volunteer for the provider if the individual has TB or symptoms of active TB;

(f) Shall maintain documentation for an employee or volunteer with a positive TB test to ensure that active disease or symptoms of active disease are not present;

(g)1. Shall:

a. Prior to the employee's date of hire or the volunteer's date of service, obtain the results of:

(i) A criminal record check from[~~:~~

~~1.~~] the Administrative Office of the Courts[~~;~~] or

[~~2.~~] the equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service in Kentucky;

(ii) [~~(h) obtain the result of~~] A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and

(iii) A Caregiver Misconduct Registry check as described in 922 KAR 5:120; and

b. Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a Central Registry check as described in 922 KAR 1:470; or

2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph;

(h) Shall [~~(i)~~] annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from:

1. The Kentucky Administrative Office of the Courts; or

2. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year prior to employment;

(i)[~~(j) Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a Central Registry check as described in 922 KAR 1:470;~~

~~(k)~~] Evaluate and document the performance of each employee upon completion of the agency's designated probationary period, and at a minimum, annually thereafter;

(j)[~~(l)~~] Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct service staff at the service site in order to ensure that high quality, appropriate services are provided to the participant[~~ABI recipient~~];

(l)[~~(m)~~] Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a prior conviction of an offense de-

lineated in KRS 17.165(1) through (3) or prior felony conviction;

(m)[~~(n)~~] Not permit an employee or volunteer to transport a participant[~~an ABI recipient~~], if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;

(n)[~~(o)~~] Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(o)[~~(p)~~] Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(p)[~~(q)~~] Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a Cabinet for Health and Family Services finding of:

1. Child abuse or neglect pursuant to the Central Registry; or

2. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry; and

(q)[~~(r)~~] Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual is listed on the:

1. Nurse Aide Abuse Registry pursuant to 906 KAR 1:100; or

2. Kentucky Caregiver Misconduct Registry pursuant to 922 KAR 5:120.

(14)[~~(15)~~] An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration

or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct contact staff who:

1. Is eighteen (18) years of age or older and has a high school diploma or GED; and

2. Has a minimum of two (2) years of experience in providing a service to an individual with a disability or has successfully completed a formalized training program approved by the department.

(15)[~~(16)~~] An ABI provider shall establish written guidelines which:

(a) Ensure the health, safety, and welfare of the participant[~~ABI recipient~~];

(b) Address maintenance of sanitary conditions;

(c) Ensure each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and with a rating of 1A10BC;

(d) Ensure the availability of a supply of hot and cold running water with the water temperature at a tap, for water used by the participant[~~ABI recipient~~], not exceeding 120 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult Day Health provider;

(e) Ensure that the nutritional needs of the participant[~~ABI recipient~~] are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(f) Ensure that staff who supervise waiver participants in medication administration:[~~,~~]

1. Unless the employee is a licensed or registered nurse, have been provided specific training by a licensed medical professional and competency has been documented on cause and effect and proper administration and storage of medication[~~. The training shall be provided by a nurse, pharmacist, or medical doctor~~]; and

2. Document on a medication log all medication administered, including:

a. Self-administered and over-the-counter drugs; and

b. The date, time, and initials of the person who administered the medication;

(g) Ensure that the medication shall be:

1. Kept in a locked container;

2. Kept under double lock[~~,~~] if it is a controlled substance;

3. Carried in a proper container labeled with medication, dosage, and time of administration, if administered to the participant[~~ABI recipient~~] or self-administered at a program site other than the participant's[~~recipient's~~] residence;

4. Documented on a medication administration form; and

5. Properly disposed of if it is discontinued; and

(h) Establish policy and procedures for monitoring of medication administration, which shall be approved by the department before services begin to ensure that medication administration will be properly monitored under the policies and procedures as approved by the department.

(16)[~~(17)~~] An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time when a participant[~~an ABI recipient~~] is asleep;

(c) Mandate:

1. That the result of an evacuation drill be evaluated and modified as needed; and

2. That results of the prior years' evacuation drills be maintained on site.

(17)[~~(18)~~] An ABI provider shall:

(a) Provide orientation for each new employee which shall include the agency's:

1. Mission;

2. Goals;

3. Organization; and

4. Policies and procedures;

(b) Require documentation of all training provided which shall include the:

1. Type of training;

2. Name and title of the trainer;

3. Length of the training;

4. Date of completion; and

5. Signature of the trainee verifying completion;

(c) Ensure that each employee completes ABI training consistent with the curriculum that has been approved by the department, prior to working independently with a participant[~~an ABI recipient~~], which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting:

a. Abuse;

b. Neglect; and

c. Exploitation;

3. Unless the employee is a licensed or registered nurse, first aid provided by an individual certified as a trainer by:

a. The American Red Cross; or

b. Other nationally accredited organization; and

4. Coronary pulmonary resuscitation provided by an individual certified as a trainer by:

a The American Red Cross; or

b. Other nationally accredited organization;

(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually, following the first year of service;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, attained 2000 hours of experience providing services to a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services;

3. A speech-language pathologist providing speech therapy;

4. A board certified behavior analyst; or

5. A physical therapist or physical therapist assistant providing physical therapy; and

(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:

1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the participant[~~ABI recipient~~] to whom the volunteer shall provide services.

(18)[~~(19)~~] An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each participant[~~ABI recipient~~] served by the provider.

[~~(20) A case management provider shall:~~

~~(a) Establish a human rights committee which shall:~~

~~1. Include an individual:~~

~~a. With a brain injury or a family member of an individual with a brain injury;~~

~~b. Not affiliated with the ABI provider; and~~

~~c. Who has knowledge and experience in human rights issues;~~

~~2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months;~~

~~3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that contain human rights restrictions; and~~

~~4. Review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis;~~

~~(b) Establish a behavior intervention committee which shall:~~

~~1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;~~

~~2. Be separate from the human rights committee; and~~

~~3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that contain human rights restrictions; and~~

~~(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:~~

~~1. Within thirty (30) days of the recipient's admission into the ABI program;~~

~~2. Annually thereafter; and~~

~~3. Upon discharge from the ABI Waiver program.~~]

Section 3. Participant[~~ABI recipient~~] Eligibility, Enrollment, and Termination. (1)(a) To be eligible to receive a service in the ABI long term care waiver program an[~~, and~~] individual shall:

1.[~~(a)~~] Be at least eighteen (18) years of age;

2.[~~(b)~~] Have an ABI which necessitates:

a.[~~1.~~] Supervision;

b.[~~2.~~] Rehabilitative services; and

c.[~~3.~~] Long term supports; [~~and~~]

3.[~~(c)~~] Have an ABI that involves:

a.[~~1.~~] Cognition;

b.[~~2.~~] Behavior; or

c.[~~3.~~] Physical function; and

4. Be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for ABI waiver services.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection, the individual or a representative on behalf of the individual shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA portal; and

2. Complete and upload into the MWMA portal a MAP - 115 Application Intake - Participant Authorization.

(2) [~~From inception of the ABI long term care waiver through June 30, 2009, the department shall enroll an individual on a first priority basis, if the individual:~~

~~(a) Is currently being served in the ABI waiver as established in 907 KAR 3:090 and has reached maximum rehabilitation potential; or~~

~~(b) Has previously received ABI waiver services as established in 907 KAR 3:090 and is currently in a nursing facility or ICF/MR/DD and meets the eligibility criteria established in this section.~~

~~(3) From inception through June 30, 2009, after all first priority basis individuals outlined in subsection (2)(a) and (b) of this Section have been enrolled, the department shall enroll the remaining ABI rehabilitation waiver waiting list individuals as described in 907 KAR 3:090, Section 7, who meet the eligibility criteria established in this section.~~

~~(4) After all individuals have been enrolled pursuant to subsections (2)(a), (2)(b), and~~

~~(3) of this section,~~] The department shall utilize a first come, first serve priority basis to enroll an individual who meets the eligibility criteria established in this section.

(3)[~~(5)~~] If funding is not available, an individual shall be placed on the ABI long term care waiver waiting list in accordance with Section 9[~~7~~] of this administrative regulation.

(4)(a)[~~(6)~~] A certification packet shall be entered into the MWMA portal[~~submitted to the department~~] by a case manager or support broker on behalf of the applicant.

(b) The packet shall contain:

1.[~~(a)~~] A copy of the allocation letter sent to the applicant at the time funding was allocated for the applicant's participation in the ABI Long Term Care Waiver program;

2. A [~~(b) An Assessment form,~~] MAP-351, Medicaid Waiver Assessment;

~~(c)~~] A statement of the need for ABI long term care waiver services which shall be signed and dated by a physician on a MAP 10, Waiver Services Physician's Recommendation form;

3.[~~(d)~~] A MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form[~~, MAP-350~~]; and

4.[~~(e)~~] A person-centered service plan [~~of Care form, MAP-109; and~~

~~(f) The ABI recipient's MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program form~~].

(5)[~~(7)~~] An individual shall receive notification of potential funding allocated for the ABI long term care waiver services for the individual in accordance with this section.

(6)[~~(8)~~] An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022, including nursing facility services for a brain injury.

(7)[~~(9)~~] An individual shall:

(a) Have a primary diagnosis that indicates an ABI with structural, non-degenerative brain injury;

(b) Be medically stable;

(c) Meet Medicaid eligibility requirements established in 907 KAR 20:010[~~1:605~~];

(d) Exhibit:

1. Cognitive damage;

2. Behavioral damage;

3. Motor damage; or

4. Sensory damage;

(e) Have a rating of at least four (4) or above on the Family Guide to the Rancho Levels of Cognitive Functioning[~~, The Revised Levels - Third Edition~~]; and

(f) Receive notification of approval from the department.

(8)[~~(10)~~] The basis of an eligibility determination for participation in the ABI long term care waiver program shall be the:

(a) Presenting problem;

(b) Person-centered service plan [~~of care goal~~];

(c) Expected benefit of the admission;

(d) Expected outcome;

(e) Service required; and

(f) Cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(9)[~~(11)~~] An ABI long term care waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility, or an intermediate care facility for individuals with an intellectual[~~mental retardation or a developmental~~] disability; or

(b) Receiving a service in another 1915(c) home and community based services waiver program.

(10)[~~(12)~~] The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI long term care waiver program.

(11)[~~(13)~~] To maintain eligibility as a participant[~~an ABI recipient~~]:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 20:010[~~1:605~~];

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022; and

(c) Progress toward outcomes identified in the approved person-centered service plan [~~of care~~] shall not be required.

(12)[~~(14) An ABI case manager or support broker provider shall notify the local DCBS office and the department using a MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program form, if the ABI recipient is:~~

~~(a) Admitted to the ABI long term care waiver program;~~

~~(b) Discharged from the ABI long term care waiver program;~~

~~(c) Temporarily discharged from the ABI long term care waiver program;~~

~~(d) Admitted to a nursing facility;~~

~~(e) Changing the primary provider; or~~

~~(f) Changing the case management agency.~~

~~(15)~~] The department shall exclude an individual from receiving an ABI long term care waiver service for whom the average cost of ABI waiver service is reasonably expected to exceed the cost of a nursing facility service.

(13)[~~(16)~~] Involuntary termination and loss of an ABI long term care waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI long term care waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the participant[~~recipient~~] or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) A participant[~~an ABI recipient~~] or legal representative fails to access the required service as outlined in the person-centered service plan [~~of care~~] for a period greater than sixty (60) consecutive days without good cause shown.

1. The participant[~~recipient~~] or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the participant[~~recipient~~] or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension period, which shall not exceed sixty (60) days, to the participant[~~ABI recipient~~] during which time period the participant[~~ABI recipient~~] shall initiate the ABI long term care waiver services or access the required services as outlined in the person-centered service plan [~~of care~~]. The extension shall be in writing;

(c) A participant[~~an ABI recipient~~] changes residence outside the Commonwealth of Kentucky;

(d) A participant[~~an ABI recipient~~] does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;

(e) A participant[~~an ABI recipient~~] is no longer able to be safely served in the community; or

(f) A participant[~~an ABI recipient~~] is no longer actively participating in services within the approved person-centered service plan [~~of care~~] as determined by the person-centered[~~interdisciplinary~~] team.

(14)[(~~17~~)] Involuntary termination of a service to a participant[~~an ABI recipient~~] by an ABI provider shall require:

(a) Simultaneous notice, which shall:

1. Be sent at least thirty (30) days prior to the effective date of the action, to the:

a. Department;

b. Participant[~~ABI recipient~~] or legal representative; and

c. Case manager; and

2. Include:

a. A statement of the intended action;

b. The basis for the intended action;

c. The authority by which the action is taken; and

c. The participant's[~~ABI recipient's~~] right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the participant[~~ABI recipient~~] with the name, address, and telephone number of each current ABI provider in the state;

2. Provide assistance to the participant[~~ABI recipient~~] in making contact with another ABI provider;

3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the participant[~~ABI recipient~~] or legal representative;

5. Ensure the health, safety, and welfare of the participant[~~ABI recipient~~] until an appropriate placement is secured;

6. Continue to provide supports until alternative services or another placement is secured; and

7. Provide assistance to ensure a safe and effective service transition.

(15)[~~(18)~~] Voluntary termination and loss of an ABI long term care waiver program placement shall be initiated if a participant[~~an ABI recipient~~] or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The participant[~~ABI recipient~~] or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Person-centered Service Plan Requirements. (1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered service plan team.

(2) A participant's person-centered service plan shall:

(a) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited Eng-

lish proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:

a. Is based on the participant's:

(i) Assessed clinical and support needs;

(ii) Strengths;

(iii) Preferences; and

(iv) Ideas;

b. Encourages and supports the participant's:

(i) Rehabilitative needs;

(ii) Habilitative needs; and

(iii) Long term satisfaction;

c. Is based on reasonable costs given the participant's support needs;

d. Includes the participant's:

(i) Goals;

(ii) Desired outcomes; and

(iii) Matters important to the participant;

e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;

f. Includes:

(i) Information necessary to support the participant during times of crisis; and

(ii) Risk factors and measures in place to prevent crises from occurring;

g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;

h. Records the alternative home and community-based settings that were considered by the participant;

i. Reflects that the setting in which the participant resides was chosen by the participant;

j. Is understandable to the participant and to the individuals who are important in supporting the participant;

k. Identifies the individual or entity responsible for monitoring the person-centered service plan;

l. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;

m. Shall be distributed to the individual and other people involved in implementing

the person-centered service plan;

n. Include those services of which the individual elects to self direct; and

o. Prevents the provision of unnecessary or inappropriate services and supports; and

(c) Includes in all settings the ability for the participant to:

1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience;

2.a. Choose when and what to eat;

b. Have access to food at any time;

c. Choose with whom to eat or whether to eat alone; and

d. Choose appropriating clothing according to the:

(i) Participant's preference;

(ii) Weather; and

(iii) Activities to be performed.

(3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.

(4)(a) A participant's person-centered service plan shall be:

1. Entered into the MWMA portal by the participant's case manager; and

2. Updated in the MWMA portal by the participant's case manager.

(b) A participant or participant's authorized representative shall complete and upload into the MWMA portal a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA portal.

Section 5. Case Management Requirements. (1) A case manager shall:

(a)1. Be a registered nurse;

2. Be a licensed practical nurse; or

3. Be an individual with a bachelor's degree or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:

a. Psychology;

b. Sociology;

c. Social work;

d. Rehabilitation counseling; or

e. Occupational therapy;

(b)1. Be independent as defined as not being employed by an agency that is providing ABI waiver services to the participant; or

2. Be employed by or work under contract with a free-standing case management agency; and

(c) Have completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services.

(2) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c)1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and

2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

a. Need for knowledge of the case management process;

b. Personal rights;

c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management which shall address:

1. Advocating for standards that promote outcomes of quality;

2. Ensuring that no harm is done;

3. Respecting the rights of others to make their own decisions;

4. Treating others fairly; and

5. Being faithful and following through on promises and commitments;

(f)1. Lead the person-centered service planning team;

2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)1. Include the participant's participation or legal representative's participation in the case management process; and

2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1. A participant's interactions and communications with other agencies involved in

implementing the participant's person-centered service plan; and

2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

1. A participant to whom the case manager providers case management in ensuring that the participant's needs are met;

2. A participant's person-centered service plan team and provide leadership to the team and follow through on commitments made; and

3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Document services provided to a participant by entering the following into the MWMA portal:

1. A monthly department-approved person centered monitoring tool; and

2. A monthly entry which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note; and

f. The date the note was generated;

(n) Document via an entry into the MWMA portal if a participant is:

1. Admitted to the ABI long term care waiver program;

2. Terminated from the ABI long-term care waiver program;

3. Temporarily discharged from the ABI long term care waiver program;

4. Admitted to a hospital;

5. Admitted to a nursing facility;

6. Changing the primary ABI provider;

7. Changing the case management agency;

8. Transferred to another Medicaid 1915(c) home and community based waiver service program; or

9. Relocated to a different address; and

(o) Provide information about participant-directed services to the participant or the participant's guardian:

1. At the time the initial person-centered service plan is developed; and

2. At least annually thereafter and upon inquiry from the participant or participant's guardian.

(3) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each person-centered service plan with human rights restrictions at a minimum of every six (6) months;

3. Review and approve, in conjunction with the participant's team, behavior intervention plans that contain human rights restrictions; and

4. Review the use of a psychotropic medication by a participant without an Axis I diagnosis; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the participant's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each participant:

1. Within thirty (30) days of the participant's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge from the ABI waiver program.

(4)(a) Case management for any participant who begins receiving ABI waiver services after the effective date of this administrative regulation shall be conflict free.

(b)1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified ABI waiver services provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department, that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA portal.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separating case management and service provision functions within the provider entity and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives ABI waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide to, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management ABI waiver services.

(5) Case management shall:

(a) Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

(b) Assist a participant in the identification, coordination, and facilitation of the person centered team and person centered team meetings;

(c) Assist a participant and the person centered team to develop an individualized person-centered service plan and update it as necessary based on changes in the participant's medical condition and supports;

(d) Include monitoring of the delivery of services and the effectiveness of the person-centered service plan, which shall:

1. Be initially developed with the participant and legal representative if appointed prior to the level of care determination;

2. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

3. Include the person-centered service plan being sent to the department or its designee prior to the implementation of the effective date the change occurs with the participant;

(e) Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, updated thirty (30) days prior to discharge, and shall include:

1. The skills or service obtained from the ABI waiver program upon transition into the community; and

2. A listing of the community supports available upon the transition;

(f) Assist a participant in obtaining a needed service outside those available by the ABI waiver;

(g) Be provided by a case manager who:

1.a. Is a registered nurse;

b. Is a licensed practical nurse;

c. Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:

(i) Psychology;

(ii) Sociology;

(iii) Social work;

(iv) Rehabilitation counseling; or

(v) Occupational therapy;

d. Is an independent case manager; or

e. Is employed by a free-standing case management agency;

2. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;

3. Shall provide a participant and legal representative with a listing of each available ABI provider in the service area;

4. Shall maintain documentation signed by a participant or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

5. Shall provide a distribution of the crisis prevention and response plan, transition plan, person-centered service plan, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

6. Shall provide twenty-four (24) hour telephone access to a participant and chosen ABI provider;

7. Shall work in conjunction with an ABI provider selected by a participant to develop a crisis prevention and response plan which shall be:

a. Individual-specific; and

b. Updated as a change occurs and at each recertification;

8. Shall assist a participant in planning resource use and assuring protection of resources;

9. Shall conduct one (1) face-to-face meeting with a participant within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the participant's residence; and

10. Shall ensure twenty-four (24) hour availability of services; and

11. Shall ensure that the participant's health, welfare, and safety needs are met; and

(h) Be documented by a detailed staff note which shall include:

1. The participant's health, safety and welfare;

2. Progress toward outcomes identified in the approved person-centered service plan;

3. The date of the service;

4. Beginning and ending time;

5. The signature and title of the individual providing the service; and

6. A quarterly summary which shall include:

a. Documentation of monthly contact with each chosen ABI provider; and

b. Evidence of monitoring of the delivery of services approved in the participant's person-centered service plan and of the effectiveness of the person-centered service plan.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

Section 6. Covered Services. (1) An ABI waiver service shall:

(a) Not be covered unless it has been [~~Be:~~] prior-authorized by the department; and

(b) Be provided pursuant to the participant's person-centered service plan [~~of care~~].

(2) An ABI waiver provider shall provide the following services to a participant:

(a) Case management services in accordance with Section 4 of this administrative regulation [~~, which shall:~~

~~1. Include initiation, coordination, implementation, monitoring of the assessment and~~

~~reassessment, and intake and eligibility process;~~

~~2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;~~

~~3. Assist an ABI recipient and the interdisciplinary team with the development of an individualized plan of care and with updating the plan of care as necessary based on changes in the recipient's medical condition and supports;~~

~~4. Include monitoring the delivery of services and the effectiveness of the plan of care, which shall:~~

~~a. Be initially developed with the ABI recipient and legal representative, if appointed prior to the level of care determination;~~

~~b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and~~

~~c. Include sending the ABI Plan of Care form, MAP-109, to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;~~

~~5. Assist an ABI recipient in obtaining a needed service outside those available by the ABI long-term care waiver;~~

~~6. Be provided by a case manager who:~~

~~a. Is a registered nurse;~~

~~b. Is a licensed practical nurse;~~

~~c. Has a bachelor's or master's degree in a human services field and meets all applicable requirements of the individual's particular field, including a degree in:~~

~~(i) Psychology;~~

~~(ii) Sociology;~~

~~(iii) Social work;~~

~~(iv) Rehabilitation counseling; or~~

~~(v) Occupational therapy;~~

~~d. Is an independent case manager; or~~

~~e. Is employed by a free-standing case management agency;~~

~~7. Be provided by a case manager who:~~

~~a. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;~~

~~b. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;~~

~~c. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;~~

~~d. Shall, within the first thirty (30) days of the service and as information is updated, provide to the chosen ABI service provider a distribution of the:~~

~~(i) Crisis prevention and response plan;~~

~~(ii) Transition plan;~~

~~(iii) Plan of care; and~~

~~(iv) Other pertinent documents;~~

~~e. Shall provide twenty-four (24) hour telephone access to the ABI recipient and chosen ABI provider;~~

~~f. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:~~

~~(i) Individual specific; and~~

~~(ii) Updated as a change occurs and at each recertification;~~

~~g. Shall assist an ABI recipient in planning resource use and assuring protection of resources;~~

~~h. Shall conduct one (1) face to face meeting with an ABI recipient within a calendar month occurring at a covered service site, with one (1) visit quarterly occurring at the ABI recipient's residence;~~

~~i. Shall ensure twenty four (24) hour availability of services; and~~

~~j. Shall ensure that the ABI recipient's health, welfare, and safety needs are met; and~~

~~8. Be documented by a detailed staff note which shall include:~~

~~a. A quarterly summary including documentation of:~~

~~(i) Monthly contact with each chosen ABI provider;~~

~~(ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care; and~~

~~(iii) Effectiveness of the plan of care;~~

~~b. A description of the ABI recipient's health, safety, and welfare;~~

~~c. Progress toward outcomes identified in the approved plan of care;~~

~~d. The date of the service;~~

~~e. Beginning and ending time; and~~

~~f. The signature and title of the individual providing the service;]~~

(b) Behavioral services which shall:

1. Be a systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the participant's[~~ABI recipient's~~] behavior including:

a. An evaluation of the impact of an ABI on:

(i) Cognition; and

(ii) Behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the:

(i) Motivation;

(ii) Purpose; and

(iii) Factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote the plan;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

f. Reflect the use of positive approaches; and

g. Prohibit the use of:

(i) Prone or supine restraint;

(ii) Corporal punishment;

(iii) Seclusion;

(iv) Verbal abuse; and

(v) Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5. Include the monitoring of a participant's[~~an ABI recipient's~~] progress which shall be accomplished through:

a. The analysis of data concerning the:

(i) Frequency;

(ii) Intensity; and

(iii) Duration of a behavior; and

b. Reports involved in implementing the behavioral service plan;

6. Be provided by a behavior specialist who shall:

a. Be:

(i) A psychologist;

(ii) A psychologist with autonomous functioning;

(iii) A licensed psychological associate;

(iv) A psychiatrist;

(v) A licensed clinical social worker;

(vi) A clinical nurse specialist with a master's degree in psychiatric nursing or rehabili-

tation nursing;

(vii) An advanced registered nurse practitioner (ARNP);

(viii) A board certified behavior analyst; or

(ix) A licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time;

c. The signature and title of the behavioral specialist; and

d. A summary of data analysis and progress of the individual related to the approved person-centered service plan [~~of care~~];

(c) Community living supports, which shall:

1. Be provided in accordance with the participant's person-centered service [~~recipient's~~] plan [~~of care~~], including:

a. A nonmedical service;

b. Supervision; or

c. Socialization;

2. Include assistance, prompting, observing, or training in activities of daily living;

3. Include activities of daily living which shall include:

a. Bathing;

b. Eating;

c. Dressing;

d. Personal hygiene;

e. Shopping; and

f. Money management;

4. Include prompting, observing, and monitoring of medications and nonmedical care not requiring a nurse or physician intervention;

5. Include socialization, relationship building, and participation in community activities according to the approved person-centered service plan [~~of care~~] which are therapeutic and not diversional in nature;

6. Accompany and assist a participant[~~an ABI recipient~~] while utilizing transportation services;

7. Include documentation in a detailed staff note which shall include the:

a. Progress toward goals and objectives identified in the approved person-centered service plan [~~of care~~];

b. Date of the service;

c. Beginning and ending time; and

d. Signature and title of the individual providing the service;

8. Not be provided to a participant[~~an ABI recipient~~] who receives community residential services; and

9. Be provided by a:

a. Home health agency licensed and operating in accordance with 902 KAR 20:081;

b. Community mental health center licensed and operating in accordance with 902 KAR 20:091;

c. Community habilitation program certified at least annually by the department; or

d. Supervised Residential Care setting certified at least annually by the department;

(d) Supervised residential care level I, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or

b. An approved waiver provider certified at least annually by the department;

2. Shall not be provided to a participant[~~an ABI recipient~~] unless the participant[~~recipient~~] has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. Shall not have more than three (3) participants[~~ABI recipients~~] simultaneously in a home rented or owned by the ABI provider;

4. Shall provide [~~nineteen (19) to~~] twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5. of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;

5. May include the provision of up to five (5) unsupervised hours per day per participant[~~recipient~~] if the provider develops an individualized plan for the participant[~~recipient~~] to promote increased independence which shall:

a. Contain provisions necessary to ensure the participant's[~~recipient's~~] health, safety, and welfare;

b. Be approved by the participant's[~~recipient's~~] treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant's[~~recipient's~~] status;

6. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's person-centered service plan [~~of care~~];

8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

9. Shall include accompanying or assisting a participant[~~an ABI recipient~~] while the participant[~~recipient~~] utilizes transportation services as specified in the participant's person-centered service [~~recipient's~~] plan [~~of care~~];

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved person-centered service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to a participant[~~an ABI recipient~~] who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that a participant[~~an ABI recipient~~]:

a. Does not share a room with an individual of the opposite gender who is not the participant's[~~ABI recipient's~~] spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the participant's[~~ABI recipient's~~] health and comfort; and

17. Shall provide service and training to obtain the outcomes for the participant[~~ABI recipient~~] as identified in the approved person-centered service plan [~~of care~~];

(e) Supervised residential care level II[~~,~~] which[~~:~~

~~1.~~] shall:

1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)4 and 5 [~~be provided by:~~

~~a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or~~

~~b. An approved waiver provider certified at least annually by the department~~];

2. [~~Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:~~

~~a. Consider applications for residential care in the order in which the applications are received;~~

~~b. Base residential care decisions on the following factors:~~

~~(i) Whether the applicant resides with a caregiver or not;~~

~~(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or~~

~~(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;~~

~~c. Be comprised of three (3) Cabinet for Health and Family Services employees:~~

~~(i) With professional or personal experience with brain injury or other cognitive disa-~~

~~bilities; and~~

~~(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and~~

~~d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;~~

~~3. Shall not have more than three (3) ABI recipients simultaneously in a home rented or owned by the ABI provider;~~

~~4. Shall~~] Provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:

a. Be based on the participant's[~~recipient's~~] needs;

b. Be approved by the participant's[~~recipient's~~] treatment team; and

c. Be documented in the participant's person-centered service [~~recipient's~~] plan [~~of care~~] which shall also contain periodic reviews and updates based on changes, if any, in the participant's[~~recipient's~~] status; and

3. [~~5. Shall include assistance and training with daily living skills including:~~

~~a. Ambulating;~~

~~b. Dressing;~~

~~c. Grooming;~~

~~d. Eating;~~

~~e. Toileting;~~

~~f. Bathing;~~

~~g. Meal planning;~~

~~h. Grocery shopping;~~

~~i. Meal preparation;~~

~~j. Laundry;~~

~~k. Budgeting and financial matters;~~

~~l. Home care and cleaning;~~

~~m. Leisure skill instruction; or~~

~~n. Self-medication instruction;~~

~~6. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;~~

~~7. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;~~

~~8. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care.~~

~~9. Shall include participation in medical appointments or follow-up care as directed by the medical staff;~~

~~10. Shall~~] Include provision of twenty-four (24) hour on-call support;

[~~11. Shall be documented by a detailed staff note which shall document:~~

~~a. Progress toward goals and objectives identified in the approved plan of care;~~

~~b. The date of the service;~~

~~c. The beginning and ending time of the service; and~~

~~d. The signature and title of the individual providing the service;~~

~~12. Shall not include the cost of room and board;~~

~~13. Shall be provided to an ABI recipient who:~~

~~a. Does not reside with a caregiver;~~

~~b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or~~

~~c. Demonstrates behavior that may result in potential legal problems if not ameliorated;~~

~~14. May utilize a modular home only if the:~~

~~a. Wheels are removed;~~

~~b. Home is anchored to a permanent foundation; and~~

~~c. Windows are of adequate size for an adult to use as an exit in an emergency;~~

~~15. Shall not utilize a motor home;~~

~~16. Shall provide a sleeping room which ensures that an ABI recipient:~~

~~a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;~~

~~b. Does not share a room with an individual who presents a potential threat; and~~

~~c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and~~

~~17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;~~]

(f) Supervised residential care level III[~~,~~] which[~~:~~

~~1.~~] shall:

1. Meet the requirements established in paragraph (d) of this subsection except for

the requirements established in paragraph (d)4 and 5 [~~be provided by:~~

~~a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or~~

~~b. An approved waiver provider certified at least annually by the department;~~]

2. [~~Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:~~

~~a. Consider applications for residential care in the order in which the applications are received;~~

~~b. Base residential care decisions on the following factors:~~

~~(i) Whether the applicant resides with a caregiver or not;~~

~~(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or~~

~~(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;~~

~~c. Be comprised of three (3) Cabinet for Health and Family Services employees:~~

~~(i) With professional or personal experience with brain injury or other cognitive disabilities; and~~

~~(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and~~

~~d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;~~

3. May] Be provided in a single family home, duplex or apartment building to a participant[an ABI recipient] who lives alone or with an unrelated roommate;

3.[4. Shall] Not be provided to more than two (2) participants[ABI recipients] simultaneously in one (1) apartment or home;

4.[5. Shall] Not be provided in more than two (2) apartments in one (1) building;

5.[6. Shall,] If provided in an apartment building, have staff:

a. Available twenty-four (24) hours per day and seven (7) days per week; and

b. Who do not reside in a dwelling occupied by a participant[an ABI recipient]; and

6.[7. Shall] Provide less than twelve (12) hours of supervision or support in the home based on an individualized plan developed by the provider to promote increased independence which shall:

a. Contain provisions necessary to ensure the participant's[recipient's] health, safety, and welfare;

b. Be approved by the participant's[recipient's] treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant's[recipient's] status;

[8. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

~~f. Bathing;~~

~~g. Meal planning;~~

~~h. Grocery shopping;~~

~~i. Meal preparation;~~

~~j. Laundry;~~

~~k. Budgeting and financial matters;~~

~~l. Home care and cleaning;~~

~~m. Leisure skill instruction; or~~

~~n. Self-medication instruction;~~

~~9. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;~~

~~10. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;~~

~~11. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;~~

~~12. Shall include participation in medical appointments or follow-up care as directed by the medical staff;~~

~~13. Shall be documented by a detailed staff note which shall document:~~

~~a. Progress toward goals and objectives identified in the approved plan of care;~~

~~b. The date of the service;~~

~~c. The beginning and ending time of the service;~~

~~d. The signature and title of the individual providing the service; and~~

~~e. Evidence of at least one (1) daily face-to-face contact with the ABI recipient;~~

~~14. Shall not include the cost of room and board;~~

~~15. Shall be provided to an ABI recipient who:~~

~~a. Does not reside with a caregiver;~~

~~b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or~~

~~c. Demonstrates behavior that may result in potential legal problems if not ameliorated;~~

~~16. May utilize a modular home only if the:~~

~~a. Wheels are removed;~~

~~b. Home is anchored to a permanent foundation; and~~

~~c. Windows are of adequate size for an adult to use as an exit in an emergency;~~

~~17. Shall not utilize a motor home;~~

~~18. Shall provide a sleeping room which ensures that an ABI recipient:~~

~~a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;~~

~~b. Does not share a room with an individual who presents a potential threat; and~~

~~c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and~~

~~19. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;~~]

(g) Counseling services which:

1. Shall be designed to help a participant[~~an ABI long-term care waiver recipient~~] resolve personal issues or interpersonal problems resulting from the participant's[~~recipient's~~] ABI;

2. Shall assist a family member in implementing a participant's[~~an ABI long-term care waiver recipient's~~] approved person-centered service plan [~~of care~~];

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment, if needed;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include group counseling if the service is:

a. Provided to a maximum of twelve (12) participants[~~ABI recipients~~]; and

b. Included in the participant's[~~recipient's~~] approved person-centered service plan [~~of care~~] for:

(i) Substance abuse or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the participant's[~~ABI recipient's~~] functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A psychologist;

c. A psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced practice registered nurse [~~practitioner (ARNP)~~];

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; [~~or~~]

j. A licensed professional clinical counselor;

k. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or

l. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and

10. Shall be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the person-centered service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(h) Family training which shall:

1. Provide training and counseling services for the families of individuals served in

the ABI long term care waiver. Training to family or other responsible persons shall include:

a. Interpretation or explanation of medical examinations and procedures;

b. Treatment regimens;

c. Use of equipment specified in the person-centered service plan [~~of care~~]; or

d. Advising how to assist the participant;

2. Include updates as needed to safely maintain the participant at home;

3. Include specified goals in the participant's person-centered service [~~ABI recipient's~~] plan [~~of care~~];

4. Be training provided to family that may include a person who:

a. Lives with, or provides care to, and participant[~~ABI long-term care waiver recipient~~]; and

b. Is a:

(i) Parent;

(ii) Spouse;

(iii) Child;

(iv) Relative;

(v) Foster family; or

(vi) In-law;

5. Not include an individual who is employed to care for the participant[~~consumer~~];

6. Be provided by an approved ABI waiver provider that is certified at least annually and which may include:

a. An occupational therapist;

b. A certified occupational therapy assistant;

c. A licensed practical nurse;

d. A physical therapist;

e. A physical therapist assistant;

f. A registered nurse;

g. A speech-language pathologist;

h. A psychiatrist;

i. A psychologist;

j. A psychologist with autonomous functioning;

k. A licensed psychological associate;

l. A clinical nurse specialist with a master's degree in:

(i) Psychiatric nursing; or

(ii) Rehabilitative nursing;

m. An advanced practice registered nurse [~~practitioner (ARNP)~~];

n. A certified alcohol and drug counselor;

o. A licensed professional clinical counselor;

p. A board certified behavior analyst;

q. A licensed clinical social worker; [~~or~~]

r. A licensed marriage and family therapist;

s. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or

t. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and

7. Be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the person-centered service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(i) Nursing supports which shall include:

1.a. A physician order to monitor medical conditions; or

b. A physician order for training and oversight of medical procedures;

2. The monitoring of specific medical conditions;

3. Services that shall be provided by:

a. A registered nurse who meets the definition established in KRS 314.011(5); or

b. A licensed practical nurse as defined by KRS 314.011(9) who works under the supervision of a registered nurse; and

4. Documentation by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the person-centered service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(j) Occupational therapy which shall be:

1. A physician-ordered evaluation of a participant's[~~an ABI recipient's~~] level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide a participant[~~an ABI recipient~~] in the use of therapeutic, creative, and self-care activities to assist the participant[~~ABI recipient~~] in obtaining the highest possible level of functioning;

3. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupational therapist in accordance with 201 KAR 28:130; and

4. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved person-centered service plan [~~of care~~];

b. The date of the service;

c. Beginning and ending time; and

d. The signature and title of the individual providing the service;

(k) A physical therapy service which shall be:

1. A physician-ordered evaluation of a participant[~~an ABI recipient~~] by applying muscle, joint, and functional ability tests;

2. Physician-ordered treatment in a specified amount and duration to assist a participant[~~an ABI recipient~~] in obtaining the highest possible level of functioning;

3. Training of another ABI provider to improve the level of functioning of the participant[~~recipient~~] in that provider's service setting;

4. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and

5. Documented by a detailed staff note which shall include:

a. Progress made toward outcomes identified in the person-centered service plan [~~of care~~];

b. The date of the service;

c. Beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

(l) A respite service which shall:

1. Be provided only to a participant[~~an ABI long-term care waiver recipient~~] unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Supervised residential care provider;

e. Adult day training provider; or

f. Adult day health care provider;

3. Be provided on a short-term basis due to the absence or need for relief of a non-paid primary caregiver[~~an individual providing care to an ABI long-term care waiver recipient~~];

4. Be limited to 5,760 fifteen (15) minute units per one (1) [~~calendar~~] year authorized person-centered service plan period unless an individual's non-paid primary[~~usual~~] caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to a participant[~~an ABI long-term care waiver recipient~~] who re-

ceives supervised residential care;

6. Not include the cost of room and board if provided in a nursing facility; and

7. Be documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved person-centered service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(m) Speech-language pathology [~~therapy~~] services which shall be:

1. A physician-ordered evaluation of a participant[~~an ABI recipient~~] with a speech, hearing, or language disorder;

2. A physician-ordered habilitative service in a specified amount and duration to assist a participant[~~an ABI recipient~~] with a speech and language disability in obtaining the highest possible level of functioning;

3. Provided by a speech language pathologist; and

4. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved person-centered service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(n) Adult day training services which shall:

1. Be provided by:

a. An adult day training center which is certified at least annually by the department;

b. An outpatient rehabilitation facility which is licensed and operating in accordance with 902 KAR 20:190; or

c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

2. Focus on enabling the participant[~~individual~~] to attain or maintain the participant's[~~individual's~~] maximum functional level and reintegrate the participant[~~individual~~] into the community;

3. Not exceed a staffing ratio of five (5) participants [~~ABI recipients~~] per one (1) staff person unless a participant[~~an ABI recipient~~] requires individualized special service;

4. Include the following services:

a. Social skills training related to problematic behaviors identified in the participant's person-centered service [~~recipient's~~] plan [~~of care~~];

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior;

d. Prevocational; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with a participant's[~~an ABI waiver service recipient's~~] overall approved person-centered service plan [~~of care~~];

7. Reflect the recommendations of a participant's person-centered team[~~an ABI waiver service recipient's interdisciplinary team~~];

8. Be appropriate:

a. Given a participant's[~~an ABI waiver service recipient's~~]:

(i) Age;

(ii) Level of cognitive and behavioral function; and

(iii) Interest;

b. Given a participant's[~~an ABI waiver service recipient's~~] ability prior to and after the participant's[~~recipient's~~] injury; and

c. According to the approved person-centered service plan [~~of care~~] and be therapeutic in nature and not diversional;

9. Be coordinated with the occupational, speech, or other rehabilitation therapy included in a participant's person-centered service [~~an ABI long term care waiver recipient's~~] plan [~~of care~~];

10. Provide a participant[~~an ABI long term care waiver recipient~~] with an organized framework within which to function in the participant's[~~recipient's~~] daily activities;

11. Entail frequent assessments of a participant's[~~an ABI long term care waiver recipient's~~] progress and be appropriately revised as necessary; and

12. Be documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved person-centered

service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time;

d. The signature and title of the individual providing the service;

(o) Adult day health care services which shall:

1. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and

2. Include the following basic services and necessities provided to a partici-pant[~~Medicaid ABI long term care waiver recipient~~] during the posted hours of operation:

a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:

(i) Ostomy care;

(ii) Urinary catheter care;

(iii) Decubitus care;

(iv) Tube feeding;

(v) Venipuncture;

(vi) Insulin injections;

(vii) Tracheotomy care; or

(viii) Medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by a registered nurse;

e. Daily activities that are appropriate, given a participant's[~~an ABI long-term care waiver recipient's~~]:

(i) Age;

(ii) Level of cognitive and behavioral function;

(iii) Interest; and

f. Routine services that meet the daily personal and health care needs of a participant[~~an ABI long-term care waiver recipient~~], including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant[~~an ABI long-term care waiver recipient~~];

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the adult day health care center;

4. Focus on enabling the participant[~~individual~~] to attain or maintain the participant's[~~individual's~~] maximum functional level and reintegrate an participant[~~individual~~] into the community by providing the following training;

a. Social skills training related to problematic behaviors identified in the participant's person-centered service[~~ABI long-term care waiver recipient's~~] plan [~~of care~~];

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior per the participant's person-centered service[~~ABI long-term care waiver recipient's~~] plan [~~of care~~];

d. Prevocational services; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with a participant's[~~an ABI long-term care waiver recipient's~~] overall approved person-centered service plan [~~of care~~], therapeutic in nature and not diversional;

7. Reflect the recommendations of a participant's person-centered[~~an ABI long-term care waiver recipient's interdisciplinary~~] team;

8. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a physician, physician assistant, or advanced practice registered nurse [~~practitioner~~] in a participant's[~~an ABI long-term care waiver recipient's~~] adult day health care plan of treatment. Ancillary services shall:

a. Consist of evaluations or reevaluations for the purpose of developing a plan which shall be carried out by the participant[~~ABI long-term care waiver recipient~~] or adult day health care center staff;

b. Be reasonable and necessary for the participant's[~~ABI long-term care waiver recipient's~~] condition;

c. Be rehabilitative in nature;

d. Include:

(i) Physical therapy provided by a physical therapist or physical therapist assistant;

(ii) Occupational therapy provided by an occupational therapist or occupational therapy assistant; or

(iii) Speech-language pathology services[~~therapy~~] provided by a speech-language pathologist; and

e. Comply with the physical, occupational, and speech-language pathology service [~~therapy~~] requirements established in [~~Technical Criteria for Reviewing Ancillary Services for Adults in accordance with~~] 907 KAR 1:030, Section [~~Sections~~] 3 [~~and 6~~];

9. Be provided to a participant[~~an ABI long-term care waiver recipient~~] by the health team in an adult day health care center which may include:

a. A physician;

b. A physician assistant;

c. An advanced practice registered nurse [~~practitioner (ARNP)~~];

d. A registered nurse;

e. A licensed practical nurse;

f. An activities director;

g. A physical therapist;

h. A physical therapist assistant;

i. An occupational therapist;

j. An occupational therapy assistant;

k. A speech-language pathologist;

l. A social worker;

m. A nutritionist;

n. A health aide;

o. An LPCC;

p. A licensed marriage and family therapist;

q. A certified psychologist with autonomous functioning; or

r. A licensed psychological associate;

10. Be provided pursuant to a plan of treatment and developed annually in accordance with 902 KAR 20:066 and from information in the MAP 351, Medicaid Waiver Assessment and revised as needed; and

11. Be documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved person-centered service plan [~~of care~~];

b. The date of the service;

c. The beginning and ending time;

d. The signature and title of the individual providing the service; and

e. A monthly summary that assesses the participant's status related to the approved person-centered service plan [~~of care~~];

(p) Supported employment which shall be:

1. Intensive, ongoing services for a participant[~~an ABI long-term care waiver recipient~~] to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided by a:

a. Supported employment provider;

b. Sheltered employment provider; or

c. Structured day program provider;

3. Provided one-on-one;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's[~~ABI long-term care waiver recipient's~~] file;

5. Limited to forty (40) hours per week alone or in combination with adult day training or adult day health services;

6. An activity needed to sustain paid work by a participant[~~an ABI long-term care waiver recipient~~] receiving waiver services, including:

a. Supervision; and

b. Training;

7. Exclusive of work performed directly for the supported employment provider; and

8. Documented by a time and attendance record which shall include:

a. Progress toward the goals and objectives identified in the person-centered service plan [~~of care~~];

b. The date of service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(q) Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;

2. Enable a participant[~~an ABI recipient~~] to increase his or her ability to perform daily

living activities or to perceive, control, or communicate with the environment;

3. Be ordered by a physician, documented in a participant's person-centered service plan, entered into the MWMA portal by the participant's case manager or support broker, and [~~submitted on a Request for Equipment Form, MAP-95, and~~] include three (3) estimates if the equipment is needed for vision and hearing;

4. Include equipment necessary for the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision, or hearing programs;

6. Not be necessary for life support;

7. Meet applicable standards of manufacture, design, and installation; and

8. Exclude those items which are not of direct medical or remedial benefit to a participant[~~an ABI recipient~~];

(r) Environmental and minor home adaptations which shall:

1. Be provided in accordance with applicable state and local building codes;

2. Be provided to a participant[~~an ABI recipient~~] if:

a. Ordered by a physician;

b. Prior-authorized by the ABIB;

c. Specified in the participant's approved person-centered service plan and entered into the MWMA portal [~~Submitted on a Request for Equipment Form, MAP-95~~], by the participant's[~~a~~] case manager or support broker;

d. [~~Specified in an ABI long term care waiver recipient's approved plan of care;~~

~~e.~~] Necessary to enable the participant[~~an ABI recipient~~] to function with greater independence within the participant's[~~recipient's~~] home; and

e.[f.] Without the modification, the participant[ABI recipient] requires institutionalization;

3. Not include a vehicle modification;

4. Be limited to no more than $2,000 for a participant[an ABI recipient] in a twelve (12) month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber;

(s) Assessment services which shall:

1. Be a comprehensive assessment which shall identify a participant's[an ABI long term care waiver recipient's] needs and the services that the participant's[recipient's] family cannot manage or arrange for the participant[recipient];

2. Evaluate a participant's[an ABI long term care waiver recipient's] physical health, mental health, social supports, and environment;

3. Be requested by an individual requesting ABI services or a family or legal representative of the individual;

4. Be conducted by an ABI case manager or support broker;

5. Be conducted within seven (7) calendar days of receipt of the request for assessment;

6. Include at least one (1) face-to-face contact with the participant[ABI long term care waiver recipient] and, if appropriate, the participant's[recipient's] family by the assessor in the participant's[ABI long term care waiver recipient's] home; and

7. Not be reimbursable if the individual does not receive a level of care certification;

or

(t) Reassessment services which shall:

1. Be performed at least every twelve (12) months;

2. Be conducted using the same procedures as for an assessment service;

3. Be conducted by an ABI case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

4. Not be reimbursable if conducted during a period that the participant[~~ABI long-term care waiver recipient~~] is not covered by a valid level of care certification; and

5. Not be retroactive.

Section 7.[~~5.~~] Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

(1) A stroke treatable in a nursing facility providing routine rehabilitation services;

(2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;

(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including:

(a) Senile dementia;

(b) Organic brain disorder;

(c) Alzheimer's disease;

(d) Alcoholism; or

(e) Another addiction;

(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;

(5) A birth defect;

(6) An intellectual disability[~~Mental retardation~~] without an etiology to an acquired brain injury; or

(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community.

Section 8.[~~6.~~] Incident Reporting Process. (1)(a) There shall be two (2) classes of incidents.

(b) The following shall be the two (2) classes of incidents:

1. An incident; or

2. A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

(a) A minor injury;

(b) A medication error without a serious outcome; or

(c) A behavior or situation which is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;

2. A serious medication error;

3. Death;

4. A homicidal or suicidal ideation;

5. A missing person; or

6. Other action or event that the provider determines may result in harm to the participant.

(4)(a) If an incident occurs, the ABI provider shall:

1. Report the incident by making an entry into the MWMA portal that includes details regarding the incident; and

2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:

1. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;

2. The incident shall immediately be considered a critical incident;

3. The critical incident procedures established in subsection (5) of this section shall be followed; and

4. The ABI provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

(5)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident is:

1. One (1) that requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA portal by the individual who witnessed or discovered the critical incident; or

2. Not one (1) which requires reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery.

(c) The ABI provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and

2. Prepare a report of the investigation which shall be recorded in the MWMA portal and shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

b. Details of the critical incident; and

c. Relevant participant information including:

(i) Axis I diagnosis or diagnoses;

(ii) Axis II diagnosis or diagnoses;

(iii) Axis III diagnosis or diagnoses;

(iv) A listing of recent medical concerns;

(v) An analysis of causal factors; and

(vi) Recommendations for preventing future occurrences.

(6) If a critical incident is not one which requires reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal within eight (8)

hours of discovery.

(7)(a) Following a death of a participant receiving ABI services from an ABI provider, the ABI provider shall enter mortality data documentation into the MWMA portal within fourteen (14) days of the death.

(b) Mortality data documentation shall include:

1. The participant's person-centered service plan at the time of death;

2. Any current assessment forms regarding the participant;

3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;

4. Progress note regarding the participant from all service elements for the past thirty (30) days;

5. The results of the participant's most recent physical exam;

6. All incident reports, if any exist, regarding the participant for the past six (6) months;

7. Any medication error report, if any exists, related to the participant for the past six (6) months;

8. The most recent psychological evaluation of the participant;

9. A full life history of the participant including any update from the last version of the life history;

10. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;

11. Emergency medical services notes regarding the participant if available;

12. The police report if available;

13. A copy of:

a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable;

b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and

c. The cardiopulmonary resuscitation and first aid card for any ABI provider's staff member who was present at the time of the incident which resulted in the participant's death;

14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and

15. A record of any crisis training for any staff member present at the time of the incident which resulted in the participant's death.

(8)(a) An ABI provider shall report a medication error to the MWMA portal.

(b) An ABI provider shall document all medication error details on a medication error log retained on file at the ABI provider site[~~documented on an Incident Report form, MAP-045.~~

~~(2) There shall be three (3) classes of incidents as follows:~~

~~(a) A class I incident which shall:~~

~~1. Be minor in nature and not create a serious consequence;~~

~~2. Not require an investigation by the provider agency;~~

~~3. Be reported within twenty four (24) hours to the:~~

~~a. Case manager; or~~

~~b. Support broker;~~

~~4. Be reported to the guardian as directed by the guardian; and~~

~~5. Be retained on file at the:~~

~~a. Provider and case management agency; or~~

~~b. Support brokerage agency;~~

~~(b) A class II incident which shall:~~

~~1.a. Be serious in nature;~~

~~b. Include a medication error; or~~

~~c. Involve the use of a physical or chemical restraint;~~

~~2. Require an investigation which shall:~~

~~a. Be initiated by the provider agency within twenty-four (24) hours of discovery; and~~

~~b. Involve the case manager or support broker; and~~

~~3. Be reported to the following by the provider agency:~~

~~a. The case manager or support broker within twenty-four (24) hours of discovery;~~

~~b. The guardian within twenty-four (24) hours of discovery; and~~

~~c. ABIB within twenty-four (24) hours of discovery followed by:~~

~~(i) A complete written report of the incident investigation; and~~

~~(ii) Follow-up within ten (10) calendar days of discovery; and~~

~~(c) A class III incident which shall:~~

~~1.a. Be grave in nature;~~

~~b. Involve suspected:~~

~~(i) Abuse;~~

~~(ii) Neglect; or~~

~~(iii) Exploitation;~~

~~c. Involve a medication error which requires a medical intervention; or~~

~~d. Be a death;~~

~~2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and~~

~~3. Be reported by the provider agency to:~~

~~a. The case manager or support broker within eight (8) hours of discovery;~~

~~b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;~~

~~c. The guardian within eight (8) hours of discovery; and~~

~~d. ABIB within eight (8) hours of discovery followed by:~~

~~(i) A complete written report of the incident investigation; and~~

~~(ii) Follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to ABIB shall occur on the following business day.~~

~~(3) The following documentation with a complete written report shall be submitted for a death:~~

~~(a) A current plan of care;~~

~~(b) A current list of prescribed medications including PRN medications;~~

~~(c) A current crisis plan;~~

~~(d) Medication administration documentation for the current and previous month;~~

~~(e) Staff notes from the current and previous month including details of physician and emergency room visits;~~

~~(f) Any additional information requested by the department;~~

~~(g) A coroner's report; and~~

~~(h) If performed, an autopsy report~~].

Section 9.[~~7.~~] ABI Long Term Care Waiver Waiting List. (1) An individual eighteen (18) years of age or older applying for an ABI long term care waiver service shall be placed on a statewide ABI long term care waiver waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI long term care waiver waiting list, an individual or the individual's representative shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA portal;

(b) Complete and upload into the MWMA portal a MAP – 115 Application Intake – Participant Authorization; and

(c) Upload into the MWMA portal [~~submit to the department~~] a completed[~~:~~

~~(a) MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program; and~~

~~(b)~~] MAP 10, Waiver Services Physician's Recommendation form that has been signed by a physician.

(3) The order of placement on the ABI long term care waiver waiting list shall be determined by the:

(a) Chronological date of complete application information regarding the individual being entered into the MWMA portal [~~receipt of the MAP 10, Waiver Services Physician's Recommendation form~~]; and

(b) Category of need of the individual as follows:

1. Emergency. An emergency shall exist if an immediate service is indicated as determined by:

a. The individual currently is demonstrating behavior related to the individual's acquired brain injury that places the participant[~~recipient~~], caregiver, or others at risk of significant harm; or

b. The individual is demonstrating behavior related to the individual's acquired brain injury which has resulted in the individual's arrest; or

2. Nonemergency; and

(c) The Emergency Committee which shall consider applications for the Acquired Brain Injury long term care waiver program for emergency placement. The Emergency Committee meetings shall regularly occur during the fourth week of each month. To be considered at the monthly committee meeting, an application shall be received by the department no later than three (3) business days before the scheduled committee meeting.

1. The Emergency Review Committee shall be comprised of three (3) program staff of the cabinet.

a. Each member shall have professional or personal experience with brain injuries or other cognitive disabilities.

b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch.

(4) In determining chronological status, the original date of the individual's complete application information being entered into the MWMA portal [~~receipt of the MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver~~

~~Services Program form, and the MAP-10, Waiver Services Physician's Recommendation form,~~] shall:

(a) Be maintained; and

(b) Not change [~~changed~~] if an individual is moved from one (1) category of need to another.

(5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to an individual or caregiver, or the nature of the individual's medical need.

(6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(7) [~~If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.~~

~~(8)~~] A written notification of placement on the waiting list shall be mailed to the individual or the individual's legal representative and case management provider if identified.

(8)[~~(9)~~] Maintenance of the ABI long term care waiver waiting list shall occur as follows:

(a) The department shall, at a minimum, update the waiting list annually;

(b) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to the:

1. Individual;

2. Individual's legal representative; and

3. ABI case manager.

(9)[(~~10~~)] Reassignment of category of need shall be completed based on the updated information and validation process.

(10)[(~~11~~)] An individual or legal representative may submit a request for consideration of movement from one (1) category of need to another at any time an individual's status changes.

(11)[(~~12~~)] An individual shall be removed from the ABI long term care waiver waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or the individual's legal representative;

(b) The individual is deceased; [~~or~~]

(c) The individual or individual's legal representative refuses the offer of ABI long term care waiver services and does not request to be maintained on the ABI long term care waiver waiting list;

(d) An ABI placement for services offer is refused by the individual or legal representative; or

(e) The individual does not access services without demonstration of good cause within sixty-(60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1)

sixty (60) day extension in writing.

(12)[~~(13)~~] If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to the:

(a) Individual or to the individual's legal representative; and

(b) ABI case manager.

(13)[~~(14)~~] The removal of an individual from the ABI long term care waiver waiting list shall not prevent the submittal of a new application at a later date.

(14)[~~(15)~~] Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the ABI long term care waiver waiting list.

Section 10. Participant-[~~8. Consumer~~] Directed Services[~~Option~~]. (1) Covered services and supports provided to a participant receiving PDS [~~an ABI long term care waiver recipient participating in CDO~~] shall include:

(a) A home and community support service which shall:

1. Be available only as a participant-[~~under the consumer~~] directed service[~~option~~];

2. Be provided in the participant's [~~consumer's~~] home or in the community;

3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS [~~CDO~~] acquired brain injury service; and

5.a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence

and promote integration into the community for an individual residing in the individual's own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;

(vii) Socialization;

(viii) Relationship building;

(ix) Meal planning;

(x) Meal preparation;

(xi) Grocery shopping; or

(xii) Participation in community activities;

(b) Goods and services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant[~~recipient~~];

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints; and

(c) A community day support service which shall:

1. Be available only as a participant-directed service [~~under the consumer-directed option~~];

2. Be provided in a community setting;

3. Be tailored to the participant's [~~consumer's~~] specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant [~~consumer~~] for:

a. Work or community activities;

b. Socialization; and

c. Leisure or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS[~~CDO~~] acquired brain injury service.

(2) To be covered, a PDS[~~CDO service~~] shall be specified in a participant's person-centered service [~~consumer's~~] plan [~~of care~~].

(3) Reimbursement for a PDS[~~CDO service~~] shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-PDS [~~CDO~~] ABI setting.

(4) A participant [~~consumer~~], including a married participant [~~consumer~~], shall choose a provider and the choice of PDS [~~CDO~~] provider shall be documented in the participant's person-centered service [~~consumer's~~] plan [~~of care~~].

(5)(a) A participant [~~consumer~~] may designate a representative to act on the participant's [~~consumer's~~] behalf.

(b) The PDS [~~CDO~~] representative shall:

1.[~~(a)~~] Be twenty-one (21) years of age or older;

2.[~~(b)~~] Not be monetarily compensated for acting as the PDS [~~CDO~~] representative or

providing a PDS[~~CDO service~~]; and

3.[~~(c)~~] Be appointed by the participant[~~consumer~~] on a MAP-2000, Initiation/Termination of Participant-Directed Services [~~form~~].

(6) A participant[~~consumer~~] may voluntarily terminate PDS[~~CDO services~~] by completing a MAP-2000, Initiation/Termination of Participant-Directed Services and submitting it to the support broker.

(7) The department shall immediately terminate a participant[~~consumer~~] from receiving PDS[~~CDO services~~] if:

(a) Imminent danger to the participant's[~~consumer's~~] health, safety, or welfare exists;

(b) The participant[~~consumer~~] fails to pay patient liability;

(c) The participant's person-centered service [~~consumer's~~] plan [~~of care~~] indicates the participant[~~consumer~~] requires more hours of service than the program can provide, jeopardizing the participant's[~~consumer's~~] safety and welfare due to being left alone without a caregiver present; or

(d) The participant[~~consumer~~], caregiver, family, or guardian threatens or intimidates a support broker or other PDS[~~CDO~~] staff.

(8) The department may terminate a participant[~~consumer~~] from receiving PDS[~~CDO services~~] if the department determines that the participant's PDS[~~consumer's CDO~~] provider has not adhered to the person-centered service plan [~~of care~~].

(9) Except as provided in subsection (7) of this section, prior to a participant's[~~consumer's~~] termination from receiving PDS[~~CDO services~~], the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the participant[~~consumer~~] in developing a resolution and prevention plan;

(c) Allow at least thirty (30), but no more than ninety (90), days for the participant[~~consumer~~] to resolve the issue, develop and implement a prevention plan, or designate a PDS [~~CDO~~] representative;

(d) Complete and submit to the department a MAP-2000, Initiation/Termination of Participant-Directed Services [~~form~~] terminating the participant[~~consumer~~] from receiving PDS[~~CDO services~~] if the participant[~~consumer~~] fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the participant[~~consumer~~] in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of PDS[~~CDO services~~], the department shall:

(a) Notify a participant[~~consumer~~] in writing of its decision to terminate the participant's PDS [~~consumer's CDO~~] participation; and

(b) Except if the participant[~~consumer~~] failed to pay patient liability, inform the participant[~~consumer~~] of the right to appeal the department's decision in accordance with Section 13[~~11~~] of this administrative regulation.

(11) A PDS [~~CDO~~] provider shall:

(a) Be selected by the participant[~~consumer~~];

(b) Submit a completed Kentucky Participant-[~~Consumer~~] Directed Services[~~Option~~] Employee Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the participant[~~consumer~~], partici-

pant[~~consumer~~]representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the participant[~~consumer~~];

(h) Submit to a criminal background check conducted by:

1. The Administrative Office of the Courts if the individual is a Kentucky resident; or

2. An equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of PDS[~~CDO services~~];

(i) Submit to a check of the Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry.

1. A participant[~~consumer~~] may employ a provider prior to a Central Registry check result being obtained for up to thirty (30) days.

2. If a participant[~~consumer~~] does not obtain a Central Registry check result within thirty (30) days of employing a provider, the participant[~~consumer~~] shall cease employment of the provider until a favorable result is obtained;

(j) Submit to a check of the:

1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry; and

2. Caregiver Misconduct Registry in accordance with 922 KAR 5:120 and not be found on the registry;

(k) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant[~~consumer~~];

(m) Be approved by the department;

(n) Maintain and submit timesheets documenting hours worked; and

(o) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant[~~consumer~~].

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a participant[~~consumer~~] based on the individual's historical costs in any Medicaid waiver program minus five (5) percent to cover costs associated with administering participant-[~~the consumer~~] directed services[~~option~~].

(b) If no historical cost exists for the participant[~~consumer~~], the participant's[~~consumer's~~] budget shall equal the average per capita historical costs of a participant[~~an ABI waiver recipient~~] participating in the ABI waiver program established by 907 KAR 3:090 minus five (5) percent.

(c)[~~(b)~~] Cost of services authorized by the department for the participant's[~~individual's~~] prior year person-centered service plan [~~of care~~] but not utilized may be added to the budget if necessary to meet the individual's needs.

(d)[~~(c)~~] The department may adjust a participant's[~~consumer's~~] budget based on the participant's[~~consumer's~~] needs and in accordance with paragraphs (d) and (e) of this subsection.

(e)[~~(d)~~] A participant's[~~consumer's~~] budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The participant's[~~consumer's~~] support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(f)[~~(e)~~] The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the participant's[~~consumer's~~] health, safety, and welfare; or

4. If a significant change has occurred in the participant's[~~recipient's~~]:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the participant's[~~recipient's~~] relocation.

(g)[~~(f)~~] A participant's[~~consumer's~~] budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a PDS[~~CDO service~~] is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-PDS[~~CDO~~]) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a participant[~~consumer~~] with any aspect of PDS [~~CDO~~] or blended services;

(b) Be available by phone or in person to a participant[~~consumer~~] twenty-four (24) hours per day, seven (7) days per week to assist the participant[~~consumer~~] in obtaining community resources as needed;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a participant's[~~consumer's~~] health, safety, and welfare; and

(e) Complete or revise a person-centered service plan [~~of care~~] using person-centered planning principles.

(16) For a [~~CDO~~] participant receiving PDS, a support broker may conduct an assessment or reassessment.

(17) Financial management services shall:

(a) Include managing, directing, or dispersing a participant's[~~consumer's~~] funds identified in the participant's[~~consumer's~~] approved PDS [~~CDO~~] budget;

(b) Include payroll processing associated with an individual hired by a participant[~~consumer~~] or the participant's[~~consumer's~~] representative;

(c) Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant[~~consumer~~];

(d) Be performed by an entity:

1. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

2. With at least two (2) years of experience working with acquired brain injury; and

(e) Include preparing fiscal accounting and expenditure reports for:

1. A participant[~~consumer~~] or participant's[~~consumer's~~] representative; and

2. The department.

Section 11.[~~9.~~] Reimbursement and Coverage. (1) The department shall reimburse a

participating provider for a service provided to a Medicaid eligible person who meets the ABI long term care waiver program requirements as established in this administrative regulation.

(2) The department shall reimburse an ABI participating long term waiver provider for a prior-authorized ABI long term waiver service[~~,~~] if the service is:

(a) Included in the person-centered service plan;

(b) [~~of care and is~~] Medically necessary; and

(c)[~~(b)~~] Essential to provide an alternative to institutional care to an individual with an acquired brain injury who[~~that~~] requires maintenance services.

(3) [~~Exclusions to acquired brain injury long term care waiver program.~~] Under the ABI long term care waiver program, the department shall not reimburse a provider for a service provided:

(a) To an individual who does not meet the criteria established in Section 3 of this administrative regulation; or

(b) Which has not been prior authorized as a part of the person-centered service plan [~~of care~~].

(4) [~~Payment Amounts.~~]

(a) A participating ABI long term care waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a participant[~~recipient~~].

(b) A participating ABI long term care waiver service provider certified in accordance with this administrative regulation shall be reimbursed at the lesser of:

1. The provider's usual and customary charge; or

2. The Medicaid fixed upper payment limit per unit of service as established in subsection (5) of this section.

(5) [~~Fixed upper payment limits.~~]

(a) The unit amounts, fixed upper payment limits, and other limits[~~rates~~] established in the following table shall apply [~~this subsection shall be the fixed upper paymentlimits[, in effect on November 10, 2008, for ABI long term care waiver services in conjunction with the corresponding units of service~~]:

Service	Unit of Service	Upper Payment Limit
Case Management	1 month	$375.00 - limited to one (1) unit per member per month
Community Living Supports	15 minutes	$5.56 - limited to 160 units per member, per calendar week.
Respite Care	5 minutes	$4.00 - limited to 5760 units, equal to 1440 hours, per member, per calendar year, except as provided in paragraph (c) of this subsection
Adult Day Health Care	15 minutes	$3.19 - limited to 160 units per member, per calendar week.
Adult Day Training	15 minutes	$4.03 - limited to 160 units per member, per calendar week alone or in combination with supported employ-

		ment services.
Supported Employment	15 minutes	$7.98 - limited to 160 units per member, per calendar week alone or in combination with adult day training.
Behavior Programming	15 minutes	$33.61 - limited to 80 units per member, per calendar month for the first three (3) months; after initial three (3) months limited to forty-eight (48) units per member, per month.
Counseling – Individual	15 minutes	$23.84 - limited to 52 units per member, per month.
Counseling – Group	15 minutes	$5.75 - limited to 48 units per member, per calendar month.
Occupational Therapy	15 minutes	$25.90 - limited to 52 units per member, per calendar month.
Speech Therapy	15 minutes	$28.41 - limited to 52 units per member, per calendar month
Specialized Medical Equipment and Supplies (see paragraph (b) of this subsection)	Per Item	As negotiated by the department
Environmental Modification	Per Modification	Actual cost not to exceed $2000 per member, per calendar year.

Supervised Residential Care Level I	(1) calendar day	$200.00 - Limited to one (1) unit per member, per calendar day
Supervised Residential Care Level II	(1) calendar day	$150.00 - Limited to one (1) unit per member, per calendar day
Supervised Residential Care Level III	(1) calendar day	$75.00 - Limited to one (1) unit per member, per calendar day
Nursing Supports	15 minutes	$25.00 - Limited to 28 units per member, per calendar week
Family Training	15 minutes	$25.00 - Limited to 8 units per member, per calendar week
Physical Therapy	15 minutes	$25.00 - Limited to 52 units per member, per calendar month.
Assessment	One (1) unit equals entire process	$100.00
Assessment or Reassessment	One (1) unit equals entire process	$100.00
Participant-[~~Consumer~~] Directed Services[~~Options~~]:		
Home and Community Supports		Service limited by dollar amount prior authorized by QIO based on DMS approved participant[~~consumer~~]

		budget
Community Day Supports		Service limited by dollar amount prior authorized by QIO based on DMS approved participant[~~consumer~~] budget
Goods and Services		Service limited by dollar amount prior authorized by DMS based on DMS approved participant[~~consumer~~] budget
Support Broker	One (1) unit equal to one (1) calendar month	$375.00 - Limited to one (1) unit per member, per calendar month
Financial Management Services	Fifteen (15) minutes	$12.50 Limited to eight (8) units per member, per calendar month

(b) Specialized medical equipment and supplies shall be reimbursed on a per item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:

1. They are not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and

2. They are provided to an individual participating in the ABI waiver program.

(c) Respite care may exceed 1440 hours in a twelve (12) month period if an individual's usual caregiver is unable to provide care due to a:

1. Death in the family;

2. Serious illness; or

3. Hospitalization.

(d) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall be made only for the supervision and training required as the result of the participant's[~~ABI recipient's~~] disabilities and shall not include payment for supervisory activities normally rendered.

(e)1. The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

2. For an individual receiving supported employment services, documentation shall be maintained in the individual's record demonstrating that the services are not currently available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(6) [~~Payment Exclusions.~~] Payment shall not include:

(a)1. The cost of room and board[~~,~~] unless provided as part of respite care in a Medicaid certified nursing facility.

2. If a participant[~~an ABI recipient~~] is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual;

(b) The cost of maintenance, upkeep, an improvement, or an environmental modifica-

tion to a group home or other licensed facility;

(c) The cost of a service that is not listed in the approved person-centered service plan [~~of care~~]; or

(d) A service provided by a family member unless provided as[~~under~~] an approved participant-directed service [~~through consumer directed option~~].

(7) [~~Records Maintenance.~~] A participating provider shall:

(a) Maintain fiscal and service records for a period of at least six (6) years; and

(b) Provide, as requested by the department, a copy of, and access to, each record of the ABI Waiver Program retained by the provider pursuant to paragraph (a) of this subsection or 907 KAR 1:672[~~, Sections 2, 3, and 4~~]; and

(c) Upon request, make available service and financial records to a representative or designee of the:

1. Commonwealth of Kentucky, Cabinet for Health and Family Services;

2. United States Department for Health and Human Services, Comptroller General;

3. United States Department for Health and Human Services, Centers for Medicare and Medicaid Services (CMS);

4. General Accounting Office;

5. Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

6. Commonwealth of Kentucky, Office of the Attorney General.

Section 12.[~~10.~~] Electronic Signature Usage. [~~(1)~~] The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

[~~(2) An ABI long-term care waiver provider which chooses to use electronic signa-~~

~~tures shall:~~

~~(a) Develop and implement a written security policy which shall:~~

~~1. Be adhered to by each of the provider's employees, officers, agents, and contractors;~~

~~2. Identify each electronic signature for which an individual has access; and~~

~~3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;~~

~~(b) Develop a consent form which shall:~~

~~1. Be completed and executed by each individual using an electronic signature;~~

~~2. Attest to the signature's authenticity; and~~

~~3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and~~

~~(c) Provide the department with:~~

~~1. A copy of the provider's electronic signature policy;~~

~~2. The signed consent form; and~~

~~3. The original filed signature immediately upon request.~~]

Section 13.[~~11.~~] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an applica-

tion of this administrative regulation:

(a) Regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671, Sections 8 and 9; or

(b) Not regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671.

Section 14.[~~12.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 10, Waiver Services Physician's Recommendation", June 2015 [~~July 2008 edition~~];

(b) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(c) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(d) "MAP – 531 Conflict-Free Case Management Exemption", May 2015; [~~"MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program", July 2008 edition;~~

~~(c) "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program", July 2008 edition;~~

~~(d) "MAP-045, Incident Report", July 2008 edition;~~]

(e) [~~"MAP 95, Request for Equipment Form", June 2007 edition;~~

~~(f) "MAP 109 Plan of Care/Prior Authorization for Waiver Services", July 2008 edition;~~

~~(g)~~] "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015 [~~July 2008 edition~~];

(f)[~~(h)~~] "MAP 351, Medicaid Waiver Assessment", July 2015 [~~2008 edition~~];

(g)[~~(i)~~] "MAP-2000, Initiation/Termination of Participant-[~~Consumer~~] Directed Ser-

vices[~~Option~~] (CDO)", June 2015 [~~July 2008 edition~~];

(h)[~~(i)~~] "Mayo-Portland Adaptability Inventory-4", March 2003 [~~edition~~];

(i)[~~(k)~~] "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006;

(j)[~~The Revised Levels - Third Edition", 1998; and~~

~~(l)~~] "Kentucky Participant-[~~Consumer~~] Directed Services [~~Option~~] Employee Provider Contract", June 2015; and

(k) "MAP 4100a Acquired Brain Injury Waiver Program Provider Information and Services", September 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a)[~~,~~] At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

907 KAR 3:210

REVIEWED:

8-4-15
Date

Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

8/5/15
Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 3:210

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing September 14, 2015, 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. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 3:210
Contact Person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) long-term waiver services. The ABI long-term program enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI long-term waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI long-term coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(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. The amendments include establishing new federally-mandated case management requirements (that case management be free from conflict of interest); establishing federally-mandated requirements regarding the plan - the new term is person-centered service plan and the prior term was plan of care - that is used to identify the amount, duration, and types of services that a participant in the program receives (the plan is now called a person-centered service plan); requiring, as federally mandated, that an online portal (Medicaid Waiver Management Application or MWMA) be used to apply for admission to the program and to complete forms and documents associated with the program; adding new rights that must be guaranteed for individuals receiving services; requiring providers to check the Caregiver Misconduct Registry before hiring an individual and prohibits the hiring of anyone listed on the registry; narrowing the types of incidents to be reported from three (3) classes to two (2) and revising the incident reporting process by requiring incidents to be documented online in the new MWMA portal; revising the application process by requiring it to be done via the new MWMA portal; incorporating new forms by reference (a MAP -115 Application Intake - Participant Authorization used by individual to designate an individual to apply for 1915(c) home and community based waiver services via the MWMA portal on behalf of the individual; a MAP – 116 Service Plan – Participant Authorization used by an individual to authorize someone to repre-

sent them in person-centered service plan development and entry in the MWMA portal; a MAP-531 Conflict Free Case Management Exemption form used to request an exempt from the conflict-free case management requirement; and updating a couple of other forms. Additionally, the amendment deletes incorporated material that is being obsoleted due to implementation of a new online portal (MWMA).

(b) The necessity of the amendment to this administrative regulation: The primary amendments (revising the case management requirements, establishing person-centered service plan requirements, and requiring a new online portal (MWMA) to be used) are mandated by the Centers for Medicare and Medicaid Services (CMS) via a CMS rule published January 2015. Requiring providers to check the caregiver misconduct registry regarding potential staff and to not hire anyone listed on the registry is a safeguard to enhance participant safety and welfare. Reducing the classes of incidents is an effort to synchronize incident reporting requirements among DMS's 1915(c) home and community based waiver services programs. Introducing new incorporated material is necessary to allow participants to designate individuals to use the new online portal (MWMA portal) and/or perform related activities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals receiving ABI waiver program services (participants) as well as providers of these services. Currently, there are 223 individuals receiving services, 210 on the waiting list to receive services, and thirty-two (32) providers enrolled.

(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: Providers will need to ensure they comply with the conflict free case management requirements.

(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 receiving services will benefit from greater involvement and direction in the types of services they receive as well as when and where they receive the services which will enhance their independence as well as assimilation in their local community.

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

lation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendments to 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 the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? 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 3:210
Contact Person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.730(b) and 42 C.F.R. 441.725.

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. Among the mandates in 42 C.F.R. 441.730(b) are that services to waiver participants are free from conflict of interest. In the context of the ABI program that means that the individual who provides case management to a given waiver participant provide actual ABI waiver services or work for an entity that provides actual ABI waiver services or entity that has a business interest in a provider of actual ABI waiver services.

42 C.F.R. 447.425 establishes the person-centered service plan requirements which are many but the underlying requirement is that the plan be customized to the individual's needs (based on input from the individual or representatives of the individual among other parties) and promote/enhance the individual's independence and choice in their services and activities as well as integration their community.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment 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 3:210
Contact Person: Stuart Owen (502) 564-4321

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 amendment will affect the Department for Medicaid Services and the Department for Behavioral Health, Intellectual and Developmental Disabilities.

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), 42 C.F.R. 441.730(b), and 42 C.F.R. 441.725.

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 amendment 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 amendment 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? DMS anticipates that the amendments will be budget neutral for the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendments 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:

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 3:210

Summary of Material Incorporated by Reference

(1) The Department for Medicaid Services (DMS) is adding the following to the material incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015 which is a one (1) page form used to individuals to designate someone to represent them in applying for services and doing so online via the new Medicaid Waiver Application Management (MWMA) portal;

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015 which is a one (1) page form used to individuals to designate someone to represent them in developing a person-centered service plan;

(c) "MAP – 531 Conflict-Free Case Management Exemption", May 2015 which is a one (1) page form used by individuals to request an exemption from the requirement that case management be conflict free;

(d) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006 which is a four (4) page document which defines and establishes criteria regarding various levels of cognitive functioning; and

(e) "MAP 4100a Acquired Brain Injury Waiver Program Provider Information and Services", September 2009 which is a one (1) page form certifying the provider agency is capable and agrees to comply with the conditions for participation established in the ABI Services regulation.

(2) DMS is deleting the following material from the incorporated by reference material as the information previously captured on the material will be entered and maintained in the new Medicaid Waiver Management Application (MWMA) online portal or otherwise provided or documented or is otherwise no longer necessary:

(a) The "MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program", July 2008;
(b) The "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, July 2008;

(c) The "Incident Report", July 2008;

(d) The "MAP-95, Request for Equipment Form", May 2010;

(e) The "MAP-109, Plan of Care/Prior Authorization for Waiver Services", July 2008;

(f) The "Person Centered Planning: Guiding Principles", March 2005 edition;

(g) Rancho Levels of Cognitive Functioning, The Revised Levels", Third Edition.

(3) The following incorporated material is being revised:

(a) "MAP 10, Waiver Services Physician's Recommendation", June 2015 – which is a one (1) page form used to document a physician's recommendation for waiver program services for an individual – replaces the July 2008 and is revised the change the term "mental retardation" or "mentally retarded" to "intellectual disability";

(b) "MAP-2000, Initiation/Termination of Participant-Directed Services (PDS)", June 2015 – which is a two (2) page form used to initiate or end the receipt of participant-directed services - replaces the July 2008 edition due to changing the name of "consumer" and "CDO" to "participant" and "PDS);

(c) "Kentucky Participant Directed Services Employee Provider Contract", June 2015 – which is a two (2) page contract used to hire participant-directed service employees - replaces the April 19, 2007 edition and is revised to change the term "consumer" to "participant" and "CDO" to "PDS"; and

(d) "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015 - which is a two (2) page form used to document individual's understanding of the option to receive waiver services and related provisions – replaces the July 2008 version and is revised to replace the term "mental retardation" with "intellectual disability" and "ICF/MR/DD" with "ICF IID".

(e) "MAP 351, Medicaid Waiver Assessment", July 2015 – which is a fifteen (15) page document used to assess the needs of an individual applying for waiver services to help determine if they qualify for services. The June 2015 version replaces the July 2008 version. Revisions include changing the term "mental retardation" to "intellectual disability", "consumer" to "participant", "consumer directed option" or "CDO" to "participant directed services" or "PDS", and removing references to the Supports for Community Living (SCL) waiver as the form is no longer used for that waiver.

A total of thirty (30) pages of incorporated material are being added or revised.