

**STATEMENT OF CONSIDERATION RELATING TO
907 KAR 15:050**

**Department for Medicaid Services
Amended After Comments**

(1) A public hearing regarding 907 KAR 15:050 was not requested and; therefore, not held.

(2) The following individual submitted written comments regarding 907 KAR 15:050:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Kathy Adams, Director of Public Policy	The Children's Alliance
Anne Marie Regan, Senior Staff Attorney	Kentucky Equal Justice Center
Sharon Perkins, Director of Health Policy	Kentucky Hospital Association
Sheila A. Schuster, Ph.D.,KPA Legislative Liason	Kentucky Psychological Assoc.
Lisa Willner, Ph.D., KPA Executive Director	Kentucky Psychological Assoc.
Steve Shannon, Executive Director	Kentucky Association Regional Programs, Inc. (KARP)
Heidi Schissler Lanham, Legal Director	Protection & Advocacy

(3) The following individuals from the promulgating agency responded to comments received regarding 907 KAR 15:040:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Stuart Owen, Regulation Coordinator	Department for Medicaid Services (DMS)
Michele Blevins, MS, LMFT Assistant Director	Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID); Division of Behavioral Health
Lynne Flynn	DMS

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Eligibility Criteria

(a) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

“Page 2, line 5-14Section 2(1) – Request that paragraphs (a) through (f) be reviewed to ensure the proper conjunction is used. As written, the recipient must meet all the requirements in (a) through (f) because the conjunction is “and”, which means this regulation would only apply to a child with a severe emotional disability (SED) as specified in (c). Request that these paragraphs be so that (c) does not limit these services to children. An adult meeting the requirements of paragraphs, (a),(b), (d), (e) and (f) should qualify as a recipient for TCM services under this regulation.”

Anne Marie Regan, Senior Staff Attorney with the Kentucky Equal Justice Center, stated the following:

“To ensure that the eligibility criteria are clear and that they will be read consistently, we suggest that:

Section 2(1)(b) should read “Have a severe mental illness; or

Section 2(1)(c) should read “Be a child with a severe emotional disability as defined in KRS 200.503(2); and.”

Sheila A. Schuster, Ph.D, and Lisa Willner, Ph.D, stated the following:

“The intent of the regulation as stated in its title is to address the needs of individuals who have a chronic or complex physical health issue plus either a substance use disorder, mental illness or emotional disability. The current wording is confusing and leaves the impression that the individual must have all four (a through d) of the conditions listed.

In order to clarify the eligibility criteria, **we request that Section 2 be amended to read:**

Section 2. Eligibility Criteria. (1) To be eligible for targeted case management services under this administrative regulation, a recipient shall have a chronic or complex physical health issue and at least one of these conditions:

(a) Have a **A** primary moderate or severe substance use disorder diagnosis;

(b) Have a **A**. severe mental illness; **or**

(c) Be a child with a severe emotional disability as defined in KRS 200.503(2);

~~(d) Have a chronic or complex physical health issue;”~~

Steve Shannon, Executive Director of the Kentucky Association of Regional Programs, stated the following:

“Section 2.(1)

(1) To be eligible for targeted case management services under this administrative regulation a recipient shall:

(a) Have a primary moderate or severe substance use disorder diagnosis;

(b) Have a severe mental illness;

(c) Be a child with a severe emotional disability as defined in KRS 200.503(2);

(d) Have a chronic or complex physical health issue;

There appears to be a conflict between the title of the regulation and language in Section 2.(1). The title indicates individuals with a co-occurring mental health or substance use disorder and chronic or complex physical health issues. The language in Section 2.(1) indicates individuals must have a mental health, substance use disorder and chronic or complex physical health issues to be eligible for this targeted case management service.

It is recommended that Section 2.(1) be amended to be consistent with the language in the title of the regulation thereby making targeted case management services available to individual with a mental illness or substance use disorder and chronic or complex physical health issues. This change will greatly increase access to targeted case management for two populations with significant service and support needs and will facilitate the move to integrated behavioral health and physical health care.”

(b) Response: Via an “amended after comments” administrative regulation DMS is revising the language as follows to correct the eligibility criteria:

“Section 2. Eligibility Criteria. (1) To be eligible for targeted case management services under this administrative regulation a recipient shall:

(a) 1. Have a:

a. Primary moderate or severe substance use disorder diagnosis; or

b. [~~b~~ Have a] severe mental illness;

2. [:

~~(c) Be a child with a severe emotional disability as defined in KRS 200.503(2);~~

~~(d)~~ Have a chronic or complex physical health issue;

3. [~~e~~] Not be:

a. [~~1~~] Over the age of twenty-one (21) years and under the age of sixty-four (64) years while receiving services in an institution for mental diseases; or

b. [~~2~~] An inmate of a public institution; and

4.a. [~~f~~1.] Need assistance with access to:

(i) [~~a~~] Housing; or

(ii) [~~b~~] Vocational, medical, social, educational, or other community services or supports;

b. [~~2~~] Have been involved with at least one (1) child welfare agency or criminal justice agency; or

c. [~~3~~] Be:

(i) [~~a~~] In the custody of the Department for Community Based Services;

(ii) [~~b~~] At risk of an out-of-home placement; or

(iii) [~~e~~] At risk of inpatient mental health treatment; or

(b)1. Be a child with a severe emotional disability as defined in KRS 200.503(3);

2. Have a chronic or complex physical health issue; and

3.a. Need assistance with access to:

(i) Housing; or

(ii) Vocational, medical, social, educational, or other community services or supports;

b. Have been involved with at least one (1) child welfare agency or criminal justice agency; or

c. Be:

(i) In the custody of the Department for Community Based Services:

(ii) At risk of an out-of-home placement: or

(iii) At risk of inpatient mental health treatment."

(c) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 2, line 14 Section 2(1)(e) - Please clarify if the phrase "inmate of a public institution" includes youth in a Juvenile Justice Detention Facility. If so, we request that this provision be clarified to exempt youth in a Juvenile Justice Detention Facility from this restriction. Formerly, IMPACT Plus providers were allowed to provide targeted case management (TCM) services to youth in a Juvenile Justice Detention Facility because TCM is not a service the Department of Juvenile Justice provides."

(d) Response: The phrase "inmate of a public institution" does indeed include youths in a juvenile justice detention facility and this is a federal requirement. DMS and Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) staff are not aware of any exemption being made in the past for IMPACT Plus services.

(e) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 3, line 1-8 Section 2(2)(a) – Request that the conjunction of "and" in subparagraphs 1. through 5. be changed to an "or". A major mental disorder would be included in one of these, not all of them."

(f) Response: DMS is correcting the conjunction via an "amended after comments" administrative regulation.

(g) Comment: Anne Marie Regan, Senior Staff Attorney with the Kentucky Equal Justice Center, stated the following:

"We are very pleased that targeted case management services will be provided to individuals who have both mental health or substance use disorders and co-occurring chronic or complex physical health issues. However, we are concerned that "moderate or severe substance use disorder" is not defined in the regulation. Nor is "chronic or complex physical health issue". Are these terms defined elsewhere that could be referenced here? If these terms are not defined, we hope that the intent is that services be provided liberally."

(h) Response: Via an "amended after comments" administrative regulation DMS is addressing the concerns by adding the following language to Section 2:

"(4) A moderate or severe substance use disorder shall be a moderate or severe substance use disorder as defined in the current edition of the American Psychiatric

Association Diagnostic and Statistical Manual of Mental Disorders™.

(5) A mental health diagnosis shall be a diagnosis of any mental health condition included in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™."

(5)(a) A chronic or complex physical health issue shall include:

1. A cardiovascular disorder;
2. A respiratory disorder;
3. A genito urinary disorder;
4. An endocrine disorder;
5. A musculoskeletal disorder;
6. A neurological disorder;
7. An immune system disorder;
8. Obesity;
9. Cancer;
10. Deafness; or
11. Blindness.

(b) In addition to meeting the requirement established in paragraph (a) of this subsection, to qualify as having a chronic or complex physical health issue a recipient shall:

1. Have clinically significant symptoms which have persisted for a continuous period of at least two (2) years; or

2.a. Been hospitalized as a result of the individual's physical health issue more than once within the past two (2) years; and

b. Be currently impaired in the ability to function socially or occupationally or both.

(c) Documentation of a recipient's chronic or complex physical health diagnosis that is signed and dated by a qualified medical professional shall be present in the recipient's medical record."

(k) Comment: Heidi Schissler Lanham, Legal Director for Protection and Advocacy stated the following:

"Section 2 (2) (a) (1)-(5): The regulation should not define what a severe mental illness is by listing specific mental health diagnoses.

Suggested Change: A severe mental illness shall be a diagnosis of a major mental disorder as included in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders. under:

- ~~1. Schizophrenia spectrum and other psychiatric disorders~~
- ~~2. Bipolar and related disorders~~
- ~~3. Depressive disorders~~
- ~~4. Post-traumatic stress disorders (under trauma and stressor related disorders); and~~
- ~~5. Personality disorders~~

Rationale: The American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM) includes diagnoses not enumerated in the proposed regulation. Kentucky's Medicaid State Plan Amendment for targeted case management does not

define a severe mental illness by listing categories of mental illness. KY State Plan Amendment 14-002A, approved June 19, 2014. Listing specified diagnoses to define severe mental illness limits individuals who have a mental illness, but do not have the listed specific diagnoses, from receiving needed targeted case management services.”

(l) Response: The criteria is a result of much contemplation by DMS and DBHDID staff and staff believe that the criteria is appropriate as is except that via an “amended after comments” administrative regulation DMS is removing “personality disorders” from the categories of qualifying disorders.

(m) Comment: Steve Shannon, Executive Director of the Kentucky Association Regional Programs (KARP) stated the following:

“Section 2.(2)(c)2.b.

b. Be significantly impaired in the ability to function socially or occupationally or both.

It is suggested that educationally be added to the above language since some individuals with a severe mental illness will be in school and not pursuing employment. If ‘educationally’ is added then ‘or both’ could be deleted.”

(n) Response: DMS and DBHDID staff prefer to keep the language as is as it is verbatim the language in the template issued by the Centers for Medicare and Medicaid Services for the corresponding state plan amendment.

(2) Subject: Provider Requirements

(a) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Page 4, lines 12 – 21 Section 3(1)(d) 2., 6., and 7. Require the individual, entity or organization to have “demonstrated experience”. Request that the regulation specify “who” makes this determination and the standards that will be used for making this determination.”

(b) Response: Via an “amended after comments” administrative regulation DMS is clarifying the matter by revising Section 3(1) as follows:

Section 3. Provider Requirements. (1)(a) To be eligible to provide services under this administrative regulation, an individual, entity, or organization shall:

1.~~[(a)]~~ Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

2.~~[(b)]~~ Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3.~~[(c)]~~ Be:

a.~~[(1)]~~ A community mental health center authorized to provide services pursuant to 907 KAR 1:044;

b.[2-] An individual or provider group authorized to provide behavioral health services pursuant to 907 KAR 15:010; or

c.[3-] A behavioral health services organization authorized to provide behavioral health services pursuant to 907 KAR 15:020; and

4.[(d)] Have:

a.[1-] For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

b. Documented[2- Demonstrated] experience in serving the population of individuals with behavioral health disorders relevant to the particular services provided;

c.[3-] The administrative capacity to ensure quality of services;

d.[4-] A financial management system that provides documentation of services and costs;

e.[5-] The capacity to document and maintain individual case records;

f. Documented[6- Demonstrated] programmatic and administrative experience in providing comprehensive case management services; and

g. Documented[7- Demonstrated] referral systems and linkages and referral ability with essential social and health services' agencies.

(b) The documentation referenced in paragraph (a)4.b., f., and g. of this subsection shall be subject to audit by:

1. The department;

2. The Department for Behavioral Health, Developmental and Intellectual Disabilities;

3. The Cabinet for Health and Family Services Office of Inspector General

4. A managed care organization whose network in which a targeted case manager provider is enrolled;

5. The Centers for Medicare and Medicaid Services;

6. The Kentucky Office of the Auditor of Public Accounts; or

7. The United States Department of Health and Human Services Office of the Inspector General."

(c) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 4, line 22 Section 3(2)(a) – Request that (a) be deleted from this subsection as there is no paragraph (b) to correspond with paragraph (a), as required by KRS 13A."

(d) Response: The Legislative Research Commission - as authorized by KRS 13A.040(9) – with DMS's permission reformatted the Section via a technical amendment to comply with KRS Chapter 13A formatting standards.

(e) Comment: Steve Shannon, Kentucky Association Regional Programs (KARP) stated the following:

"Section 3.(1)(d)4.

4. A financial management system that provides documentation of services and costs;

KY Medicaid is commended for requiring providers to have a financial management system that provides documentation of services and costs. In addition, KY Medicaid is

encouraged to utilize the cost data to determine fair, reliable and valid reimbursement rates for all services including targeted case management.”

(f) Response: DMS will monitor its reimbursement of targeted case management services over time to gauge the appropriateness of the reimbursement as it relates to providers.

(3) Subject: Case Manager Requirements

(a) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Page 5, line 7 Recommend that Section 4 be renumbered in accordance with KRS 13A requirements. Section 4 has a subsection (1) but not a subsection (2).”

(b) Response: The Legislative Research Commission - as authorized by KRS 13A.040(9) – with DMS’s permission reformatted the Section via technical amendments to comply with KRS Chapter 13A formatting standards.

(c) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Page 5, line 17 Section 4 (1)(a)1.h. requires the department to approve a case manager that has a bachelor’s degree in “another human service degree program”. Request that the regulation specify how and to whom a request for approval under this provision is submitted as these requirements should be included in regulation. The Children’s Alliance has asked DMS staff on numerous occasions for this information and as of the submission date of these comments, has not received a response, noting that the Emergency regulation went into effect on 9/16/14. Additionally, request that the timeframe for approval or denial of a submitted request under this provision be included in regulation.”

Sharon Perkins, Director of Health Policy for the Kentucky Hospital Association stated the following:

“In the New Administrative Regulations, 907 KAR 15:040, 907 KAR 15:050 and 907 KAR 15:060 Section 4. Case Manager Requirements. 12. An individual with a bachelor’s degree in a behavioral science program or other human service degree program approved by the department who... KHA is requesting clarification on “other human service degree programs...” and to have included in the regulation, a list of the “other human service degree programs.”

(d) Response: Via an “amended after comments” administrative regulation DMS is removing the provision and replacing it with a comprehensive list of specific degrees. The revised language reads as follows:

"Section 4. Case Manager Requirements. (1) A case manager shall:

(a)1. Have at least a bachelor of arts or science~~[sciencess]~~ degree in a behavioral science including:

a.~~[1.]~~ Psychology;

b.~~[2.]~~ Sociology;

c.~~[3.]~~ Social work;

d.~~[4.]~~ Family studies;

e.~~[5.]~~ Human services;

f.~~[6.]~~ Counseling;

g.~~[7.]~~ Nursing; ~~[or]~~

h. Behavioral analysis;

i. Public health;

j. Special education;

k. Gerontology;

l. Recreational therapy;

m. Education;

n. Occupational therapy;

o. Physical therapy;

p. Speech language pathology;

q. Rehabilitation counseling; or

r. Faith-based education; or

2. Be a certified alcohol and drug counselor who has a bachelor of arts or science degree~~[8. Another human service degree program approved by the department]."~~

(e) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 5, line 18-20Section 4(1)(a)2. Requires case managers to have successfully completed case management training approved by DBHDID within six (6) months of employment. Request that the minimum core curriculum requirements for the case management training be specified in regulation and that this regulation refer to the regulation that includes the minimum core curriculum requirements. Otherwise the training requirements can be changed at any time. Request that the regulation specify how and to whom a case management curriculum is submitted for approval, along with a required timeframe for DBHDID to approve or deny a submitted curriculum. A provider's ability to provide TCM services is dependent upon their ability to get staff trained within the specified time frames. While the Emergency regulation with this requirement has been in effect since 9/16/14, no guidance on curriculum requirements for case management training have been provided. DBHDID provided their last SC 101 training in October and the class was reported as being full shortly after the training announcement was sent to providers. Request that the requirements for case management training curriculums be provided as soon as possible."

Clarification needs to be provided in regulation specific to case managers and supervisors (refer to paragraph (b) of this subsection) that are not "newly employed" as this provision states "within six (6) months of employment". Many former IMPACT Plus

providers have had case managers providing TCM services under their employment for years. Guidance DBHDID staff have provided, specific to "six months from the date of hire", for therapeutic child support (TCS) includes: that 10/1/14 is the date of hire for employees already credentialed as TCS workers and in compliance with the TCS requirements; and the date the regulation was filed and became effective (9/16/14) is considered the hire date for a TCS worker that was already hired but not yet an approved TCS worker. Supervisors should be retrained in 3 years based upon their recertification date. Request that the regulation be clarified accordingly."

(f) Response: As DBHDID has very recently filed an emergency administrative regulation and ordinary administrative regulation establishing the training and related personnel qualifications for targeted case management services providers, DMS is revising the language (via an "amended after comments" administrative regulation) by replacing the provisions with a reference to the new DBHDID targeted case management administrative regulation. The revised language reads as follows:

"(b) Have successfully completed case management training pursuant to 908 KAR 2:260[approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment]."

(g) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 5, line 21-22 Section 4(1)(a)3. Request that the "recertification requirements" be specified in regulation so that providers know what requirements have to be met every 3 years. Request that the start date for the "3 years" be clarified for those case managers that were previously approved by DBHDID under the IMPACT Plus program. Providers need to know the date that formerly approved case managers begin to count their "3 years" since not all case managers are "newly employed" in accordance with (1)(a)2. above."

(h) Response: As DBHDID has very recently filed an emergency administrative regulation and ordinary administrative regulation establishing the training and related personnel qualifications for targeted case management services providers, DMS is revising the language (via an "amended after comments" administrative regulation) by replacing the provisions with a reference to the new DBHDID targeted case management administrative regulation. The revised language reads as follows:

"(c) Successfully complete continuing education requirements pursuant to 908 KAR 2:260[completed recertification requirements approved by DBHDID every three (3) years]."

(i) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 6, line 1-2Section 4(1)(b)1. Request that this provision be amended to clarify that

the "case management training approved by DBHDID" is consistent with the same case management curriculum process that we have requested be clarified under (1)(a)2. above, which we have asked include the minimum core curriculum requirements for the case management training be specified, how and to whom a case management curriculum is submitted for approval, a required timeframe for DBHDID to approve or deny a submitted curriculum and that SC 101 does count as an approved training by DBHDID."

(j) Response: As DBHDID has very recently filed an emergency administrative regulation and ordinary administrative regulation establishing the training and related personnel qualifications for targeted case management services providers, DMS is revising the language (via an "amended after comments" administrative regulation) by replacing the provisions with a reference to the new DBHDID targeted case management administrative regulation. The revised language reads as follows:

"(b) Have successfully completed case management training pursuant to 908 KAR 2:260~~[approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment]."~~

(k) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 5, line 3-5 Section 4(1)(c) Request that the phrase "educational requirements" as used in this paragraph be clarified to indicate that the educations requirements being referred to are specific to the individual's Bachelor of Arts or Bachelor of Sciences degree referred to in (1)(a). Also, does the individual's "one year of full-time employment working with individuals in a human service setting" have to be "paid" employment?"

(l) Response: Via an "amended after comments" administrative regulation DMS is clarifying the requirement as recommended and as follows:

"(3)(a) Except as established in paragraph (b) of this subsection, a case manager shall have at least one (1) year of full-time employment working directly with individuals in a human service setting after completing the educational requirements established in subsection (1)(a) of this section."

(m) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 6, line 17Section 4(1)(c)2.h. Same comment for as submitted for Section 4 (1)(a)1.h."

(n) Response: Via an "amended after comments" administrative regulation DMS is removing the provision and replacing it with a comprehensive list of specific degrees. The revised language reads as follows:

“(b) A master’s degree in one (1) or more of the following behavioral science disciplines may substitute for the one (1) year of experience:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; [or]
8. Behavioral analysis;
9. Public health;
10. Special education;
11. Gerontology;
12. Recreational therapy;
13. Education;
14. Occupational therapy;
15. Physical therapy;
16. Speech language pathology;
17. Rehabilitation counseling; or
18. Faith-based education[~~Another human service degree program approved by the department~~].”

(o) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Page 7, line 12-13Section 4(1)(d)12. requires an individual with a bachelor’s degree in a behavioral science program or other human services degree program be approved by the department. Request that the regulation specify how and to whom a request for approval under this provision is submitted as these requirements should be included in regulation. The Children’s Alliance has asked DMS staff on numerous occasions for this information and as of the submission date of these comments, has not received a response, noting that the Emergency regulation went into effect on 9/16/14. Additionally, request that the timeframe for approval or denial of a submitted request under this provision be included in regulation.”

(p) Response: Via an “amended after comments” administrative regulation DMS is revising the language by referring to the amended subsection – (1)(a)1 – which contains the comprehensive list of acceptable degrees. The revised language reads as follows:

“(l) An individual with a bachelor’s degree stated in subsection (1)(a)1. of this Section[~~in a behavioral science program or other human service degree program approved by the department~~].”

(q) Comment: Anne Marie Regan, Senior Staff Attorney for Kentucky Equal Justice Center, stated the following:

"Section 4 states that supervision of the case manager shall occur at least twice a month, and at least one of these contacts shall be face-to-face. Section 4(2). Supervision for targeted case management under IMPACT Plus requires "weekly documented face-to-face supervision" by the case manager's supervisor. 907 KAR 3:030 Section 5(1)(c)3.d. IMPACT Plus also requires that case management services be documented in a monthly case management summary. Section 5(1)(f). The new regulation just refers to "periodic reassessments" and "periodic revisions" to the plan of care, monitoring at least every 3 months and a face-to-face reassessment at least annually. 907 KAR 15:050 Section 6. Proper supervision and specific time requirements for certain activities is critical to ensure that services are appropriate, timely and effective. We do not think the case management supervision requirements under the new regulation should be any less stringent than under IMPACT Plus."

Steve Shannon, Executive Director of the Kentucky Association of Regional Programs, stated the following:

"Section 4.(1)(b)1. & 2.

- (b)1. Supervision by a behavioral health professional who has completed case management training approved by DBHDID shall occur at least twice per month.
- 2. At least one (1) of these supervisory contacts shall be on an individual basis and face-to-face.

These two requirements will result in greater administrative costs associated with targeted case management. While the list of behavioral health professionals is comprehensive, the majority of professionals listed are licensed, independent practicing professionals who will have to be diverted from other necessary job functions to provide the supervision. This concern coupled with the well documented behavioral health professional shortages will result in less access to qualified, licensed behavioral health professionals."

(r) Response: DMS and DBHDID absolutely agree that proper supervision is critical. Staff believe that the requirements are appropriate as stated and notes that the billing supervisor requirement is a new/additional requirement that did not exist in the IMPACT Plus program. It is a new requirement but one that DMS and DBHDID think is necessary to ensure quality delivery of services. DMS and DBHDID will monitor the impact of requirements on the availability of providers.

(s) Comment: Anne Marie Regan, Senior Staff Attorney for the Kentucky Equal Justice Center stated the following:

"Section 4(3)(a) of this regulation states that a case manager shall have one year of full time employment experience working with individuals in a human service setting. 907 KAR 15:060 Section 4(3)(a)2 requires that a case manager for a child with a severe emotional disability have one year full-time employment experience working directly with

individuals under 21. We think this additional requirement should also apply to case managers for children with co-occurring mental health or substance use disorders and chronic or complex physical health issues."

(t) Response: DMS and DBHDID staff appreciate the recommendation but are concerned that imposing the requirement would result in too few providers being qualified to provide targeted case management services resulting in recipients being unable to receive these critical services.

(u) Comment: Sharon Perkins, Director of Health Policy for the Kentucky Hospital Association stated the following:

"Case Management is defined as a service furnished to assist in gaining access to needed medical, social, educational or other services. It is not defined as a Direct Clinical Service, but a "Coordination of Services" to the recipient. In the New Administrative Regulations, 907 KAR 15:040, 907 KAR 15:050 and 907 KAR 15:060 Section 4. Case Manager Requirements. 12. An individual with a bachelor's degree in a behavioral science program or other human service degree program approved by the department who: a. is working under the supervision of a billing supervisor. KHA is requesting clarification as to why the case manager would be supervised by a billing supervisor. The use of "billing supervisor" is not appropriate and should be removed."

(v) Response: DMS and DBHDID staff believe that the billing supervisory requirement is an important safeguard to ensure quality delivery of targeted case management services.

(y) Comment: Sharon Perkins, Director of Health Policy, of the Kentucky Hospital Association stated the following:

"In the New Administrative Regulation, 907 KAR 15:050, Section 4(3) (d) (10). Case Manager Requirements.(10) A behavioral health practitioner under supervision except that a certified alcohol and drug counselor shall not be considered a behavioral health professional for the purposes of providing targeted case management to an individual with a complex or chronic physical health issue." KHA would like clarification on this requirement. According to 201 KAR 35:050 Curriculum of Study. Section 1. The 270 classroom hours of curriculum required by KRS 309.083(4) to receive certification as an alcohol and drug counselor (CADC) shall be specifically related to the knowledge and skills necessary to perform the following twelve (12) core functions, which shall be: (g) case management. CADC's are required to complete a baccalaureate degree, have six thousand (6,000) hours of work experience and three hundred (300) hours of direct supervision prior to receiving certification. Please clarify how CADC's are not qualified to be considered a case manager for individuals with substance use disorders and chronic or complex physical health issues."

Steve Shannon, Executive Director of the Kentucky Association of Regional Programs, stated the following:

“Section 4.(1)(d)10.

10. A behavioral health practitioner under supervision except that a certified alcohol and drug counselor shall not be considered a behavioral health professional for the purpose of providing targeted case management to an individual with a complex or chronic physical health issue;

It is recommended the language prohibiting a certified alcohol and drug counselor from providing targeted case management under this regulation be deleted. As previously indicated, CADCs with at least a bachelor’s degree will be effective targeted case managers for individuals with a substance use disorder and a complex or chronic physical health issue.”

(z) Response: DMS appreciates the question and is correcting the language to clarify that a CADC shall not be authorized to provide targeted case management to an individual with a chronic or complex physical health issue **IF** the individual does not also have a substance use disorder. CADCs can provide targeted case management to individuals with a substance use disorder and chronic or complex physical health issues but not to individuals who only have a mental health disorder (and no substance use disorder) and a chronic or complex physical health issue.

(aa) Comment: Sheila A. Schuster and Lisa Willner , Kentucky Psychological Association stated the following:

“In 907 KAR 15:050, Section 4(4) – The listing of behavioral health professionals includes:

(e) A licensed psychological practitioner;
KPA Comments on 907 KAR 15:040, 15:050, 15:060

(f) A licensed psychologist;

But fails to list: A certified psychologist with autonomous functioning (an individual licensed under KRS 319 to practice psychology without supervision.)

We request that (e) be amended to read: A licensed psychological practitioner or a certified psychologist with autonomous functioning;”

(bb) Response: There is a related administrative regulation - 907 KAR 15:005, Definitions for 907 KAR Chapter 15 – which captures the option of certified psychologists with autonomous functioning by including them in the definition of licensed psychological practitioner. The definition from 907 KAR 15:005, Section 1(27) reads as follows:

“(27) “Licensed psychological practitioner” means an individual who:
(a) Meets the requirements established in KRS 319.053; or
(b) Is a certified psychologist with autonomous functioning.”

(cc) Comment: Sheila A. Schuster, Ph.D, and Lisa Willner, Ph.D, Kentucky Psychological Association stated the following:

"In 907 KAR 15:050, Section 4(4) – (j) A behavioral health practitioner under supervision except that a certified alcohol and drug counselor shall not be considered a behavioral health professional for the purpose of providing targeted case management to an individual with a complex or chronic physical health issue;
In order to be consistent in the language in the earlier part of the definition, **we request that (j) be amended to read: (j) A behavioral health practitioner professional** under supervision...

(dd) Response: There is a related administrative regulation - 907 KAR 15:005, Definitions for 907 KAR Chapter 15 – which captures defines the terms used in the administrative regulations contained in Chapter 15. The term as defined in 907 KAR 15:005, Section 1(4) is "behavioral health practitioner under supervision"; thus, DMS needs to use the term as defined in 907 KAR 15:005.

(ee) Comment: Steve Shannon, Executive Director of the Kentucky Association of Regional Programs (KARP) stated the following:

"Section 4.(1)(a)1.

(1) (a) 1. Have at least a bachelor of arts or sciences degree in a behavioral science including:

It is recommended that a new item (2) be added to Section 4. (1)(a). This new item (2) would include language stating that a bachelor's level Certified Alcohol or Drug Counselor (CADC) would be eligible to be a targeted case manager of individuals with a substance use disorder.

This language is needed since some CADCs have a bachelor of arts of sciences degree in fields that are not behavioral sciences. However, the requirements for a CADC result in CADCs being well qualified to be targeted case managers. The requirements include 2,000 hours of supervised experience and 270 hours of classroom training.

CADCs will be effective targeted case managers for individuals with a co-occurring substance use disorder and a chronic or complex physical health conditions."

(ff) Response: Via an "amended after comments" administrative regulation, DMS is adopting the recommendation. The revised language reads as follows:

"Section 4. Case Manager Requirements. (1) A case manager shall:
(a) 1. Have at least a bachelor of arts or science[~~sciences~~] degree in a behavioral science including:
a.[~~1.~~] Psychology;
b.[~~2.~~] Sociology;

- c.[3-] Social work;
- d.[4-] Family studies;
- e.[5-] Human services;
- f.[6-] Counseling;
- g.[7-] Nursing; [ex]
- h. Behavioral analysis;
- i. Public health;
- j. Special education;
- k. Gerontology;
- l. Recreational therapy;
- m. Education;
- n. Occupational therapy;
- o. Physical therapy;
- p. Speech-language pathology;
- q. Rehabilitation counseling; or
- r. Faith-based education; or
- 2. Be a certified alcohol and drug counselor who has a bachelor of arts or science degree[8. Another human service degree program approved by the department].”

(gg): Comment: Steve Shannon, Executive Director of the Kentucky Association of Regional Programs, stated the following:

“Section 4.(1)(d)12.

12. An individual with a bachelor’s degree in a behavioral science program or other human service degree program approved by the department who:

- a. Is working under the supervision of a billing supervisor; and
- b. Has at least five (5) years of documented full-time experience providing specialized case management services for the target population.

The inclusion of an individual with a bachelor’s degree in behavioral science working under a billing supervisor and having five (5) years experience providing specialized case management services will permit individuals who are not licensed to provide supervision is appreciated. However, this does represent a significant change in the supervision requirement and we respectfully ask for the rationale of this requirement since five (5) years appear extensive.

We believe the targeted case management organization should be directed to insure that adequate supervision is provided to all targeted case managers resulting in targeted case management services being delivered in a timely, effective and efficient manner consistent with the unique needs of the individuals served and their service plan. If supervision requirements are specifically delineated in regulation, the standard listed may inadvertently become the maximum amount of supervision received as opposed to the minimum.

Please clarify how long a targeted case manager will require this level of supervision? If the requirement remains five (5) years experience for a bachelor’s level professional to

provide supervision, will the supervision requirement not be necessary at one (1), three (3) or five (5) years post the required five (5) years of experience?"

(hh) Response: DMS and DBHDID will monitor the impact of the requirement on providers but do not want to relax the requirement until an adequate period of time has elapsed to assess the impact of the requirement as is.

(ii) Comment: Steve Shannon, Executive Director of the Kentucky Association of Regional Programs stated the following:

"We appreciate and express thanks that the regulation does not include a maximum caseload size. As previously stated, we believe the targeted case management organization should determine the caseload size for their respective targeted case managers based upon the unique service and supports needs of the individuals receiving targeted case management."

(jj) Response: Though the administrative regulation as initially filed did not contain a caseload cap, DBHDID has recently filed an emergency (and ordinary) administrative regulation establishing targeted case management requirements – 908 KAR 2:260. Via an "amended after comments" administrative regulation DMS is inserting the following subsection (in Section 8. Exclusions and Limits) regarding a caseload cap:

"(4) The maximum number of recipients to whom a targeted case manager shall provide targeted case management services at any given time shall be as established in 908 KAR 2:260."

(4) Subject: Freedom of Choice Provider

(a) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 7, line 19-22 Section 5(1)(a) and (b) – Request that these provisions be clarified. As written it is unclear if a client's case manager specified in (a) must be separate from (i.e. not employed by) the provider of non-targeted case management Medicaid covered services as specified in (b)."

(b) Response: The targeted case manager who provides targeted case management to a recipient can work for an agency that provides actual behavioral health services to the recipient, but the targeted case manager him/herself cannot provide behavioral health services to the recipient.

~~(5) Subject: Covered Services~~

(a) Comment: Anne Marie Regan, Senior Staff Attorney with the Kentucky Equal Justice Center stated the following:

"Section 6 (3)(b) reads: "Include ensuring the active participation of the recipient and working with the recipient, the recipient's authorized health care decision maker, or others to develop the goals, or". This appears to be a typo. "Or" should be replaced with "and".

(b) Response: DMS is correcting the mistake via an "amended after comments" administrative regulation.

(c) Comment: Steve Shannon, Kentucky Association Regional Programs, stated the following:

"Section 6.(5)(b)

(b) Monitoring shall:

1. Occur at least once every three (3) months;
2. Be face-to-face; and
3. Determine if:
 - a. The services are being furnished in accordance with the recipient's care plan;
 - b. The services in the recipient's care plan are adequate to meet the recipient's needs; and
 - c. Changes in the needs or status of the recipient are reflected in the care plan.

This section indicates the targeted case manager will monitor the services provided. Will the targeted case manager be responsible for monitoring services provided by personnel of other behavioral health service organizations? If this is the case, can KY DMS elaborate on the monitoring expectations?"

(d) Response: The targeted case manager is only required to monitor that the services (identified in the recipient's plan of care) were actually provided to the recipient. The targeted case manager is not required to monitor the actual delivery of such services.

(6) Subject: Exclusions and Limits

(a) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 11, line 2-6Section 8(1)(b) – The "if the" stem in (1) is not congruent with the wording of (b):Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the (b) constitute the direct delivery of underlying medical....." Request that (b) be worded appropriately."

(b) Response: The Legislative Research Commission - as authorized by KRS 13A.040(9) – with DMS's permission revised the language via a technical amendment. The revised language now reads:

"Section 8. Exclusions and Limits. (1) Targeted case management services shall not include services defined in 42 C.F.R. 440.169 if the activities:

(a) Are an integral and inseparable component of another covered Medicaid service; or
(b) Constitute the direct delivery of underlying medical, educational, social, or other services to which an eligible recipient has been referred, including:.”

(c) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Page 11, line 17-19 Section 8(2) – This subsection prohibits a recipient who is receiving case management service under a 1915(c) home and community based waiver program from being eligible to receive TCM. Request that this provision be amended to allow TCM for waiver children as long as there is no duplication of service or service provider and there is a clear distinction between the case management services being provided via the waiver (if waiver case management services are being provided) and the behavioral health TCM services.”

Steve Shannon, Executive Director of the Kentucky Association Regional Programs, stated the following:

“Section 8.(2)

(2) A recipient who is receiving case management services under a 1915(c) home and community based waiver program shall not be eligible to receive targeted case management services under this administrative regulation.

We have received contradictory information regarding this language. We have been told that as long as the case management services under a 1915(c) home and community based waiver program do not replicate the targeted case management services provided, the two case management services are permissible. Can you please clarify whether the language will remain in the regulation or be deleted?”

(d) Response: DMS is preserving the language in the administrative regulation because the corresponding state plan amendment approved by the Centers for Medicare and Medicaid Services (CMS) also contains the prohibition. DMS would be subject to recoupment of federal funds for targeted case management provided to any individual in violation of the provision as stated in the state plan amendment.

(e) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Page 11, line 20-22 Section 8(3) – Request that this provision be amended to just limit the TCM provider from providing other Medicaid covered services to the same recipient. As currently written, this provision does not allow providers to have split positions, which was allowed under Kentucky’s IMPACT Plus program. For example, a provider would have therapists who provided therapy to some clients and then also had a caseload for case management of different clients.

Request (3) be amended to read: An individual who provides targeted case

management to a recipient shall not provide any Medicaid covered service other than targeted case management to that any recipient.”

(f) Response: DMS and DBHDID staff who are knowledgeable about the IMPACT Plus program indicate that actually this was not allowed under IMPACT Plus. Targeted case management and clinical/direct care services require two (2) very different set of skills and knowledge. Staff believe that the provision is appropriate as is.

(g) Comment: Steve Shannon, Executive Director of Kentucky Association Regional Programs, stated the following:

“Section 8. (3)

(3) An individual who provides targeted case management to a recipient shall not provide any Medicaid covered service other than targeted case management.

We commend KY DMS for its thoughtful consideration of the provision of targeted case management services and fully support that concept that targeted case managers should not provide other services to individuals.

(h) Response: Thank you for the support.

(7) Subject: Records, Maintenance, Documentation, Protection and Security

(a) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

“Page 12, line 5-6Section 9(2)(b) – This provision requires the individual providing case management to sign the case record on “the date of service”, which is a very stringent and difficult standard to meet. Request that this provision be amended to allow 48 hours for the individual providing the service to sign the case record, which is consistent with regulatory requirements for signing therapy and Comprehensive Community Support Services (CCSS) notes. We do not recommend that the case management notes signature requirement be stricter than that for therapy and CCSS notes, especially since case management is billed on a monthly basis. Recommend that (b) be rewritten as:

(b) Response: Via an “amended after comments” administrative regulation DMS is revising the language to establish a forty-eight (48) hour timeframe as requested.

(c) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

“Page 13, line 3 Section 9(3)(b)2.b. – Request that this requirement be clarified to specify if the word “enrolled” is specific to recipients currently, formerly or both currently and formerly enrolled. At what point are providers responsible for furnishing a case record for a recipient that was once enrolled with a MCO but is not currently enrolled

with a MCO?

(d) Response: The requirement applies to former as well as current enrollees and DMS will clarify this in an "amended after comments" administrative regulation.

(e) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 13, line 13-14 and line 20-21 Section 9(4)(a)1. and (b) – (4)(a)1. Specifies that a discharge summary is required "upon termination of services" for each recipient who received at least three service visits. Request that (4)(a)1. be amended to allow a provider ten days from a recipient's termination to complete the discharge summary, which is consistent with paragraph (4)(b), which requires that a case record relating to a recipient who was terminated from receiving services be fully completed within ten days following termination. Request that a timeframe be added to (4)(a)1. as providing the discharge summary the date of termination is not always feasible. Recommend (4)(a)1. be amended to read:

(4)(a)1. "Be required, within 10 days of upon termination of services, for each recipient who"

(f) Response: A discharge summary is much briefer/less comprehensive than a case record. DMS and DBHDID staff believe the requirement is appropriate as is.

(g) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 14, line 4Section 9(6) requires the provider to transfer a recipient's records within ten business days of a client's transfer or referral. Recommend that this requirement be amended to clarify that the provider must meet this requirement within ten days of notification of the client's transfer. In many instances the provider may not become aware of a client's transfer until a request for records is received from another provider. Recommend that (6) be amended to read:

(6) ".....the transferring TCM services provider shall, within ten (10) business days of the transfer or referral or notice of transfer, transfer the recipient's records....."

(h) Response: Via an "amended after comments" administrative regulation DMS is revising the language as follows:

"(6) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring targeted case management services provider shall, within ten (10) business days of **awareness of** the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by."

(i) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 14, line 23 Section 9(8)(a) – Should the word "last" be added before the word "date" to specify that provider must keep a case record for at least six years from the "last" date of the service? If the word "last" was included (8)(a) would be amended to read:

(8)(a)".....shall maintain a case record regarding a recipient for at least six year from the last date of the service or....."

(j) Response: Via an "amended after comments" administrative regulation, DMS is inserting the word "last" as recommended.

(k) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 15, line 2-3 Section 9(8)(b) – This provision specifies the time period that a provider must maintain a recipient's record following the recipient's death or discharge. Should "termination of services" be included in this provision, which is referred to in subsections (4) and (5) of this Section? Clarification regarding requirements to maintain records upon termination of services is needed."

(l) Response: Via an "amended after comments" administrative regulation DMS is clarifying the discharge summary requirement in subsection (4)(a) of the same section to clarify that such a summary is required upon a decision being made that services are terminated. DMS believes that the amendment to Section 9(4)(a) will address the concern.

(m) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 15, line 11 Section 9(9)(a) – Specifies what a "TCM service" shall comply with 45 C.F.R. Chapter 164. Previously throughout the regulation the phrase "TCM service provider" is used. Recommend that all uses of "TCM service" and "TCM service provider" be reviewed and the most accurate phrase used where and when most appropriate. In this paragraph, it would seem that "TCM service provider" is the most accurate and appropriate phrase to use. Recommend that (9)(a) be re-written to read: (9)(a) A targeted case management service provider shall comply with 45 C.F.R. Chapter 164."

(n) Response: The Legislative Research Commission - as authorized by KRS 13A.040(9) – with the permission of DMS corrected the term to be "targeted case management services provider" in the administrative regulation via a "technical amendment."

(o) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 15, line 15-16 Section 9(9)(b)3.a. – This provision requires that all information in a case record be disclosed to an authorized representative of the department. Should managed care companies (MCOs) be added to the list in subparagraph 3 when the client is an enrollee of the managed care company, or are MCOs considered an authorized representative of the department?"

(p) Response: Indeed MCOs are authorized representatives of DMS; however, DMS is clarifying this in an "amended after comments" version of the administrative regulation.

(q) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 15, line 18 Section 9(9)(c)1. – Consistent with a previous comment, recommend that all uses of "TCM service" and "TCM service provider" be reviewed and the most accurate phrase used where and when most appropriate. In this paragraph, it would seem that "TCM service provider" is the most accurate and appropriate phrase to use. Recommend that (9)(c)1. be re-written to read:

(9)(c)1. Upon request, a targeted case management service provider shall provide to an authorized representative

(r) Response: The Legislative Research Commission - as authorized by KRS 13A.040(9) – with the permission of DMS corrected the term to be "targeted case management services provider" in the administrative regulation via a 'technical amendment."

(s) Comment: Steve Shannon, Executive Director of Kentucky Association Regional Programs (KARP), stated the following:

"Section 9.(3)(a)4.

4. The nature, content, and units of the targeted case management services provided;

Currently, based upon 907 KAR 15:055 reimbursement provisions for targeted case management for individuals with co-occurring mental health or substance use disorder and chronic or complex physical health issues is based upon five (5) contacts per month and only billed if there are five (5) contacts per month. Therefore, we respectfully ask clarification regarding the "units of targeted case management services provided." Will the unit be four contacts per month or the distinct contacts planned for each month?"

(t) Response: DMS is clarifying, via an "amended after comments" administrative regulation, the requirement as follows:

"4. The nature, content, and contacts that occurred regarding~~[units of]~~ the targeted case management services provided."

(u) Comment: Steve Shannon, Executive Director of Kentucky Association Regional Programs, stated the following:

"Section 9.(4)1.

(4)(a) A discharge summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

We respectfully ask for clarification of when a discharge summary is required, the language indicates "upon termination of services." Will a discharge summary be required when targeted case management services are terminated or when the individual is no longer accessing any services. For example, if an individual continues to participate in outpatient therapy services and medication management but no longer needs targeted case management will a discharge summary be required? In this scenario the individual has not terminated from services.

(v) Response: DMS is clarifying in an "amended after comments" administrative regulation that the discharge summary is required upon the decision being made that services are terminated. Following is the revised language:

"(4)(a) A discharge summary shall:

1. Be required, at the time a decision is made that services are terminated~~[upon termination of services]~~, for each recipient who received at least three (3) service visits; and."

(8) Subject: Medicaid Program Participation Requirement

(a) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"Page 17, line 19 Section 10(3)(b)1. - This provision requires that any claim and substantiating record associate with a service be subject to audit by the department or its designee. Should managed care companies (MCOs) be added to the list in paragraph (b) when the client is an enrollee of the managed care company, or are MCOs considered a designee of the department?"

(b) Response: The MCOs are indeed designees of DMS; however, DMS is clarifying – via an "amended after comments" administrative regulation – that MCOs have such authority.

(9) Subject: Auditing Authority

(a) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated

the following:

“Page 19, line 13 Section 13 – This provision specifies what the department has the authority to audit. Should this provision also provide managed care companies (MCOs) with audit authority when the client is an enrollee of the managed care company? “

(b) Response: Via an “amended after comments” version of the administrative regulation DMS is revising the language to clarify that MCOs (designees of the department) have auditing authority.

(10) Subject: Regulatory Impact Analysis

(a) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Request that the number of individuals, businesses, organizations or state and local governments affected by this administrative regulation be specified.”

(b) Response: The exact number of the individuals or entities is indeterminable as DMS is experiencing a continued enrollment of new providers of various behavioral health services and cannot predict how many will continue to enroll as behavioral health providers and, of that number, how many will elect to provide targeted case management services. DMS anticipates a continued growing enrollment over the next year but is unable to forecast a precise number. DMS will address this in the “amended after comments” version of the administrative regulation DMS is filing.

(c) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“(4)(b) The Children’s Alliance would like this paragraph amended to indicate that providers of TCM services will experience additional personnel costs to meet the supervision and training requirements included in this regulation.”

(d) Response: DMS will address this as recommended in the “amended after comments” version of the administrative regulation that DMS is filing.

(e) Comment: Kathy Adams, Director of Public Policy for the Children’s Alliance stated the following:

“Regulatory Impact Analysis(4)(c) Request that this paragraph be amended to specify that the Medicaid recipients in need of TCM services are limited to Medicaid recipients with a co-occurring mental health or substance use disorder and chronic or complex physical health issue.”

(f) Response: DMS will clarify the affected population in the “amended after comments” version of the administrative regulation that DMS is filing.

(11) Subject: Fiscal Note on State or Local Government

(a) Comment: Kathy Adams, Director of Public Policy for the Children's Alliance stated the following:

"The Children's Alliance believes that 3.(a) should indicate that this administrative regulation should generate an "undetermined" amount of additional revenue for state and local governments in areas where new providers of TCM services are located or in areas where TCM services are expanded. New providers of TCM services will generate new revenue for state and local governments due to employee taxes."

(b) Response: DMS will include such or similar language in the "amended after comments" version of the administrative regulation that DMS is filing.

**SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY**

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 15:050 and is amending the administrative regulation as follows:

Page 1

Title

Line 6

After "with", insert "a".
Delete "co-occurring".

After "use", insert "disorder".
Delete "disorders".

Page 2

Section 2(1)(a)

Line 7

After "(a)", insert "1.".

After "a", insert a colon, a return, and "a.".

Page 2

Section 2(1)(a) and (b)

Lines 7 and 8

After "diagnosis;", insert "or", a return, and "b.".
Delete "(b) Have a".

Page 2

Section 2(1)(b), (c), and (d)

Lines 8, 9, and 10

After "illness", insert a semi-colon, a return, and "2.".

Delete the following:

:

(c) Be a child with a severe emotional disability as defined in KRS 200.503(2);

(d)

Page 2

Section 2(1)(e)

Line 11

Renumber this paragraph by inserting "3." and by deleting "(e)".

Page 2

Section 2(1)(e)1. and 2.

Lines 12 and 14

Renumber these two (2) subparagraphs by inserting "a." and "b.", respectively, and by deleting "1." and "2.", respectively.

Page 2

Section 2(1)(f)1.

Line 15

Renumber this paragraph by inserting "4.a." and by deleting "(f)1.".

Page 2

Section 2(1)(f)1.a. and b.

Lines 16 and 17

Renumber these two (2) clauses by inserting "(i)" and "(ii)", respectively, and by deleting "a." and "b.", respectively.

Page 2

Section 2(1)(f)2. and 3.

Lines 18 and 20

Renumber these two (2) subparagraphs by inserting "b." and "c.", respectively, and by deleting "2." and "3.", respectively.

Page 2

Section 2(1)(f)3.a., b., and c.

Lines 21, 22, and 23

Renumber these three (3) clauses by inserting "(i)", "(ii)", and "(iii)", respectively, and by deleting "a.", "b.", and "c.", respectively.

Page 2

Section 2(1)(f)3.c.

Line 23

After "treatment", insert the following:

: or

(b)1. Be a child with a severe emotional disability as defined in KRS 200.503(3);

2. Have a chronic or complex physical health issue; and

3.a. Need assistance with access to:

(i) Housing; or

(ii) Vocational, medical, social, educational, or other community services or supports;

b. Have been involved with at least one (1) child welfare agency or criminal justice agency; or

c. Be:

(i) In the custody of the Department for Community Based Services;

(ii) At risk of an out-of-home placement; or

(iii) At risk of inpatient mental health treatment

Page 3

Section 2(2)(a)3.

Line 6

After "disorders;", insert "or".

Page 3

Section 2(2)(a)4. and 5.

Lines 7 and 8

After "disorders)", delete the following:

“; and

5. Personality disorders”.

Page 3

Section 3

Line 19

Before "Section 3.", insert the following and then insert a return:

(3) A moderate or severe substance use disorder shall be a moderate or severe substance use disorder as defined in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™.

(4)(a) A chronic or complex physical health issue shall include:

1. A cardiovascular disorder;

2. A respiratory disorder;

3. A genito urinary disorder;

4. An endocrine disorder;

5. A musculoskeletal disorder;

6. A neurological disorder;

7. An immune system disorder;

8. Obesity;

9. Cancer;

10. Deafness; or

11. Blindness.

(b) In addition to meeting the requirement established in paragraph (a) of this subsection, to qualify as having a chronic or complex physical health issue, a recipient shall:

1. Have clinically significant symptoms which have persisted for a continuous period of at least two (2) years; or

2.a. Have been hospitalized as a result of the individual's physical health issue more than once within the past two (2) years; and

b. Be currently impaired in the ability to function socially or occupationally or both.

(c) Documentation of a recipient's chronic or complex physical health diagnosis that is signed and dated by a qualified medical professional shall be present in the recipient's medical record.

Page 3

Section 3(1)

Line 19

After "(1)", insert "(a)".

Page 3

Section 3(1)(a) and (b)

Lines 21 and 23

Renumber these two (2) paragraphs by inserting "1.", and "2.", respectively, and by deleting "(a)" and "(b)", respectively.

Page 4

Section 3(1)(c)

Line 2

Renumber this paragraph by inserting "3." and by deleting "(c)".

Page 4

Section 3(1)(c)1., 2., and 3.

Lines 3, 5, and 7

Renumber these three (3) subparagraphs by inserting "a.", "b.", and "c.", respectively, and by deleting "1.", "2.", and "3.", respectively.

Page 4

Section 3(1)(d)

Line 9

Renumber this paragraph by inserting "4." and by deleting "(d)".

Page 4

Section 3(1)(d)1.

Line 10

Renumber this subparagraph by inserting "a." and by deleting "1."

Page 4

Section 3(1)(d)2.

Line 12

Before "2.", insert "b. Documented".
Delete "2. Demonstrated".

Page 4

Section 3(1)(d)3., 4., and 5.

Lines 14, 15, and 17

Renumber these three (3) subparagraphs by inserting "c.", "d.", and "e.", respectively, and by deleting "3.", "4.", and "5.", respectively.

Page 4

Section 3(1)(d)6.

Line 18

Before "6.", insert "f. Documented".
Delete "6. Demonstrated".

Page 4

Section 3(1)(d)7.

Line 20

Before "7.", insert "g. Documented".
Delete "7. Demonstrated".

Page 4

Section 3(2)

Line 22

Before "(2)", insert the following and then insert a return:

(b) The documentation referenced in paragraph (a)4.b., f., and g. of this subsection shall be subject to audit by:

1. The department;

2. The Department for Behavioral Health, Developmental and Intellectual Disabilities;

3. The Cabinet for Health and Family Services, Office of Inspector General;

4. A managed care organization, if a targeted case manager provider is enrolled in its network;

5. The Centers for Medicare and Medicaid Services;

6. The Kentucky Office of the Auditor of Public Accounts; or

7. The United States Department of Health and Human Services, Office of the Inspector General.

Page 5

Section 4(1)(a)

Line 8

After "(a)", insert "1.".

Note to Regulations Compiler: Section 4 of the "as filed" version of 907 KAR 15:060

contained many numbering mistakes and pursuant to KRS 13A.040(9), you (the Regulations Compiler) corrected the mistakes and published the corrected version. DMS has noted such corrections in this statement of consideration for the public. Therefore, to reduce the possibility of confusion regarding new formatting changes to Section 4 I used the LRC-corrected version as the basis for referring to numbering/formatting citations rather than the erroneous "as filed" version.

Line 8

After "or", insert "science".
Delete "sciences".

Page 5

Section 4(1)(a)1., 2., 3., 4., 5., 6., and 7.

Lines 10, 11, 12, 13, 14, 15, and 16

Renumber these seven (7) subparagraphs by inserting "a.", "b.", "c.", "d.", "e.", "f.", and "g.", respectively and by deleting "1.", "2.", "3.", "4.", "5.", "6.", and "7.", respectively.

Page 5

Section 4(1)(a)7.

Line 16

After "Nursing;", insert a return and the following:

- h. Behavioral analysis;
- i. Public health;
- j. Special education;
- k. Gerontology;
- l. Recreational therapy;
- m. Education;
- n. Occupational therapy;
- o. Physical therapy;
- p. Speech-language pathology;
- q. Rehabilitation counseling; or
- r. Faith-based education;

Page 5

Section 4(1)(a)8.

Line 17

Before "8.", insert the following:

2. Be a certified alcohol and drug counselor who has a bachelor of arts or science degree

Delete the following:

8. Another human service degree program approved by the department

Page 5

Section 4(1)(b)

Line 18 and Lines 18 to 20

After "training", insert "pursuant to 908 KAR 2:260".

Delete the following:

approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) within six (6) months of employment

Page 5

Section 4(1)(c)

Line 21 and Lines 21 to 22

After "Successfully", insert the following:

Complete continuing education requirements pursuant to 908 KAR 2:260

Delete the following:

completed recertification requirements approved by DBHDID every three (3) years

Page 6

Section 4(3)(a)

Line 7

After "requirements", insert the following:

established in subsection (1)(a) of this section

Page 6

Section 4(3)(b)7.

Line 16

After "Nursing;", delete "or".

Page 6

Section 4(3)(b)8.

Line 17

After "8.", insert the following:

Behavioral analysis;

9. Public health;

10. Special education;

11. Gerontology;

12. Recreational therapy;

13. Education;

14. Occupational therapy;

15. Physical therapy;

16. Speech-language pathology;

17. Rehabilitation counseling; or

18. Faith-based education

Delete the following:

~~Another human service degree program approved by the department~~

Page 7

Section 4(4)(j)

Lines 8 and 9

After "individual", insert the following:

unless the individual has a substance use disorder

Delete the following:

with a complex or chronic physical health issue

Page 7

Section 4(4)(l)

Line 12 and Lines 12 to 13

After "bachelor's degree", insert the following:

stated in subsection (1)(a)1. of this section

Delete the following:

in a behavioral science program or other human service degree program approved by the department

Page 9

Section 6(3)(b)

Line 13

After "goals;", insert "and".

Delete "or".

Page 10

Section 7(2)(a)

Line 18

After "which the", insert "same".

Page 11

Section 9, Title

Line 23

Before "Section 9.", insert the following and then insert a return:

(4) The maximum number of recipients to whom a targeted case manager shall provide targeted case management services at any given time shall be as established in 908 KAR 2:260.

Page 12

Section 9(2)(b)

Line 5

After "record", insert the following:

within forty-eight (48) hours from

Delete "on".

Page 12

Section 9(3)(a)4.

Line 15

After "and", insert "contacts that occurred regarding".
Delete "units of".

Page 13

Section 9(3)(b)3.b.

Line 7

After "enrolled", insert the following:
or has been enrolled in the past if applicable

Page 13

Section 9(4)(a)1.

Line 13

After "required,", insert the following:
at the time a decision is made that services are terminated
Delete "upon termination of services".

Page 14

Section 9(6)

Line 4

After "of", insert "awareness of".

Page 14

Section 9(8)(a)

Line 23

After "from the", insert "last".

Page 15

Section 9(9)(b)3.a.

Line 16

After "Department;", delete "or".

Page 15

Section 9(9)(b)3.b.

Line 17

After "government", insert the following:
: or
c. For an enrollee, managed care organization in which the enrollee is enrolled

Page 15

Section 9(9)(c)1.

Line 19

After "department", insert a comma.
Delete "or".

After "government", insert the following:
, or managed care organization if applicable.

Page 17
Section 10(4)(b)4.
Line 23

After "designee;", delete "or".

Page 18
Section 10(4)(b)5.
Line 1

After "designee;", insert the following:

: or
6. For an enrollee, managed care organization in which the enrollee is enrolled

Page 18
Section 10(4)(c)
Line 2

After "the", insert a colon, a return, and "1.".

Lines 5 and 6

After "by the department", insert the following:

: or
2. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the targeted case management services provider shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization

Page 19
Section 13
Line 13

After "department", insert the following:
or the managed care organization in which an enrollee is enrolled