

STATEMENT OF EMERGENCY

907 KAR 3:210E

(1) This emergency administrative regulation is promulgated to establish acquired brain injury long term care waiver services and reimbursement.

(2) This action must be done on an emergency basis because failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the health, safety and welfare of Medicaid recipients whose receipt of services may be otherwise jeopardized.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

Steven L. Beshear
Governor

Janie Miller, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (New Emergency Administrative Regulation)

5 907 KAR 3:210E. Acquired brain injury services long term care waiver and
6 reimbursement.

7 RELATES TO: KRS 202A.011, Chapter 209, 17.165, 202A.011, 205.5605,
8 205.5607, 205.8451, 205.8477, 314.011, 319.010(8), 319A.010, 319.056, 327.010,
9 334A.020, 335.300(2), 335.500(3), 620.030, 42 C.F.R. 441 Subpart G, 455 Subpart B,
10 42 U.S.C. 1396a, b, d, n

11 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3),
12 205.5606(1).

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

1 services provided to an individual with an acquired brain injury as an alternative to
2 nursing facility services and including a consumer-directed services program pursuant
3 to KRS 205.5606. The purpose of acquired brain injury long term care waiver services
4 is to provide an alternative to institutional care to individuals with acquired brain injury
5 who require maintenance services.

6 Section 1. Definitions.

7 (1) "ABI" means an acquired brain injury.

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

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

12 (4) "ABI recipient" means an individual who meets the criteria established in
13 Section 3 of this administrative regulation.

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

17 (a) An injury from a physical trauma;

18 (b) Anoxia or a hypoxic episode; or

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

20 (6) "ADHC services" means adult day health care services provided on a
21 regularly scheduled basis that ensure optimal functioning of an ABI recipient who does
22 not require twenty-four (24) hour care in an institutional setting.

23 (7) "Assessment" or "reassessment" means a comprehensive evaluation of

1 abilities, needs, and services that is:

2 (a) Completed on a MAP-351; and

3 (b) Submitted to the department:

4 1. For a level of care determination; and

5 2. No less than every twelve (12) months.

6 (8) "Behavior intervention committee" or "BIC" means a group of individuals
7 established to evaluate the technical adequacy of a proposed behavior intervention for
8 an ABI recipient.

9 (9) "Blended services" means a non-duplicate combination of ABI waiver
10 services identified in Section 4 of this administrative regulation and consumer directed
11 option services identified in Section 8 of this administrative regulation provided in
12 accordance with the recipient's approved plan of care.

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

15 (11) "Case manager" means an individual who manages the overall development
16 and monitoring of a recipient's plan of care.

17 (12) "Consumer" is defined by KRS 205.5605(2).

18 (13) "Consumer directed option" or "CDO" means an option established by KRS
19 205.5606 within the home and community based services waiver that allows a recipient
20 to:

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

22 (b) Choose a provider of services; and

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

1 (14) "Covered services and supports" is defined by KRS 205.5605(3).

2 (15) "Crisis prevention and response plan" means a plan developed to identify
3 any potential risk to a recipient and to detail a strategy to minimize the risk.

4 (16) "DCBS" means the Department for Community Based Services.

5 (17) "Department" means the Department for Medicaid Services or its designee.

6 (18) "Family training" means providing to the family or other responsible person:

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

8 (b) Treatment regimens;

9 (c) Use of equipment specified in the plan of care; or

10 (d) Advising them how to assist the participant.

11 (19) "Good cause" means a circumstance beyond the control of an individual
12 which affects the individual's ability to access funding or services, including:

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

15 (b) Death or incapacitation of the primary caregiver;

16 (c) Required paperwork and documentation for processing in accordance with
17 Section 3 of this administrative regulation that has not been completed but is expected
18 to be completed in two (2) weeks or less; or

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

23 (20) "Human rights committee" means a group of individuals established to

1 protect the rights and welfare of an ABI recipient.

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

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

5 (b) A chosen ABI service provider;

6 (c) A case manager; or

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

8 (22) "Licensed marriage and family therapist" or "LMFT" is defined by KRS
9 335.300(2).

10 (23) "Licensed practical nurse" or "LPN" means a person who:

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

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

13 (24) "Licensed professional clinical counselor" or "LPCC" is defined by KRS
14 335.500(3).

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

17 (26) "Nursing supports" means training and monitoring of services by a
18 registered nurse or a licensed practical nurse.

19 (27) "Occupational therapist" is defined by KRS 319A.010(3).

20 (28) "Occupational therapy assistant" is defined by KRS 319A.010(4).

21 (29) "Physical therapist" is defined by KRS 327.010(2).

22 (30) "Physical therapist assistant" means a skilled health care worker who:

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

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

3 (31) "Pro re nata" or "PRN" means as needed.

4 (32) "Psychologist" is defined by KRS 319.010(8).

5 (33) "Psychologist with autonomous functioning" means an individual who is
6 licensed in accordance with KRS 319.056.

7 (34) "Qualified mental health professional" is defined by KRS 202A.011(12).

8 (35) "Registered nurse" or "RN" means a person who:

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

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

11 (36) "Representative" is defined by KRS 205.5605(6).

12 (37) "Speech-language pathologist" is defined by KRS 334A.020(3).

13 (38) "Support broker" means an individual designated by the department to:

14 (a) Provide training, technical assistance, and support to a consumer; and

15 (b) Assist a consumer in any other aspects of CDO.

16 (39) "Transition plan" means a plan that is developed to aid an ABI recipient in
17 exiting from the ABI program into the community.

18 Section 2. Non-CDO Provider Participation.

19 (1) In order to provide an ABI waiver service in accordance with Section 4 of this
20 administrative regulation, excluding a consumer-directed option service, an ABI provider
21 shall be:

22 (a) Enrolled as a Medicaid provider in accordance with 907 KAR 1:671;

23 (b) Located within an office in the Commonwealth of Kentucky; and

1 (c) A licensed provider in accordance with:
2 1. 902 KAR 20:066, if an adult day health care provider;
3 2. 902 KAR 20:081, if a home health service provider; or
4 3. 902 KAR 20:091, if a community mental health center; or
5 (d) Certified by the department in accordance with 907 KAR 1:145, Section 3, or
6 907 KAR 3:090, Section 2, if a provider type is not listed in paragraph (a) of this
7 subsection.

8 (2) An ABI provider shall comply with:

9 (a) 907 KAR 1:672; and

10 (b) 907 KAR 1:673; and

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

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

13 (b) Responsible for the overall operation of the organization including
14 establishing policy that complies with this administrative regulation concerning the
15 operation of the agency and the health, safety, and welfare of an ABI recipient served
16 by the agency.

17 (4) An ABI provider shall:

18 (a) Unless participating in the CDO program, ensure that an ABI waiver service is
19 not provided to an ABI recipient by a staff member of the ABI provider who has one (1)
20 of the following blood relationships to the ABI recipient:

21 1. Child;

22 2. Parent;

23 3. Sibling; or

1 4. Spouse;

2 (b) Not enroll an ABI recipient for whom the ABI provider cannot meet the service
3 needs; and

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

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

9 (6) An ABI provider shall meet the following requirements if responsible for the
10 management of an ABI recipient's funds:

11 (a) Separate accounting shall be maintained for each ABI recipient or for the
12 recipient's interest in a common trust or special account;

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

15 (c) The ABI recipient or legal representative shall be notified when a large
16 balance is accrued that may affect Medicaid eligibility.

17 (7) An ABI provider shall have a written statement of its mission and values.

18 (8) An ABI provider shall have written policies and procedures for communication
19 and interaction with a family and legal representative of an ABI recipient which shall:

20 (a) Require a timely response to an inquiry;

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

22 (c) Require prompt notification of any unusual incident;

23 (d) Permit visitation with the ABI recipient at a reasonable time and with due

1 regard for the ABI recipient's right of privacy;

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

4 (f) Consider the cultural, educational, language, and socioeconomic
5 characteristics of the ABI recipient.

6 (9) An ABI provider shall ensure the rights of an ABI recipient by:

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

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

10 2. To retain and use personal possessions; and

11 3. For a residential, personal care, companion, or respite provider to
12 communicate, associate and meet privately with a person of the ABI recipient's choice,
13 including:

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

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

16 (b) Maintaining a grievance and appeals system; and

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

18 35.

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

22 (a) Department;

23 (b) ABI recipient's selected case manager;

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

3 (d) General Accounting Office or its designee;

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

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

6 (g) Centers for Medicare and Medicaid Services.

7 (11) An ABI provider shall cooperate with monitoring visits from monitoring
8 agents.

9 (12) An ABI provider shall maintain a record for each ABI recipient served that
10 shall:

11 (a) Be recorded in permanent ink;

12 (b) Be free from correction fluid;

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

14 (d) Contain no blank lines between each entry.

15 (13) A record of each ABI recipient who is served shall:

16 (a) Be cumulative;

17 (b) Be readily available;

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

20 (d) Contain the following specific information:

21 1. The ABI recipient's name, Social Security number, and Medical Assistance
22 Identification Number (MAID);

23 2. An assessment summary relevant to the service area;

- 1 3. The plan of care, MAP-109;
- 2 4. The crisis prevention and response plan that shall include:
 - 3 a. A list containing emergency contact telephone numbers; and
 - 4 b. The ABI recipient's history of any allergies with appropriate allergy alerts for
 - 5 severe allergies;
- 6 5. The transition plan that shall include:
 - 7 a. Skills to be developed or maintained from the ABI long term care waiver
 - 8 program;
 - 9 b. A listing of the on-going formal and informal community services available to
 - 10 be accessed; and
 - 11 c. A listing of additional resources needed;
- 12 6. The training objective for any service which provides skills training to the ABI
- 13 recipient;
- 14 7. The ABI recipient's medication record, including a copy of the prescription or
- 15 the signed physician's order and the medication log if medication is administered at the
- 16 service site;
- 17 8. Legally-adequate consent for the provision of services or other treatment
- 18 including consent for emergency attention which shall be located at each service site;
- 19 9. The Long Term Care Facilities and Home and Community Based Program
- 20 Certification form - MAP-350 updated at recertification; and
- 21 10. Current level of care certification;
- 22 (e) Be maintained by the provider in a manner to ensure the confidentiality of the
- 23 ABI recipient's record and other personal information and to allow the ABI recipient or

1 legal representative to determine when to share the information;

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

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

6 (14) An ABI provider shall:

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

12 (b) Maintain documentation of annual TB risk assessment or negative TB test
13 result described in paragraph (a) of this subsection for:

14 1. Existing staff; or

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

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

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

23 (e) Not permit an individual to work for or volunteer for the provider if the

1 individual has TB or symptoms of active TB;

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

4 (g) Prior to the employee's date of hire or the volunteer's date of service, obtain
5 results of:

6 1. A criminal record check from the Administrative Office of the Courts; or

7 2. The equivalent out-of-state agency if the individual resided, worked, or

8 volunteered outside Kentucky during the year prior to employment or volunteer service;

9 (h) Obtain the result of a nurse aide abuse registry check as described in 906

10 KAR 1:100;

11 (i) Annually, for twenty-five (25) percent of employees randomly selected, obtain:

12 1. The results of a criminal record check from the Kentucky Administrative Office
13 of the Courts; or

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

16 (j) Within thirty (30) days of the date of hire or service as a volunteer, obtain the
17 results of a central registry check as described in 922 KAR 1:470;

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

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

23 (m) Not employ or permit an individual to serve as a volunteer performing direct

1 care or a supervisory function, if the individual has a prior conviction of an offense
2 delineated in KRS 17.165(1) through (3) or prior felony conviction;

3 (n) Not permit an employee or volunteer to transport an ABI recipient, if the
4 employee or volunteer has a conviction of Driving under the Influence (DUI) during the
5 past year;

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

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

12 (q) Not employ or permit an individual to serve as a volunteer performing direct
13 care or a supervisory function, if the individual has a Cabinet for Health and Family
14 Services finding of child abuse or neglect pursuant to the central registry; and

15 (r) Not employ or permit an individual to serve as a volunteer performing direct
16 care or a supervisory function, if the individual is listed on the nurse aide abuse registry.

17 (15) An ABI provider shall:

18 (a) Have an executive director who:

19 1. Is qualified with a bachelor's degree from an accredited institution in
20 administration or a human services field; and

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

23 (b) Have adequate direct contact staff who:

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

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

6 (16) An ABI provider shall establish written guidelines which:

7 (a) Ensure the health, safety, and welfare of the ABI recipient;

8 (b) Prohibit firearms and ammunition at a provider service site;

9 (c) Address maintenance of sanitary conditions;

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

11 1. Operational smoke detectors placed in strategic locations; and

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

15 (e) Ensure the availability of a supply of hot and cold running water with the
16 water temperature at a tap, for water used by the ABI recipient, not exceeding 120
17 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult
18 Day Health provider;

19 (f) Ensure that the nutritional needs of the ABI recipient are met in accordance
20 with the current recommended dietary allowance of the Food and Nutrition Board of the
21 National Research Council or as specified by a physician;

22 (g) Ensure that staff who supervise waiver participants in medication
23 administration;

- 1 1. Unless the employee is a licensed or registered nurse, have been provided
2 specific training by a licensed medical professional and competency has been
3 documented on cause and effect and proper administration and storage of medication.
4 The training shall be provided by a nurse, pharmacist, or medical doctor; and
- 5 2. Document on a medication log all medication administered, including:
6 a. Self-administered and over-the-counter drugs; and
7 b. The date, time, and initials of the person who administered the medication;
8 (h) Ensure that the medication shall be:
9 1. Kept in a locked container;
10 2. Kept under double lock, if it is a controlled substance;
11 3. Carried in a proper container labeled with medication, dosage, and time of
12 administration, if administered to the ABI recipient or self-administered at a program
13 site other than the recipient's residence;
14 4. Documented on a medication administration form; and
15 5. Properly disposed of if it is discontinued; and
16 (i) Establish policy and procedures for on-going monitoring of medication
17 administration as approved by the department.
- 18 (17) An ABI provider shall establish and follow written guidelines for handling an
19 emergency or a disaster which shall:
20 (a) Be readily accessible on site;
21 (b) Include an evacuation drill:
22 1. To be conducted and documented at least quarterly; and
23 2. For a residential setting, scheduled to include a time when an ABI recipient is

1 asleep; and

2 (c) Mandate that the result of an evacuation drill be evaluated and modified as
3 needed.

4 (18) An ABI provider shall:

5 (a) Provide orientation for each new employee which shall include the:

6 1. Mission;

7 2. Goals;

8 3. Organization of the agency; and

9 4. Policies and procedures of the agency;

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

11 1. Type of training;

12 2. Name and title of the trainer;

13 3. Length of the training;

14 4. Date of completion; and

15 5. Signature of the trainee verifying completion;

16 (c) Ensure that each employee completes ABI training consistent with the
17 curriculum that has been approved by the department, prior to working independently

18 with an ABI recipient, which shall include:

19 1. Required orientation in brain injury;

20 2. Identifying and reporting:

21 a. Abuse;

22 b. Neglect; and

23 c. Exploitation;

1 3. Unless the employee is a licensed or registered nurse, first aid provided by:

2 a. An individual certified as a trainer by the American Red Cross; or

3 b. Other nationally accredited organization; and

4 4. Coronary pulmonary resuscitation provided by:

5 a. An individual certified as a trainer by the American Red Cross; or

6 b. Other nationally accredited organization;

7 (d) Ensure that each employee completes six (6) hours of continuing education

8 in brain injury annually, following the first year of service;

9 (e) Not be required to receive the training specified in paragraph (c)1 of this

10 subsection if the provider is a professional who has, within the prior five (5) years,

11 attained 2000 hours of experience providing services to a person with a primary

12 diagnosis of a brain injury including:

13 1. An occupational therapist or occupational therapy assistant providing

14 occupational therapy;

15 2. A psychologist or psychologist with autonomous functioning providing

16 psychological services;

17 3. A speech-language pathologist providing speech therapy;

18 4. A board certified behavior analyst; or

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

20 and

21 (f) Ensure that prior to the date of service as a volunteer, an individual receives

22 training which shall include:

23 1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4

1 of this subsection;

2 2. Orientation to the agency;

3 3. A confidentiality statement; and

4 4. Individualized instruction on the needs of the ABI recipient to whom the
5 volunteer shall provide services.

6 (19) An ABI provider shall provide information to a case manager necessary for
7 completion of a Mayo-Portland Adaptability Inventory-4 for each ABI recipient served by
8 the provider.

9 (20) A case management provider shall:

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

11 1. Include an individual:

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

13 b. Not affiliated with the ABI provider; and

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

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

17 3. Review and approve, in conjunction with the ABI recipient's team, behavior
18 intervention plans that include highly restrictive procedures or contain human rights
19 restrictions;

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

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

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

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

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

- 6 1. Within thirty (30) days of the recipient's admission into the ABI program;
- 7 2. Annually thereafter; and
- 8 3. Upon discharge from the ABI Waiver program.

9 Section 3. ABI Recipient Eligibility, Enrollment and Termination.

10 (1) To be eligible to receive a service in the ABI long term care waiver program
11 and individual shall:

12 (a) Be at least eighteen (18) years of age;

13 (b) Have an ABI which necessitates:

- 14 1. Supervision;
- 15 2. Rehabilitative services; and
- 16 3. Long term supports;

17 (c) Have an ABI that involves:

- 18 1. Cognition;
- 19 2. Behavior; or
- 20 3. Physical function;

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

23 (a) Is currently being served in the ABI waiver as defined in 907 KAR 3:090 and

1 has reached maximum rehabilitation potential; or

2 (b) Has previously received ABI waiver services as defined in 907 KAR 3:090
3 and is currently in a nursing facility or ICF/MR and meets the eligibility criteria
4 established in Section 4 of this administrative regulation.

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

10 (4) After all individuals have been enrolled pursuant to subsections (2)(a), (2)(b),
11 and (3) of this section, the department shall utilize a first come, first serve priority basis
12 to enroll an individual who meets the eligibility criteria established in Section 3 of this
13 administrative regulation.

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

16 (6) A certification packet shall be submitted to the department by a case
17 manager or support broker on behalf of the applicant that contains:

18 (a) A copy of the allocation letter;

19 (b) An Assessment form - MAP-351;

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

23 (d) A Long Term Care Facilities and Home and Community Based Program

1 Certification form - MAP-350;

2 (e) A Plan of Care form - MAP-109; and

3 (f) The ABI Recipient's Admission Discharge DCBS Notification Form – MAP-
4 24C.

5 (7) An individual shall receive notification of potential funding allocated for the
6 ABI long term care waiver services for the individual in accordance with Section 7 of
7 this administrative regulation.

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

10 (9) An individual shall:

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

13 (b) Be medically stable;

14 (c) Meet Medicaid eligibility requirements established in 907 KAR 1:605;

15 (d) Exhibit:

16 1. Cognitive;

17 2. Behavioral;

18 3. Motor; or

19 4. Sensory damage;

20 (e) Have a rating of at least four (4) on the Rancho Los Amigos Level of
21 Cognitive Function Scale; and

22 (f) Receive notification of approval from the department.

23 (10) The basis of an eligibility determination for participation in the ABI long term

1 care waiver program shall be the:

2 (a) Presenting problem;

3 (b) Plan of care goal;

4 (c) Expected benefit of the admission;

5 (d) Expected outcome;

6 (e) Service required; and

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

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

11 (a) An inpatient of a hospital, nursing facility, or an intermediate care facility for
12 individuals with mental retardation or a developmental disability; or

13 (b) Receiving a service in another home and community based waiver program.

14 (12) The department shall make:

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

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

19 (13) To maintain eligibility as an ABI recipient:

20 (a) An individual shall maintain Medicaid eligibility requirements established in
21 907 KAR 1:605; and

22 (b) A reevaluation shall be conducted at least once every twelve (12) months to
23 determine if the individual continues to meet the patient status criteria for nursing facility

1 services established in 907 KAR 1:022.

2 (14) An ABI case manager or support broker provider shall notify the local DCBS
3 office and the department of an ABI Recipient's Admission Discharge DCBS

4 Notification form – MAP-24C, if the ABI recipient is:

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

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

7 (c) Temporarily discharged from the ABI long term care waiver Program;

8 (d) Admitted to a nursing facility;

9 (e) Changing the primary provider; or

10 (f) Changing case management agency.

11 (15) The department may exclude an individual from receiving an ABI long term
12 care waiver service for which the aggregate cost of ABI waiver service is reasonably
13 expected to exceed the cost of a nursing facility service.

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

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

20 1. A statement signed by the recipient or legal representative;

21 2. Copies of letters to providers; and

22 3. Copies of letters from providers;

23 (b) An ABI recipient or legal representative fails to access the required service as

1 outlined in the plan of care for a period greater than sixty (60) consecutive days without
2 good cause shown.

3 1. The recipient or legal representative shall have the burden of providing
4 documentation of good cause including:

5 a. A statement signed by the recipient or legal representative;

6 b. Copies of letters to providers; and

7 c. Copies of letters from providers;

8 2. Upon receipt of documentation of good cause, the department shall grant one
9 (1) extension in writing which shall be:

10 a. Sixty (60) days for an individual who does not reside in a facility; or

11 b. For an individual who resides in a facility, the length of the transition plan shall
12 not exceed ninety (90) days;

13 (c) For an ABI recipient who changes residence outside the Commonwealth of
14 Kentucky;

15 (d) For an ABI recipient who does not meet the patient status criteria for nursing
16 facility services established in 907 KAR 1:022;

17 (e) For an ABI recipient who is no longer able to be safely served in the
18 community; or

19 (f) For an ABI recipient who is no longer actively participating in services within
20 the approved plan of care as determined by the Interdisciplinary Team.

21 (17) Involuntary termination of a service to an ABI recipient by an ABI provider
22 shall require:

23 (a) Simultaneous notice, at least thirty (30) days prior to the effective date of the

1 action, to the:

2 1. Department;

3 2. ABI recipient or legal representative; and

4 3. Case manager which shall include:

5 a. A statement of the intended action;

6 b. The basis for the intended action;

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

8 d. The ABI recipient's right to appeal the intended action through the provider's
9 appeal or grievance process;

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

11 1. Provide the ABI recipient with the name, address, and telephone number of
12 each current ABI provider in the state;

13 2. Provide assistance to the ABI recipient in making contact with another ABI
14 provider;

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

16 4. Provide a copy of pertinent information to the ABI recipient or legal
17 representative;

18 5. Ensure the health, safety, and welfare of the ABI recipient until an appropriate
19 placement is secured; and

20 6. Provide assistance to ensure a safe and effective service transition.

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

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

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

5 Section 4. Covered Services.

6 (1) An ABI waiver service shall be:

7 (a) Prior-authorized by the department; and

8 (b) Provided pursuant to the plan of care.

9 (2) An ABI waiver provider shall provide the following services to an ABI
10 recipient:

11 (a) Case management services which shall:

12 1. Include initiation, coordination, implementation, monitoring of the assessment
13 and reassessment, and intake and eligibility process;

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

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

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

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

23 b. Be updated within the first thirty (30) days of service and as changes or

1 recertification occurs; and

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

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

8 a. The skills or services to be obtained from the ABI long term care waiver
9 program upon transition into the community; and

10 b. A listing of the community supports available upon the transition;

11 6. Assist an ABI recipient in obtaining a needed service outside those available
12 by the ABI long term care waiver;

13 7. Be provided by a case manager who:

14 a. Is a registered nurse;

15 b. Is a licensed practical nurse;

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

18 (i) Psychology;

19 (ii) Sociology;

20 (iii) Social work;

21 (iv) Rehabilitation counseling; or

22 (v) Occupational therapy;

23 d. Is an independent case manager;

- 1 e. Is employed by a free-standing case management agency;
- 2 f. Has completed case management training that is consistent with the
3 curriculum that has been approved by the department prior to providing case
4 management services;
- 5 g. Shall provide an ABI recipient and legal representative with a listing of each
6 available ABI provider in the service area;
- 7 h. Shall maintain documentation signed by an ABI recipient or legal
8 representative of informed choice of an ABI provider and of any change to the selection
9 of an ABI provider and the reason for the change;
- 10 i. Shall, within the first thirty (30) days of the service and as information is
11 updated, provide to the chosen ABI service provider a distribution of the:
- 12 (i) Crisis prevention and response plan;
- 13 (ii) Transition plan;
- 14 (iii) Plan of care; and
- 15 (iv) Other pertinent documents;
- 16 j. Shall provide twenty-four (24) hour telephone access to the ABI recipient and
17 chosen ABI provider;
- 18 k. Shall work in conjunction with an ABI provider selected by an ABI recipient to
19 develop a crisis prevention and response plan which shall be:
- 20 (i) Individual-specific; and
- 21 (ii) Updated as a change occurs and at each recertification;
- 22 l. Shall assist an ABI recipient in planning resource use and assuring protection
23 of resources;

- 1 m. Shall conduct one (1) face-to-face meeting with an ABI recipient within a
2 calendar month occurring at a covered service site, with one (1) visit quarterly occurring
3 at the ABI recipient's residence;
- 4 n. Shall ensure twenty-four (24) hour availability of services; and
- 5 o. Shall ensure that the ABI recipient's health, welfare, and safety needs are
6 met; and
- 7 8. Be documented by a detailed staff note which shall include:
- 8 a. A monthly summary including documentation of:
- 9 (i) Monthly contact with each chosen ABI provider;
- 10 (ii) Evidence of monitoring of the delivery of services approved in the recipient's
11 plan of care; and
- 12 (iii) Effectiveness of the plan of care;
- 13 b. The ABI recipient's health, safety, and welfare;
- 14 c. Progress toward outcomes identified in the approved plan of care;
- 15 d. The date of the service;
- 16 e. Beginning and ending time; and
- 17 f. The signature and title of the individual providing the service;
- 18 (b) Behavioral services which shall:
- 19 1. Be a systematic application of techniques and methods to influence or change
20 a behavior in a desired way;
- 21 2. Include a functional analysis of the ABI recipient's behavior including:
- 22 a. An evaluation of the impact of an ABI on:
- 23 (i) Cognition; and

- 1 (ii) Behavior;
- 2 b. An analysis of potential communicative intent of the behavior;
- 3 c. The history of reinforcement for the behavior;
- 4 d. Critical variables that precede the behavior;
- 5 e. Effects of different situations on the behavior; and
- 6 f. A hypothesis regarding the:
 - 7 (i) Motivation;
 - 8 (ii) Purpose; and
 - 9 (iii) Factors which maintain the behavior;
- 10 3. Include the development of a behavioral support plan which shall:
 - 11 a. Be developed by the behavioral specialist;
 - 12 b. Not be implemented by the behavior specialist who wrote the plan;
 - 13 c. Be revised as necessary;
 - 14 d. Define the techniques and procedures used;
 - 15 e. Include the hierarchy of behavior interventions ranging from the least to the
 - 16 most restrictive;
 - 17 f. Reflect the use of positive approaches; and
 - 18 g. Prohibit the use of:
 - 19 (i) Prone or supine restraint;
 - 20 (ii) Corporal punishment;
 - 21 (iii) Seclusion;
 - 22 (iv) Verbal abuse; and
 - 23 (v) Any procedure which denies private communication, requisite sleep, shelter,

- 1 bedding, food, drink, or use of a bathroom facility;
- 2 4. Include the provision of training to other ABI providers concerning
- 3 implementation of the behavioral intervention plan;
- 4 5. Include the monitoring of an ABI recipient's progress which shall be
- 5 accomplished through:
- 6 a. The analysis of data concerning the:
- 7 (i) Frequency;
- 8 (ii) Intensity; and
- 9 (iii) Duration of a behavior;
- 10 b. Reports involved in implementing the behavioral service plan; and
- 11 c. A monthly summary that assesses the participant's status related to the
- 12 approved plan of care;
- 13 6. Be provided by a behavior specialist who shall be:
- 14 a. A psychologist;
- 15 b. A psychologist with autonomous functioning;
- 16 c. A licensed psychological associate;
- 17 d. A psychiatrist;
- 18 e. A licensed clinical social worker;
- 19 f. A clinical nurse specialist with a master's degree in:
- 20 (i) Psychiatric nursing; or
- 21 (ii) Rehabilitation nursing;
- 22 g. An advanced registered nurse practitioner (ARNP);
- 23 h. A board certified behavior analyst; or

- 1 i. A licensed professional clinical counselor; and
- 2 7. Be documented by a detailed staff note which shall include:
 - 3 a. The date of the service;
 - 4 b. The beginning and ending time;
 - 5 c. The signature and title of the behavioral specialist; and
 - 6 d. A summary of data analysis and progress of the individual toward meeting
 - 7 goals of the service;
- 8 (c) Community living supports shall:
 - 9 1. Be in provided in accordance with the recipient's plan of care, including:
 - 10 a. A nonmedical service;
 - 11 b. Supervision; or
 - 12 c. Socialization;
 - 13 2. Include assistance, prompting, observing, or training in activities of daily living;
 - 14 3. Include activities of daily living which shall include:
 - 15 a. Bathing;
 - 16 b. Eating;
 - 17 c. Dressing;
 - 18 d. Personal hygiene;
 - 19 e. Shopping; and
 - 20 f. Money management;
 - 21 4. Include prompting, observing, and monitoring of medications and non-medical
 - 22 care not requiring a nurse or physician intervention;
 - 23 5. Include socialization, relationship building, and participation in community

- 1 activities according to the approved plan of care which are therapeutic and not
2 diversional in nature;
- 3 6. Accompany and assist an ABI recipient while utilizing transportation services;
4 7. Include documentation in a detailed staff note which shall include the:
5 a. Progress toward goals and objectives identified in the approved plan of care;
6 b. Date of the service;
7 c. Beginning and ending time; and
8 d. Signature and title of the individual providing the service;
- 9 8. Not be provided to an ABI recipient who receives community residential
10 services; and
- 11 9. Be provided by a:
12 a. Home health agency licensed and operating in accordance with 902 KAR
13 20:081;
14 b. Community mental health center licensed and operating in accordance with
15 902 KAR 20:091;
16 c. Community habilitation program certified at least annually by the department;
17 or
18 d. Supervised Residential Care setting certified at least annually by the
19 department;
- 20 (d) Supervised residential care which shall be provided by:
21 1. A community mental health center licensed and operating in accordance with
22 902 KAR 20:091; or
23 2. An approved waiver provider certified at least annually by the department;

- 1 (e) Supervised residential care which shall include the following levels of
2 supervision:
- 3 1. Supervised residential care level I which:
- 4 a. Shall not have greater than three (3) ABI recipients residing in a home rented
5 or owned by the ABI provider;
- 6 b. Shall provide twenty-four (24) hour supervision;
- 7 c. Shall be based on the individual needs of a recipient;
- 8 d. May include the provision of trial periods of up to five (5) unsupervised hours
9 per day for a member to work toward increased independence. If this option is utilized,
10 an ABI provider shall develop an individualized plan for the recipient to work toward
11 achieving increased independence, which shall include:
- 12 (i) Necessary provisions to assure the recipient's health, safety, and welfare;
- 13 (ii) Documented approval by the recipient's treatment team; and
- 14 (iii) Periodic review and updates based on changes in the recipient's status;
- 15 e. Shall provide assistance and training with daily living skills including the
16 following activities:
- 17 (i) Ambulating;
- 18 (ii) Dressing;
- 19 (iii) Grooming;
- 20 (iv) Eating;
- 21 (v) Toileting;
- 22 (vi) Bathing;
- 23 (vii) Meal planning;

- 1 (viii) Grocery shopping and meal preparation;
- 2 (ix) Laundry;
- 3 (x) Budgeting and financial matters;
- 4 (xi) Home care and cleaning;
- 5 (xii) Instruction in leisure skills,
- 6 (xiii) Instruction in self medication; or
- 7 (xiv) Social skills training, including the reduction or elimination of maladaptive
- 8 behaviors in accordance with the plan of care;
- 9 f. Shall provide or arrange transportation to services, activities, and medical
- 10 appointments as needed;
- 11 g. Shall accompany and assist an ABI recipient while utilizing transportation
- 12 services as specified in the plan of care;
- 13 h. Shall include participation in medical appointments and follow-up care as
- 14 directed by the medical staff; and
- 15 i. Shall be documented by a detailed staff note which shall include:
- 16 (i) Progress toward goals and objectives identified in the approved plan of care;
- 17 (ii) The date of the service;
- 18 (iii) Beginning and ending time; and
- 19 (iv) The signature and title of the individual providing the service;
- 20 2. Supervised residential care level II which shall:
- 21 a. Not have greater than three (3) ABI recipients in a home rented or owned by
- 22 the ABI provider;
- 23 b. Provide twelve (12) to eighteen (18) hours of supervision per day;

- 1 c. Be based on the individual needs of a recipient;
- 2 d. Require documented approval by the recipient's treatment team;
- 3 e. Require periodic review and updates based on changes in the recipient's
- 4 status;
- 5 f. Provide assistance and training with daily living skills which shall include the
- 6 following activities:
 - 7 (i) Ambulating;
 - 8 (ii) Dressing;
 - 9 (iii) Grooming;
 - 10 (iv) Eating;
 - 11 (v) Toileting;
 - 12 (vi) Bathing;
 - 13 (vii) Meal planning;
 - 14 (viii) Grocery shopping and meal preparation;
 - 15 (ix) Laundry;
 - 16 (x) Budgeting and financial matters;
 - 17 (xi) Home care and cleaning
 - 18 (xii) Instruction in leisure skills;
 - 19 (xiii) Instruction in self medication; or
 - 20 (ix) Social skills training, including the reduction or elimination of maladaptive
 - 21 behaviors in accordance with the plan of care;
- 22 g. Provide or arrange transportation to services, activities, and medical
- 23 appointments as needed;

- 1 h. Accompany and assist an ABI recipient while utilizing transportation services
2 as specified in the plan of care;
- 3 i. Include participation in medical appointments and follow-up care as directed by
4 the medical staff;
- 5 j. Provide twenty-four (24) hour on-call support; and
- 6 k. Be documented by a detailed staff note which shall include:
- 7 (i). Progress toward goals and objectives identified in the approved plan of care;
8 (ii). The date of the service;
9 (iii). Beginning and ending time; and
10 (iv) The signature and title of the individual providing the service;
- 11 3. Supervised residential care level III which shall:
- 12 a. Be provided to an ABI participant who lives alone or with an unrelated
13 roommate in a:
- 14 (i) Single family home;
15 (ii) Duplex; or
16 (iii) Apartment building;
- 17 b. Be provided to no more than two (2) waiver participants in one (1) home or
18 apartment. This service shall be provided in no more than two (2) apartments per
19 building, supported by staff who are available twenty-four (24) hours a day, seven (7)
20 days a week but who do not live in any of the units occupied by individuals receiving
21 supports;
- 22 c. Provide less than twelve (12) hours of supervision or support in the home.
23 d. Require documented approval by the recipient's treatment team; and

- 1 e. Require period review and updates based on changes in the recipient's status.
- 2 f. Provide assistance and training in daily living skills which shall include:
- 3 (i) Ambulating;
- 4 (ii) Dressing;
- 5 (iii) Grooming;
- 6 (iv) Eating;
- 7 (v) Toileting;
- 8 (vi) Bathing;
- 9 (vii) Meal planning;
- 10 (viii) Grocery shopping and meal preparation;
- 11 (ix) Laundry;
- 12 (x) Budgeting and financial matters;
- 13 (xi) Home care and cleaning;
- 14 (xii) Instruction in leisure skills;
- 15 (xiii) Instruction in self medication; or
- 16 (xiv) Social skills training, including the reduction or elimination of maladaptive
- 17 behaviors in accordance with the plan of care;
- 18 g. Provide or arrange transportation to services, activities, and medical
- 19 appointments as needed;
- 20 h. Accompany and assist an ABI recipient while utilizing transportation services;
- 21 i. Include participation in medical appointments and follow-up care as directed by
- 22 the medical staff; and
- 23 j. Be documented by a detailed staff note which shall include:

- 1 (i) Progress toward goals and objectives identified in the approved plan of care;
- 2 (ii) The date of the service;
- 3 (iii) Beginning and ending time;
- 4 (iv) The signature and title of the individual providing the service; and
- 5 (v) Evidence of one (1) daily face-to-face contact with the ABI recipient;
- 6 (f) Supervised residential care levels I, II, and III shall:
 - 7 1. Not include the cost of room and board;
 - 8 2. Be available to an ABI recipient who:
 - 9 a. Does not reside with a caregiver;
 - 10 b. Resides with a caregiver but demonstrates maladaptive behavior that places
 - 11 the ABI recipient at significant risk for injury or jeopardy if the caregiver is unable to
 - 12 effectively manage the behavior or the risk it presents and it results in the need for the
 - 13 ABI recipient to be removed from the home to be in a more structured setting; or
 - 14 c. Demonstrates behavior that may result in potential legal problems if not
 - 15 ameliorated;
 - 16 3. Utilize a modular home only if the:
 - 17 a. Wheels are removed;
 - 18 b. Home is anchored to a permanent foundation; and
 - 19 c. Windows are of adequate size for an adult to use as an exit in an emergency;
 - 20 4. Not utilize a motor home;
 - 21 5. Provide a sleeping room which ensures that an ABI recipient:
 - 22 a. Does not share a room with an individual of the opposite gender who is not the
 - 23 ABI recipient's spouse;

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

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

5 6. Provide service and training to obtain the outcomes of the ABI recipient as
6 identified in the approved plan of care;

7 7. Have applications reviewed monthly by a residential review committee, as
8 required by the department, to consider applications for supervised residential care.

9 The application shall be:

10 a. Considered in the order in which it was received by the department;

11 b. Received by the department no later than the close of business the day before
12 the committee convenes in order to be considered at the monthly committee meeting;
13 and

14 c. Considered by the committee with the committee's decision based upon the
15 following criteria:

16 (i) The applicant does not reside with a caregiver;

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

21 (iii) The applicant demonstrates behavior that may result in potential legal
22 problems if not ameliorated;

23 8. Have applications reviewed by a residential review committee which is

- 1 comprised of three (3) program staff of the Cabinet;
- 2 a. Each member shall have professional or personal experience with brain injury
- 3 or other cognitive disabilities; and
- 4 b. At least two (2) members shall not be supervised by the branch manager of
- 5 the Acquired Brain Injury Branch;
- 6 (g) Counseling services which:
- 7 1. Shall be designed to help an ABI long term care waiver recipient resolve
- 8 personal issues or interpersonal problems resulting from the recipient's ABI;
- 9 2. Shall assist a family member in implementing an ABI long term care waiver
- 10 recipient's approved plan of care;
- 11 3. In a severe case, shall be provided as an adjunct to behavioral programming;
- 12 4. Shall include substance abuse or chemical dependency treatment;
- 13 5. Shall include building and maintaining healthy relationships;
- 14 6. Shall develop social skills or the skills to cope with and adjust to the brain
- 15 injury;
- 16 7. Shall increase knowledge and awareness of the effects of an ABI;
- 17 8. May include group counseling if the service is:
- 18 a. Provided to a maximum of twelve (12) ABI recipients; and
- 19 b. Included in the recipient's approved plan of care for:
- 20 (i) Substance abuse or chemical dependency treatment;
- 21 (ii) Building and maintaining healthy relationships;
- 22 (iii) Developing social skills;
- 23 (iv) Developing skills to cope with and adjust to a brain injury, including the use of

1 cognitive remediation strategies consisting of the development of compensatory
2 memory and problem solving strategies, and the management of impulsivity; and
3 (v) Increasing knowledge and awareness of the effects of the acquired brain
4 injury upon the ABI recipient's functioning and social interactions;

5 9. Shall be provided by:

6 a. A psychiatrist;

7 b. A psychologist;

8 c. A psychologist with autonomous functioning;

9 d. A licensed psychological associate;

10 e. A licensed clinical social worker;

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

12 g. An advanced registered nurse practitioner (ARNP);

13 h. A certified alcohol and drug counselor;

14 i. A licensed marriage and family therapist; or

15 j. A licensed professional clinical counselor; and

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

17 a. Progress toward the goals and objectives established in the plan of care;

18 b. The date of the service;

19 c. The beginning and ending time; and

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

21 (h) Family training which shall:

22 1. Provide training and counseling services for the families of individuals served
23 in the ABI long term care waiver. Training to family or other responsible persons shall

- 1 include:
- 2 a. Interpretation or explanation of medical examinations and procedures;
 - 3 b. Treatment regimens;
 - 4 c. Use of equipment specified in the plan of care; or
 - 5 d. Advising how to assist the participant;
- 6 2. Include updates as needed to safely maintain the participant at home;
- 7 3. Include specified goals in the ABI recipient's plan of care;
- 8 4. Be training provided to family that may include:
- 9 a. A person who lives with; or
 - 10 b. A person who provides care to an ABI long term care waiver recipient and may
- 11 include a:
- 12 (i) Parent;
 - 13 (ii) Spouse;
 - 14 (iii) Child;
 - 15 (iv) Relative;
 - 16 (v) Foster family; or
 - 17 (vi) In-law; and
- 18 5. Not include an individual who is employed to care for the consumer;
- 19 6. Be provided by an approved ABI waiver provider that is certified at least
- 20 annually which may include:
- 21 a. An occupational therapist;
 - 22 b. A certified occupational therapy assistant;
 - 23 c. A licensed practical nurse;

- 1 d. A physical therapist;
- 2 e. A physical therapy assistant;
- 3 f. A registered nurse;
- 4 g. A speech-language pathologist;
- 5 h. A psychiatrist;
- 6 i. A psychologist;
- 7 j. A psychologist with autonomous functioning;
- 8 k. A licensed psychological associate;
- 9 l. A clinical nurse specialist with a master's degree in:
 - 10 (i) Psychiatric nursing; or
 - 11 (ii) Rehabilitative nursing;
- 12 m. An advanced registered nurse practitioner (ARNP);
- 13 n. A certified alcohol and drug counselor;
- 14 o. A licensed professional clinical counselor;
- 15 p. A board certified behavior analyst;
- 16 q. A licensed clinical social worker; or
- 17 r. A licensed marriage and family therapist; and
- 18 7. Be documented by a detailed staff note which shall include:
 - 19 a. Progress toward the goals and objectives established in the plan of care;
 - 20 b. The date of the service;
 - 21 c. The beginning and ending time; and
 - 22 d. The signature and title of the individual providing the service;
 - 23 (i) Nursing supports which shall include:

- 1 1.a. A physician order to monitor medical conditions; or
- 2 b. A physician order for training and oversight of medical procedures;
- 3 2. The monitoring of specific medical conditions;
- 4 3. Services that shall be provided by:
- 5 a. A registered nurse who meets the definition established in KRS 314.011(5); or
- 6 b. A licensed practical nurse as defined by KRS 314.011(9) who works under the
- 7 supervision of a registered nurse; and
- 8 4. Documentation by a detailed staff note which shall include:
- 9 a. Progress toward the goals and objectives established in the plan of care;
- 10 b. The date of the service;
- 11 c. The beginning and ending time; and
- 12 d. The signature and title of the individual providing the service;
- 13 (j) Occupational therapy which shall be:
- 14 1. A physician-ordered evaluation of an ABI recipient's level of functioning by
- 15 applying diagnostic and prognostic tests;
- 16 2. Physician-ordered services in a specified amount and duration to guide an ABI
- 17 recipient in the use of therapeutic, creative, and self-care activities to assist the ABI
- 18 recipient in obtaining the highest possible level of functioning;
- 19 3. Exclusive of maintenance or the prevention of regression;
- 20 4. Provided by an occupational therapist or an occupational therapy assistant if
- 21 supervised by an occupational therapist in accordance with 201 KAR 28:130; and
- 22 5. Documented by a detailed staff note which shall include:
- 23 a. Progress toward goals and objectives identified in the approved plan of care;

- 1 b. The date of the service;
- 2 c. Beginning and ending time; and
- 3 d. The signature and title of the individual providing the service;
- 4 (k) A physical therapy service which shall be:
 - 5 1. A physician-ordered evaluation of an ABI recipient by applying muscle, joint,
 - 6 and functional ability tests;
 - 7 2. Physician-ordered treatment in a specified amount and duration to assist an
 - 8 ABI recipient in obtaining the highest possible level of functioning;
 - 9 3. Training of another ABI provider to improve the level of functioning of the
 - 10 recipient in that provider's service setting;
 - 11 4. Exclusive of maintenance or the prevention of regression;
 - 12 5. Provided by a physical therapist or a physical therapy assistant supervised by
 - 13 a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
 - 14 6. Documented by a detailed staff note which shall include:
 - 15 a. Progress made toward outcomes identified in the plan of care;
 - 16 b. The date of the service;
 - 17 c. Beginning and ending time of the service; and
 - 18 d. The signature and title of the individual providing the service;
- 19 (l) A respite service which shall:
 - 20 1. Be provided only to an ABI long term care waiver recipient unable to
 - 21 administer self-care;
 - 22 2. Be provided by a:
 - 23 a. Nursing facility;

- 1 b. Community mental health center;
- 2 c. Home health agency;
- 3 d. Supervised residential care provider;
- 4 e. Adult day training provider; or
- 5 f. Adult day health care provider;
- 6 3. Be provided on a short-term basis due to:
 - 7 a. Absence; or
 - 8 b. Need for relief of an individual providing care to an ABI long term care waiver
 - 9 recipient;
- 10 4. Be limited to 5,760 fifteen (15) minute units per calendar year unless an
- 11 individual's usual caregiver is unable to provide care due to a:
 - 12 a. Death in the family;
 - 13 b. Serious illness; or
 - 14 c. Hospitalization;
- 15 5. Not be provided to an ABI long term care waiver recipient who receives
- 16 supervised residential care;
- 17 6. Not include the cost of room and board if provided in a nursing facility; and
- 18 7. Be documented by a detailed staff note which shall include:
 - 19 a. Progress toward goals and objectives identified in the approved plan of care;
 - 20 b. The date of the service;
 - 21 c. The beginning and ending time; and
 - 22 d. The signature and title of the individual providing the service;
 - 23 (m) Speech therapy services which shall be:

- 1 1. A physician-ordered evaluation of an ABI recipient with a speech, hearing, or
2 language disorder;
- 3 2. A physician-ordered habilitative service in a specified amount and duration to
4 assist an ABI recipient with a speech and language disability in obtaining the highest
5 possible level of functioning;
- 6 3. Exclusive of maintenance or the prevention of regression;
- 7 4. Provided by a speech language pathologist; and
- 8 5. Documented by a detailed staff note which shall include:
 - 9 a. Progress toward goals and objectives identified in the approved plan of care;
 - 10 b. The date of the service;
 - 11 c. The beginning and ending time; and
 - 12 d. The signature and title of the individual providing the service;
- 13 (n) Adult day training services which shall:
 - 14 1. Be provided by:
 - 15 a. An adult day training center which is certified at least annually by the
16 department;
 - 17 b. An outpatient rehabilitation facility which is licensed and operating in
18 accordance with 902 KAR 20:190; or
 - 19 c. A community mental health center licensed and operating in accordance with
20 902 KAR 20:091;
 - 21 2. Focus on enabling the individual to attain or maintain the individual's
22 maximum functional level and reintegrate the individual into the community;
 - 23 3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person

- 1 unless an ABI recipient requires individualized special service;
- 2 4. Include the following services:
- 3 a. Social skills training related to problematic behaviors identified in the
- 4 recipient's plan of care;
- 5 b. Sensory or motor development;
- 6 c. Reduction or elimination of a maladaptive behavior;
- 7 d. Prevocational; or
- 8 e. Teaching concepts and skills to promote independence including:
- 9 (i) Following instructions;
- 10 (ii) Attendance and punctuality;
- 11 (iii) Task completion;
- 12 (iv) Budgeting and money management;
- 13 (v) Problem solving; or
- 14 (vi) Safety;
- 15 5. Be provided in a nonresidential setting;
- 16 6. Be developed in accordance with an ABI waiver service recipient's overall
- 17 approved plan of care;
- 18 7. Reflect the recommendations of an ABI waiver service recipient's
- 19 interdisciplinary team;
- 20 8. Be appropriate:
- 21 a. Given an ABI waiver service recipient's:
- 22 (i) Age;
- 23 (ii) Level of cognitive and behavioral function; and

- 1 (iii) Interest;
- 2 b. Given an ABI waiver service recipient's ability prior to and after the recipient's
- 3 injury; and
- 4 c. According to the approved plan of care and be therapeutic in nature and not
- 5 diversionary;
- 6 9. Be coordinated with:
- 7 a. Occupational;
- 8 b. Speech, or
- 9 c. Other rehabilitation therapy included in an ABI long term care waiver
- 10 recipient's plan of care;
- 11 10. Provide an ABI long term care waiver recipient with an organized framework
- 12 within which to function in the recipient's daily activities;
- 13 11. Entail frequent assessments of an ABI long term care waiver recipient's
- 14 progress and be appropriately revised as necessary; and
- 15 12. Be documented by a detailed staff note which shall include:
- 16 a. Progress toward goals and objectives identified in the approved plan of care;
- 17 b. The date of the service;
- 18 c. The beginning and ending time; and
- 19 d. The signature and title of the individual providing the service; and
- 20 e. A monthly summary that assesses the participant's status related to the
- 21 approved plan of care;
- 22 (o) Adult day health care services which shall:
- 23 1. Be provided by an adult day health care center that is licensed and operating

1 in accordance with 902 KAR 20:066; and

2 2. Include the following basic services and necessities provided to a Medicaid

3 ABI long term care waiver recipient during the posted hours of operation:

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

6 (i) Ostomy care;

7 (ii) Urinary catheter care;

8 (iii) Decubitus care;

9 (iv) Tube feeding;

10 (v) Venipuncture;

11 (vi) Insulin injections;

12 (vii) Tracheotomy care; or

13 (viii) Medical monitoring;

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

16 c. Snacks;

17 d. Supervision by a registered nurse;

18 e. Daily activities that are appropriate, given an ABI long term care waiver
19 recipient's:

20 (i) Age;

21 (ii) Level of cognitive and behavioral function;

22 (iii) Interest; and

23 f. Routine services that meet the daily personal and health care needs of an ABI

1 long term care waiver recipient, including:

2 (i) Monitoring of vital signs;

3 (ii) Assistance with activities of daily living; and

4 (iii) Monitoring and supervision of self-administered medications, therapeutic

5 programs, and incidental supplies and equipment needed for use by an ABI long term

6 care waiver recipient;

7 3. Include developing, implementing, and maintaining nursing policies for nursing

8 or medical procedures performed in the adult day health care center;

9 4. Focus on enabling the individual to attain or maintain the individual's

10 maximum functional level and reintegrate an individual into the community by providing

11 the following training;

12 a. Social skills training related to problematic behaviors identified in the ABI long

13 term care waiver recipient's plan of care;

14 b. Sensory or motor development;

15 c. Reduction or elimination of a maladaptive behavior per the ABI long term care

16 waiver recipient's plan of care;

17 d. Prevocational; or

18 e. Teaching concepts and skills to promote independence including:

19 (i) Following instructions;

20 (ii) Attendance and punctuality;

21 (iii) Task completion;

22 (iv) Budgeting and money management;

23 (v) Problem solving; or

- 1 (vi) Safety;
- 2 5. Be provided in a nonresidential setting;
- 3 6. Be developed in accordance with an ABI long term care waiver recipient's
- 4 overall approved plan of care, therapeutic in nature and not diversional;
- 5 7. Reflect the recommendations of an ABI long term care waiver recipient's
- 6 interdisciplinary team;
- 7 8. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a
- 8 physician, physician assistant, or advanced registered nurse practitioner in an ABI long
- 9 term care waiver recipient's adult day health care plan of treatment. Ancillary services
- 10 shall:
- 11 a. Consist of evaluations or reevaluations for the purpose of developing a plan
- 12 which shall be carried out by the ABI long term care waiver recipient or adult day health
- 13 care center staff;
- 14 b. Be reasonable and necessary for the ABI long term care waiver recipient's
- 15 condition;
- 16 c. Be rehabilitative in nature;
- 17 d. Include:
- 18 (i) Physical therapy provided by a physical therapist or physical therapist
- 19 assistant;
- 20 (ii) Occupational therapy provided by an occupational therapist or occupational
- 21 therapist assistant; or
- 22 (iii) Speech therapy provided by a speech-language pathologist; and
- 23 e. Comply with the:

- 1 (i) Physical;
- 2 (ii) Occupational; and
- 3 (iii) Speech therapy requirements established in Technical Criteria for Reviewing
- 4 Ancillary Services for Adults in accordance with 907 KAR 1:030, Section 3 and 6.

5 9. Be provided to an ABI long term care waiver recipient by the health team in an
6 adult day health care center which may include:

- 7 a. A physician;
- 8 b. A physician assistant;
- 9 c. An advanced registered nurse practitioner (ARNP);
- 10 d. A registered nurse;
- 11 e. A licensed practical nurse;
- 12 f. An activities director;
- 13 g. A physical therapist;
- 14 h. A physical therapist assistant;
- 15 i. An occupational therapist;
- 16 j. An occupational therapist assistant;
- 17 k. A speech pathologist;
- 18 l. A social worker;
- 19 m. A nutritionist;
- 20 n. A health aide;
- 21 o. An LPCC
- 22 p. A licensed marriage and family therapist;
- 23 q. A certified psychologist with autonomous functioning; or

1 r. A licensed psychological associate;

2 10. Be provided pursuant to a plan of treatment and developed annually in
3 accordance with 902 KAR 20:066 and from information in the Map-351 and revised as
4 needed;

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

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

7 b. The date of the service;

8 c. The beginning and ending time;

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

10 e. A monthly summary that assesses the participant's status related to the
11 approved plan of care;

12 (p) Supported employment which shall be:

13 1. Intensive, ongoing services for an ABI long term care waiver recipient to
14 maintain paid employment in an environment in which an individual without a disability
15 is employed;

16 2. Provided by a:

17 a. Supported employment provider;

18 b. Sheltered employment provider; or

19 c. Structured day program provider;

20 3. Provided one-on-one;

21 4. Unavailable under a program funded by either the Rehabilitation Act of 1973

22 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which

23 shall be documented in the ABI long term care waiver recipient's file;

- 1 5. Limited to forty (40) hours per week alone or in combination with adult day
2 training or adult day health services;
- 3 6. An activity needed to sustain paid work by an ABI long term care waiver
4 recipient receiving waiver services, including:
- 5 a. Supervision; and
6 b. Training;
- 7 7. Exclusive of work performed directly for the supported employment provider;
8 and
- 9 8. Documented by a time and attendance record which shall include:
- 10 a. Progress toward the goals and objectives identified in the plan of care;
11 b. The date of service;
12 c. The beginning and ending time; and
13 d. The signature and title of the individual providing the service;
- 14 (q) Specialized medical equipment and supplies which shall:
- 15 1. Include durable and nondurable medical equipment, devices, controls,
16 appliances, or ancillary supplies;
- 17 2. Enable an ABI recipient to increase his or her ability to perform daily living
18 activities or to perceive, control, or communicate with the environment;
- 19 3. Be ordered by a physician and submitted on a Request for Equipment form –
20 MAP-95 and include three (3) estimates for vision and hearing;
- 21 4. Include equipment necessary to the proper functioning of specialized items;
22 5. Not be available through the department’s durable medical equipment, vision,
23 or hearing program;

- 1 6. Not be necessary for life support;
- 2 7. Meet applicable standards of manufacture, design, and installation; and
- 3 8. Exclude those items which are not of direct medical or remedial benefit to an
- 4 ABI recipient;
- 5 (r) Environmental and minor home adaptations which shall:
 - 6 1. Be provided in accordance with applicable state and local building codes;
 - 7 2. Be provided to an ABI recipient if:
 - 8 a. Ordered by a physician;
 - 9 b. Prior-authorized by the ABIB;
 - 10 c. Submitted on a Request for Equipment form - MAP-95 by a case manager or
 - 11 support broker;
 - 12 d. Specified in an ABI long term care waiver recipient's approved plan of care;
 - 13 e. Necessary to enable an ABI recipient to function with greater independence
 - 14 within the recipient's home; and
 - 15 f. Without the modification, the ABI recipient requires institutionalization;
 - 16 3. Not include a vehicle modification;
 - 17 4. Be limited to no more than \$2,000 for an ABI recipient in a twelve (12) month
 - 18 period; and
 - 19 5. If entailing:
 - 20 a. Electrical work, be provided by a licensed electrician; or
 - 21 b. Plumbing work, be provided by a licensed plumber;
 - 22 (s) Assessment services which shall:
 - 23 1. Be a comprehensive assessment which shall identify an ABI long term care

- 1 waiver recipient's needs and the services that the recipient's family cannot manage or
2 arrange for the recipient;
- 3 2. Evaluate an ABI long term care waiver recipient's physical health, mental
4 health, social supports, and environment;
- 5 3. Be requested by an individual requesting ABI services or a family or legal
6 representative of the individual;
- 7 4. Be conducted by an ABI case manager or support broker;
- 8 5. Be conducted within seven (7) calendar days of receipt of the request for
9 assessment;
- 10 6. Include at least one (1) face-to-face contact with the ABI long term care waiver
11 recipient and, if appropriate, the recipient's family by the assessor in the ABI long term
12 care waiver recipient's home; and
- 13 7. Not be reimbursable if the individual does not receive a level of care
14 certification; and
- 15 (t) Reassessment service which shall:
- 16 1. Be performed at least every twelve (12) months;
- 17 2. Be conducted using the same procedures as for an assessment service;
- 18 3. Be conducted by an ABI case manager or support broker and submitted to the
19 department no more than three (3) weeks prior to the expiration of the current level of
20 care certification to ensure that certification is consecutive;
- 21 4. Not be reimbursable if conducted during a period that the ABI long term care
22 waiver recipient is not covered by a valid level of care certification; and
- 23 5. Not be retroactive.

1 Section 5. Exclusions of the Acquired Brain Injury Waiver Program. A condition
2 included in the following list shall not be considered an acquired brain injury requiring
3 specialized rehabilitation:

4 (1) A stroke treatable in a nursing facility providing routine rehabilitation services;

5 (2) A spinal cord injury for which there is no known or obvious injury to the
6 intracranial central nervous system;

7 (3) Progressive dementia or another condition related to mental impairment that
8 is of a chronic degenerative nature, including:

9 (a) Senile dementia;

10 (b) Organic brain disorder;

11 (c) Alzheimer's disease;

12 (d) Alcoholism; or

13 (e) Another addiction;

14 (4) A depression or a psychiatric disorder in which there is no known or obvious
15 central nervous system damage;

16 (5) A birth defect;

17 (6) Mental retardation without an etiology to an acquired brain injury; or

18 (7) A condition which causes an individual to pose a level of danger or an
19 aggression which is unable to be managed and treated in a community.

20 Section 6. Incident Reporting Process.

21 (1) An incident shall be documented on an incident report form.

22 (2) There shall be three (3) classes of incidents as follows:

23 (a) A class I incident which shall:

- 1 1. Be minor in nature and not create a serious consequence;
- 2 2. Not require an investigation by the provider agency;
- 3 3. Be reported within twenty-four (24) hours to the:
 - 4 a. Case manager; or
 - 5 b. Support broker;
- 6 4. Be reported to the guardian as directed by the guardian; and
- 7 5. Be retained on file at the:
 - 8 a. Provider and case management agency; or
 - 9 b. Support brokerage agency;
- 10 (b) A class II incident which shall:
 - 11 1.a. Be serious in nature;
 - 12 b. Include a medication error; or
 - 13 c. Involve the use of a:
 - 14 (i) Physical; or
 - 15 (ii) Chemical restraint;
 - 16 2. Require an investigation which shall:
 - 17 a. Be initiated by the provider agency within twenty-four (24) hours of discovery;
 - 18 and
 - 19 b. Shall involve the case manager or support broker;
 - 20 3. Be reported to the following by the provider agency:
 - 21 a. The case manager or support broker within twenty-four (24) hours of
 - 22 discovery;
 - 23 b. The guardian within twenty-four (24) hours of discovery; and

- 1 c. ABIB within twenty-four (24) hours of discovery followed by:
- 2 (i) A complete written report of the incident investigation; and
- 3 (ii) Follow-up within ten (10) calendar days of discovery;
- 4 (c) A class III incident which shall:
- 5 1.a. Be grave in nature;
- 6 b. Involve suspected:
- 7 (i) Abuse;
- 8 (ii) Neglect; or
- 9 (iii) Exploitation;
- 10 c. Involve a medication error which requires a medical intervention; or
- 11 d. Be a death;
- 12 2. Be Immediately investigated by the provider agency, and the investigation
- 13 shall involve the case manager or support broker; and
- 14 3. Be reported by the provider agency to:
- 15 a. The case manager or support broker within eight (8) hours of discovery;
- 16 b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or
- 17 exploitation in accordance with KRS Chapter 209;
- 18 c. The guardian within eight (8) hours of discovery; and
- 19 d. ABIB within eight (8) hours of discovery followed by:
- 20 (i) A complete written report of the incident investigation; and
- 21 (ii) Follow-up within seven (7) calendar days of discovery. If an incident occurs
- 22 after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to ABIB
- 23 shall occur on the following business day.

1 (3) The following documentation with a complete written report shall be
2 submitted for a death:

3 (a) A current plan of care;

4 (b) A current list of prescribed medications including PRN medications;

5 (c) A current crisis plan;

6 (d) Medication Administration Review (MAR) forms for the current and previous
7 month;

8 (e) Staff notes from the current and previous month including details of physician
9 and emergency room visits;

10 (f) Any additional information requested by the department;

11 (g) A coroner's report; and

12 (h) If performed, an autopsy report.

13 Section 7. ABI Long Term Waiting List.

14 (1) An individual eighteen (18) years of age or older applying for an ABI long
15 term care waiver service shall be placed on a statewide ABI long term care waiver
16 waiting list which shall be maintained by the department.

17 (2) In order to be placed on the ABI long term care waiver waiting list, an
18 individual shall submit to the department a:

19 (a) Completed Acquired Brain Injury Waiver Services Program Application form
20 MAP-26, and

21 (b) Waiver Services- Physician Recommendation form - MAP-10.

22 (3) The order of placement on the ABI long term care waiver waiting list shall be
23 determined by:

1 (a) Chronological date of receipt of the Waiver Services- Physician

2 Recommendation form - MAP-10;

3 (b) Category of need of the individual as follows:

4 1. Emergency. An immediate service is indicated as determined by:

5 a. The individual currently is demonstrating behavior related to the individual's
6 acquired brain injury that places the recipient, caregiver, or others at risk of significant
7 harm;

8 b. The individual is demonstrating behavior related to the individual's acquired
9 brain injury which has resulted in the individual's arrest; or

10 2. Nonemergency; and

11 (c) The Emergency Committee which shall consider applications for the
12 Acquired Brain Injury long term care waiver program for emergency placement. The
13 Emergency Committee meetings shall regularly occur during the fourth week of each
14 month. To be considered at the monthly committee meeting, an application shall be
15 received by the department no later than three (3) business days before the scheduled
16 committee meeting.

17 1. The Emergency Review Committee shall be comprised of three (3) program
18 staff of the Cabinet;

19 a. Each member shall have professional or personal experience with brain
20 injuries or other cognitive disabilities, and

21 b. At least two (2) members shall not be supervised by the branch manager of
22 the Acquired Brain Injury Branch.

23 (4) In determining chronological status, the original date of receipt of the

1 Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the
2 Waiver Services-Physician Recommendation form - MAP-10 shall be maintained and
3 not changed if an individual is moved from one (1) category of need to another.

4 (5) A written statement by a physician or other qualified mental health
5 professional shall be required to support the validation of risk of significant harm to an
6 individual or caregiver, or the nature of the individual's medical need.

7 (6) Written documentation by law enforcement or court personnel shall be
8 required to support the validation of a history of arrest.

9 (7) If multiple applications are received on the same date, a lottery shall be held
10 to determine placement on the waiting list within each category of need.

11 (8) A written notification of placement on the waiting list shall be mailed to the
12 individual or the individual's legal representative and case management provider if
13 identified.

14 (9) Maintenance of the ABI long term care waiver waiting list shall occur as
15 follows:

16 (a) The department shall, at a minimum, update the waiting list annually;

17 (b) If an individual is removed from the ABI long term care waiver waiting list,

18 written notification shall be mailed by the department to the:

19 1. Individual;

20 2. Individual's legal representative; and

21 3. ABI case manager;

22 (10) Reassignment of category of need shall be completed based on the
23 updated information and validation process.

1 (11) An individual or legal representative may submit a request for consideration
2 of movement from one (1) category of need to another at any time an individual's status
3 changes.

4 (12) An individual shall be removed from the ABI long term care waiver waiting
5 list if:

6 (a) After a documented attempt, the department is unable to locate the individual
7 or the individual's legal representative;

8 (b) The individual is deceased; or

9 (c) The individual or individual's legal representative refuses the offer of ABI long
10 term care waiver services and does not request to be maintained on the ABI long term
11 care waiver waiting list.

12 (13) If an individual is removed from the ABI long term care waiver waiting list,
13 written notification shall be mailed by the department to the:

14 (a) Individual or to the individual's legal representative; and

15 (b) ABI case manager.

16 (14) The removal of an individual from the ABI long term care waiver waiting list
17 shall not prevent the submittal of a new application at a later date.

18 (15) Potential funding allocated for services for an individual shall be based
19 upon:

20 (a) The individual's category of need; and

21 (b) The individual's chronological date of placement on the ABI long term care
22 waiver waiting list.

23 Section 8. Consumer Directed Option.

- 1 (1) Covered services and supports provided to an ABI long term care waiver
2 recipient participating in CDO shall include:
- 3 (a) A home and community support service which shall:
- 4 1. Be available only under the consumer directed option;
5 2. Be provided in the consumer's home or in the community;
6 3. Be based upon therapeutic goals and not be diversional in nature;
7 4. Not be provided to an individual if the same or similar service is being
8 provided to the individual by a non-CDO acquired brain injury service; and
- 9 5.a. Be respite for the primary caregiver; or
10 b. Be supports and assistance related to chosen outcomes to facilitate
11 independence and promote integration into the community for an individual residing in
12 the individual's own home or the home of a family member and may include:
- 13 (i) Routine household tasks and maintenance;
14 (ii) Activities of daily living;
15 (iii) Personal hygiene;
16 (iv) Shopping;
17 (v) Money management;
18 (vi) Medication management;
19 (vii) Socialization;
20 (viii) Relationship building;
21 (ix) Meal planning;
22 (x) Meal preparation;
23 (xi) Grocery shopping; or

- 1 (xii) Participation in community activities;
- 2 (b) Goods and services which shall:
- 3 1. Be individualized;
- 4 2. Be utilized to reduce the need for personal care or to enhance independence
- 5 within the home or community of the recipient;
- 6 3. Not include experimental goods or services; and
- 7 4. Not include chemical or physical restraints;
- 8 (c) A community day support service which shall:
- 9 1. Be available only under the consumer directed option;
- 10 2. Be provided in a community setting;
- 11 3. Be tailored to the consumer's specific personal outcomes related to the
- 12 acquisition, improvement, and retention of skills and abilities to prepare and support the
- 13 consumer for:
- 14 a. Work or community activities;
- 15 b. Socialization; and
- 16 c. Leisure or retirement activities;
- 17 4. Be based upon therapeutic goals and not be diversional in nature; and
- 18 5. Not be provided to an individual if the same or similar service is being
- 19 provided to the individual by a non-CDO acquired brain injury service.
- 20 (2) To be covered, a CDO service shall be specified in a consumer's plan of care.
- 21 (3) Reimbursement for a CDO service shall not exceed the department's allowed
- 22 reimbursement for the same or a similar service provided in a non-CDO ABI setting.
- 23 (4) A consumer, including a married consumer, shall choose a provider and the

1 choice of CDO provider shall be documented in the consumer's plan of care.

2 (5) A consumer may designate a representative to act on the consumer's behalf.

3 The CDO representative shall:

4 (a) Be twenty-one (21) years of age or older;

5 (b) Not be monetarily compensated for acting as the CDO representative or
6 providing a CDO service; and

7 (c) Be appointed by the consumer on a MAP-2000 form.

8 (6) A consumer may voluntarily terminate CDO services by completing a MAP-
9 2000 and submitting it to the support broker.

10 (7) The department shall immediately terminate a consumer from CDO services
11 if:

12 (a) Imminent danger to the consumer's health, safety, or welfare exists;

13 (b) The consumer fails to pay patient liability;

14 (c) The consumer's plan of care indicates the consumer requires more hours of
15 service than the program can provide, jeopardizing the consumer's safety and welfare
16 due to being left alone without a caregiver present; or

17 (d) The consumer, caregiver, family, or guardian threaten or intimidate a support
18 broker or other CDO staff.

19 (8) The department may terminate a consumer from CDO services if the
20 department determines that the consumer's CDO provider has not adhered to the plan
21 of care.

22 (9) Except as provided in subsection (7) of this section, prior to a consumer's
23 termination from CDO services, the support broker shall:

- 1 (a) Notify the assessment or reassessment service provider of potential
2 termination;
- 3 (b) Assist the consumer in developing a resolution and prevention plan;
- 4 (c) Allow at least thirty (30), but no more than ninety (90), days for the consumer
5 to resolve the issue, develop and implement a prevention plan, or designate a CDO
6 representative;
- 7 (d) Complete and submit to the department a MAP-2000 form terminating the
8 consumer from CDO services if the consumer fails to meet the requirements in
9 paragraph (c) of this subsection; and
- 10 (e) Assist the consumer in transitioning back to traditional ABI services.

11 (10) Upon an involuntary termination of CDO services, the department shall:

12 (a) Notify a consumer in writing of its decision to terminate the consumer's CDO
13 participation; and

14 (b) Except in a case where a consumer failed to pay patient liability, inform the
15 consumer of the right to appeal the department's decision in accordance with Section
16 10 of this administrative regulation.

17 (11) A CDO provider shall:

18 (a) Be selected by the consumer;

19 (b) Submit a completed Kentucky Consumer Directed Option Employee Provider
20 Contract to the support broker;

21 (c) Be eighteen (18) years of age or older;

22 (d) Be a citizen of the United States with a valid Social Security number or
23 possess a valid work permit if not a U.S. citizen;

- 1 (e) Be able to communicate effectively with the consumer, consumer
2 representative, or family;
- 3 (f) Be able to understand and carry out instructions;
- 4 (g) Be able to keep records as required by the consumer;
- 5 (h) Submit to a criminal background check conducted by the Administrative
6 Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state
7 agency if the individual resided or worked outside Kentucky during the year prior to
8 selection as a provider of CDO services;
- 9 (i) Submit to a check of the central registry maintained in accordance with 922
10 KAR 1:470 and not be found on the registry:
- 11 1. A consumer may employ a provider prior to a central registry check result
12 being obtained for up to thirty (30) days; and
- 13 2. If a consumer does not obtain a central registry check result within thirty (30)
14 days of employing a provider, the consumer shall cease employment of the provider
15 until a favorable result is obtained;
- 16 (j) Submit to a check of the nurse aide abuse registry maintained in accordance
17 with 906 KAR 1:100 and not be found on the registry;
- 18 (k) Not have pled guilty or been convicted of committing a sex crime or violent
19 crime as defined in KRS 17.165 (1) through (3);
- 20 (l) Complete training on the reporting of abuse, neglect, or exploitation in
21 accordance with KRS 209.030 or 620.030 and on the needs of the consumer;
- 22 (m) Be approved by the department;
- 23 (n) Maintain and submit timesheets documenting hours worked; and

1 (o) Be a friend, spouse, parent, family member, other relative, employee of a
2 provider agency, or other person hired by the consumer.

3 (12) A parent, parents combined, or a spouse shall not provide more than forty
4 (40) hours of services in a calendar week (Sunday through Saturday) regardless of the
5 number of family members who receive waiver services.

6 (13)(a) The department shall establish a budget for a consumer based on the
7 individual's historical costs minus five (5) percent to cover costs associated with
8 administering the consumer directed option. If no historical cost exists for the
9 consumer, the consumer's budget shall equal the average per capita historical costs of
10 ABI long term care waiver recipients minus five (5) percent.

11 (b) Cost of services authorized by the department for the individual's prior year
12 plan of care but not utilized may be added to the budget if necessary to meet the
13 individual's needs.

14 (c) The department may adjust a consumer's budget based on the consumer's
15 needs and in accordance with paragraphs (d) and (e) of this subsection.

16 (d) A consumer's budget shall not be adjusted to a level higher than established
17 in paragraph (a) of this subsection unless:

18 1. The consumer's support broker requests an adjustment to a level higher than
19 established in paragraph (a) of this subsection; and

20 2. The department approves the adjustment.

21 (e) The department shall consider the following factors in determining whether to
22 allow for a budget adjustment:

23 1. If the proposed services are necessary to prevent imminent institutionalization;

- 1 2. The cost effectiveness of the proposed services; and
- 2 3. Protection of the consumer's health, safety, and welfare.
- 3 4. A significant change has occurred in the recipient's:
- 4 a. Physical condition resulting in additional loss of function or limitations to
- 5 activities of daily living and instrumental activities of daily living;
- 6 b. Natural support system; or
- 7 c. Environmental living arrangement resulting in the recipient's relocation.
- 8 (f) A consumer's budget shall not exceed the average per capita cost of services
- 9 provided to individuals with a brain injury in a nursing facility.

10 (14) Unless approved by the department pursuant to subsection (13)(b) through
11 (e) of this section, if a CDO service is expanded to a point in which expansion
12 necessitates a budget allowance increase, the entire service shall only be covered via a
13 traditional (non-CDO) waiver service provider.

14 (15) A support broker shall:

- 15 (a) Provide needed assistance to a consumer with any aspect of CDO or
- 16 blended services;
- 17 (b) Be available to a consumer twenty-four (24) hours per day, seven (7) days
- 18 per week;
- 19 (c) Comply with applicable federal and state laws and requirements;
- 20 (d) Continually monitor a consumer's health, safety, and welfare; and
- 21 (e) Complete or revise a plan of care using person-centered planning principles.

22 (16) For a CDO participant, a support broker may conduct an assessment or
23 reassessment.

1 (17) Financial Management Services shall:

2 1. Include managing, directing, or dispersing a consumer's funds identified in the
3 consumer's approved CDO budget;

4 2. Include payroll processing associated with an individual hired by a consumer
5 or the consumer's representative;

6 3. Include withholding local, state, and federal taxes and making payments to
7 appropriate tax authorities on behalf of a consumer;

8 4. Be performed by an entity:

9 a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

10 b. With at least two (2) years of experience working with acquired brain Injury.

11 5. Include preparing fiscal accounting and expenditure reports for:

12 a. A consumer or consumer's representative; and

13 b. The department.

14 Section 9. Reimbursement and Coverage.

15 (1) The department shall reimburse a participating provider for a service provided
16 to a Medicaid eligible person who meets the ABI long term care waiver program
17 requirements as established in this administrative regulation.

18 (2) The department shall reimburse an ABI participating long term waiver
19 provider for a prior-authorized ABI long term waiver service, if the service is:

20 (a) Included in the plan of care and is medically necessary, and

21 (b) Essential to provide an alternative to institutional care to an individual with
22 acquired brain injury that requires maintenance services.

23 (3) Exclusions to acquired brain injury long term waiver program. Under the ABI

1 long term waiver program, the department shall not reimburse a provider for a service
2 provided:

3 (a) To an individual who has a condition identified in 907 KAR 3:210, Section 3;

4 or

5 (b) Which has not been prior authorized as a part of the plan of care.

6 (4) Payment Amounts.

7 (a) A participating ABI long term waiver service provider shall be reimbursed a
8 fixed rate for reasonable and medically necessary services for a prior-authorized unit of
9 service provided to a recipient.

10 (b) A participating ABI long term waiver service provider certified in accordance
11 with this administrative regulation shall be reimbursed at the lesser of:

12 1. The provider's usual and customary charge; or

13 2. The Medicaid fixed upper payment limit per unit of service as established in
14 subsection (5) of this section.

15 (5) Fixed Upper Payment Limits.

16 (a) The following rates shall be the fixed upper payment limits, in effect on the
17 effective date of this administrative regulation, for ABI long term care waiver services in
18 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	15 minutes	\$4.00 limited to 5760 units, equal to 1440 hours, per member, per calendar year
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 employment 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 sixteen (16) units per member, per day.
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 subsection (2) of this section)	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 Assessment	15 minutes One (1) unit equals entire process	\$25.00 Limited to 52 units per member, per calendar month. \$100.00
Assessment or Re-assessment	One (1) unit equals entire process	\$100.00
Consumer Directed Options:		
Home and Community Supports		Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget
Community Day Supports		Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget
Goods and Services		Service limited by dollar amount prior authorized by DMS based on DMS approved 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 (not to exceed eight (8) units or \$100.00 per month)

1 (b) Specialized medical equipment and supplies shall be reimbursed on a per
2 item basis based on a reasonable cost as negotiated by the department if they meet the
3 following criteria:

- 4 1. They are not covered through the Medicaid durable medical equipment
5 program established in 907 KAR 1:479; and
- 6 2. They are provided to an individual participating in the ABI waiver program.

7 (c) Respite care may exceed 1440 hours in a twelve (12) month period if an
8 individual's usual caregiver is unable to provide care due to a:

- 9 1. Death in the family;
- 10 2. Serious illness; or
- 11 3. Hospitalization.

12 (d) Payment for respite care provided in a setting other than a nursing facility
13 shall not include the cost of room and board. If an ABI recipient is placed in a nursing
14 facility to receive respite care, the department shall pay the nursing facility its per diem
15 rate for that individual.

1 (e) If supported employment services are provided at a work site in which
2 persons without disabilities are employed, payment shall be made only for the
3 supervision and training required as the result of the ABI recipient's disabilities and shall
4 not include payment for supervisory activities normally rendered.

5 (f) The department shall only pay for supported employment services for an
6 individual if supported employment services are unavailable under a program funded by
7 either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34
8 C.F.R. Subtitle B, Chapter III). For an individual receiving supported employment
9 services, documentation shall be maintained in the individual's record demonstrating
10 that the services are not currently available under a program funded by either the
11 Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle
12 B, Chapter III).

13 (6) Payment Exclusions. Payment shall not include:

14 (a) The cost of room and board, unless provided as part of respite care in a
15 Medicaid certified nursing facility. If an ABI recipient is placed in a nursing facility to
16 receive respite care, the department shall pay the nursing facility its per diem rate for
17 that individual;

18 (b) The cost of maintenance, upkeep, an improvement, or an environmental
19 modification to a group home or other licensed facility;

20 (c) Excluding an environmental modification as established in the Acquired Brain
21 Injury Services and Reimbursement Program Manual, the cost of maintenance, upkeep,
22 or an improvement to a recipient's place of residence;

23 (d) The cost of a service that is not listed in the approved plan of care; or

1 (e) A service provided by a family member unless provided under an approved
2 service through consumer directed option.

3 (7) Records Maintenance. A participating provider shall:

4 (a) Maintain fiscal and service records for a period of at least six (6) years; and

5 (b) Provide, as requested by the department, a copy of, and access to, each
6 record of the ABI Waiver Program retained by the provider pursuant to subsection (1) of
7 this section or 907 KAR 1:672, Sections 2, 3, and 4; and

8 (c) Upon request, make available service and financial records to a
9 representative or designee of the:

10 1. Commonwealth of Kentucky, Cabinet for Health and Family Services or its
11 designated agent;

12 2. United States Department for Health and Human Services, Comptroller
13 General;

14 3. United States Department for Health and Human Services, Centers for
15 Medicare and Medicaid Services (CMS);

16 4. General Accounting Office;

17 5. Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

18 6. Commonwealth of Kentucky, Office of the Attorney General.

19 Section 10. Appeal Rights.

20 (1) An appeal of a department decision regarding a Medicaid beneficiary based
21 upon an application of this administrative regulation shall be in accordance with 907
22 KAR 1:563.

23 (2) An appeal of a department decision regarding Medicaid eligibility of an

1 individual based upon an application of this administrative regulation shall be in
2 accordance with 907 KAR 1:560.

3 (3) An appeal of a department decision regarding a provider based upon an
4 application of this administrative regulation:

5 (a) Regarding a provider's reimbursement shall be in accordance with 907 KAR
6 1:671, Sections 8 and 9; or

7 (b) Not regarding a provider's reimbursement shall be in accordance with 907
8 KAR 1:671.

9 Section 11. Incorporation by Reference.

10 (1) The following material is incorporated by reference:

11 (a) "MAP-10, Physician Recommendations for Waiver Services", July 2008
12 edition;

13 (b) "MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL
14 Program", July 2008 edition;

15 (c) "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain
16 Injury (ABI) Waiver Services Program", July 2008 edition;

17 (d) "MAP-045, Incident Report", July 2008 edition;

18 (e) "MAP-95, Request for Equipment Form", June 2008 edition;

19 (f) "MAP-109, Plan of Care/Prior Authorization for Waiver Services", July 2008
20 edition;

21 (g) "MAP-350, Long Term Care Facilities and Home and Community Based
22 Program Certification Form", July 2008 edition;

23 (h) "MAP-351, Medicaid Waiver Assessment", July 2008 edition;

1 (i) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", July
2 2008 edition;

3 (j) "Mayo-Portland Adaptability Inventory-4", March 2003 edition;

4 (k) "Person Centered Planning: Guiding Principles", March 2005 edition; and

5 (l) "Family Guide to The Rancho Levels of Cognitive Functioning", August 2006
6 edition;

7 (2) This material may be inspected, copied, or obtained, subject to applicable
8 copyright law, at the Department for Medicaid Services, 275 East Main Street,
9 Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 3:210E

REVIEWED:

Date

Elizabeth A. Johnson, Commissioner
Department for Medicaid Services

APPROVED:

Date

Janie Miller, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:210E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Leslie Bland (502) 564-5560 or
Cheryl Bentley (502) 564-6204

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does:

This administrative regulation establishes the coverage and reimbursement provisions related to home- and community-based waiver services for individuals with acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program.
 - (b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the coverage and reimbursement provisions relating to acquired long term care waiver services in order to provide an alternative to institutional care for individuals with ABI who require maintenance services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation:

This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation:

This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes:
This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes:
This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation:
This administrative regulation is expected to impact individuals diagnosed with acquired brain injury by providing home- and community-based services as an alternative to institutionalized services. This administrative regulation allows qualified Medicaid enrolled providers in the Commonwealth of Kentucky to receive reimbursement for acquired brain injury services provided to qualifying enrolled individuals. During the first year, the budget allows for fifty (50) individuals with ABI to receive these waiver services. During the following year, the budget allows for an additional 100 individuals to receive these waiver services, totaling 150 individuals.

(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.
Entities choosing to provide ABI services and receive Medicaid reimbursement are required to be enrolled as a Medicaid provider. During the first year, the budget allows for fifty (50) individuals with ABI to receive these waiver services. During the following year, the budget allows for an additional 100 individuals to receive these waiver services, totaling 150 individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3).
This regulation should not impose additional costs on Medicaid providers. Organizations applying as new providers may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The new administrative regulation offers an alternative to institutional care for individuals that have reached a plateau in their rehabilitation level and require maintenance services to avoid institutionalization and to live safely in their community. The long term nature of the program will complete the continuum of care and complement Kentucky's existing acute brain injury waiver program which focused on intensive rehabilitation services. The waiver program also provides the option for self- directed services for individuals.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) estimates a cost of

approximately \$2.3 million during the state fiscal year 2009 to serve 50 individuals with this program.

- (b) On a continuing basis: DMS estimates a cost of approximately \$12.1 million during the state fiscal year 2010 as a result of enrolling an additional 100 individuals (for a total enrollment of 150 individuals) in the program.
- (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 Title XIX of the Social Security Act 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. This program does require an increase in funding which was included and approved by the legislation in the 2008 and 2010 biennial budget.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used). Tiering was not applied in this administrative regulation because it is applicable equally to all those individuals or entities regulated by it.
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 3:210E Contact Person: Leslie Bland (502) 564-5560 or
Cheryl Bentley (502) 564-6204

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

Yes X No
If yes, complete 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Department for Community Based Services (DCBS), Department for Aging and Independent Living (DAIL), Area Agencies on Aging (AAA), Protection and Advocacy (P&A), and Vocational Rehabilitation will be impacted by this administrative regulation. This amendment will affect Medicaid eligible individuals diagnosed with ABI who choose to access these waiver services.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation.

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 for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home- and community-based services waivers.

4. 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 regulation will not generate revenue for state or local government during the first year of the program administration.

- (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 regulation will not generate revenue for state or local government during subsequent years of the program administration.

(c) How much will it cost to administer this program for the first year?
Approximately 2.3 million dollars is the projected cost during the first year.

(d) How much will it cost to administer this program for subsequent years?
Approximately 12.1 million dollars is the projected cost during the subsequent year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): .

Expenditures (+/-):

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 3:210E

Summary of Material Incorporated by Reference

1. "MAP-10, Physician Recommendations for Waiver Services", July 2008 edition. This form is part of the application process and it is the physician's recommendation for ABI or ABI Long Term Care Waiver Services. This form contains one (1) page.
2. "MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program", July 2008 edition. ABI case managers use this form to notify DCBS of admissions, discharges, and transfers of recipients in the program. This form contains two (2) pages.
3. "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, July 2008 edition. This form is used by residents of the Kentucky to apply for funding for ABI or ABI long term care waiver services. This form contains three (3) pages.
4. "MAP-045, Incident Report", July 2008 edition. This form is used by Support of Community Living (SCL), ABI, and ABI long term waiver providers to report to the monitoring agency documentation of an injury or incident which relates to the health, welfare and safety of the recipient. This form has two (2) pages.
5. "MAP-95, Request for Equipment Form, June 2008 edition. ABI case managers use this form to request durable medical equipment or environmental modifications for the ABI waiver recipient. This form contains one (1) page.
6. "MAP-109, Plan of Care/Prior Authorization for Waiver Services", July 2008 edition. This form is used by ABI case managers to request prior authorization for services upon admission to the program or to modify services or units on the plan of care. This form contains five (5) pages.
7. "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008 edition. This form is used by the SCL, ABI and ABI long term care case manager or support broker to document the agreement. This form is two (2) pages.
8. "Map-351, Medicaid Waiver Assessment", July 2008 edition. This form is used by the SCL, ABI and ABI long term care waiver case manager or support broker to assess the applicant's level of functioning and care needs. This form has fifteen (15) pages.

9. "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO), July 2008 edition. This form is used by the support broker to document the beginning or ending of consumer directed services. This form contains two (2) pages.

10. "Mayo-Portland Adaptability Inventory-4", March 2003 edition. This is a standardized measuring instrument designed specifically for individuals with acquired brain injury. It is used as the program evaluation tool of the ABI and ABI long term care waiver program. This form contains four (4) pages.

11. "Person Centered Planning: Guiding Principles", March 2005 edition. These specific characteristics of person-centered training and practice seek to foster self-direction and self-responsibility of the participant and are based on fundamental principles of self-direction and mutuality. This form contains one (1) page.

12. "Family Guide to The Rancho Levels of Cognitive Functioning", August 2006 edition. This is a medical scale intended to assess the level of recovery of brain injury patients and those recovering from coma. In order to be eligible for the ABI or ABI long term care waiver programs, an applicant must have a Rancho score of four (4) or higher. This form contains four (4) pages.

A total of forty-two (42) pages are incorporated by reference into this administrative regulation.