

STATEMENT OF EMERGENCY

907 KAR 1:145E

(1) This emergency administrative regulation is being promulgated to establish the consumer directed option (CDO) program, created by KRS 205.5606, for supports for community living (SCL) service recipients. This initiative allows individuals to choose their providers of non-medical waiver services resulting in greater freedom of choice, flexibility, and control over their supports and services. Members can choose to direct all or some of their non-medical waiver services.

(2) This action must be taken on an emergency basis to meet a deadline for implementation of a requirement established by state law.

(3) This emergency administrative regulation differs from the emergency administrative regulation governing the same subject that was submitted to the Legislative Research Commission on April 4, 2006 in that it implements a consumer directed option pursuant to KRS 205.5606, increases the requirements for background checks and defines reporting requirements for deaths of SCL service recipients.

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

(5) The ordinary administrative regulation differs from the emergency administrative regulation regarding Class II and Class III incident reporting provisions.

Ernie Fletcher
Governor

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Long Term Care and Community Alternatives

4 (Emergency Amendment)

5 907 KAR 1:145E. Supports for community living services for an individual with mental
6 retardation or a developmental disability.

7 RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart
8 G, 42 U.S.C. 1396a, b, d, n

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6317

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services, has responsibility to administer the Medi-
12 caid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
13 comply with any requirement that may be imposed, or opportunity presented, by federal
14 law for the provision of medical assistance to Kentucky's indigent citizenry. KRS
15 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a
16 consumer-directed services program to provide an option for the home and community
17 based services waivers. This administrative regulation establishes the coverage provi-
18 sions relating to home and community-based services provided to an individual with
19 mental retardation or a developmental disability as an alternative to placement in an in-
20 termediate care facility for an individual with mental retardation or a developmental dis-
21 ability, including a consumer directed option pursuant to KRS 205.5606.

1 Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive
2 evaluation of abilities, needs, and services that is:

3 (a) Completed on a MAP-351 [~~MAP-351B~~];

4 (b) Submitted to the department;

5 1. For a level of care determination; and

6 2. Annually thereafter.

7 (2) "Behavior intervention committee" or "BIC" means a group of individuals estab-
8 lished to evaluate the technical adequacy of a proposed behavior intervention for an
9 SCL recipient.

10 (3) "Behavior support specialist" means an individual who has a master's degree with
11 formal graduate course work in a behavioral science and at least one (1) year of experi-
12 ence in behavioral programming.

13 (4) "Blended services" means a non-duplicative combination of SCL waiver services
14 identified in Section 4 of this administrative regulation and CDO services identified in
15 Section 5 of this administrative regulation provided pursuant to a recipient's approved
16 plan of care.

17 (5) "Budget allowance" is defined by KRS 205.5605(1).

18 (6) "Certified psychologist with autonomous functioning" or "licensed psychological
19 practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

20 (7) [~~(5)~~] "Consumer" is defined by KRS 205.5605(2).

21 (8) "Consumer directed option" or "CDO" means an option established by KRS
22 205.5606 within the home and community based services waivers that allow recipients
23 to:

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

2 (b) Choose their providers of services; and

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

4 (9) "Covered services and supports" is defined by KRS 205.5605(3).

5 (10) "DCBS" means the Department for Community Based Services.

6 (11) [(6)] "Department" means the Department for Medicaid Services or its designee.

7 (12) [(7)] "Developmental disability" means a disability that:

8 (a) Is manifested prior to the age of twenty-two (22);

9 (b) Constitutes a substantial disability to the affected individual; and

10 (c) Is attributable to mental retardation or related conditions that:

11 1. Result in impairment of general intellectual functioning and adaptive behavior simi-
12 lar to that of a person with mental retardation; and

13 2. Are a direct result of, or are influenced by, the person's substantial cognitive defi-
14 cits.

15 (13) [(8)] "DMHMR" means the Department for Mental Health and Mental Retardation
16 Services.

17 (14) [(9)] "DMR" means the Division of Mental Retardation in the Department for
18 Mental Health and Mental Retardation Services.

19 (15) [(10)] "Electronic signature" is defined in KRS 369.102.

20 (16) [(11)] "Good cause" means a circumstance beyond the control of an individual
21 that affects the individual's ability to access funding or services, which includes:

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

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

2 (c) Required paperwork and documentation for processing in accordance with Sec-
3 tion 2 of this administrative regulation has not been completed but is expected to be
4 completed in two (2) weeks or less;

5 (d) The individual or his or her legal representative has made diligent contact with a
6 potential provider to secure placement or access services but has not been accepted
7 within the sixty (60) day time period; or

8 (e) The individual is residing in a facility and is actively participating in a transition
9 plan to community based services, the length of which is greater than sixty (60) days
10 but less than one (1) year.

11 (17) ~~[(42)]~~ "Human rights committee" means a group of individuals established to pro-
12 tect the rights and welfare of an SCL recipient.

13 (18) ~~[(43)]~~ "ICF-MR-DD" means an intermediate care facility for an individual with
14 mental retardation or a developmental disability.

15 (19) ~~[(14) "Individual support plan" or "ISP" means a written individualized plan de-~~
16 ~~veloped by an SCL recipient, or an SCL recipient's legal representative, support coordi-~~
17 ~~nator, or others designated by an SCL recipient.~~

18 ~~(45)~~ "Level of care determination" means a determination by the department that an
19 individual meets low-intensity or high-intensity patient status criteria in accordance with
20 907 KAR 1:022.

21 (20) ~~[(46)]~~ "Licensed marriage and family therapist" or "LMFT" is defined by KRS
22 335.300(2) ~~[means a person licensed pursuant to KRS 335.300 to 335.399].~~

23 (21) ~~[(47)]~~ "Licensed professional clinical counselor" or "LPCC" is defined by KRS

1 335.500(3) [~~means a person licensed pursuant to KRS 335.500 to 335.599~~].

2 (22) [~~(18)~~] "Medically necessary" or "medical necessity" means that a covered benefit
3 is determined to be needed in accordance with 907 KAR 3:130.

4 (23) [~~(19)~~] "Mental retardation" means that a person has:

5 (a) Significantly sub-average intellectual functioning;

6 (b) An intelligence quotient of approximately seventy (70) or below;

7 (c) Concurrent deficits or impairments in present adaptive functioning in at least two

8 (2) of the following areas:

9 1. Communication;

10 2. Self-care;

11 3. Home living;

12 4. Social or interpersonal skills;

13 5. Use of community resources;

14 6. Self-direction;

15 7. Functional academic skills;

16 8. Work;

17 9. Leisure; or

18 10. Health, and safety; and

19 (d) Had an onset before eighteen (18) years of age.

20 (24) [~~(20)~~] "Occupational therapist" means an individual who is licensed as defined in
21 accordance with KRS 319A.010.

22 (25) "Occupational therapy assistant" is defined in KRS 319A.010(4).

23 (26) "Patient liability" means the financial amount an individual is required to contrib-

1 ute towards the cost of care in order to maintain Medicaid eligibility.

2 (27) [(21)] "Physical therapist" means an individual who is licensed as defined in ac-
3 cordance with KRS 327.010.

4 (28) "Physical therapist assistant" means a skilled health care worker who:

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

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

8 (29) "Plan of Care" or "POC" means a written individualized plan developed by:

9 (a) An SCL recipient or an SCL recipient's legal representative;

10 (b) Case manager or support broker; and

11 (c) Other designated by the SCL recipient if the SCL recipient designates any other.

12 (30) [(22)] "Psychologist" means an individual who is licensed in accordance with
13 KRS 319.050.

14 (31) [(23)] "Psychologist with autonomous functioning" means an individual who is li-
15 censed in accordance with KRS 319.056.

16 ~~[(24) "Qualified mental retardation professional" or "QMRP" means an individual who~~
17 ~~has at least one (1) year of experience working with persons with mental retardation or~~
18 ~~developmental disabilities and meets the professional criteria in accordance with 42~~
19 ~~C.F.R. 483.430.]~~

20 (32) [(25)] "Registered nurse" or "RN" means a person who is currently licensed as
21 defined in KRS 314.011(5), and who has one (1) year or more experience as a profes-
22 sional nurse.

23 (33) Representative is defined in KRS 205.5605(6).

1 (34) "SCL mental retardation professional" or "SCL MRP" means an individual who
2 has at least one (1) year of experience working with persons with mental retardation or
3 developmental disabilities and:

4 (a) Is a doctor of medicine or osteopathy;

5 (b) Is a registered nurse; or

6 (c) Holds at least a bachelor's degree in a human services field including sociology,
7 special education, rehabilitation counseling or psychology.

8 (35) [(26)] "SCL provider" means an entity that meets the criteria established in Sec-
9 tion 3 of this administrative regulation.

10 (36) [(27)] "SCL recipient" means an individual who meets the criteria established in
11 Section 2 of this administrative regulation.

12 (37) [(28)] "Social worker" means an individual licensed by the Kentucky Board of
13 Social Work under KRS 335.080, 335.090, or 335.100.

14 (38) [(29)] "Speech therapist" means an individual who is licensed in accordance with
15 KRS 334A.030.

16 (39) "Support broker" means an individual designated by the department to:

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

18 (b) Assist the consumer in any other aspects of CDO.

19 (40) [(30)] "Supports for community living" or "SCL" means home and community-
20 based waiver services for an individual with mental retardation or a developmental dis-
21 ability.

22 (41) "Support spending plan" means a plan for a consumer that identifies:

23 (a) CDO services requested;

1 (b) Employee name;

2 (c) Hourly wage;

3 (d) Hours per month;

4 (e) Monthly pay;

5 (f) Taxes; and

6 (g) Budget allowance.

7 Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to
8 receive a service in the SCL program, an individual shall:

9 (a) Be placed on the SCL waiting list in accordance with Section 6 of this administra-
10 tive regulation;

11 (b) Receive notification of potential SCL funding in accordance with Section 6 of this
12 administrative regulation;

13 (c) Meet ICF-MR-DD patient status requirements established in 907 KAR 1:022;

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

15 (e) Submit an application packet to the department ~~[DMHMR]~~ which shall contain:

16 1. The Long Term Care Facilities and Home and Community Based Program Certifi-
17 cation Form, MAP-350;

18 2. ~~[The Freedom of Choice of Home and Community Based Waiver for Persons with~~
19 ~~MR-DD Service Providers Form, MAP-4102;~~

20 3.] The MAP-351 ~~[MAP-351B]~~ assessment form;

21 ~~[4. The level of care determination;]~~

22 3. ~~[5.]~~ The results of a physical examination that was conducted within the last twelve
23 (12) months;

1 4. ~~[6.]~~ A MAP-10, statement of the need for long-term care services, which shall be
2 signed and dated by a physician or an SCL MRP ~~[a QMRP]~~ and be less than one (1)
3 year old;

4 5. ~~[7.]~~ The results of a psychological examination completed by a licensed psycholo-
5 gist or psychologist with autonomous functioning;

6 6. ~~[8.]~~ A social case history which is less than one (1) year old;

7 7. ~~[9.]~~ A projection of the needed supports and a preliminary MAP-109 ~~[145-SCL]~~
8 plan of care for meeting those needs; and

9 8. ~~[10.]~~ A MAP-24C documenting an individual's status change; and

10 9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and

11 (f) Receive notification of an admission packet approval from the department.

12 (2) To maintain eligibility as an SCL recipient:

13 (a) An individual shall be administered an NC-SNAP assessment by the department
14 in accordance with 907 KAR 1:155;

15 (b) An individual shall maintain Medicaid eligibility requirements established in 907
16 KAR 1:605; and

17 (c) An ICF-MR-DD level of care determination shall be performed by the department
18 at least once every twelve (12) months, ~~and~~

19 ~~(d) An SCL provider] shall notify the local DCBS office [and] the department on a~~
20 MAP-24C form if an SCL recipient is:

21 1. ~~Terminated from the SCL waiver program;~~

22 2. ~~Admitted to an ICF-MR-DD facility; or~~

23 3. ~~Transferred to another Medicaid waiver program.]~~

1 (3) An SCL waiver service shall not be provided to an SCL recipient who is receiving
2 a service in another Medicaid waiver program or is an inpatient of an ICF-MR-DD or
3 other facility.

4 (4) The department may exclude from receiving an SCL waiver service an individual
5 for whom the aggregate cost of SCL waiver services would reasonably be expected to
6 exceed the cost of ICF-MR-DD services.

7 (5) Involuntary termination and loss of an SCL waiver program placement shall be in
8 accordance with 907 KAR 1:563 and shall be initiated if:

9 (a) An individual fails to access an SCL waiver service within sixty (60) days of notifi-
10 cation of potential funding without good cause shown.

11 1. The individual or legal representative shall have the burden of documenting good
12 cause, including:

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

14 b. Copies of letters to providers;

15 c. Copies of letters from providers; and

16 d. A copy of a transition plan for individuals residing in a facility.

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

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

20 b. The length of the transition plan, not to exceed one (1) year, and contingent upon
21 continued active participation in the transition plan for an individual who does reside in a
22 facility;

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

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

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

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

6 b. Copies of letters to providers;

7 c. Copies of letters from providers; and

8 d. A copy of a transition plan for individuals residing in a facility.

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

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

12 b. The length of the transition plan, not to exceed one (1) year, and contingent upon
13 continued active participation in the transition plan for an individual who does reside in a
14 facility;

15 (c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or

16 (d) An SCL recipient does not meet ICF-MR-DD patient status criteria.

17 (6) Involuntary termination of a service to an SCL recipient by an SCL provider shall
18 require:

19 (a) Simultaneous notice to the SCL recipient or legal representative and the case
20 manager or support broker at least twenty (20) days prior to the effective date of the ac-
21 tion, which shall include:

22 1. A statement of the intended action;

23 2. The basis for the intended action;

- 1 3. The authority by which the action is taken; and
2 4. The SCL recipient's right to appeal the intended action through the provider's ap-
3 peal or grievance process;

4 (b) Submittal of a MAP-24C to the department and to DMR at the time of [DMR-001
5 to DMHMR at least twenty (20) days prior to the effective date of] the intended action;
6 and

7 (c) The case manager or support broker in conjunction with the provider to:

8 1. Provide the SCL recipient with the name, address, and telephone number of each
9 current SCL provider in the state;

10 2. Provide assistance to the SCL recipient in making contact with another SCL pro-
11 vider;

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

13 4. Provide a copy of pertinent information to the SCL recipient or legal representative;

14 5. Ensure the health, safety and welfare of the SCL recipient until an appropriate
15 placement is secured;

16 6. Continue to provide supports until alternative services or another placement is se-
17 cured; and

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

19 (7) Voluntary termination and loss of an SCL waiver program placement shall be initi-
20 ated if an SCL recipient or legal representative submits a written notice of intent to dis-
21 continue services to the service provider, to the department and to DMR [and to
22 DMHMR].

23 (a) An action to terminate services shall not be initiated until thirty (30) calendar days

1 from the date of the notice; and

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

4 Section 3. Non-CDO Provider Participation. (1) In order to provide a non-CDO [an]
5 SCL waiver service in accordance with Section 4 of this administrative regulation, an
6 SCL provider shall:

7 (a) Be certified by the department prior to the initiation of the service;

8 (b) Be recertified at least annually by the department; and

9 (c) Have a main office within the Commonwealth of Kentucky.

10 (2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR
11 1:673 and 902 KAR 20:078.

12 (3) An SCL provider shall have a governing body that shall:

13 (a) Be a legally constituted entity within the Commonwealth of Kentucky;

14 (b) Not contain a majority of owners;

15 (c) Be responsible for the overall operation of the organization that shall include:

16 1. Establishing policy that complies with this administrative regulation concerning the
17 operation of the agency and the health, safety and welfare of an SCL recipient sup-
18 ported by the agency;

19 2. Appointing and annually evaluating the executive director;

20 3. Delegating the authority and responsibility for the management of the affairs of the
21 agency in accordance with written policy and procedures that comply with this adminis-
22 trative regulation;

23 4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and main-

1 taining a record of the discharge of its duties; and

2 5. Orienting a new member of the governing body to the operation of the organiza-
3 tion, including the roles and responsibilities of board members.

4 (4) An SCL provider shall:

5 (a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff
6 member of the SCL provider who has one (1) of the following blood relationships to the
7 SCL recipient.

8 1. Child;

9 2. Parent;

10 3. Sibling; or

11 4. Spouse;

12 (b) Not enroll an SCL recipient for whom they cannot meet the support needs;

13 (c) Have and follow written criteria that comply with this administrative regulation for
14 determining the eligibility of an individual for admission to services; and

15 (d) Document any denial for a service and the reason for the denial, and identify re-
16 sources necessary to successfully support the denied SCL recipient in the community.

17 (5) An SCL provider shall maintain documentation of its operations which shall in-
18 clude:

19 (a) An annual review of written policy and procedures;

20 (b) A written description of available SCL waiver services;

21 (c) A current table of organization;

22 (d) A memorandum of understanding with an SCL case management provider with
23 whom they share plans of care [~~individual support plans~~];

1 (e) Information regarding satisfaction of an SCL recipient and the utilization of that in-
2 formation;

3 (f) A quality improvement program; and

4 (g) Documentation of achievement of outcomes based on best practice standards as
5 approved by the department.

6 (6) An SCL provider shall:

7 (a) Maintain accurate fiscal information which shall include documentation of revenue
8 and expenses;

9 (b) Maintain a written schedule of policy relevant to rates and charges that shall be
10 available to any individual upon request;

11 (c) Meet the following requirements if responsible for the management of SCL recipi-
12 ent funds:

13 1. Separate accounting shall be maintained for each SCL recipient or for his or her
14 interest in a common trust or special account;

15 2. Account balance and records of transactions shall be provided to the SCL recipient
16 or legal representative on a quarterly basis; and

17 3. The SCL recipient or legal representative shall be notified if a large balance is ac-
18 crued that may affect Medicaid eligibility.

19 (7) An SCL provider shall have a written statement of its mission and values, which
20 shall:

21 (a) Support empowerment and informed decision-making;

22 (b) Support and assist people to remain connected to natural support networks; and

23 (c) Promote dignity and self-worth.

1 (8) An SCL provider shall have written policy and procedures for communication and
2 interaction with a family and legal representative of an SCL recipient which shall:

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

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

5 (c) Require prompt notification of any unusual occurrence;

6 (d) Require visitation to the SCL recipient at a reasonable time, without prior notice
7 and with due regard for the SCL recipient's right of privacy;

8 (e) Require involvement in decision making regarding the selection and direction of
9 the service provided; and

10 (f) Consider the cultural, educational, language and socioeconomic characteristics of
11 the family being supported.

12 (9) An SCL provider shall ensure the rights of an SCL recipient by:

13 (a) Making available a description of the rights and the means by which they can be
14 exercised and supported which shall include:

15 1. The right to time, space, and opportunity for personal privacy;

16 2. The right to communicate, associate and meet privately with the person of choice;

17 3. The right to send and receive unopened mail;

18 4. The right to retain and use personal possessions including clothing and grooming
19 articles; and

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

21 (b) Having a grievance and appeals system that includes an external mechanism for
22 review of complaints; and

23 (c) Complying with the Americans with Disabilities Act (28 C.F.R. 35).

1 (10)(a) An SCL provider shall maintain fiscal and service records and incident reports
2 for a minimum of six (6) years from the date that:

- 3 1. A covered service is provided; or
- 4 2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one
5 (21);

6 (b) All records and incident reports shall be made available to the:

- 7 1. ~~[The]~~ Department;
- 8 2. DMHMR or its designee;
- 9 3. ~~[The Commonwealth of Kentucky,]~~ Cabinet for Health and Family Services, Office
10 of Inspector General or its designee;
- 11 4. ~~[The United States]~~ General Accounting Office or its designee;
- 12 5. ~~[The Commonwealth of Kentucky,]~~ Office of the Auditor of Public Accounts or its
13 designee;
- 14 6. ~~[The Commonwealth of Kentucky,]~~ Office of the Attorney General or its designee;
- 15 7. DCBS ~~[The Commonwealth of Kentucky, Cabinet for Health and Family Services,~~
16 ~~Department for Community Based Services];~~ or
- 17 8. ~~[The]~~ Centers for Medicare and Medicaid Services.

18 (11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

19 (12) An SCL provider shall maintain a record for each SCL recipient served that shall:

- 20 (a) Be recorded in permanent ink;
- 21 (b) Be free from correction fluid;
- 22 (c) Have a strike through each error that is initialed and dated; and
- 23 (d) Contain no blank lines in between each entry.

- 1 (13) A record of each SCL recipient who is served shall:
- 2 (a) Contain all information necessary for the delivery of the SCL recipient's services;
- 3 (b) Be cumulative;
- 4 (c) Be readily available;
- 5 (d) Contain documentation which shall meet the requirements of Section 4 of this
- 6 administrative regulation;
- 7 (e) Contain the following specific information:
- 8 1. The SCL recipient's name, Social Security number and Medicaid identification
- 9 number (MAID);
- 10 2. The intake or face sheet;
- 11 3. The MAP-351 [~~MAP-351B~~] assessment form completed at least annually;
- 12 4. The current plan of care; [~~ISP~~]
- 13 5. The training objective for any support which facilitates achievement of the SCL re-
- 14 cipient's chosen outcomes;
- 15 6. A list containing emergency contact telephone numbers;
- 16 7. The SCL recipient's history of allergies with appropriate allergy alerts for severe al-
- 17 lergies;
- 18 8. The SCL recipient's medication record, including a copy of the prescription or the
- 19 signed physician's order and the medication log if medication is administered at the ser-
- 20 vice site;
- 21 9. A recognizable photograph of the SCL recipient;
- 22 10. Legally-adequate consent, updated annually, for the provision of services or other
- 23 treatment requiring emergency attention and shall be located at each service site;

- 1 11. The individual educational plan (IEP) or individual family service plan (IFSP), if
2 applicable;
- 3 12. The SCL recipient's social history updated at least annually;
- 4 13. The results of an annual physical exam;
- 5 14. The Long Term Care Facilities and Home and Community Based Program Certi-
6 fication Form, MAP-350 updated annually;
- 7 15. Psychological evaluation;
- 8 16. ~~[Original and]~~ Current level of care certification; and
- 9 17. The MAP-552K, Department for Community Based Services Notice of Availability
10 for Long Term Care/Waiver Agency/Hospice Form in the case management and resi-
11 dential record [~~;~~ ~~and~~
- 12 ~~18. A copy of the approved SCL-1 form];~~
- 13 (f) Be maintained by the provider in a manner to ensure the confidentiality of the SCL
14 recipient's record and other personal information and to allow the SCL recipient or legal
15 representative to determine when to share the information as provided by law;
- 16 (g) Have the safety from loss, destruction or use by an unauthorized person ensured
17 by the provider;
- 18 (h) Be available to the SCL recipient or legal guardian according to the provider's
19 written policy and procedures which shall address the availability of the record; and
- 20 (i) Have a corresponding legend which the provider shall make readily accessible.
- 21 (14) An SCL provider shall:
- 22 (a)1. Ensure that each staff and volunteer performing direct care or a supervisory
23 function [~~;~~ ~~prior to providing direct care to a recipient;~~] has tested negatively for tubercu-

1 losis within the past twelve (12) months as documented on test results received by the
2 provider within seven (7) days of the date of hire or date the individual began serving as
3 a volunteer; and

4 2. Maintain documentation of each staff person's and if a volunteer performs direct
5 care or a supervisory function, the volunteer's negative tuberculosis test;

6 (b) Have written personnel guidelines for each employee to include:

7 1. Salary range;

8 2. Vacation and leave procedures;

9 3. Health insurance;

10 4. Retirement benefits;

11 5. Opportunity for continuing education; and

12 6. Grievance procedures;

13 (c) Provide a written job description for each staff person which describes the em-
14 ployee's duties and responsibilities;

15 (d) Annually review each job description;

16 (e)[4-] For each potential employee[~~, prior to employment,~~] obtain:

17 1. Prior to employment, the results of a criminal record check from the Kentucky Ad-
18 ministrative Office of the Courts and equivalent out-of-state agency if the individual re-
19 sided or worked outside of Kentucky during the year prior to employment;

20 2. Within fourteen (14) days of the date of hire, the results of a central registry check
21 as described in 922 KAR 1:470; and

22 3. Prior to employment, the results of a nurse aide abuse registry check as described
23 in 906 KAR 1:100;

1 (f) Annually, for twenty-five (25) percent of employees randomly selected, obtain the
2 results of a criminal record check from the Kentucky Administrative Office of the Courts
3 and equivalent out-of-state agency if the individual resided or worked outside of Ken-
4 tucky during the year prior to employment;

5 (g) For a volunteer expected to perform direct care or a supervisory function obtain:

6 1. Prior to the date the individual began serving as a volunteer, the results of a crimi-
7 nal record check from the Kentucky Administrative Office of the Courts and equivalent
8 out-of-state agency if the individual resided or worked outside of Kentucky during the
9 year prior to volunteering;

10 2. Within fourteen (14) days of the date of service as a volunteer, the results of a cen-
11 tral registry check as described in 922 KAR 1:470; and

12 3. Prior to the date the individual began serving as a volunteer, the results of a nurse
13 aide abuse registry check as described in 906 KAR 1:100;

14 (h) Annually, for twenty-five (25) percent of volunteers randomly selected, performing
15 direct care staff or a supervisory function, obtain the results of a criminal record check
16 from the Kentucky Administrative Office of the Courts and equivalent out-of-state
17 agency if the individual resided or worked outside of Kentucky during the year prior to
18 volunteering;

19 (i) Not employ or place an individual as a volunteer who:

20 1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

21 2. Has a prior felony conviction;

22 3. Has a conviction of abuse or sale of illegal drugs;

23 4. Has a conviction of abuse, neglect or exploitation;

1 5. Has a Cabinet for Health and Family Services finding of child abuse or neglect pur-
2 suant to the central registry; or

3 6. Is listed on the nurse aide abuse registry;

4 (j) Not employ or place an individual as a volunteer to transport an SCL recipient if
5 the individual has a driving under the influence (DUI) conviction during the past year;
6 and

7 (k) [a criminal record check from the Administrative Office of the Courts in each state
8 in which the individual resided or worked in during the previous year; or

9 ~~2. For an employee who resided or worked outside the Commonwealth during the~~
10 ~~previous year, obtain a criminal record check from the Administrative Office of the~~
11 ~~Courts or the state's designated equivalent agency;~~

12 ~~(f) For twenty-five (25) percent of employees, randomly selected, obtain a criminal~~
13 ~~record check from the Administrative Office of the Courts, or other states designated~~
14 ~~equivalent annually for each state in which the individual resided or worked in during the~~
15 ~~previous year;~~

16 ~~(g) Obtain a criminal record check from the Administrative Office of the Courts prior to~~
17 ~~placement as a volunteer performing direct care staff or a supervisory function, and~~
18 ~~twenty-five (25) percent of volunteers, randomly selected, annually thereafter if the indi-~~
19 ~~vidual is placed;~~

20 ~~(h) Not employ or place an individual as a volunteer with a prior conviction of an of-~~
21 ~~fense delineated in KRS 17.165(1) through (3) or prior felony conviction; and~~

22 ~~(i)} Evaluate the performance and competency of each employee upon completion of~~
23 ~~the agency's designated probationary period and at a minimum of annually thereafter.~~

- 1 (15) An SCL provider shall have:
- 2 (a) [~~Have~~] An executive director who:
- 3 1.a. Is qualified with a bachelor's degree from an accredited institution in administra-
- 4 tion or a human services field; or
- 5 b. Is a registered nurse; and
- 6 2. Has a minimum of one (1) year of administrative responsibility in an organization
- 7 which served individuals with mental retardation or a developmental disability;
- 8 (b) [~~Have~~] A program director of the SCL waiver program who:
- 9 1. Has a minimum of one (1) year of previous supervisory responsibility in an organi-
- 10 zation which served individuals with mental retardation or developmental disabilities;
- 11 2. Is an SCL MRP [~~a QMRP~~]; and
- 12 3. May serve as executive director if the requirements established in paragraph (a) of
- 13 this subsection of this administrative regulation are met;
- 14 (c) [~~Have~~] Adequate direct-contact staff who:
- 15 1.a.(i) Is eighteen (18) years or older; and
- 16 (ii) Has a high school diploma or GED; or
- 17 b.(i) Is at least twenty-one (21) years old; and
- 18 (ii) Is able to adequately communicate with recipients and staff;
- 19 2. Has a valid Social Security number or valid work permit if not a U.S. citizen;
- 20 3. Can understand and carry out instructions; and
- 21 4. Has ability to keep simple records; and
- 22 (d) [~~Has~~] Adequate supervisory staff who:
- 23 1.a.(i) Is eighteen (18) years or older; and

- 1 (ii) Has a high school diploma or GED; or
- 2 b.(i) Is at least twenty-one (21) years old; and
- 3 (ii) Has a minimum of one (1) year experience in providing services to individuals with
- 4 mental retardation or developmental disability;
- 5 2. Is able to adequately communicate with the recipients, staff, and family members;
- 6 3. Has a valid Social Security number or valid work permit if not a U.S. citizen; and
- 7 4. Has ability to perform required record keeping.

8 (16) An SCL provider shall establish written guidelines that address the health, safety

9 and welfare of an SCL recipient, which shall include:

- 10 (a) Ensuring the health, safety and welfare of the SCL recipient;
- 11 (b) Maintenance of sanitary conditions;
- 12 (c) Ensuring each site operated by the provider is equipped with:
- 13 1. An operational smoke detector placed in strategic locations; and
- 14 2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic loca-
- 15 tions; one (1) of which shall be capable of extinguishing a grease fire and have a rating
- 16 of 1A10BC;
- 17 (d) Ensuring the availability of an ample supply of hot and cold running water with the
- 18 water temperature at a tap used by an SCL recipient not exceeding 120 degrees Fahr-
- 19 enheit;
- 20 (e) Establishing written procedures concerning the presence of deadly weapons as
- 21 defined in KRS 500.080 which shall ensure:
- 22 1. Safe storage and use; and
- 23 2. That firearms and ammunition are permitted:

- 1 a. Only in a family [~~care~~] home provider or an adult foster care home; and
- 2 b. Only if stored separately and under double lock;
- 3 (f) Establishing [~~Establish~~] written procedures concerning the safe storage of com-
- 4 mon household items;
- 5 (g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with
- 6 the current recommended dietary allowance of the Food and Nutrition Board of the Na-
- 7 tional Research Council or as specified by a physician;
- 8 (h) Unless the employee is a licensed or registered nurse, ensuring that staff admin-
- 9 istering medication:
- 10 1. Have specific training provided by a licensed medical professional per a DMR-
- 11 approved curriculum and documented competency on medication administration, medi-
- 12 cation cause and effect and proper administration and storage of medication; and
- 13 2. Document all medication administered, including self-administered, over-the-
- 14 counter drugs, on a medication log, with the date, time, and initials of the person who
- 15 administered the medication and ensure that the medication shall:
- 16 a. Be kept in a locked container;
- 17 b. If a controlled substance, be kept under double lock;
- 18 c. Be carried in a proper container labeled with medication and dosage and accom-
- 19 pany and be administered to an SCL recipient at a program site other than his or her
- 20 residence if necessary; and
- 21 d. Be documented on a medication administration form and properly disposed of, if
- 22 discontinued; and
- 23 (i) Policy and procedures for ongoing monitoring of medication administration.

1 (17) An SCL provider shall establish and follow written guidelines for handling an
2 emergency or a disaster which shall:

3 (a) Be readily accessible on site;

4 (b) Include instruction for notification procedures and the use of alarm and signal sys-
5 tems to alert an SCL recipient according to his or her disability;

6 (c) Include an evacuation drill to be conducted in three (3) minutes or less, docu-
7 mented at least quarterly and scheduled to include a time when an SCL recipient is
8 asleep; and

9 (d) Mandate that the result of an evacuation drill be evaluated and modified as
10 needed.

11 (18) An SCL provider shall:

12 (a) Provide orientation for each new employee which shall include the mission, goals,
13 organization, and practice of the agency;

14 (b) Provide or arrange for the provision of competency-based training to each em-
15 ployee to teach and enhance skills related to the performance of their duties;

16 (c) Require documentation of all training which shall include:

17 1. The type of training provided;

18 2. The name and title of the trainer;

19 3. The length of the training;

20 4. The date of completion; and

21 5. The signature of the trainee verifying completion;

22 (d) Ensure that each employee prior to independent functioning completes training
23 which shall include:

- 1 1. Unless the employee is a licensed or registered nurse, first aid, which shall be pro-
2 vided by an individual certified as a trainer by the American Red Cross or other nation-
3 ally-accredited organization;
- 4 2. Cardiopulmonary resuscitation which shall be provided by an individual certified as
5 a trainer by the American Red Cross or other nationally-accredited organization;
- 6 3. Crisis prevention and management;
- 7 4. Identification and prevention of abuse, neglect, and exploitation;
- 8 5. Rights of individuals with disabilities; and
- 9 6. Individualized instruction on the needs of the SCL recipient to whom the trainee
10 provides supports;
- 11 (e) Ensure that each employee that will be administering medications, prior to inde-
12 pendent functioning, completes training which shall include;
- 13 1. Medication administration training per cabinet-approved curriculum;
- 14 2. Medications and seizures;
- 15 3. First aid, which shall be provided by an individual certified as a trainer by the
16 American Red Cross or other nationally-accredited organization;
- 17 4. Cardiopulmonary resuscitation which shall be provided by an individual certified as
18 a trainer by the American Red Cross or other nationally-accredited organization;
- 19 5. Crisis prevention and management;
- 20 6. Identification and prevention of abuse, neglect, and exploitation;
- 21 7. Rights of individuals with disabilities; and
- 22 8. Individualized instruction on the needs of the SCL recipient to whom the trainee
23 provides supports;

1 (f) Ensure that all employees complete core training, consistent with a DMHMR-
2 approved curriculum, no later than six (6) months from the date of employment, which
3 shall include:

- 4 1. Values, attitudes, and stereotypes;
- 5 2. Building community inclusion;
- 6 3. Person-centered planning;
- 7 4. Positive behavior support;
- 8 5. Human sexuality and persons with disabilities;
- 9 6. Self determination; and
- 10 7. Strategies for successful teaching;

11 (g) Not be required to receive the training specified in this section if the provider is:

- 12 1. An occupational therapist providing occupational therapy;
- 13 2. A physical therapist providing physical therapy;
- 14 3. A psychologist or psychologist with autonomous functioning providing psychologi-
15 cal services; or
- 16 4. A speech therapist providing speech therapy; [~~and~~]

17 (h) Ensure that an individual volunteer performing a direct care staff or a supervisory
18 function receives training prior to working independently, which shall include:

- 19 1. Orientation to the agency;
- 20 2. Individualized instruction on the needs of the SCL recipient to whom the volunteer
21 provides support;
- 22 3. First aid, which shall be provided by an individual certified as a trainer by the
23 American Red Cross or other nationally-accredited organization; and

1 4. Cardiopulmonary resuscitation, which shall be provided by an individual certified
2 as a trainer by the American Red Cross or other nationally-accredited organization; and

3 (i) On or after the first day of the month following the effective date of this emergency
4 administrative regulation, ensure that each new case manager hired complete DMR-
5 approved case management training within:

6 1. The first three (3) months from the date of hire; or

7 2. As soon as possible following the third month of hire if the case manager is unable
8 to complete training within the first three (3) months due to unavailability of the training.

9 Section 4. Non-CDO Covered Services. (1) A non-CDO SCL waiver service shall:

10 (a) Be prior authorized by the department; and

11 (b) Be provided pursuant to the plan of care [~~individual support plan~~].

12 (2) The following services provided to an SCL recipient by an SCL waiver provider
13 shall be covered by the department:

14 (a) Adult day training which shall:

15 1. Support the SCL recipient to participate in daily meaningful routines in the commu-
16 nity;

17 2. Stress training in:

18 a. The activities of daily living;

19 b. Self-advocacy;

20 c. Adaptive and social skills; and

21 d. Vocational skills;

22 3. Be provided in a nonresidential or community setting that may;

23 a. Be a fixed location; or

- 1 b. Occur in public venues.
- 2 4. Not be diversional in nature;
- 3 5. Be provided as on-site services which shall:
 - 4 a. Include facility-based services provided on a regularly-scheduled basis;
 - 5 b. Lead to the acquisition of skills and abilities to prepare the participant for work or
6 community participation; or
 - 7 c. Prepare the participant for transition from school to work or adult support services;
- 8 6. Be provided as off-site services which:
 - 9 a. Shall include services provided in a variety of community settings;
 - 10 b. Shall provide access to community-based activities that cannot be provided by
11 natural or other unpaid supports;
 - 12 c. Shall be designed to result in increased ability to access community resources
13 without paid supports;
 - 14 d. Shall provide the opportunity for the participant to be involved with other members
15 of the general population;
 - 16 e. May be provided as an enclave or group approach to training in which participants
17 work as a group or dispersed individually throughout an integrated work setting with
18 people without disabilities;
 - 19 f. May be provided as a mobile crew performing work in a variety of community busi-
20 nesses or other community settings with supervision by the provider; and
 - 21 g. May be provided as entrepreneurial or group approach to training for participants
22 to work in a small business created specifically by or for the recipient or recipients
- 23 7. Ensure that any recipient performing productive work that benefits the organization

1 be paid commensurate with compensation to members of the general work force doing
2 similar work;

3 8. Require that a provider conduct an orientation informing the recipient of supported
4 employment and other competitive opportunities in the community at least annually;

5 9. Be provided at a time mutually agreed to by the recipient and provider;

6 10. a. Be provided to recipients age twenty-two (22) or older;

7 b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition proc-
8 ess from school to work or adult support services;

9 11. Be documented by:

10 a. A time and attendance record which shall include;

11 (i) The date of the service;

12 (ii) The beginning and ending time of the service;

13 (iii) The location of the service; and

14 (iv) The signature, date of signature, and title of the individual providing the service;

15 and

16 b. A detailed monthly summary staff note which shall include:

17 (i) The month, day, and year for the time period covered by each note written;

18 (ii) [~~Progress toward outcomes identified in the ISP;~~

19 ~~(iii)] Progression, regression, and maintenance toward outcomes identified in the plan~~

20 of care; and

21 ~~(iii)~~[(iv)] The signature, date of signature, and title of individual preparing the sum-

22 mary staff note;

23 12. Be limited to five (5) days per week, 255 days maximum per year;

1 13. Not exceed eight (8) hours per day, five (5) days [~~or forty (40) hours~~] per week;
2 and

3 14. Not exceed sixteen (16) hours per day if provided in combination with community
4 living supports or supported employment;

5 (b) An assessment service including a comprehensive assessment which shall:

6 1. Identify an SCL recipient's needs and the services that the SCL recipient or his or
7 her family cannot manage or arrange for on his or her behalf;

8 2. Evaluate an SCL recipient's physical health, mental health, social supports, and
9 environment;

10 3. Be requested by an individual requesting SCL services or a family or legal repre-
11 sentative of the individual;

12 4. Be conducted within seven (7) calendar days of receipt of the request for assess-
13 ment;

14 5. Include at least one (1) face-to-face contact with the SCL recipient and, if appro-
15 priate, his or her family by the assessor in the SCL recipients home; and

16 6. Not be reimbursable if the individual does not receive a level of care certification;

17 (c) A reassessment service which shall:

18 1. Determine the continuing need for SCL waiver services;

19 2. Be performed at least every twelve (12) months;

20 3. Be conducted using the same procedures as for an assessment service;

21 4. Be conducted by a SCL case manager or support broker and submitted to the de-
22 partment no more than three (3) weeks prior to the expiration of the current level of care
23 certification to ensure that certification is consecutive;

- 1 5. Not be reimbursable if conducted during a period that the SCL recipient is not cov-
2 ered by a valid level of care certification; and
- 3 6. Not be retroactive;
- 4 (d) Behavioral support which shall:
- 5 1. Be the systematic application of techniques and methods to influence or change a
6 behavior in a desired way;
- 7 2. Be provided to assist the SCL recipient to learn new behaviors that are directly re-
8 lated to existing challenging behaviors or functionally equivalent replacement behaviors
9 for identified challenging behaviors;
- 10 3. Include a functional assessment of the SCL recipient's behavior which shall in-
11 clude:
- 12 a. An analysis of the potential communicative intent of the behavior;
- 13 b. The history of reinforcement for the behavior;
- 14 c. Critical variables that preceded [~~precede~~] the behavior;
- 15 d. Effects of different situations on the behavior; and
- 16 e. A hypothesis regarding the motivation, purpose and factors which maintain the be-
17 havior;
- 18 4. Include the development of a behavioral support plan which shall:
- 19 a. Be developed by the behavioral specialist;
- 20 b. Be implemented by SCL provider staff in all relevant environments and activities;
- 21 c. Be revised as necessary;
- 22 d. Define the techniques and procedures used;
- 23 e. Be designed to equip the recipient to communicate his or her needs and to partici-

- 1 pate in age-appropriate activities;
- 2 f. Include the hierarchy of behavior interventions ranging from the least to the most
- 3 restrictive;
- 4 g. Reflect the use of positive approaches; and
- 5 h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, ver-
- 6 bal abuse, and any procedure which denies private communication, requisite sleep,
- 7 shelter, bedding, food, drink, or use of a bathroom facility;
- 8 5. Include the provision of training to other SCL providers concerning implementation
- 9 of the behavioral support plan;
- 10 6. Include the monitoring of an SCL recipient's progress which shall be accomplished
- 11 through:
- 12 a. The analysis of data concerning the frequency, intensity, and duration of a behav-
- 13 ior; and
- 14 b. The reports of an SCL provider involved in implementing the behavioral support
- 15 plan;
- 16 7. Provide for the design, implementation, and evaluation of systematic environ-
- 17 mental modifications;
- 18 8. Be provided by a behavior support specialist who shall have:
- 19 a. A master's degree with formal graduate course work in a behavioral science; and
- 20 b. One (1) year of experience in behavioral programming;
- 21 9. Be documented by a detailed staff note which shall include:
- 22 a. The date of the service;
- 23 b. The beginning and ending time; and

- 1 c. The signature, date of signature and title of the behavioral specialist; and
- 2 10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours
- 3 for the initial development of the behavior support plan and staff training;
- 4 (e) Case management which shall include:
- 5 1. Initiation, coordination, implementation, and monitoring of the assessment, reas-
- 6 sessment, evaluation, intake, and eligibility process;
- 7 2. Assisting an SCL recipient in the identification, coordination, and arrangement of
- 8 the support team and support team meetings;
- 9 3. Assisting an SCL recipient and the support team to develop, update, and monitor
- 10 the plan of care [ISP] which shall:
- 11 a. Be initially developed within thirty (30) days of the initiation of the service using
- 12 person-centered guiding principles;
- 13 b. Be updated at least annually or as changes occur;
- 14 c. Be submitted with the MAP-351 [~~MAP-351B and MAP 145 SCL forms~~]; and
- 15 d. Include any modification [~~the addendum~~] to the plan of care [ISP] and be sent to
- 16 the department [~~DMHMR~~] within fourteen (14) days of the effective date that the change
- 17 occurs with the SCL recipient;
- 18 4. Assisting an SCL recipient in obtaining a needed service outside those available
- 19 by the SCL waiver utilizing referrals and information;
- 20 5. Furnishing an SCL recipient and legal representative with a listing of each avail-
- 21 able SCL provider in the service area;
- 22 6. Maintaining documentation signed by an SCL recipient or legal representative of
- 23 informed choice of an SCL provider and of any change to the selection of an SCL pro-

1 vider and the reason for the change;

2 7. Timely distribution of the plan of care [ISP], crisis prevention plan, assessment,
3 and other documents to chosen SCL service providers;

4 8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour tele-
5 phone access to a case management staff person;

6 9. Working in conjunction with an SCL provider selected by an SCL recipient to de-
7 velop a crisis prevention plan which shall be:

8 a. Individual-specific;

9 b. Annually reviewed; and

10 c. Updated as a change occurs;

11 10. Assisting an SCL recipient in planning resource use and assuring protection of
12 resources;

13 11. Services that are exclusive of the provision of a direct service to an SCL recipient;

14 12. Monthly face-to-face contact with an SCL recipient;

15 13. Monitoring the health, safety, and welfare of an SCL recipient;

16 14. Monitoring all of the supports provided to an SCL recipient;[:]

17 15. Notifying the local DCBS office, the department and DMR on a MAP-24C form if

18 an SCL recipient is:

19 a. Terminated from the SCL waiver program;

20 b. Admitted to an ICF-MR-DD;

21 c. Admitted to a hospital; or

22 d. Transferred to another Medicaid waiver program;

23 16. Establishing a human rights committee which shall:

- 1 a. Include an:
- 2 (i) SCL recipient;
- 3 (ii) Individual not affiliated with the SCL provider; and
- 4 (iii) Individual who has knowledge and experience in rights issues;
- 5 b. Review and approve, prior to implementation and at least annually thereafter, all
- 6 plans of care [ISPs] with rights restrictions;
- 7 c. Review and approve prior to implementation and at least annually thereafter, in
- 8 conjunction with the SCL recipient's team, behavior support plans that include highly-
- 9 restrictive procedures or contain rights restrictions; and
- 10 d. Review the use of a psychotropic medication by an SCL recipient [~~with or~~] without
- 11 an Axis I diagnosis;
- 12 17.[16.] Establishing a behavior intervention committee which shall:
- 13 a. Include one (1) individual who has expertise in behavior intervention and is not the
- 14 behavior specialist who wrote the behavior support plan;
- 15 b. Be separate from the human rights committee;
- 16 c. Review and approve prior to implementation and at least annually thereafter or as
- 17 changes are needed, in conjunction with the SCL recipient's team, all behavior support
- 18 plans; and
- 19 d. Review the use of a psychotropic medication by an SCL recipient [~~with or~~] without
- 20 an Axis I diagnosis and recommend an alternative intervention if appropriate;
- 21 18.[17.] Documentation with a monthly summary note which shall include:
- 22 a. Documentation of monthly contact with each chosen SCL provider which shall in-
- 23 clude monitoring of the delivery of services and the effectiveness of the assessment of

- 1 needs and plan of care;
- 2 b. Documentation of monthly face-to-face contact with an SCL recipient; and
- 3 c. Progress towards outcomes identified in the plan of care [ISP];
- 4 19.[18.] Provision by a case manager who shall:
- 5 a. Have a bachelor's degree from an accredited institution in a human services field
- 6 ~~[in a human service]~~;
- 7 b. Be a registered nurse licensed in accordance with KRS 314.011;
- 8 c. Be a qualified social worker;
- 9 d. Be a licensed marriage and family therapist;
- 10 e. Be a professional clinical counselor;
- 11 f. Be a certified psychologist; or
- 12 g. Be a licensed psychological practitioner;
- 13 20.[19.] Supervision by a case management supervisor who shall be an SCL MRP [a
- 14 ~~QMRP~~]; and
- 15 21.[20.] Documentation with a detailed monthly summary note which shall include:
- 16 a. The month, day, and year for the time period each note covers;
- 17 b. Progression, regression, and maintenance toward outcomes identified in the plan
- 18 of care [ISP]; and
- 19 c. The signature, date of signature, and title of the individual preparing the note;
- 20 (f) Children's day habilitation which shall be:
- 21 1. The provision of support, training, and intervention in the areas of:
- 22 a. Self-care;
- 23 b. Sensory/motor development;

- 1 c. Daily living skills;
- 2 d. Communication; and
- 3 e. Adaptive and social skills;
- 4 2. Provided in a nonresidential or community setting;
- 5 3. Provided to enable the recipient to participate in and access community resources;
- 6 4. Provided to help remove or diminish common barriers to participation in typical
- 7 roles in community life;
- 8 5. Provided at a time mutually agreed upon by the recipient and provider;
- 9 6. Limited to:
- 10 a. Individuals who are in school and up to sixteen (16) years of age;
- 11 b. Up to eight (8) hours per day, five (5) days per week; and
- 12 c. Up to sixteen (16) hours per day in combination with community living supports;
- 13 and
- 14 7. Documented by:
- 15 a. A time and attendance record which shall include:
- 16 (i) The date of service;
- 17 (ii) The beginning and ending time of the service;
- 18 (iii) The location of the service; and
- 19 (iv) The signature, date of signature, and title of the individual providing the service;
- 20 and
- 21 b. A detailed monthly staff note which shall include:
- 22 (i) The month, day, and year for the time period each note covers;
- 23 (ii) ~~Progress toward outcomes identified in the ISP;~~

1 ~~(iii)~~] Progression, regression, or maintenance of outcomes identified in the plan of
2 care [~~ISP~~]; and

3 (iii) [~~(iv)~~] The signature, date of signature, and title of the individual preparing the
4 summary staff note;

5 (g) Community living supports which shall:

6 1. Be provided to facilitate independence and promote integration into the community
7 for an SCL recipient residing in his or her own home or in his or her family's home;

8 2. Be supports and assistance which shall be related to chosen outcomes and not be
9 diversional in nature. This may include:

10 a. Routine household tasks and maintenance;

11 b. Activities of daily living;

12 c. Personal hygiene;

13 d. Shopping;

14 e. Money management;

15 f. Medication management;

16 g. Socialization;

17 h. Relationship building;

18 i. Leisure choices;

19 j. Participation in community activities;

20 k. Therapeutic goals; or

21 l. Non-medical care not requiring nurse or physician intervention;

22 3. Not replace other work or day activities;

23 4. Be provided on a one-on-basis;

- 1 5. Not be provided at an adult day-training or children's day-habilitation site;
- 2 6. Be documented by:
- 3 a. A time and attendance record which shall include:
- 4 (i) The date of the service;
- 5 (ii) The beginning and ending time of the service; and
- 6 (iii) The signature, date of signature and title of the individual providing the service;
- 7 and
- 8 b. A detailed monthly summary note which shall include:
- 9 (i) The month, day and year for the time period each note covers;
- 10 (ii) ~~[Progress toward outcomes identified in the ISP];~~
- 11 ~~(iii)]~~ Progression, regression and maintenance toward outcomes identified in the plan
- 12 of care [ISP]; and
- 13 (iii) [(iv)] The signature, date of signature and title of the individual preparing the sum-
- 14 mary note; and
- 15 7. Be limited to sixteen (16) hours per day alone or in combination with adult day
- 16 training, children's day habilitation, and supported employment;
- 17 (h) Occupational therapy which shall be:
- 18 1. A physician-ordered evaluation of an SCL recipient's level of functioning by apply-
- 19 ing diagnostic and prognostic tests;
- 20 2. Physician ordered services in a specified amount and duration to guide an SCL re-
- 21 cipient in the use of therapeutic, creative, and self-care activities to assist an SCL re-
- 22 cipient in obtaining the highest possible level of functioning;
- 23 3. Training of other SCL providers on improving the level of functioning;

- 1 4. Exclusive of maintenance or the prevention of regression;
- 2 5. Provided by an occupational therapist or an occupational therapy assistant super-
- 3 vised by a licensed occupational therapist in accordance with 201 KAR 28:130; and
- 4 6. Documented by a detailed staff note which shall include:
 - 5 a. Progress toward outcomes identified in the plan of care [ISP];
 - 6 b. The date of the service;
 - 7 c. Beginning and ending time; and
 - 8 d. The signature, date of signature and title of the individual providing the service;
- 9 (i) Physical therapy which shall be:
 - 10 1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and
 - 11 functional ability tests;
 - 12 2. Physician-ordered treatment in a specified amount and duration to assist an SCL
 - 13 recipient in obtaining the highest possible level of functioning;
 - 14 3. Training of another SCL provider on improving the level of functioning;
 - 15 4. Exclusive of maintenance or the prevention of regression;
 - 16 5. Provided by a physical therapist or a certified physical therapist assistant super-
 - 17 vised by a licensed physical therapist in accordance with 201 KAR 22:001 and 201 KAR
 - 18 22:020; and
 - 19 6. Documented by a detailed staff note which shall include:
 - 20 a. Progress made toward outcomes identified in the plan of care [ISP];
 - 21 b. The date of the service;
 - 22 c. Beginning and ending time of the service; and
 - 23 d. The signature, date of signature and title of the individual providing the service;

- 1 (j) Psychological services which shall:
- 2 1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment
- 3 for mental illness and a psychological condition;
- 4 2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or
- 5 another covered service;
- 6 3. Include:
- 7 a. The administration of psychological testing;
- 8 b. Evaluation;
- 9 c. Diagnosis; and
- 10 d. Treatment;
- 11 4. Be incorporated into the plan of care [ISP] with input from the psychological ser-
- 12 vice provider for the development of program-wide support;
- 13 5. Be provided by a psychologist or a psychologist with autonomous functioning; and
- 14 6. Be documented by a detailed staff note which shall include:
- 15 a. The date of the service;
- 16 b. The beginning and ending time of the service; and
- 17 c. The signature, date of signature and title of the individual providing the service;
- 18 (k) Residential support service which shall:
- 19 1. Include twenty-four (24) hour supervision in:
- 20 a. A staffed residence which shall not have greater than three (3) recipients of pub-
- 21 licly-funded supports in a home rented or owned by the SCL provider;
- 22 b. A group home which shall be licensed in accordance with 902 KAR 20:078 and
- 23 shall not have greater than eight (8) SCL recipients;

- 1 c. A family [~~care~~] home provider which shall not have greater than three (3) recipients
2 of publicly-funded supports living in the home; or
- 3 d. An adult foster care home which shall not have greater than three (3) recipients of
4 publicly-funded supports aged eighteen (18) or over living in the home;
- 5 2. Utilize a modular home only if the:
- 6 a. Wheels are removed;
- 7 b. Home is anchored to a permanent foundation; and
- 8 c. Windows are of adequate size for an adult to use as an exit in the event of an
9 emergency;
- 10 3. Not utilize a motor home;
- 11 4. Provide a sleeping room which ensures that an SCL recipient:
- 12 a. Does not share a room with an individual of the opposite sex who is not the SCL
13 recipient's spouse;
- 14 b. Under the age of eighteen (18) does not share a room with an individual that has
15 an age variance of more than five (5) years;
- 16 c. Does not share a room with an individual who presents a potential threat; and
- 17 d. Has a separate bed equipped with substantial springs, a clean and comfortable
18 mattress and clean bed linens as required for the SCL recipient's health and comfort;
- 19 5. Provide assistance with daily living skills which shall include:
- 20 a. Ambulation;
- 21 b. Dressing;
- 22 c. Grooming;
- 23 d. Eating;

- 1 e. Toileting;
- 2 f. Bathing;
- 3 g. Meal planning and preparation;
- 4 h. Laundry;
- 5 i. Budgeting and financial matters;
- 6 j. Home care and cleaning; or
- 7 k. Medication management;
- 8 6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care [~~individual support plan~~];
- 9
- 10 7. Provide or arrange for transportation to services, activities, and medical appointments as needed;
- 11
- 12 8. Include participation in medical appointments and follow-up care as directed by the medical staff; and
- 13
- 14 9. Be documented by a detailed monthly summary note which shall include:
- 15 a. The month, day, and year for the time period the note covers;
- 16 b. Progression, regression and maintenance toward outcomes identified in the plan of care [ISP];
- 17
- 18 c. Pertinent information regarding the life of the SCL recipient; and
- 19 d. The signature, date of signature, and title of the individual preparing the staff note;
- 20 (l) Respite service which shall be:
- 21 1. Provided only to an SCL recipient unable to independently administer self-care;
- 22 2. Provided in a variety of settings;
- 23 3. Provided on a short-term basis due to absence or need for relief of an individual

- 1 providing care to an SCL recipient;
- 2 4. Provided only to an SCL recipient who resides in a family [~~care~~] home provider,
- 3 adult foster care home, or his or her own or family's home;
- 4 5. Limited to 1440 hours per calendar year; and
- 5 6. Documented by a detailed staff note which shall include:
- 6 a. The date of the service;
- 7 b. The beginning and ending time; and
- 8 c. The signature, date of signature and title of the individual providing the service;
- 9 (m) Specialized medical equipment and supplies which shall:
- 10 1. Include durable and nondurable medical equipment, devices, controls, appliances
- 11 or ancillary supplies;
- 12 2. Enable an SCL recipient to increase his or her ability to perform daily living activi-
- 13 ties or to perceive, control or communicate with the environment;
- 14 3. Be ordered by a physician and submitted on a MAP-95;
- 15 4. Include equipment necessary to the proper functioning of specialized items;
- 16 5. Not be available through the department's durable medical equipment, vision,
- 17 hearing, or dental programs;
- 18 6. Meet applicable standards of manufacture, design and installation; and
- 19 7. Exclude those items which are not of direct medical or remedial benefit to the SCL
- 20 recipient;
- 21 (n) Speech therapy which shall be:
- 22 1. A physician-ordered evaluation of an SCL recipient with a speech or language dis-
- 23 order;

- 1 2. A physician ordered habilitative service in a specified amount and duration to as-
- 2 sist an SCL recipient with a speech and language disability in obtaining the highest pos-
- 3 sible level of functioning;
- 4 3. Training of other SCL providers on improving the level of functioning;
- 5 4. Exclusive of maintenance or the prevention of regression;
- 6 5. Be provided by a speech therapist; and
- 7 6. Documented by a detailed staff note which shall include:
- 8 a. Progress toward outcomes identified in the plan of care [ISP];
- 9 b. The date of the service;
- 10 c. The beginning and ending time; and
- 11 d. The signature, date of signature and title of the individual providing the service; or
- 12 (o) Supported employment which shall be:
- 13 1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an
- 14 environment in which an individual without a disability is employed;
- 15 2. Provided in a variety of settings;
- 16 3. Provided on a one-to-one (1 to 1) basis;
- 17 4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29
- 18 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which
- 19 shall be documented in the SCL recipient's file;
- 20 5. Exclusive of work performed directly for the supported employment provider;
- 21 6. Provided by a staff person who has completed a supported employment training
- 22 curriculum conducted by staff of the cabinet or its designee;
- 23 7. Documented by:

- 1 a. A time and attendance record with shall include:
- 2 (i) The date of service;
- 3 (ii) The beginning and ending time; and
- 4 (iii) The signature, date of signature, and title of the individual providing the service;
- 5 and
- 6 b. A detailed monthly summary note which shall include:
- 7 (i) The month, day, and year for the time period the note covers;
- 8 (ii) Progression, regression and maintenance toward outcomes identified in the plan
- 9 of care [ISP]; and
- 10 (iii) The signature, date of signature and title of the individual preparing the note; and
- 11 8. Limited to forty (40) hours per week alone or in combination with adult day training.

12 Section 5. Consumer Directed Option.

13 (1) Covered services and supports provided to an SCL recipient participating in CDO

14 shall include:

15 (a) A home and community support service which shall:

16 1. Be available only under the consumer directed option;

17 2. Be provided in the consumer's home or in the community;

18 3. Be based upon therapeutic goals and not diversional in nature;

19 4. Not be provided to an individual if the same or similar service is being provided to

20 the individual via non-CDO SCL services; and

21 5.a. Be respite for the primary caregiver; or

22 b. Be supports and assistance related to chosen outcomes to facilitate independence

23 and promote integration into the community for an individual residing in his or her own

1 home or the home of a family member and may include:

2 (i) Routine household tasks and maintenance;

3 (ii) Activities of daily living;

4 (iii) Personal hygiene;

5 (iv) Shopping;

6 (v) Money management;

7 (vi) Medication management;

8 (vii) Socialization;

9 (viii) Relationship building;

10 (ix) Leisure choices; or

11 (x) Participation in community activities; and

12 (b) A community day support service which shall:

13 1. Be available only under the consumer directed option;

14 2. Be provided in a community setting;

15 3. Be tailored to the consumer's specific personal outcomes related to the acquisition,

16 improvement, and retention of skills and abilities to prepare and support the consumer

17 for work or community activities, socialization, leisure or retirement activities;

18 4. Be based upon therapeutic goals and not diversional in nature; and

19 5. Not be provided to an individual if the same or similar service is being provided to

20 the individual via non-CDO SCL services.

21 (2) To be covered, a CDO service shall be specified in a consumer's plan of care;

22 (3) Reimbursement for a CDO service shall not exceed the department's allowed re-

23 imbursement for the same or a similar service provided in a non-CDO SCL setting.

1 (4) A consumer, including a married consumer, shall choose providers and a con-
2 sumer's choice of CDO provider shall be documented in the consumer's plan of care.

3 (5) A consumer may designate a representative to act on his or her behalf. The CDO
4 representative shall:

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

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

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

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

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

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

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

14 (8) The department may terminate a consumer from CDO services if it determines
15 that the consumer's CDO provider has not adhered to the plan of care;

16 (9) Prior to a consumer's termination from CDO services, the support broker shall:

17 (a) Notify the SCL assessment or reassessment service provider of potential termina-
18 tion;

19 (b) Assist the consumer in developing a resolution and prevention plan;

20 (c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to re-
21 solve the issue, develop and implement a prevention plan or designate a CDO repre-
22 sentative;

23 (d) Complete, and submit to the department and to DMR, a MAP-2000 terminating

1 the consumer from CDO services if the consumer fails to meet the requirements in
2 paragraph (c) of this subsection; and

3 (e) Assist the consumer in transitioning back to traditional SCL services.

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

5 (a) Notify a consumer in writing of its decision to terminate the consumer's CDO par-
6 ticipation; and

7 (b) Except in a case where a consumer failed to pay patient liability, inform the con-
8 sumer of the right to appeal the department's decision in accordance with Section 9 of
9 this administrative regulation.

10 (11) A CDO provider:

11 (a) Shall be selected by the consumer;

12 (b) Shall submit a completed Kentucky Consumer Directed Option Employee Pro-
13 vider Contract to the support broker;

14 (c) Shall be eighteen (18) years of age or older;

15 (d) Shall be a citizen of the United States with a valid Social Security number or pos-
16 sess a valid work permit if not a US citizen;

17 (e) Shall be able to communicate effectively with the consumer, consumer represen-
18 tative or family;

19 (f) Shall be able to understand and carry out instructions;

20 (g) Shall be able to keep records as required by the consumer;

21 (h) Shall submit to a criminal background check conducted by the Kentucky Adminis-
22 trative Office of the Courts or equivalent agency from any other state, for each state in
23 which the individual resided or worked during the year prior to selection as a provider of

1 CDO services;

2 (i) Shall submit to a check of the central registry maintained in accordance with 922

3 KAR 1:470 and not be found on the registry;

4 1. A consumer may employ a provider prior to a central registry check result being
5 obtained for up to fourteen (14) days; and

6 2. If a consumer does not obtain a central registry check result within fourteen (14)
7 days of employing a provider, the consumer shall cease employment of the provider un-
8 til a favorable result is obtained;

9 (j) Shall submit to a check of the nurse aide abuse registry maintained in accordance
10 with 906 KAR 1:100 and not be found on the registry;

11 (k) Shall not have pled guilty or been convicted of committing a sex crime or violent
12 crime as defined in KRS 17.165 (1) through (3);

13 (l) Shall complete training on the reporting of abuse, neglect or exploitation in accor-
14 dance with KRS 209.030 or KRS 620.030 and on the needs of the consumer;

15 (m) Shall be approved by the department;

16 (n) Shall maintain and submit timesheets documenting hours worked; and

17 (o) May be a friend, spouse, parent, family member, other relative, employee of a
18 provider agency or other person hired by the consumer.

19 (12) A parent, parents combined, or a spouse shall not provide more than forty (40)
20 hours of services in a calendar week (Sunday through Saturday) regardless of the num-
21 ber of family members who receive waiver services.

22 (13)(a) The department shall establish a budget for a consumer based on the individ-
23 ual's historical costs minus five (5) percent to cover costs associated with administering

1 the consumer directed option. If no historical cost exists for the consumer, the con-
2 sumer's budget shall equal the average per capita historical costs of SCL recipients mi-
3 nus five (5) percent.

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

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

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

11 1. The consumer's support broker requests an adjustment to a level higher than es-
12 tablished in paragraph (a) of this subsection; and

13 2. The department approves the adjustment.

14 (e) The department shall consider the following factors in determining whether to al-
15 low for a budget adjustment:

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

17 2. The cost effectiveness of the proposed services; and

18 3. Protection of the consumer's health, safety, and welfare.

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

23 (15) A support broker shall:

1 (a) Provide needed assistance to a consumer with any aspect of CDO or blended
2 services;

3 (b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per
4 week;

5 (c) Comply with applicable federal and state laws and requirements;

6 (d) Continually monitor a consumer's health, safety, and welfare; and

7 (e) Complete or revise a plan of care using person-centered planning principles.

8 (16) For a CDO participant, a support broker may conduct an assessment or reas-
9 essment.

10 Section 6. [~~5~~.] Incident Reporting Process. (1) An incident shall be documented on an
11 incident report form.

12 (2) There shall be three (3) classes of incidents including:

13 (a) A class I incident which shall:

14 1. Be minor in nature and not create a serious consequence;

15 2. Not require an investigation by the provider agency;

16 3. Be reported to the case manager or support broker within twenty-four (24) hours;

17 4. Be reported to the guardian as directed by the guardian; and

18 5. Be retained on file at the provider, and case management or support brokerage
19 agency;

20 (b) A class II incident which shall:

21 1. Be serious in nature;

22 2. Involve the use of physical or chemical restraint;

23 3. Involve a medication error resulting in a physician or emergency room visit;

- 1 4. Require an investigation which shall be initiated by the provider agency within
2 twenty-four (24) hours of discovery, and shall involve the case manager or support bro-
3 ker; and
- 4 5. Be reported by the provider agency to:
- 5 a. The case manager or support broker within twenty-four (24) hours of discovery;
- 6 b. The guardian within twenty-four (24) hours of discovery;
- 7 c. The assistant director of the Division of Mental Retardation, DMHMR, or designee,
8 within ten (10) calendar days of discovery, and shall include a complete written report of
9 the incident investigation and follow up; and
- 10 (c) A class III incident which shall:
- 11 1. a. Be grave in nature;
- 12 b. Be a medication error that occurs over multiple days or results in a delay in obtain-
13 ing critical medications; or
- 14 c. Be a medication error resulting in harm or hospitalization of the individual;
- 15 2. Be immediately investigated by the provider agency, and the investigation shall in-
16 volve the case manager or support broker; and
- 17 3. Be reported by the provider agency to:
- 18 a. The case manager or support broker within eight (8) hours of discovery;
- 19 b. The guardian within eight (8) hours of discovery;
- 20 c. DCBS immediately upon discovery, if involving suspected abuse, neglect, or ex-
21 ploitation in accordance with KRS Chapter 209; and
- 22 d. The assistant director of the Division of Mental Retardation, DMHMR, or designee,
23 within eight (8) hours of discovery and shall include a complete written report of the in-

1 incident investigation and follow-up within seven (7) calendar days of discovery. If the in-
2 cident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notifi-
3 cation to DMR shall occur on the following business day. The following documentation
4 with a complete written report shall be submitted for a death:

5 (i) A current plan of care;

6 (ii) A current list of prescribed medications including PRN medications;

7 (iii) A current crisis plan;

8 (iv) Medication Administration Review (MAR) forms for the current and previous
9 month;

10 (v) Staff notes from the current and previous month including details of physician and
11 emergency room visits;

12 (vi) Any additional information requested by DMHMR;

13 (vii) A coroner's report when received; and

14 (viii) If performed, an autopsy report when received.

15 (3) All medication errors shall be reported to the Assistant Director of the Division of
16 Mental Retardation, DMHMR, or designee on a monthly medication error report form by
17 the fifteenth (15th) [~~tenth (10th)~~] of the following month.

18 Section 7. [~~6.~~] SCL Waiting List. (1) An individual applying for SCL waiver services
19 shall be placed on a statewide waiting list which shall be maintained by the department.

20 (2) An individual shall be placed on the SCL waiting list based upon his or her region
21 of origin in accordance with KRS 205.6317(3) and (4).

22 (3) In order to be placed on the SCL waiting list, an individual shall submit to the de-
23 partment a completed MAP-620, Application for MR-DD Services, which shall include

1 the following:

2 (a) A signature from a physician or an SCL MRP [~~a QMRP~~] indicating medical neces-
3 sity;

4 (b) A current and valid MR/DD diagnosis, including supporting documentation to vali-
5 date the diagnosis; and

6 (c) Completion of the Axis I, II, and III.

7 (4) DMHMR or its designee shall validate the MAP-620 application information.

8 (5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an indi-
9 vidual residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be September 22, 1995 or the date
10 of admission to the ICF-MR-DD [~~ICF/MR/DD~~], whichever is later, and by category of
11 need of the individual in accordance with subsection (7)(a)-(c) of this section.

12 (6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an indi-
13 vidual residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be determined by chronological
14 date of receipt of the MAP-620 and by category of need of the individual in accordance
15 with subsection (7)(a)-(c) of this section.

16 (7) The order of placement on the SCL waiting list for an individual not residing in an
17 ICF-MR-DD [~~ICF/MR/DD~~] shall be determined by chronological date of receipt of the
18 MAP-620 and by category of need of the individual as follows:

19 (a) Emergency. The need shall be classified as emergency if an immediate service is
20 needed as determined by any of the following if all other service options have been ex-
21 plored and exhausted:

22 1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;

23 2. The death of the individual's primary caregiver and lack of alternative primary

1 caregiver;

2 3. The lack of appropriate placement for the individual due to:

3 a. Loss of housing;

4 b. Inappropriate hospitalization; or

5 c. Imminent discharge from a temporary placement;

6 4. Jeopardy to the health and safety of the individual due to the primary caregiver's

7 physical or mental health status; [øf]

8 5. The attainment of the age of twenty (20) years and six (6) months, for an individual

9 in the custody of DCBS; or

10 6. Imminent or current institutionalization in an ICF-MR-DD;

11 (b) Urgent. The need shall be classified as urgent if a service is needed within one (1)

12 year as determined by:

13 1. Threatened loss of the individual's existing funding source for supports within the

14 year due to the individual's age or eligibility;

15 2. The individual is residing in a temporary or inappropriate placement but his or her

16 health and safety is assured;

17 3. The diminished capacity of the primary caregiver due to physical or mental status

18 and the lack of an alternative primary caregiver; or

19 4. The individual exhibits an intermittent behavior or action that requires hospitaliza-

20 tion or police intervention;

21 (c) Future planning. The need shall be classified as future planning if a service is

22 needed in greater than one (1) year as determined by:

23 1. The individual is currently receiving a service through another funding source that

1 meets his or her needs;

2 2. The individual is not currently receiving a service and does not currently need the
3 service;

4 3. The individual is in the custody of DCBS and is less than twenty (20) years and six
5 (6) months of age; or

6 4. The individual is less than twenty-one (21) years of age.

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

9 (9) A written notification of original placement on the SCL waiting list and any
10 changes due to reconsideration shall be mailed to an individual or his or her legal repre-
11 sentative and case management provider if identified.

12 (10) In determining chronological status, the original date of receipt of a MAP- 620
13 shall be maintained and shall not change when an individual is moved from one (1)
14 category of need to another.

15 (11) Maintenance of the SCL waiting list shall occur as follows:

16 (a) [~~During the first year of implementation of category of need, each individual cur-~~
17 ~~rently on the SCL waiting list shall be contacted by phone or in person for validation to~~
18 ~~determine category of need;~~

19 (~~b~~) Validation shall be completed based upon the chronological date of placement on
20 the SCL waiting list within each geographic region; and

21 (b)1. [~~e~~] The department shall, at a minimum, annually update the waiting list during
22 the birth month of an individual.

23 2. The individual or his or her legal representative and case management provider

1 shall be contacted in writing to verify the accuracy of the information on the SCL waiting
2 list and his or her continued desire to pursue placement in the SCL program.

3 3. If a discrepancy is noted in diagnostic information at the time of the annual update,
4 the department may request a current diagnosis of MR/DD signed by a physician or
5 SCL MRP [QMRP], including documentation supporting the diagnosis.

6 4. The requested data shall be received by the department within thirty (30) days
7 from the date of the letter.

8 (12) Reassignment of category of need shall be completed based on the updated in-
9 formation and validation process.

10 (13) An individual or his or her legal representative may submit a written request for
11 consideration of movement from one (1) category of need to another if there is a change
12 in status of the individual.

13 (14) If an individual on the SCL waiting list in the emergency category of need is
14 placed in an ICF-MR-DD [ICF/MR/DD], the category of need shall not change.

15 (15) The criteria for removal from the SCL waiting list shall be:

16 (a) After a documented attempt, the department is unable to locate the individual or
17 his or her legal representative;

18 (b) The individual is deceased;

19 (c) Review of documentation reveals that the individual does not have a mental retar-
20 dation diagnosis or a developmental disability diagnosis as defined in Section 1 of this
21 administrative regulation;

22 (d) Notification of potential SCL funding is made and the individual or his or her legal
23 representative declines the potential funding and does not request to be maintained on

1 the SCL waiting list; or

2 (e) Notification of potential SCL funding is made and the individual or his or her legal
3 representative does not, without good cause, complete the application process with the
4 department within sixty (60) days of the potential funding notice date.

5 1. The individual or legal representative shall have the burden of providing documen-
6 tation of good cause, including:

7 a. A signed statement by the individual or the legal representative;

8 b. Copies of letters to providers;

9 c. Copies of letters from providers; and

10 d. A copy of a transition plan for individuals residing in a facility.

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

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

14 b. The length of the transition plan, not to exceed one (1) year, and contingent upon
15 continued active participation in the transition plan, for an individual who does reside in
16 a facility.

17 (16) If notification of potential SCL funding is made and an individual or his or her le-
18 gal representative declines the potential funding but requests to be maintained on the
19 SCL waiting list:

20 (a) The individual shall be moved to the future planning category; and

21 (b) The chronological date shall remain the same.

22 (17) If an individual is removed from the SCL waiting list, the department shall mail
23 written notification to the individual or his or her legal representative and the case man-

1 agement [~~SCL coordination~~] provider.

2 (18) The removal of an individual from the SCL waiting list shall not prevent the sub-
3 mittal of a new application at a later date.

4 (19) The SCL waiting list, excluding the emergency category, shall be fixed as it ex-
5 ists ninety (90) days prior to the expected date of offering a placement based upon the
6 allocation of new funding and shall be resumed following the allocation of new funding.

7 (20) An individual shall be allocated potential funding based upon:

8 (a) His or her region of origin in accordance with KRS 205.6317(3) and (4);

9 (b) His or her category of need; and

10 (c) His or her chronological date of placement on the SCL waiting list.

11 (21) To be allocated potential funding, an individual residing in an institution shall
12 meet the following additional criteria:

13 (a) The treatment professionals determine that an SCL placement is appropriate for
14 the individual; and

15 (b) The SCL placement is not opposed by the individual or his or her legal represen-
16 tative.

17 Section 8. [7.] Use of Electronic Signatures. (1) The creation, transmission, storage,
18 and other use of electronic signatures and documents shall comply with the require-
19 ments established in KRS 369.101 to 369.120, and all applicable state and federal stat-
20 utes and regulations.

21 (2) A SCL service provider choosing to utilize electronic signatures shall:

22 (a) Develop and implement a written security policy which shall:

23 1. Be adhered to by all of the provider's employees, officers, agents, and contractors;

1 2. Stipulate which individuals have access to each electronic signature and password
2 authorization; and

3 3. Ensure that an electronic signature is created, transmitted, and stored in a secure
4 fashion;

5 (b) Develop a consent form which shall:

6 1. Be completed and executed by each individual utilizing an electronic signature;

7 2. Attest to the signature's authenticity; and

8 3. Include a statement indicating that the individual has been notified of his or her re-
9 sponsibility in allowing the use of the electronic signature; and

10 (3) Produce to the department a copy of the agency's electronic signature policy, the
11 signed consent form, and the original filed signature immediately upon request.

12 Section 9 [8-] Appeal Rights. (1) An appeal of a department decision regarding a
13 Medicaid beneficiary based upon an application of this administrative regulation shall be
14 in accordance with 907 KAR 1:563.

15 (2) An appeal of a department decision regarding Medicaid eligibility of an individual
16 based upon an application of this administrative regulation shall be in accordance with
17 907 KAR 1:560.

18 (3) An appeal of a department decision regarding a provider based upon an applica-
19 tion of this administrative regulation shall be in accordance with 907 KAR 1:671.

20 (4) An individual shall not appeal a category of need specified in Section 7 [6] of this
21 administrative regulation.

22 Section 10 [9-] Incorporation by Reference. (1) "Supports for Community Living
23 Manual, April 2007 [April 2006] edition", is incorporated by reference.

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

907 KAR 1:145E

REVIEWED:

Date

Glenn Jennings, Commissioner
Department for Medicaid Services

APPROVED:

Date

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:145E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502) 564-6204

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes provisions related to the coverage of home and community based waiver services provided as an alternative to institutionalization to individuals with mental retardation or a developmental disability. (The home and community based services program for individuals with mental retardation or a developmental disability is known as the "supports for community living" or "SCL" program).
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.
 - (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 provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.
 - (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 provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.
- (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 amendment establishes a consumer directed option (CDO) program that allows, in accordance with KRS 205.5606, Medicaid SCL recipients to choose their providers of non-medical services as well as how and when they will receive the services. SCL CDO services include home and community support services and community day support services listed in the consumer's approved plan of care. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. This amendment also requires SCL providers' employees and volunteers to submit to a child abuse/neglect central registry check and a check of the nurse aide abuse registry, and not be listed on either registry for the purpose of employment or service as a volunteer. This amendment further establishes what types of documentation must be provided to the department in case of death of an SCL recipient.
 - (b) The necessity of the amendment to this administrative regulation: This amend-

ment is necessary to implement the CDO program established by KRS 205.5606 for SCL recipients.

- (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the CDO program for SCL recipients.
 - (d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing CDO program for SCL recipients in accordance with KRS 205.5605 and KRS 205.5606.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect any Medicaid SCL waiver recipient who opts to participate in the CDO program as well as any individual who chooses to be a CDO provider.
- (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: SCL waiver recipients may opt to participate in the consumer directed option program. An individual who chooses to participate will be assisted by a support broker. Individuals who wish to provide consumer directed option services must meet basic requirements including: complete and submit a CDO provider agreement to the consumer's support broker, be at least eighteen (18) years old, pass a criminal background check, complete training identified by the consumer, report any suspected abuse, neglect or exploitation, demonstrate ability to safely attend to consumer, and be able to communicate effectively.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is required by KRS 205.5606 and does not impose a cost on regulated entities.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An SCL waiver recipient who enrolls in the consumer directed option program will be able to choose their providers of non-medical services, in their approved plan of care, as well as how and when they will receive the services. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and non-medical home and community based services and supports. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. CDO providers will be reimbursed for providing services to CDO consumers.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid

program for nonresidential and non-medical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.

- (b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and non-medical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.
- (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 from general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: SCL providers, as a result of an amendment to this administrative regulation, will be required to obtain a child abuse/neglect central registry check for potential staff, volunteers, and for an annual sampling of staff. Central registry checks cost \$10.00 per individual.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Consumer-directed option (CDO) providers are subject to less strict provider qualifications than non-CDO providers in order to enhance recipient access to services and to facilitate greater recipient independence among recipients in accordance with KRS 205.5606.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:145E

Contact Person: Stuart Owen or Stephanie Brammer-Barnes (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? This amendment will affect each SCL waiver recipient who opts to participate in the consumer directed option program.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and KRS 205.5606.
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 amendment will not generate revenue for state or local government during the first year of 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 amendment will not generate revenue for state or local government during subsequent years of program administration.
 - (c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.
 - (d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

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

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: No additional expenditures are necessary to implement this amendment.

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

907 KAR 1:145E, Supports for community living services for an individual with mental retardation or a developmental disability

Summary of Material Incorporated by Reference

The "Supports for Community Living Manual, April 2007 edition" replaces the April 2006 Edition. Revisions include the following:

1. Section B.c. – extended verbal level of care certification request timeframe from fourteen (14) days to twenty-one (21) days; requires a case manager to send a MAP-351, MAP-109, and a MAP 350 to the Quality Improvement Organization (QIO) within twenty-one (21) days of receipt of a verbal level of care certification; and clarifies that the QIO will prior authorize services.
2. General changes include changing the phrase "Peer Review Organization (PRO)" to "Quality Improvement Organization (QIO)"; replacing the term "member" with "recipient"; and replacing the phrase "HIFA 1500" with "CMS 1500". Additionally, the term "QMRP" is replaced by "SCL MRP" on the "Waiver Services MAP 10" and the "Application for Supports for Community Living MR/DD Services MAP 620" and accompanying instructions. June 2007 is the revision date for the MAP 10 and MAP 620.
3. Replaces the "MAP-351B" with the "MAP-351, Medicaid Waiver Assessment" to serve as the assessment tool for home and community based waiver services. This form contains fifteen (15) pages.
4. Adds the "Addendum to MAP-351" as a new form completed by a consumer to acknowledge their freedom to choose the consumer directed option as part of waiver participation.
5. Replaces the DMR-001 with the "MAP 24C, 11/2006 edition" and for use in admitting an individual into the SCL program, transferring an individual within the SCL program, or discharging an individual from the SCL program.
6. Adds the "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)" to end a consumer's participation in the CDO program.
7. Adds the "Person Centered Planning: Guiding Principles" as a new document to outline the principles used when conducting person centered planning. It is used during completion or revision of a MAP-109 or during the development of a plan of care and is a one (1) page form.
8. Revises the MAP-95 by removing a request for the following information: equipment rental information, manufacturer's name, manufacturer's suggested list price, and

agency's acquisition cost. Further revises the MAP-95 by inserting a request for the case manager or support broker's name. This form serves as a prior authorization tool for minor home adaptations and contains one (1) page.

The total number of pages incorporated by reference for this administrative regulation is 151 pages.