STATEMENT OF EMERGENCY

907 KAR 3:090E

(1) This emergency administrative regulation is being promulgated to establish a residential care model which is tailored to recipients' needs and to establish recipient safeguards. This administrative regulation is being amended in conjunction with a companion reimbursement regulation which establishes rates corresponding to the three levels of residential care (level I, II and III) established in this administrative regulation.

(2) This action must be implemented on an emergency basis to ensure the availability of funding necessary for the continued operation of the Medicaid program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding.

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

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

_____
Steven L. Beshear
Governor

_____
Janie Miller, Secretary
Cabinet for Health and Family Services

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Emergency Amendment)

907 KAR 3:090E. Acquired brain injury waiver services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 CFR 441.300 – 310, 42 CFR 455.100 – 106,[~~42 C.F.R. 441 Subpart G, 455 Subpart B,~~] 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program pursuant to KRS 205.5606. The purpose of ac

quired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

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

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

(4) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch of the Department for Medicaid Services Division of Community Alternatives.

(5) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service for an individual who has acquired a brain injury to his or her central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance or another acute medical incident.

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

(a) Completed on a MAP-351;

(b) Submitted to the department:

1. For a level of care determination; and

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

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

(8)[~~(7) "BISB" or "brain injury service branch", Division of Long Term Care and Community Alternatives, Cabinet for Health and Family Services means the brain injury service branch.~~

~~(8)~~] "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

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

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

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

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

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

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

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

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

(15) "Crisis prevention and response plan" means a plan developed by an interdisciplinary team to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

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

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

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

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

(b) Death or incapacitation of the primary caregiver;

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

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

(19) "Human rights committee" or “HRC” means a group of individuals established to protect the rights and welfare of an ABI recipient.

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

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

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(21) “Level of care certification” means verification, by the department, of ABI program eligibility for:

(a) An individual; and

(b) A specific period of time.

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

(23)[~~(22)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

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

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

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

(27)[~~(26)~~] "Patient liability" means the financial amount, determined by the department, that an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.

(28) “Personal services agency” is defined by KRS 216.710(8).

(29)[~~(27)~~] "Psychologist" is defined by KRS 319.010(8).

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

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

(32)[~~(30)~~] "Representative" is defined by KRS 205.5605(6).

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

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

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

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

(35)[~~(33)~~]"Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

(36)[~~(34)~~]"Transition plan" means a plan that is developed by an interdisciplinary team to aid an ABI recipient in exiting from the ABI program into the community.

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

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671[~~, Conditions of Medicaid provider participation; withholding overpayments, administrative appeals process, and sanctions~~];

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

(c) Be recertified at least annually by the department; [~~and~~]

(d) Have an office within the commonwealth of Kentucky; and

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

(2) An ABI provider shall comply with:

(a) 907 KAR 1:672[~~, Provider enrollment, disclosure, and documentation for Medicaid participation~~];

(b) 907 KAR 1:673[~~, Claims processing~~]; and

(c) 902 KAR 20:078[~~, Operations and services; group homes~~].

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

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

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

(4) An ABI provider shall:

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

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

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

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

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

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

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

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

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

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

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

(a) Require a timely response to an inquiry;

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

(c) Require prompt notification of any unusual incident;

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

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

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

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

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

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

2. The right to retain and use personal possessions; and

3. For supervised residential care[~~a residential~~], personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

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

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

(b) Maintaining a grievance and appeals system; and

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

(d) Prohibiting the use of:

1. Prone or supine restraint;

2. Corporal punishment;

3. Seclusion;

4. Verbal abuse; or

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

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

(a) Department;

(b) ABI recipient's selected case manager;

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

(d) General Accounting Office or its designee;

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

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

(g) Centers for Medicare and Medicaid Services.

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

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

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

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

(d) Contain no blank lines [~~in~~]between each entry.

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

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry; <u>and</u>

(d) Contain the following specific information:

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

2. An assessment summary relevant to the service area;

3. The plan of care, MAP-109;

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

a. A list containing emergency contact telephone numbers; and

b. The ABI recipient’s history of any allergies with appropriate allergy alerts for se-

vere allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed; and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

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

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

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. Current level of care certification;

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

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

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

(14) An ABI provider shall:

(a)1. Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;

2. Maintain, for existing staff, documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test described in paragraph 1 of this paragraph;

3. Ensure that an employee or volunteer who tests positive for TB or has history of positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;

4. Before allowing a staff person or volunteer determined to have signs or symptoms of active disease to work, ensure that follow-up testing is administered by a physician with the test results indicating the person does not have active TB disease; and

5. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present.[~~staff person or volunteer performing direct care or a supervisory function has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and~~

~~2. Maintain documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test described in subparagraph 1 of this paragraph;~~]

(b) For each potential employee or volunteer expected to perform direct care or a supervisory function, obtain:

1. Prior to the date of hire or date of service as a volunteer, the results of:

a. A criminal record check from the Administrative Office of the Courts or equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

b. A nurse aide abuse registry check as described in 906 KAR 1:100; and

<u>c. Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;</u>

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

(c) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(d) Not permit an employee or volunteer to transport an ABI recipient if the employee or volunteer has a conviction of Driving Under the Influence (DUI) during the past year;

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

(f) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse, neglect or exploita-

tion;

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

(h) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the nurse aide abuse registry;

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

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

(15) An ABI provider shall:

(a) Have an executive director who:

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

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

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

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

(b) The prohibition of firearms and ammunition at a provider-service site;

(c) Maintenance of sanitary conditions;

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

1. Operational smoke detectors placed in strategic locations; and

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

(e) For a supervised residential care or adult day training [~~residential or structured day~~] provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 120 degrees Fahrenheit;

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

(g) Ensuring that staff who supervise medication administration[~~administering medication~~]:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional and documented competency on cause and

effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, time of administration, and the recipient's name[~~and time~~] if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Establish policies[~~policy~~] and procedures for on-going monitoring of medication administration as approved by the department.

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

(a) Be readily accessible on site;

(b) Include an evacuation drill:

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

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

(c) Mandate that:

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

2. Results of the prior year's evacuation drill be maintained on site[~~to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep; and~~

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

(18) An ABI provider shall:

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

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

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department prior to working independently with an ABI recipient which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified

as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes at least six (6) hours of continuing education in brain injury annually;

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

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

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

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

4. A board certified behavior analyst; and

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

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

2. Orientation to the agency;

3. A confidentiality statement; and

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

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

(20) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

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

b. Individual not affiliated with the ABI provider; and

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

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

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

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

(b) Establish a behavior intervention committee which shall:

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

2. Be separate from the human rights committee; and

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

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

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

2. Annually thereafter; and

3. Upon discharge from the ABI waiver program.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program:

(a) An individual shall:

1. Be at least eighteen (18) years of age;

2. Have acquired a brain injury, of the following nature, to the central nervous system:

a. An injury from physical trauma;

b. Damage from anoxia or from a hypoxic episode; or

c. Damage from an allergic condition, toxic substance or another acute medical incident; and

3. Apply to be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(b) A case manager or support broker, on behalf of an applicant, shall submit a certification packet to the department containing the following[~~be [twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;~~

(~~b) An individual shall be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;~~

~~(c) n application packet containing the following shall be submitted by a support broker on behalf of the applicant~~]:

1. A copy of the allocation letter;

2. An Assessment form - MAP-351;

3. A statement for the need for ABI waiver[~~long term care~~] services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services form - MAP-10;

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350;

5. A Plan of Care form - MAP-109; and

6. The ABI Recipient's Admission Discharge DCBS Notification Form - MAP 24C;

(c)[~~(d)~~] An individual shall Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

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

(e)[~~(f)~~] An individual shall meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1:605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and

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

(f)[~~(g)~~] An individual shall receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of

time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

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

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

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

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

(5) The department shall make:

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

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

(6) To maintain eligibility as an ABI recipient:

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

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

services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, BISB, and the department via an ABI Recipient's Admission Discharge DCBS Notification form - MAP 24C, if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Discharged[~~Terminated~~] from the ABI waiver program;

(c) Temporarily discharged from the ABI waiver program;

(d) Admitted to a nursing facility; [~~or~~]

(e) Changing the primary provider; or

(f) Changing case management agency.

(8) The department may exclude an individual from receiving ABI waiver services if the projected cost of ABI waiver services for the individual is reasonably expected to exceed the cost of nursing facility services for the individual[~~an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service~~].

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

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

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

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

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

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

b. Copies of letters to providers; and

c. Copies of letters from providers; and

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

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

b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;

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

(d) An ABI recipient does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

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

(f) The ABI recipient has reached maximum rehabilitation potential; or

(g) An ABI recipient is no longer actively participating in services within the approved plan of care as determined by the interdisciplinary team.

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

(a) Simultaneous notice to the department, the ABI recipient or legal representative

and the case manager at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

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

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

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

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

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

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

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

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

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

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

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

(b) The ABI recipient or legal representative may reconsider and revoke the notice in

writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall:

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

(b) Be provided pursuant to the plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider:

(a) Case management services, which shall:

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

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

3. Assist an ABI recipient and the interdisciplinary team to develop an individualized plan of care and update it as necessary based on changes in the recipient's medical condition and supports;

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

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

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

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

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

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

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

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse;

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

(iv) Is an independent case manager; or

(v) Is employed by a free-standing case management agency;

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

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

d. Shall maintain documentation signed by an ABI recipient or legal representative of

informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

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

f. Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

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

(i) Individual-specific; and

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

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

i.(i) Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence; and

(ii) For an ABI recipient receiving supervised residential care, shall conduct at least one (1) of the two (2) monthly visits at the ABI recipient's supervised residential care provider site;

j. [~~Shall visit an ABI recipient who resides outside of his or her own or family's home on a monthly basis;~~

~~k.~~] Shall ensure twenty-four (24) hour availability of services; and

k.[~~l.~~] Shall ensure that the ABI recipient's health, welfare, and safety needs are met;

and

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

a. The ABI recipient's health, safety and welfare;

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

c. The date of the service;

d. Beginning and ending time; [~~and~~]

e. The signature[~~, date of signature~~] and title of the individual providing the service; and

f. A quarterly summary which shall include:

(i) Documentation of monthly contact with each chosen ABI provider; and

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

(b) Behavior programming which shall:

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

2. Include a functional analysis of the ABI recipient's behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

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

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

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

a. Be developed by the behavioral specialist;

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

c. Be revised as necessary;

d. Define the techniques and procedures used;

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

f. Reflect the use of positive approaches; and

g. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

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

5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. Reports involved in implementing the behavioral service plan; <u>and</u>

<u>c. A monthly summary which assesses the participant’s status related to the plan of care;</u>

6. Be provided by a behavior specialist who shall:

a.(i) Be a psychologist;

(ii) Be a psychologist with autonomous functioning;

(iii) Be a licensed psychological associate;

(iv) Be a psychiatrist;

(v) Be a licensed clinical social worker;

(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;

(vii) Be an advanced registered nurse practitioner (ARNP);

(viii) Be a board certified behavior analyst; or

(ix) Be a licensed professional clinical counselor; and

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

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

a. The date of the service;

b. The beginning and ending time; and

c. The signature[~~, date~~] and title of the behavioral specialist; [~~and~~

~~d. A summary of data analysis and progress of the individual toward meeting goals of the services;~~]

(c) Companion services which shall:

1. Include a nonmedical service, supervision or socialization as indicated in the recipient's plan of care;

2. Include assisting with but not performing meal preparation, laundry and shopping;

3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;

4. Include services provided according to the approved plan of care which are therapeutic and not divers ional in nature;

5. Include accompanying and assisting an ABI recipient while utilizing transportation services;

6. Include documentation by a detailed staff note which shall include:

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

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

7. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services~~]; and

8. Be provided by:

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

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

c. [~~A group home licensed and operating in accordance with 902 KAR 20:078;~~

~~d.~~] A community habilitation program certified by the department; or

d. A supervised residential care provider;

(d) Supervised residential care level I, which:

1. Shall be provided by:

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

b. An ABI provider;

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

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

b. Base residential care decisions on the following factors:

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

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

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

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

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

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

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

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

4. Shall provide twenty-four (24) hours of supervision daily unless the provider im-

plements, pursuant to subparagraph 5. of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;

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

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

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

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

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

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

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

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

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

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

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

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

b. The date of the service;

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

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

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

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

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

c. Demonstrates behavior that may result in potential legal problems if not ameli-

orated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

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

15. Shall not utilize a motor home;

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

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

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

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

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

(e) Supervised residential care level II, which:

1. Shall be provided by:

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

b. An ABI provider;

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

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

received;

b. Base residential care decisions on the following factors:

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

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

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

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

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

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

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

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

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

a. Be based on the recipient's needs;

b. Be approved by the recipient's treatment team; and

c. Be documented in the recipient's plan of care which shall also contain periodic re-

views and updates based on changes, if any, in the recipient's status;

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

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

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

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

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

9. Shall include participation in medical appointments or follow-up care as directed

by the medical staff;

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

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

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

b. The date of the service;

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

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

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

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

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

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

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

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

15. Shall not utilize a motor home;

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

a. Does not share a room with an individual of the opposite gender who is not the

ABI recipient's spouse;

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

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

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

(f) Supervised residential care level III, which:

1. Shall be provided by:

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

b. An ABI provider;

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

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

b. Base residential care decisions on the following factors:

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

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

(iii) Whether the applicant demonstrates behavior which may result in potential legal

problems if not ameliorated;

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

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

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

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

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

4. Shall not be provided to more than two (2) ABI recipients simultaneously in one (1) apartment or home;

5. Shall not be provided in more than two (2) apartments in one (1) building;

6. Shall, if provided in an apartment building, have staff:

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

b. Who do not reside in a dwelling occupied by an ABI recipient;

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

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

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

c. Contain periodic reviews and updates based on changes, if any, in the recipient's

status;

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

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

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

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

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

12. Shall include participation in medical appointments or follow-up care as directed

by the medical staff;

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

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

b. The date of the service;

c. The beginning and ending time of the service;

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

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

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

15. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

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

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

16. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

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

17. Shall not utilize a motor home;

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

a. Does not share a room with an individual of the opposite gender who is not the

ABI recipient's spouse;

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

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

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

(g)[~~e. A staffed residence certified by the department;~~

~~(d) Community residential services which shall:~~

~~1. Include twenty-four (24) hour supervision in:~~

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

~~b. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or~~

~~c. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;~~

~~2. Not include the cost of room and board;~~

~~3. Be available to an ABI recipient who:~~

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

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

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

~~4. Utilize a modular home only if the:~~

~~a. Wheels are removed;~~

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

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

~~5. Not utilize a motor home;~~

~~6. Provide a sleeping room which ensures that an ABI recipient:~~

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

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

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

~~7. Provide assistance with daily living skills which shall include:~~

~~a. Ambulating;~~

~~b. Dressing;~~

~~c. Grooming;~~

~~d. Eating;~~

~~e. Toileting;~~

~~f. Bathing;~~

~~g. Meal planning, grocery shopping and preparation;~~

~~h. Laundry;~~

~~i. Budgeting and financial matters;~~

~~j. Home care and cleaning;~~

~~k. Social skills training;~~

~~l. Reduction or elimination of a maladaptive behavior;~~

~~m. Instruction in leisure skills; and~~

~~n. Instruction in self medication;~~

~~8. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved plan of care;~~

~~9. Provide or arrange for transportation to services, activities; or medical appointments as needed;~~

~~10. Include participation in medical appointments and follow-up care as directed by the medical staff; and~~

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

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

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

~~c. Beginning and ending time; and~~

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

~~(e)~~] Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved plan of care;

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

4. Shall include substance abuse or chemical dependency treatment;

5. Shall include building and maintaining healthy relationships;

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

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

8. May include a group therapy service if the service is:

a. Provided to a minimum of two (2) and a maximum of eight (8) ABI recipients[~~a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes~~]; and

b. Included in the recipient's approved plan of care for:

(i) Substance abuse or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

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

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

9. Shall be provided by:

a. A psychiatrist;

b. A psychologist;

c. A psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

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

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

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; or

j. A licensed professional clinical counselor; and

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

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

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date of signature~~] and title of the individual providing the service;

(h)[~~(f)~~] Occupational therapy which shall be:

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

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

3. Exclusive of maintenance or the prevention of regression;

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

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

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

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(i)[~~(g)~~] Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20:081;

c. A personal services agency; or

d. An ABI provider;

3. Include the following activities of daily living:

a. Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

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

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

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service; and

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services;~~]

(j)[~~(h)~~] A respite service which shall:

1. Be provided only to an ABI recipient unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Supervised residential care provider; or

e. [~~Group home agency;~~

~~e. Staffed residence agency; or~~

~~f.~~] Community habilitation program;

3. Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient;

4. Be limited to 336 hours in a twelve (12)-month [~~168 hours in a six (6) month~~]period unless an individual's normal caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services;~~]

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

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

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

b. The date of the service;

c.[~~b.~~] The beginning and ending time; and

d.[~~c.~~] The signature[~~, date of signature~~] and title of the individual providing the service;

(k)[~~(j)~~] Speech, hearing and language services which shall be:

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

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

3. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech language pathologist; and

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

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

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(l) Adult day training[~~(j) Structured day program~~] services which shall:

1. Be provided by:

a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20:066;

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

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

d. A community habilitation program;

e. A sheltered employment program; or

f. A therapeutic rehabilitation program;

2. [~~Be to~~]Rehabilitate, retrain and reintegrate an individual into the community;

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

4. Include the following services:

a. Social skills training related to problematic behaviors identified in the recipient's plan of care;

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior;

d. Prevocational; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with an ABI waiver service recipient’s overall approved plan of care;

7. Reflect the recommendations of an ABI waiver service recipient’s interdisciplinary

team;

8. Be appropriate:

a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;

b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and

c. According to the approved plan of care and be therapeutic in nature and not divers ional;

9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's plan of care;

10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;

11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and

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

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

b. The date of the service;

c. The beginning and ending time; [~~and~~]

d. The signature[~~, date~~] and title of the individual providing the service; and

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

(m)[~~(k)~~] Supported employment which shall be:

1. Intensive, ongoing services for an ABI recipient to maintain paid employment in an

environment in which an individual without a disability is employed;

2. Provided by a:

a. Supported employment provider;

b. Sheltered employment provider; or

c. Structured day program provider;

3. Provided one-on-one;

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

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

6. An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training;

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

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

a. Progress towards the goals and objectives identified in the plan of care;

b. The date of service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(n)[~~(l)~~] Specialized medical equipment and supplies which shall:

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

2. Enable an ABI recipient to increase his or her ability to perform daily living activi-

ties or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a Request for Equipment form - MAP-95 and include three (3) estimates for vision and hearing;

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

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

6. Not be necessary for life support;

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

8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient; [~~or~~]

(o)[~~(m)~~] Environmental modifications which shall:

1. Be provided in accordance with applicable state and local building codes;

2. Be provided to an ABI recipient if:

a. Ordered by a physician;

b. Prior-authorized by the department[~~BISB;~~]

c. Submitted on a Request for Equipment form - MAP-95 by a case manager or support broker;

d. Specified in an ABI recipient's approved plan of care;

e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and

f. Without the modification, the ABI recipient would require institutionalization;

3. Not include a vehicle modification[~~ or an electronic monitoring system~~];

4. Be limited to no more than $2000 for an ABI recipient in a twelve (12) month pe-

riod; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber;

(p) An assessment which shall:

1. Be a comprehensive assessment which shall identify:

a. An ABI waiver recipient's needs; and

b. Services that an ABI recipient's family cannot manage or arrange for the recipient;

2. Evaluate an ABI waiver recipient's physical health, mental health, social supports, and environment;

3. Be requested by:

a. An individual requesting ABI waiver services;

b. A family member of the individual requesting ABI services; or

c. A legal representative of the individual requesting ABI services;

4. Be conducted:

a. By an ABI case manager or support broker; and

b. Within seven (7) calendar days of receipt of the request for an assessment;

5. Include at least one (1) face-to-face contact between the assessor and the ABI waiver recipient:

a. And, if appropriate, the recipient's family; and

b. In the ABI waiver recipient's home;

6. Not be reimbursable if the individual no longer meets ABI program eligibility requirements; or

(g) A reassessment:

1. Which shall be performed at least once every twelve (12) months;

2. Which shall be conducted:

a. Using the same procedures as for an assessment; and

b. By an ABI case manager or support broker;

3. The results of which shall be submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

4. Which shall not be reimbursable if the individual no longer meets ABI program eligibility requirements; and

5. Which shall not be retroactive.

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

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

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

(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;

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

(5) A birth defect;

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

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

(8) Determination that the recipient has met his or her maximum rehabilitation potential.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

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

(a) A Class I incident which shall:

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

2. Not require an investigation by the provider agency;

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

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

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

(b) A Class II incident which shall:

1.a. Be serious in nature; or

b. Include a medication error; [~~or~~

~~c. Involve the use of a physical or chemical restraint;~~]

2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager or support broker; and

3. Be reported to the following by the provider agency:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery; and

c. BISB within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect or exploitation;

c. Involve a medication error which requires a medical intervention or hospitalization;

d. Be an admission to an acute or psychiatric hospital;

e. Involve the use of a chemical or physical restraint; or

f. [~~or~~

~~d.~~]Be a death;

2. Be Immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. BISB, within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday,

notification to BISB shall occur on the following business day.

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

(a) A current plan of care;

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

(c) A current crisis plan;

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

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

(f) Any additional information requested by the department;

(g) A coroner's report; and

(h) If performed, an autopsy report.

Section 7. ABI Waiting List. (1) An individual of age eighteen (18) years or older[~~between the age of twenty-one (21) to sixty-five (65) years of age~~]applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26, and an Acquired Brain Injury Waiver Services form - MAP-10.

(3) The order of placement on the ABI waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services form - MAP-10 and by category of need.

(4) The ABI waiting list categories of need shall be emergency or nonemergency.

(5) To be placed in the emergency category of need, an individual shall be determined by the emergency review committee to meet the emergency category criteria established in subsection (8) of this section.

(6) The emergency review committee shall:

(a) Be comprised of three (3) individuals from the department:

1. Who shall each have professional or personal experience with brain injury or cognitive disabilities; and

2. Two (2) of whom shall not be supervised by the branch manager of the department's acquired brain injury branch;

(b) Meet during the fourth (4th) week of each month to review and consider applications for the acquired brain injury waiver program to determine if applicants meet the emergency category of need criteria established in subsection (8) of this subsection;

(7) A completed Acquired Brain Injury Waiver Services Program Application form - MAP-26 and an Acquired Brain Injury Waiver Services form - MAP-10 for an ABI waiting list applicant shall be submitted to the department no later than three (3) business days prior to fourth (4th) week of each month in order to be considered by the emergency review committee during that month's emergency review committee meeting.

(8) An applicant shall meet emergency category of need criteria if the applicant is currently demonstrating behavior related to his or her acquired brain injury:

(a) That places the individual, caregiver, or others at risk of significant harm; or

(b) Which has resulted in the applicant being arrested.

(9) An applicant who does not meet the emergency category of need criteria estab-

lished in subsection (8) of this subsection shall be considered to be in the nonemergency category of need.

(10)[~~of the individual as follows:~~

~~(a) Emergency. An immediate service is indicated as determined by:~~

~~1. The individual currently is demonstrating behavior related to his or her acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or~~

~~2. The individual is demonstrating behavior related to his or her acquired brain injury which has resulted in his or her arrest; or~~

~~(b) Nonemergency.~~

~~(4)~~] In determining chronological status of an applicant, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Acquired Brain Injury Waiver Services form - MAP-10 shall be maintained and not change if an individual is moved from one (1) category of need to another.

(11)[~~(5)~~] A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(12)[~~(6)~~] Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

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

(14)[~~(8)~~] A written notification of placement on the waiting list shall be mailed to the individual or his or her legal representative and case management provider if identified.

(15)[~~(9)~~] Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual and his or her legal representative and also the ABI case manager; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

(16)[~~(10)~~] Reassignment of an applicant's category of need shall be completed based on the updated information and validation process.

(17)[~~(11~~] An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time that an individual's status changes.

(18)[~~(12~~] An individual shall be removed from the ABI waiting list if:

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

(b) The individual is deceased;

(c) The individual or individual's legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26 application within sixty (60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of provid-

ing documentation of good cause including:

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

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(19)[~~(13~~] If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or individual's legal representative and the ABI case manager.

(20)[~~(14)~~] The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(21)[~~(15)~~] Potential funding allocated for services for an individual shall be based upon:

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

(b) The individual's chronological date of placement on the waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI recipient participating in CDO shall include:

(a) Home and community support services;

(b) Community day support services;

(c) Goods or services; or

(d) Financial management.

(2) A home and community support service [~~which~~]shall:

(a) Be available only under the consumer directed option;

(b) Be provided in the consumer's home or in the community;

(c) Be based upon therapeutic goals;

(d) [~~and~~]Not be diversional in nature;

(e)[~~(d)~~] Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO ABI services; and

(f)1.[~~(e)1.~~] Be respite for the primary caregiver; or

2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Meal planning;

j. Meal preparation;

k. Grocery shopping; or

l. Participation in community activities.

(3) A community day support service shall:

(a) Be available only under the consumer-directed option;

(b) Be provided in a community setting;

(c) Be based upon therapeutic goals;

(d) Not be diversional in nature;

(e) Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for:

1. Work;

2. Community activities;

3. Socialization;

4. Leisure; or

5. Retirement activities; and

(f) Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(4) Goods or services shall:

(a) Be individualized;

(b) Be utilized to:

1. Reduce the need for personal care; or

2. Enhance independence within the consumer's home or community;

(c) Not include experimental goods or services; and

(d) Not include chemical or physical restraints.

(5)[~~(2)~~] To be covered, a CDO service shall be specified in a consumer's plan of care.

(6)[~~(3)~~] Reimbursement for a CDO service shall not exceed the department's allowed

reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(7)[~~(4)~~] A consumer, including a married consumer, shall choose providers and the choice of CDO provider shall be documented in his or her plan of care.

(8)[~~(5)~~] A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

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

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

(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 and submitting it to the support broker.

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

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

(b) The recipient’s plan of care indicates he or she requires more hours of service than the program can provide, thus jeopardizing the recipient’s safety or welfare due to being left alone without a caregiver present; or

(c) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.

(11)[~~.~~

~~(8)~~] The department may terminate a consumer from CDO services if it determines that the consumer’s CDO provider has not adhered to the plan of care.

(12)[~~(9)~~] Prior to a consumer’s termination from CDO services, the support broker

shall:

(a) Notify the assessment or reassessment service provider of potential termination;

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

(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

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

(13)[~~(10)~~] Upon an involuntary termination of CDO services, the department shall:

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

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(14)[~~(11)~~] A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

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

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

(e) Shall be able to communicate effectively with the consumer, consumer repre-

sentative, or family;

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

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

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry:

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days; and

2. If a consumer does not obtain a central registry check result within thirty (30) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

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

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

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

(m) Shall be approved by the department;

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

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a

provider agency, or other person hired by the consumer.

(15)[~~(12~~] A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(16)(a)[~~(13)(a)~~] The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

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

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

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

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

2. The department approves the adjustment.

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

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

2. The cost effectiveness of the proposed services; [~~and~~]

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

4. A significant change has occurred in the recipient's:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the recipient's relocation.

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

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

(18)[~~(15)~~] A support broker shall:

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

(b) Be available to a consumer by phone or in person:

1. Twenty-four (24) hours per day, seven (7) days per week; and

2. To assist the consumer in obtaining community resources as needed;

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

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

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

(19)[~~(17)~~] For a CDO participant, a support broker may conduct an assessment or reassessment.

(20) Financial management shall:

(a) Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;

(b) Include payroll processing associated with the individual hired by a consumer or the consumer's representative;

(c) Include:

1. Withholding local, state, and federal taxes; and

2. Making payments to appropriate tax authorities on behalf of a consumer;

(d) Be performed by an entity:

1. That is enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

2. That is currently compliant with 907 KAR 1:671;

3. Which has at least two (2) years of experience working with individuals with an acquired brain injury; and

(e) Include preparation of fiscal accounting and expenditure reports for:

1. A consumer or consumer's representative; and

2. The department.

Section 9. Electronic Signature Usage. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An ABI provider which chooses to use electronic signatures shall:

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

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

2. Identify each electronic signature for which an individual has access; and

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

(b) Develop a consent form which shall:

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

2.Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 10. [~~Section 9.~~]Appeal Rights. (1) An appeal of a department decision regarding a recipient[~~Medicaid beneficiary~~] based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

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

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

Section 11.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-109 Prior Authorization for Waiver Services", July 2008[~~March 2007~~] edition;

(b) "MAP 24C, SCL or ABI Admission Discharge Department for Community Based

Services (DCBS) Notification", July 2008[~~April 2007~~] edition;

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application", July 2008[~~May 2003~~] edition;

(d) "MAP-95, Request for Equipment Form", May 2010[~~June 2007~~] edition;

(e) "MAP-10 Waiver Services", July 2008[~~January 2007~~] edition;

(f) "Incident Report", July 2008[~~April 2007~~] edition;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", July 2008[~~March 2007~~] edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008[~~January 2000~~] edition;

(i) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006 edition][~~"Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition~~];

(j) "MAP-351, Medicaid Waiver Assessment", July 2008[~~March 2007~~] edition;

(k) "Mayo-Portland Adaptability Inventory-4", March 2003 edition; [~~and~~]

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

(m) "MAP-4100a", April 2009 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (25 Ky.R. 2993; Am. 26 Ky.R. 400; eff. 8-16-99; 28 Ky.R. 1244; 1878; eff. 2-7-2002; 30 Ky.R. 1970; 2042; eff. 3-18-04; 31 Ky.R. 471; 720; eff. 11-5-04; 34 Ky.R. 460; 1050;1480; eff. 1-4-2008.)

907 KAR 3:090E

REVIEWED:

Date	Elizabeth A. Johnson, Commissioner Department for Medicaid Services

APPROVED:

Date	Janie Miller, Secretary Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:090E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Diane Pratt (502) 564-5198 or Dana McKenna (502) 564-5198

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(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: Amendments include establishing a residential care model tailored to recipient's needs which will be reimbursed accordingly. The new residential care model is comprised of three levels of care - supervised residential care levels I, II and III. Additional amendments include: incorporating by reference a form (MAP-4100a not previously incorporated) to be used by entities applying to become ABI waiver service providers; clarifying that the providers are prohibited from imposing the following on ABI service recipients: prone or supine restraint, corporal punishment, seclusion, verbal abuse or any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility; inserting an annual criminal record check requirement for staff (twenty-five (25) percent) – the department already requires this for the supports for community living (SCL) program ; establishing that the human rights committee shall review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; lowering the ABI waiver program eligibility age to eighteen (18) rather than twenty-one (21) years and remove the sixty-five (65)

age limit; utilizing the admission/discharge form (MAP-24C) for case management agency changes; involuntarily terminating an individual from ABI waiver service program participation if the individual is no longer actively participating in services within their approved plan of care; adding a case management quarterly summary requirement - the department already requires this for the SCL program; clarifying the behavior programming summary requirement; eliminating the group counseling limit of twice a week not to exceed ninety (90) minutes; reducing the group counseling limit from twelve (12) recipients to two (2) to eight (8) recipients; inserting an annual provider certification requirement where applicable; requiring respite staff notes to address progress toward goals and objectives identified in the approved plan of care; inserting an adult day training monthly summary requirement - the department already requires this for the SCL program; elaborating on assessment and reassessment provisions; expanding class III incidents to include a medication error involving hospitalization and an admission to an acute or psychiatric hospital; elevating chemical and physical restraints from a class II to class III incident; changingd the name of structured day services to adult day training in order to be consistent with the SCL program; elaborating on emergency review committee and emergency application provisions; adding community day supports and goods and services to the consumer-directed option (CDO); consistent with the consumer-directed option policies in the home and community based waiver services regulation and the Michelle P. waiver services regulation adding the following reasons for involuntary termination from CDO participation: the recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present, or the recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff; adding CDO budget adjustment provisions; clarifying that a support broker must be available to a consumer twenty-four (24) hours a day, seven (7) days a week by phone or in person; inserting CDO financial management provisions; and inserting a section establishing electronic signature provisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the health, safety and welfare of ABI waiver service recipients and to replace the prior residential reimbursement model with one tailored to recipients' needs as well as more cost effective. Additionally, the amendment is necessary to clarify policies and ensure consistency with the corresponding waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service recipients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service reci-

pients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are 177 individuals receiving ABI waiver services and twenty-four (24) providers of ABI waiver services pursuant to this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will have to comply with new requirements including a case management quarterly summary report, addressing progress toward goals and outcomes in respite staff notes, and utilizing the admission/discharge (MAP-24C) form for case management agency changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Some providers could experience additional minimal administrative costs as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The recipients' safety and welfare are enhanced as a result of the amendment.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment – implemented in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels – a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/da7, $175/day and $75/day respectively.

(b) On a continuing basis: DMS estimates that the amendment – in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year of implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be neces-

sary 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: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied in this administrative regulation because it is applicable equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 3:090E
Agency Contact Person: Diane Pratt (502) 564-5198 or Dana McKenna (502) 564-5198

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

   Yes _X__ No ____
   If yes, complete 2-4.

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

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 CFR 441.300 – 310.

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? The Department for Medicaid Services (DMS) estimates that the amendment – implemented in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels – a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/da7, $175/day and $75/day respectively.

   (d) How much will it cost to administer this program for subsequent years? DMS

estimates that the amendment – in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year of implementation.

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 3:090E

Summary of Material Incorporated by Reference

The following material is incorporated by reference:

1. The "MAP-10, Physician Recommendations for Waiver Services", July 2008 edition replaces the January 2007 edition to refer to the ABI long-term care waiver and the Michelle P. waiver (not in effect in January 2007.) This form is part of the application process and it is the physician's recommendation for ABI or ABI Long Term Care Waiver Services. This form contains one (1) page.

2. The "MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program", July 2008 edition replaces the April 2007 edition to refer to the ABI long-term care waiver and the Michelle P. waiver. Case managers use this form to notify DCBS of admissions, discharges, and transfers of recipients in the program. This form contains two (2) pages.

3. The "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, July 2008 edition replaces the May 2003 edition to refer to the ABI long-term care waiver and Michelle P. waiver. This form is used by Kentucky residents to apply for funding for ABI or ABI long term care waiver services. This form contains three (3) pages.

4. The "Incident Report", July 2008 edition replaces the April 2007 edition. This form is used by waiver providers to report to the monitoring agency documentation of an injury or incident which relates to the health, welfare and safety of the recipient. This form has two (2) pages.

5. The "MAP-95, Request for Equipment Form, May 2010 edition replaces the June 2007 edition to refer to the ABI long-term care waiver and the Michelle P. waiver. Case managers use this form to request durable medical equipment or environmental modifications for the ABI waiver recipient. This form contains one (1) page.

6. The "MAP-109, Plan of Care/Prior Authorization for Waiver Services", July 2008 edition replaces the March 2007 edition to refer to the ABI long-term care waiver and the Michelle P. waiver. This form is used by case managers to request prior authorization for services upon admission to the program or to modify services or units on the plan of care. This form contains five (5) pages.

7. The "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008 edition replaces the January 2000 edition to refer to

the ABI long-term care waiver and the Michelle P. waiver. This form is used by case managers or support brokers to document the agreement. This form is two (2) pages.

8. The“Map-351, Medicaid Waiver Assessment”, July 2008 edition replaces the March 2007 edition to refer to the ABI long-term care waiver and Michelle P. waiver. This form is used by the SCL, ABI and ABI long term care waiver case manager or support broker to assess the applicant’s level of functioning and care needs. This form has fifteen (15) pages.

9. The “MAP-2000, Initiation/Termination of Consumer Directed Option (CDO), July 2008 edition replaces the March 2007 edition to refer to the ABI long-term care waiver and the Michelle P. waiver. This form is used by the support broker to document the beginning or ending of consumer directed services. This form contains two (2) pages.

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

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

12. “Family Guide to The Rancho Levels of Cognitive Functioning”, August 2006 edition replaces the “Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition. The family guide is more reader-friendly for nonclinical individuals. The guide contains a medical scale intended to assess the level of recovery of brain injury patients and those recovering from coma. In order to be eligible for the ABI or ABI long term care waiver programs, an applicant must have a Rancho score of four (4) or higher. This form contains four (4) pages.

13. The “Map 4100a”, April 2009 edition is new to the material incorporated by reference; however, the form has been used in practice. The form is used by ABI Medicaid Waiver provider applicants to determine services the agency will provide and contains one (1) page.

The total number of pages incorporated by reference into this administrative regulation is forty-three (43) pages.