

STATEMENT OF EMERGENCY

907 KAR 1:835E

(1) This emergency administrative regulation is promulgated to establish “Michelle P.” waiver service coverage and reimbursement as approved by the Centers for Medicare and Medicaid Services (CMS).

(2) This action must be taken on an emergency basis to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort regarding the civil suit, *Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.*

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

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

Steven L. Beshear
Governor

Janie Miller, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (New Emergency Administrative Regulation)

5 907 KAR 1:835E. Michelle P. waiver services and reimbursement.

6 RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R.

7 440.180

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

9 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services has responsibility to administer the Medi-
12 caid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement
13 that may be imposed, or opportunity presented, by federal law for the provision of medi-
14 cal assistance to Kentucky's indigent citizenry. This administrative regulation estab-
15 lishes the coverage and reimbursement provisions for Michelle P. waiver services.

16 Section 1. Definitions. (1) "ADHC" means adult day health care.

17 (2) "ADHC center" means an adult day health care center licensed in accordance
18 with 902 KAR 20:066.

19 (3) "ADHC services" means health-related services provided on a regularly-
20 scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who
21 does not require twenty-four (24) hour care in an institutional setting.

1 (4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts
2 within his or her scope of practice and is licensed in accordance with KRS 314.042.

3 (5) "Assessment team" means a team which:

4 (a) Conducts assessment or reassessment services; and

5 (b) Consists of:

6 1. Two (2) registered nurses; or

7 2. One (1) registered nurse and one (1) of the following:

8 a. A social worker;

9 b. A certified psychologist with autonomous functioning;

10 c. A licensed psychological practitioner;

11 d. A licensed marriage and family therapist; or

12 e. A licensed professional clinical counselor.

13 (6) "Behavioral support specialist" means an individual who has a master's degree from
14 an accredited institution with formal graduate course work in a behavioral science and at
15 least one (1) year of experience in behavioral programming.

16 (7) "Blended services" means a nonduplicative combination of Michelle P. waiver ser-
17 vices identified in Section 7 of this administrative regulation and consumer-directed option
18 services identified in Section 8 of this administrative regulation provided pursuant to a re-
19 cipient's approved plan of care.

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

21 (9) "Certified psychologist with autonomous functioning" or "licensed psychological prac-
22 titioner" means a person licensed pursuant to KRS Chapter 319.

23 (10) "Communicable disease" means a disease that is transmitted:

- 1 (a) Through direct contact with an infected individual;
- 2 (b) Indirectly through an organism that carries disease-causing microorganisms from
- 3 one (1) host to another; or
- 4 (c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic
- 5 material from one (1) location to another.

6 (11) "Consumer" is defined by KRS 205.5605(2).

7 (12) "Consumer-directed option" or "CDO" means an option established by KRS

8 205.5606 within the home and community-based service waivers which allows recipients to:

- 9 (a) Assist with the design of their programs;
- 10 (b) Choose their providers of services; and
- 11 (c) Direct the delivery of services to meet their needs.

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

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

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

15 (16) "Developmental disability means a severe, chronic disability that:

16 (a) Is attributable to:

- 17 1. Cerebral palsy or epilepsy; or
- 18 2. Any other condition, excluding mental illness, closely related to mental retardation re-
- 19 sulting in impairment of general intellectual functioning or adaptive behavior similar to that
- 20 of an individual with mental retardation and which requires treatment or services similar to
- 21 those required by persons with mental retardation;

22 (b) Is manifested prior to the individual's twenty-second (22nd) birthday;

23 (c) Is likely to continue indefinitely; and

1 (d) Results in substantial functional limitations in three (3) or more of the following areas
2 of major life activity:

- 3 1. Self-care;
- 4 2. Understanding and use of language;
- 5 3. Learning;
- 6 4. Mobility;
- 7 5. Self-direction; or
- 8 6. Capacity for independent living.

9 (17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to
10 provide services to the recipient and who:

- 11 (a)1. Is eighteen (18) years of age or older; and
- 12 2. Has a high school diploma or GED; or
- 13 (b)1. Is twenty-one (21) years of age or older; and
- 14 2. Is able to adequately communicate with recipients and staff;
- 15 (c) Has a valid Social Security number or valid work permit if not a U.S. citizen;
- 16 (d) Can understand and carry out simple instructions;
- 17 (e) Has the ability to keep simple records; and
- 18 (f) Is managed by the provider's supervisory staff.

19 (18) "Electronic signature" is defined by KRS 369.102(8).

20 (19) "ICF-MR-DD" means an intermediate care facility for an individual with mental retar-
21 dation or a developmental disability.

22 (20) "Home and community support services" means nonresidential and nonmedical
23 home and community based services and supports that:

1 (a) Meet the consumer's needs; and

2 (b) Constitute a cost-effective use of funds.

3 (21) "Home health agency" means an agency that is:

4 (a) Licensed in accordance with 902 KAR 20:081, Operation and services; home health
5 agencies; and

6 (b) Medicare and Medicaid certified.

7 (22) "Level of care determination" means a determination that an individual meets the
8 ICF-MR-DD level of care criteria established in Section 5 of this administrative regulation.

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

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

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

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

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

14 (26) "Mental retardation" means an individual has:

15 (a) Significantly sub-average intellectual functioning;

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

17 (c) Concurrent deficits or impairments in present adaptive functioning in at least two (2)

18 of the following areas:

19 1. Communication;

20 2. Self-care;

21 3. Home living;

22 4. Social or interpersonal skills;

23 5. Use of community resources;

- 1 6. Self-direction;
- 2 7. Functional academic skills;
- 3 8. Work;
- 4 9. Leisure; or
- 5 10. Health and safety; and

6 (d) Had an onset prior to eighteen (18) years of age.

7 (27) "Michelle P. recipient" means an individual who:

8 (a) Is a recipient as defined by KRS 205.8451(9);

9 (b) Meets the ICF-MR-DD level of care criteria established in Section 5 of this adminis-
10 trative regulation; and

11 (c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of
12 this administrative regulation.

13 (28) "Normal baby sitting" means general care provided to a child which includes cus-
14 tody, control, and supervision.

15 (29) "Occupational therapist" is defined by KRS 319A.010(3).

16 (30) "Occupational therapist assistant" is defined by KRS 319A.010(4).

17 (31) "Patient liability" means the financial amount an individual is required to contribute
18 toward cost of care in order to maintain Medicaid eligibility.

19 (32) "Physical therapist" is defined by KRS 327.010(2).

20 (33) "Physical therapist assistant" means a skilled health care worker who:

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

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

- 1 (34) "Physician assistant" or "PA" is defined by KRS 311.840(3).
- 2 (35) "Plan of care" or "POC" means a written individualized plan developed by:
- 3 (a) A Michelle P. recipient or a Michelle P. recipient's legal representative;
- 4 (b) The case manager or support broker; and
- 5 (c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient
- 6 designates another person.
- 7 (36) "Plan of treatment" means a care plan used by an ADHC center.
- 8 (37) "Psychologist" is defined by KRS 319.010(8).
- 9 (38) "Psychologist with autonomous functioning" means an individual who is licensed
- 10 in accordance with KRS 319.056.
- 11 (39) "Qualified Mental Retardation Professional" or "QMRP" is defined by KRS
- 12 202B.010(12).
- 13 (40) "Registered nurse" or "RN" means a person who:
- 14 (a) Meets the definition established in KRS 314.011(5); and
- 15 (b) Has one (1) year or more experience as a professional nurse.
- 16 (41) "Representative" is defined by KRS 205.5605(6).
- 17 (42) "SCL waiting list individual" means an individual on the Supports for Community
- 18 Living (SCL) waiting list pursuant to 907 KAR 1:145, Section 7.
- 19 (43) "Sex crime" is defined by KRS 17.165(1).
- 20 (44) "Social worker" means a person with a bachelor's degree in social work, sociol-
- 21 ogy, or a related field.
- 22 (45) "Speech-language pathologist" is defined by KRS 334A.020(3).
- 23 (46) "Supervisory staff" means an individual employed by the Michelle P. waiver provider

1 who shall manage direct-care staff and who:

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

3 2. Has a high school diploma; or

4 (b)1. Is twenty-one (21) years of age or older; and

5 2. Has a minimum of one (1) year experience in providing services to individuals with
6 mental retardation or developmental disability;

7 (c) Is able to adequately communicate with the recipients, staff, and family members;

8 (d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

9 (e) Has the ability to perform required record keeping.

10 (47) "Support broker" means an individual chosen by a consumer from an agency
11 designated by the department to:

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

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

14 (48) "Support spending plan" means a plan for a consumer that identifies the:

15 (a) CDO services requested;

16 (b) Employee name;

17 (c) Hourly wage;

18 (d) Hours per month;

19 (e) Monthly pay;

20 (f) Taxes;

21 (g) Budget allowance; and

22 (h) Six (6)-month budget.

23 (49) "Violent crime" is defined by KRS 17:165(3).

1 Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver
2 services, excluding consumer-directed option services, a provider shall be:

3 (a) Licensed in accordance with:

- 4 1. 902 KAR 20:066 if an adult day health care provider;
- 5 2. 902 KAR 20:078 if a group home;
- 6 3. 902 KAR 20:081 if a home health service provider;
- 7 4. 902 KAR 20:091 if a community mental health center; or

8 (b) Be certified by the department in accordance with 907 KAR 1:145, Section 3, if a
9 provider type not listed in paragraph (a) of this subsection.

10 (2) A Michelle P. waiver service provider shall:

11 (a) Provide services to Michelle P. waiver recipients:

- 12 1. Directly; or
- 13 2. Indirectly through a subcontractor;

14 (b) Comply with the following administrative regulations and program requirements:

- 15 1. 907 KAR 1:671;
- 16 2. 907 KAR 1:672; and
- 17 3. 907 KAR 1:673;

18 (c) Not enroll a Michelle P. recipient for whom the provider is unequipped or unable to
19 provide Michelle P. waiver services; and

20 (d) Be permitted to accept or not accept a Michelle P. recipient.

21 Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

22 (a) A clinical record for each Michelle P. recipient that shall contain the following:

- 23 1. Pertinent medical, nursing, and social history;

- 1 2. A comprehensive assessment entered on form MAP-351 and signed by the:
- 2 a. Assessment team; and
- 3 b. Department;
- 4 3. A completed MAP 109;
- 5 4. A copy of the MAP-350 signed by the recipient or his or her legal representative at
- 6 the time of application or reapplication and each recertification thereafter;
- 7 5. The name of the case manager;
- 8 6. Documentation of all level of care determinations;
- 9 7. All documentation related to prior authorizations, including requests, approvals,
- 10 and denials;
- 11 8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;
- 12 9. Documentation that the Michelle P. recipient receiving ADHC services or legal rep-
- 13 resentative was provided a copy of the ADHC center's posted hours of operation;
- 14 10. Documentation that the recipient or legal representative was informed of the pro-
- 15 cedure for reporting complaints; and
- 16 11. Documentation of each service provided. The documentation shall include:
- 17 a. The date the service was provided;
- 18 b. The duration of the service;
- 19 c. The arrival and departure time of the provider, excluding travel time, if the service
- 20 was provided at the Michelle P. waiver recipient's home;
- 21 d. Itemization of each service delivered;
- 22 e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the ser-
- 23 vice was provided outside the recipient's home;

1 f. Progress notes which shall include documentation of changes, responses, and treat-
2 ments utilized to meet the Michelle P. recipient's needs; and

3 g. The signature of the service provider; and

4 (b) Fiscal reports, service records, and incident reports regarding services provided. The
5 reports and records shall be retained:

6 1. At least six (6) years from the date that a covered service is provided; or

7 2. For a minor, three (3) years after the recipient reaches the age of majority under state
8 law, whichever is longest.

9 (2) Upon request, a Michelle P. provider shall make information regarding service and
10 financial records available to the:

11 (a) Department;

12 (b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its
13 designee;

14 (c) United States Department for Health and Human Services or its designee;

15 (d) United States Government Accountability Office or its designee;

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

17 (f) Kentucky Office of the Attorney General or its designee.

18 Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1)

19 A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipi-
20 ent who:

21 (a) Is determined by the department to meet ICF-MR-DD level of care requirements
22 in accordance with Section 5 of this administrative regulation; and

23 (b) Would, without waiver services, be admitted to an ICF-MR-DD.

1 (2) The department shall perform an ICF-MR-DD level of care determination for each
2 Michelle P. recipient at least once every twelve (12) months or more often if necessary.

3 (3) A Michelle P. waiver service shall not be provided to an individual who:

4 (a) Does not require a service other than:

5 1. An environmental and minor home adaptation;

6 2. Case management; or

7 3. An environmental and minor home adaptation and case management;

8 (b) Is an inpatient of:

9 1. A hospital;

10 2. A nursing facility; or

11 3. An ICF-MR-DD;

12 (c) Is a resident of a licensed personal care home; or

13 (d) Is receiving services from another Medicaid home and community based services
14 waiver program.

15 (4) A Michelle P. waiver provider shall inform a Michelle P. recipient or his legal rep-
16 resentative of the choice to receive:

17 (a) Michelle P. waiver services; or

18 (b) Institutional services.

19 (5) An eligible Michelle P. recipient or the recipient's legal representative shall select
20 a participating Michelle P. waiver provider from which the recipient wishes to receive
21 Michelle P. waiver services.

22 (6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a
23 Michelle P. service recipient's:

- 1 (a) Termination from the Michelle P. waiver program; or
- 2 (b)1. Admission to an ICF-MR-DD or nursing facility for less than sixty (60) consecu-
- 3 tive days;
- 4 2. Return to the Michelle P. waiver program from an ICF-MR-DD or nursing facility
- 5 within sixty (60) consecutive days;
- 6 (c) Admission to a hospital; or
- 7 (d) Transfer to another waiver program within the department.

8 (7) Involuntary termination of a service to a Michelle P. recipient by a Michelle P. pro-

9 vider shall require:

10 (a) Simultaneous notice to the recipient or legal representative, the case manager or

11 support broker, and the department at least thirty (30) days prior to the effective date of

12 the action, which shall include:

- 13 1. A statement of the intended action;
- 14 2. The basis for the intended action;
- 15 3. The authority by which the action is taken; and
- 16 4. The recipient's right to appeal the intended action through the provider's appeal or
- 17 grievance process;

18 (b) Submittal of a MAP-24 to the department at the time of the intended action; and

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

- 20 1. Provide the recipient with the name, address, and telephone number of each cur-
- 21 rent provider in the state;
- 22 2. Provide assistance to the recipient in making contact with another provider;
- 23 3. Arrange transportation for a requested visit to a provider site;

- 1 4. Provide a copy of pertinent information to the recipient or legal representative;
- 2 5. Ensure the health, safety, and welfare of the recipient until an appropriate placement
- 3 is secured;
- 4 6. Continue to provide supports until alternative services are secured; and
- 5 7. Provide assistance to ensure a safe and effective service transition.

6 Section 5. ICR-MR-DD Level of Care Criteria. (1) To meet ICF-MR-DD level of care
7 criteria, an individual shall require physical or environmental management or rehabilita-
8 tion and:

9 (a) Have a developmental disability or significantly sub-average intellectual function-
10 ing and require a planned program of active treatment to attain or maintain an optimal
11 level of functioning;

12 (b) Require a protected environment while overcoming the effects of a developmental
13 disability or sub-average intellectual functioning while:

- 14 1. Learning fundamental living skills;
- 15 2. Learning to live happily and safely within his or her limitations;
- 16 3. Obtaining educational experiences which will be useful in self-supporting activities;

17 or

18 4. Increasing awareness of his or her environment; or

19 (c) Have a primary psychiatric diagnosis if:

- 20 1. Possessing care needs listed in paragraph (a) or (b);
- 21 2. The individual's mental care needs are adequately handled in an ICF-MR-DD; and
- 22 3. The individual does not require psychiatric inpatient treatment.

23 (2) An individual who does not require a planned program of active treatment to attain

1 or maintain an optimal level of functioning shall not meet ICF-MR-DD level of care crite-
2 ria.

3 (3) The department shall not determine that an individual fails to meet ICF-MR-DD
4 level of care criteria solely due to the individual's age, length of stay in an institution, or
5 history of previous institutionalization if the individual meets the criteria established in
6 subsection (1) of this Section.

7 Section 6. Enrollment. (1) The department shall enroll an individual on a first (1st) pri-
8 ority basis if the individual:

9 (a) Has an urgent need pursuant to 907 KAR 1:145, Section 7(7)(b) regardless of
10 whether the individual is on the SCL waiting list; and

11 (b) Meets the eligibility criteria established in Section 4 of this administrative regula-
12 tion.

13 (2) After all first (1st) priority basis individuals have been enrolled, the department
14 shall enroll remaining SCL waiting list individuals who meet the eligibility criteria estab-
15 lished in Section 4 of this administrative regulation in accordance with the SCL waiting
16 list provisions established in 907 KAR 1:145, Section 7.

17 (3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this
18 Section, the department shall utilize a first (1st) come, first (1st) served priority basis to
19 enroll an individual who meets the eligibility criteria established in Section 4 of this ad-
20 ministrative regulation.

21 Section 7. Covered Services. (1) A Michelle P. waiver service shall:

22 (a) Be prior authorized by the department to ensure that the service or modification of
23 the service meets the needs of the Michelle P. recipient;

1 (b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of
2 care and support spending plan;

3 (c) Except for a CDO service, not be provided by a member of the Michelle P. recipient's
4 family. A CDO service may be provided by a Michelle P. recipient's family member; and

5 (d) Shall be accessed within sixty (60) days of the date of prior authorization.

6 (2) To request prior authorization, a provider shall submit a completed MAP 10, MAP
7 109, and MAP 351 to the department.

8 (3) Covered Michelle P. waiver services shall include:

9 (a) A comprehensive assessment which shall:

10 1. Be completed by the department;

11 2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver
12 recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

13 3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social sup-
14 ports, and environment;

15 4. Be requested by an individual seeking Michelle P. waiver services or the individual's
16 family, legal representative, physician, physician assistant, QMRP, or ARNP;

17 5. Be conducted by an assessment team; and

18 6. Include at least one (1) face-to-face home visit by a member of the assessment team
19 with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

20 (b) A reassessment service which shall:

21 1. Be completed by the department;

22 2. Determine the continuing need for Michelle P. waiver services and, if appropriate,
23 CDO services;

- 1 3. Be performed at least every twelve (12) months;
- 2 4. Be conducted using the same procedures used in an assessment service; and
- 3 5. Not be retroactive;
- 4 (c) A case management service which shall:
 - 5 1. Consist of coordinating the delivery of direct and indirect services to a Michelle P.
6 waiver recipient;
 - 7 2. Be provided by a case manager who shall:
 - 8 a. Arrange for a service but not provide a service directly;
 - 9 b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Mi-
10 chelle P. recipient's home, in the ADHC center, or the adult day training provider's location.
 - 11 c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan
12 of care;
 - 13 d. Have a bachelor's degree from an accredited institution in a human services field and
14 be supervised by:
 - 15 (i) A QMRP;
 - 16 (ii) A registered nurse who has at least two (2) years of experience working with indi-
17 viduals with mental retardation or a development disability;
 - 18 (iii) An individual with a bachelor's degree in a human service field who has at least two
19 (2) years of experience working with individuals with mental retardation or a developmental
20 disability;
 - 21 (iv) A qualified social worker who has at least two (2) years of experience working with
22 individuals with mental retardation or a developmental disability;
 - 23 (v) A licensed marriage and family therapist who has at least two (2) years of experience

- 1 working with individuals with mental retardation or a developmental disability;
- 2 (vi) A licensed professional clinical counselor who has at least two (2) years of experi-
- 3 ence working with individuals with mental retardation or a developmental disability;
- 4 (vii) A certified psychologist who has at least two (2) years of experience working with
- 5 individuals with mental retardation or a developmental disability; or
- 6 (viii) A licensed psychological practitioner at least two (2) years of experience working
- 7 with individuals with mental retardation or a developmental disability;
- 8 e. Be an RN;
- 9 f. Be an LPN:
- 10 g. Be a qualified social worker;
- 11 h. Be an LMFT;
- 12 i. Be an LPCC;
- 13 j. Be a certified psychologist; or
- 14 k. Be a licensed psychological practitioner;
- 15 3. Not include a group conference;
- 16 4. Include development of a plan of care that shall:
- 17 a. Be completed on the MAP 109 using person-centered guiding principles;
- 18 b. Reflect the needs of the Michelle P. recipient;
- 19 c. List goals, interventions, and outcomes;
- 20 d. Specify services needed;
- 21 e. Determine the amount, frequency, and duration of services;
- 22 f. Provide for reassessment at least every twelve (12) months;
- 23 g. Be developed and signed by the case manager and Michelle P. waiver recipient, fam-

- 1 ily member, or legal representative; and
- 2 h. Be submitted to the department no later than thirty (30) calendar days after receiving
- 3 the department's approval of ICF-MR-DD level of care;
- 4 5. Include documentation with a detailed monthly summary note which includes:
- 5 a. The month, day, and year for the time period each note covers;
- 6 b. Progression, regression, and maintenance toward outcomes identified in the plan of
- 7 care;
- 8 c. The signature, date of signature, and title of the individual preparing the note; and
- 9 d. Documentation of at least one (1) face-to-face meeting between the case manager
- 10 and Michelle P. waiver recipient, family member, or legal representative; and
- 11 6. Include requiring a Michelle P. recipient or legal representative to sign a MAP-350
- 12 form at the time of application or reapplication and at each recertification to document that
- 13 the individual was informed of the choice to receive Michelle P. waiver or institutional ser-
- 14 vices;
- 15 (d) A homemaker service which shall consist of general household activities and shall:
- 16 1. Be provided by direct-care staff;
- 17 2. Be provided to a Michelle P. waiver recipient:
- 18 a. Who is functionally unable, but would normally perform age-appropriate homemaker
- 19 tasks; and
- 20 b. If the caregiver regularly responsible for homemaker activities is temporarily absent or
- 21 functionally unable to manage the homemaking activities; and
- 22 3. Include documentation with a detailed note which shall include:
- 23 a. The month, day, and year for the time period each note covers;

- 1 b. Progression, regression, and maintenance toward outcomes identified in the plan of
2 care; and
- 3 c. The signature, date of signature, and title of the individual preparing the note;
- 4 (e) A personal care service which shall:
- 5 1. Be age appropriate;
- 6 2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or
7 other activities of daily living;
- 8 3. Be provided by direct-care staff;
- 9 4. Be provided to a Michelle P. recipient:
- 10 a. Who does not need highly skilled or technical care;
- 11 b. For whom services are essential to the recipient's health and welfare and not for the
12 recipient's family; and
- 13 c. Who needs assistance with age-appropriate activities of daily living; and
- 14 5. Include documentation with a detailed note which shall include:
- 15 a. The month, day, and year for the time period each note covers;
- 16 b. Progression, regression, and maintenance toward outcomes identified in the plan of
17 care;
- 18 c. The signature, date of signature, and title of the individual preparing the note; and
- 19 d. The beginning and ending time of service;
- 20 (f) An attendant care service which shall consist of hands-on care that is:
- 21 1. Provided by direct-care staff to a Michelle P. waiver recipient who:
- 22 a. Is medically stable but functionally dependent and requires care or supervision twenty-
23 four (24) hours per day; and

- 1 b. Has a family member or other primary caretaker who is employed and not able to pro-
2 vide care during working hours;
- 3 2. Not of a general housekeeping nature;
- 4 3. Not provided to a Michelle P. waiver recipient who is receiving any of the following Mi-
5 chelle P. waiver services:
 - 6 a. Personal care;
 - 7 b. Homemaker;
 - 8 c. ADHC;
 - 9 d. Adult day training;
 - 10 e. Community living supports; or
 - 11 f. Supported employment; and
- 12 4. Include documentation with a detailed note which shall include:
 - 13 a. The month, day, and year for the time period each note covers;
 - 14 b. Progression, regression, and maintenance toward outcomes identified in the plan of
15 care;
 - 16 c. The signature, date of signature, and title of the individual preparing the note; and
 - 17 d. Beginning and ending time of service;
- 18 (g) A respite care service which shall be short term care based on the absence or need
19 for relief of the primary caretaker and be:
 - 20 1. Provided by direct-care staff who provide services at a level which appropriately and
21 safely meet the medical needs of the Michelle P. waiver recipient in the following settings:
 - 22 a. The Michelle P. waiver recipient's place of residence; or
 - 23 b. An ADHC center during posted hours of operation;

- 1 2. Provided to a Michelle P. waiver recipient who has care needs beyond normal baby
- 2 sitting; and
- 3 3. Used no less than every six (6) months;
- 4 4. Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10.a. through c ., if pro-
- 5 vided to a child under age 21 (twenty-one) in an ADHC center; and
- 6 5. Include documentation with a detailed note which shall include:
- 7 a. The month, day, and year for the time period each note covers;
- 8 b. Progression, regression, and maintenance toward outcomes identified in the plan of
- 9 care;
- 10 c. The signature, date of signature, and title of the individual preparing the note; and
- 11 d. The beginning and ending time of service;
- 12 (h) An environmental and minor home adaptation service which shall be a physical adap-
- 13 tation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P.
- 14 waiver recipient and which shall:
- 15 1. Meet all applicable safety and local building codes;
- 16 2. Relate strictly to the Michelle P. waiver recipient's disability and needs;
- 17 3. Exclude an adaptation or improvement to a home that has no direct medical or reme-
- 18 dial benefit to the Michelle P. waiver recipient;
- 19 4. Be submitted on form MAP-95 for prior authorization; and
- 20 5. Include documentation with a detailed note which shall include:
- 21 a. The month, day, and year for the time period each note covers;
- 22 b. Progression, regression, and maintenance toward outcomes identified in the plan of
- 23 care; and

- 1 c. The signature, date of signature, and title of the individual preparing the note;
- 2 (i) Occupational therapy which shall be:
- 3 1. A physician ordered evaluation of a Michelle P. recipient's level of functioning by ap-
- 4 plying diagnostic and prognostic tests;
- 5 2. Physician-ordered services in a specified amount and duration to guide a Michelle P.
- 6 waiver member in the use of therapeutic, creative, and self-care activities to assist the re-
- 7 cipient in obtaining the highest possible level of functioning;
- 8 3. Training of other Michelle P. waiver providers on improving the level of functioning;
- 9 4. Exclusive of maintenance or the prevention of regression;
- 10 5. Provided by an occupational therapist or an occupational therapy assistant supervised
- 11 by an occupational therapist in accordance with 201 KAR 28:130; and
- 12 6. Documented with a detailed staff note which shall include:
- 13 a. The month, day, and year for the time period each note covers;
- 14 b. Progression, regression, and maintenance toward outcomes identified in the plan of
- 15 care; and
- 16 c. The signature, date of signature, and title of the individual preparing the note;
- 17 (j) Physical therapy which shall be:
- 18 1. A physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle,
- 19 joint, and functional ability tests;
- 20 2. Physician-ordered treatment in a specified amount and duration to assist a Michelle P.
- 21 waiver recipient in obtaining the highest possible level of functioning;
- 22 3. Training of other Michelle P. waiver providers on improving the level of functioning;
- 23 4. Exclusive of maintenance or the prevention of regression;

- 1 5. Provided by a physical therapist or a physical therapist assistant supervised by a
2 physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
- 3 6. Documented with a detailed monthly summary note which include:
 - 4 a. The month, day, and year for the time period each note covers;
 - 5 b. Progression, regression, and maintenance toward outcomes identified in the plan of
6 care; and
 - 7 c. The signature, date of signature, and title of the individual preparing the note;
- 8 (k) Speech therapy which shall be:
 - 9 1. A physician-ordered evaluation of a Michelle P. waiver recipient with a speech or lan-
10 guage disorder;
 - 11 2. A physician-ordered habilitative service in a specified amount and duration to assist a
12 Michelle P. waiver recipient with a speech and language disability in obtaining the highest
13 possible level of functioning;
 - 14 3. Training of other Michelle P. waiver providers on improving the level of functioning;
 - 15 4. Provided by a speech-language pathologist; and
 - 16 5. Documented with a detailed monthly summary note which include:
 - 17 a. The month, day, and year for the time period each note covers;
 - 18 b. Progression, regression, and maintenance toward outcomes identified in the plan of
19 care; and
 - 20 c. The signature, date of signature, and title of the individual preparing the note;
- 21 (l) An adult day training service which shall:
 - 22 1. Support the Michelle P. waiver recipient in daily, meaningful routines in the commu-
23 nity;

- 1 2. Stress training in:
 - 2 a. The activities of daily living;
 - 3 b. Self-advocacy;
 - 4 c. Adaptive and social skills; and
 - 5 d. Vocational skills;
- 6 3. Be provided in a community setting which may:
 - 7 a. Be a fixed location; or
 - 8 b. Occur in public venues;
- 9 4. Not be diversional in nature;
- 10 5. If provided on site:
 - 11 a. Include facility-based services provided on a regularly-scheduled basis;
 - 12 b. Lead to the acquisition of skills and abilities to prepare the recipient for work or com-
13 munity participation; or
 - 14 c. Prepare the recipient for transition from school to work or adult support services;
- 15 6. If provided off site:
 - 16 a. Shall:
 - 17 (i) Include services provided in a variety of community settings;
 - 18 (ii) Provide access to community-based activities that cannot be provided by natural or
19 other unpaid supports;
 - 20 (iii) Be designed to result in increased ability to access community resources without
21 paid supports; and
 - 22 (iv) Provide the opportunity for the recipient to be involved with other members of the
23 general population; and

- 1 b. May be provided as:
- 2 (i) An enclave or group approach to training in which recipients work as a group or dis-
- 3 persed individually throughout an integrated work setting with people without disabilities;
- 4 (ii) A mobile crew performing work in a variety of community businesses or other com-
- 5 munity settings with supervision by the provider; or
- 6 (iii) An entrepreneurial or group approach to training for participants to work in a small
- 7 business created specifically by or for the recipient or recipients;
- 8 7. Ensure that any recipient performing productive work that benefits the organization, be
- 9 paid commensurate with compensation to members of the general work force doing similar
- 10 work;
- 11 8. Require that a Michelle P. waiver provider conduct, at least annually, an orientation
- 12 informing the recipient of supported employment and other competitive opportunities in the
- 13 community;
- 14 9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver pro-
- 15 vider;
- 16 10.a. Be provided to recipients age twenty-two (22) or older; or
- 17 b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process
- 18 from school to work or adult support services;
- 19 11. Be documented with:
- 20 a. A detailed monthly summary note which shall include:
- 21 (i) The month, day, and year for the time period each note covers;
- 22 (ii) Progression, regression, and maintenance toward outcomes identified in the plan of
- 23 care; and

- 1 (iii) The signature, date of signature, and title of the individual preparing the note; and
- 2 b. A time and attendance record which shall include:
- 3 (i) The date of service;
- 4 (ii) The beginning and ending time of the service;
- 5 (iii) The location of the service; and
- 6 (iv) The signature, date of signature, and title of the individual providing the service;
- 7 (m) A supported employment service which shall:
- 8 1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid
- 9 employment in an environment in which an individual without a disability is employed;
- 10 2. Include attending to a recipient's personal care needs;
- 11 3. Be provided in a variety of settings;
- 12 4. Be provided on a one-to-one basis;
- 13 5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34
- 14 C.F.R. Subtitle B, Chapter III, proof of which shall be documented in the Michelle P.
- 15 waiver recipient's file;
- 16 6. Exclude work performed directly for the supported employment provider;
- 17 7. Be provided by a staff person who has completed a supported employment train-
- 18 ing curriculum conducted by staff of the cabinet or its designee;
- 19 8. Be documented by:
- 20 a. A detailed monthly summary note which shall include:
- 21 (i) The month, day, and year for the time period each note covers;
- 22 (ii) Progression, regression, and maintenance toward outcomes identified in the plan
- 23 of care; and

- 1 (iii) The signature, date of signature, and title of the individual preparing the note; and
- 2 b. A time and attendance record which shall include:
- 3 (i) The date of service;
- 4 (ii) The beginning and ending time of the service;
- 5 (iii) The location of the service; and
- 6 (iv) The signature, date of signature, and title of the individual providing the service;
- 7 (n) A behavioral support service which shall:
- 8 1. Be the systematic application of techniques and methods to influence or change a
- 9 behavior in a desired way;
- 10 2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are
- 11 directly related to existing challenging behaviors or functionally equivalent replacement be-
- 12 haviors for identified challenging behaviors;
- 13 3. Include a functional assessment of the Michelle P. waiver recipient's behavior which
- 14 shall include:
- 15 a. An analysis of the potential communicative intent of the behavior;
- 16 b. The history of reinforcement for the behavior;
- 17 c. Critical variables that preceded the behavior;
- 18 d. Effects of different situations on the behavior; and
- 19 e. A hypothesis regarding the motivation, purpose, and factors which maintain the be-
- 20 havior;
- 21 4. Include the development of a behavioral support plan which shall:
- 22 a. Be developed by the behavioral specialist;
- 23 b. Be implemented by Michelle P. waiver provider staff in all relevant environments and

- 1 activities;
- 2 c. Be revised as necessary;
- 3 d. Define the techniques and procedures used;
- 4 e. Be designed to equip the recipient to communicate his or her needs and to participate
- 5 in age-appropriate activities;
- 6 f. Include the hierarchy of behavior interventions ranging from the least to the most re-
- 7 strictive;
- 8 g. Reflect the use of positive approaches; and
- 9 h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any
- 10 procedure which denies private communication, requisite sleep, shelter, bedding, food,
- 11 drink, or use of a bathroom facility;
- 12 5. Include the provision of training to other Michelle P. waiver providers concerning im-
- 13 plementation of the behavioral support plan;
- 14 6. Include the monitoring of a Michelle P. recipient's progress which shall be accom-
- 15 plished by:
- 16 a. The analysis of data concerning the frequency, intensity, and duration of a behavior;
- 17 and
- 18 b. The reports of a Michelle P. waiver provider involved in implementing the behavior
- 19 support plan;
- 20 7. Provide for the design, implementation, and evaluation of systematic environmental
- 21 modifications;
- 22 8. Be provided by a behavior support specialist;
- 23 9. Be documented by a detailed staff note which shall include:

- 1 a. The date of service;
- 2 b. The beginning and ending time; and
- 3 c. The signature, date of signature, and title of the behavioral specialist;
- 4 (o) An ADHC service which shall:
 - 5 1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of
 - 6 age;
 - 7 2. Include the following basic services and necessities provided to Medicaid waiver re-
 - 8 cipients during the posted hours of operation:
 - 9 a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary
 - 10 catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy
 - 11 care, or medical monitoring;
 - 12 b. Meal service corresponding with hours of operation with a minimum of one (1) meal
 - 13 per day and therapeutic diets as required;
 - 14 c. Snacks;
 - 15 d. Supervision by an RN;
 - 16 e. Age and diagnosis appropriate daily activities; and
 - 17 f. Routine services that meet the daily personal and health care needs of a Michelle P.
 - 18 waiver recipient, including:
 - 19 (i) Monitoring of vital signs;
 - 20 (ii) Assistance with activities of daily living; and
 - 21 (iii) Monitoring and supervision of self-administered medications, therapeutic programs,
 - 22 and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;
 - 23 3. Include developing, implementing, and maintaining nursing policies for nursing or

- 1 medical procedures performed in the ADHC center;
- 2 4. Include respite care services pursuant to paragraph (g) of this subsection;
- 3 5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center
- 4 which may include:
- 5 a. A physician;
- 6 b. A physician assistant;
- 7 c. An ARNP;
- 8 d. An RN;
- 9 e. An LPN;
- 10 f. An activities director;
- 11 g. A physical therapist;
- 12 h. A physical therapist assistant;
- 13 i. An occupational therapist;
- 14 j. An occupational therapist assistant;
- 15 k. A speech pathologist;
- 16 l. A social worker;
- 17 m. A nutritionist;
- 18 n. A health aide;
- 19 o. An LPCC;
- 20 p. An LMFT;
- 21 q. A certified psychologist with autonomous functioning; or
- 22 r. A licensed psychological practitioner; and
- 23 6. Be provided pursuant to a plan of treatment. The plan of treatment shall:

- 1 a. Be developed and signed by each member of the plan of treatment team which shall
2 include the recipient or a legal representative of the recipient;
- 3 b. Include pertinent diagnoses, mental status, services required, frequency of visits to
4 the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permit-
5 ted, nutritional requirements, medication, treatment, safety measures to protect against in-
6 jury, instructions for timely discharge, and other pertinent information; and
- 7 c. Be developed annually from information on the MAP 351 and revised as needed; and
- 8 (p) Community living supports which shall:
 - 9 1. Be provided to facilitate independence and promote integration into the community
10 for an SCL recipient residing in his or her own home or in his or her family's home;
 - 11 2. Be supports and assistance which shall be related to chosen outcomes and not be
12 diversional in nature. This may include:
 - 13 a. Routine household tasks and maintenance;
 - 14 b. Activities of daily living;
 - 15 c. Personal hygiene;
 - 16 d. Shopping;
 - 17 e. Money management;
 - 18 f. Medication management;
 - 19 g. Socialization;
 - 20 h. Relationship building;
 - 21 i. Leisure choices;
 - 22 j. Participation in community activities;
 - 23 k. Therapeutic goals; or

- 1 I. Nonmedical care not requiring nurse or physician intervention;
- 2 3. Not replace other work or day activities;
- 3 4. Be provided on a one-on-basis;
- 4 5. Not be provided at an adult day-training or children's day- habilitation site;
- 5 6. Be documented by:
 - 6 a. A time and attendance record which shall include:
 - 7 (i) The date of the service;
 - 8 (ii) The beginning and ending time of the service; and
 - 9 (iii) The signature, date of signature and title of the individual providing the service;
 - 10 and
 - 11 b. A detailed monthly summary note which shall include:
 - 12 (i) The month, day, and year for the time period each note covers;
 - 13 (ii) Progression, regression, and maintenance toward outcomes identified in the plan
 - 14 of care; and
 - 15 (iii) The signature, date of signature, and title of the individual preparing the summary
 - 16 note; and
- 17 7. Be limited to sixteen (16) hours per day alone or in combination with adult day
- 18 training, children's day habilitation, and supported employment.

19 Section 8. Consumer-Directed Option. (1) Covered services and supports provided to a
20 Michelle P. waiver recipient participating in CDO shall be non-medical and include:

- 21 (a) A home and community support service which shall:
 - 22 1. Be available only under the consumer-directed option;
 - 23 2. Be provided in the consumer's home or in the community;

- 1 3. Be based upon therapeutic goals and not diversional in nature; and
- 2 4. Not be provided to an individual if the same or similar service is being provided to the
- 3 individual via non-CDO Michelle P. waiver services;

4 (b) Goods and services which shall:

- 5 1. Be individualized;
- 6 2. Be utilized to reduce the need for personal care or to enhance independence within
- 7 the home or community of the recipient;
- 8 3. Not include experimental goods or services; and
- 9 4. Not include chemical or physical restraints;

10 (c) A community day support service which shall:

- 11 1. Be available only under the consumer-directed option;
- 12 2. Be provided in a community setting;
- 13 3. Be tailored to the consumer's specific personal outcomes related to the acquisition,
- 14 improvement, and retention of skills and abilities to prepare and support the consumer for
- 15 work or community activities, socialization, leisure, or retirement activities;
- 16 4. Be based upon therapeutic goals and not be diversional in nature; and
- 17 5. Not be provided to an individual if the same or similar service is being provided to
- 18 the individual via non-CDO Michelle P. waiver services; or

19 (d) Financial management which shall:

- 20 1. Include managing, directing, or dispersing a consumer's funds identified in the
- 21 consumer's approved CDO budget;
- 22 2. Include payroll processing associated with the individuals hired by a consumer or
- 23 consumer's representative;

- 1 3. Include withholding local, state, and federal taxes and making payments to
2 appropriate tax authorities on behalf of a consumer;
- 3 4. Be performed by an entity:
- 4 a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
5 b. With at least two (2) years of experience working with the Michelle P. services
6 target population;
- 7 5. Include preparing fiscal accounting and expenditure reports for:
- 8 a. A consumer or consumer's representative; and
9 b. The department.
- 10 (2) To be covered, a CDO service shall be specified in a plan of care.
- 11 (3) Reimbursement for a CDO service shall not exceed the department's allowed reim-
12 bursement for the same or similar service provided in a non-CDO Michelle P waiver setting.
- 13 (4) A consumer, including a married consumer, shall choose providers and a consumer's
14 choice shall be reflected or documented in the plan of care.
- 15 (5) A consumer may designate a representative to act on the consumer's behalf. The
16 CDO representative shall:
- 17 (a) Be twenty-one (21) years of age or older;
18 (b) Not be monetarily compensated for acting as the CDO representative or providing a
19 CDO service; and
20 (c) Be appointed by the consumer on a MAP 2000 form.
- 21 (6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and
22 submitting it to the support broker.
- 23 (7) The department shall immediately terminate a consumer from CDO services if:

- 1 (a) Imminent danger to the consumer's health, safety, or welfare exists;
- 2 (b) The consumer fails to pay patient liability;
- 3 (c) The recipient's plan of care indicates he or she requires more hours of service than
- 4 the program can provide; thus, jeopardizing the recipient's safety and welfare due to being
- 5 left alone without a caregiver present; or
- 6 (d) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or
- 7 other CDO staff.

8 (8) The department may terminate a consumer from CDO services if it determines that

9 the consumer's CDO provider has not adhered to the plan of care.

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

- 11 (a) Notify the assessment or reassessment service provider of potential termination;
- 12 (b) Assist the consumer in developing a resolution and prevention plan;
- 13 (c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to re-
- 14 solve the issue, develop and implement a prevention plan, or designate a CDO representa-
- 15 tive;
- 16 (d) Complete, and submit to the department, a MAP 2000 terminating the consumer from
- 17 CDO services if the consumer fails to meet the requirements in paragraph (c) of this sub-
- 18 section; and
- 19 (e) Assist the consumer in transitioning back to traditional Michelle P. waiver services.

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

- 21 (a) Notify a consumer in writing of its decision to terminate the consumer's CDO partici-
- 22 pation; and
- 23 (b) Except in a case where a consumer failed to pay patient liability, inform the consumer

1 of the right to appeal the department's decision in accordance with Section 13 of this ad-
2 ministrative regulation.

3 (11) A CDO provider shall:

4 (a) Be selected by the consumer;

5 (b) Submit a completed Kentucky Consumer Directed Option Employee Provider Con-
6 tract to the support broker;

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

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

10 (e) Be able to communicate effectively with the consumer, consumer representative, or
11 family;

12 (f) Be able to understand and carry out instructions;

13 (g) Be able to keep records as required by the consumer;

14 (h) Submit to a criminal background check;

15 (i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906
16 KAR 1:100 and not be found on the registry;

17 (j) Not have pled guilty or been convicted of committing a sex crime or violent crime as
18 defined in KRS 17.165(1) through (3);

19 (k) Complete training on the reporting of abuse, neglect, or exploitation in accordance
20 with KRS 209.030 or 620.030 and on the needs of the consumer;

21 (l) Be approved by the department;

22 (m) Maintain and submit timesheets documenting hours worked; and

23 (n) Be a friend, spouse, parent, family member, other relative, employee of a provider

1 agency, or other person hired by the consumer.

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

5 (13)(a) The department shall establish a six (6)-month budget for a consumer based on
6 the consumer's plan of care.

7 (b) A consumer's six (6)-month budget shall not exceed \$20,000 unless:

8 1. The consumer's support broker requests a budget adjustment to a level higher than
9 \$20,000; and

10 2. The department approves the adjustment.

11 (c) The department shall consider the following factors in determining whether to grant a
12 six (6)-month budget adjustment:

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

14 2. The cost effectiveness of the proposed services;

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

16 4. If a significant change has occurred in the recipient's:

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

19 b. Natural support system; or

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

21 (14) Unless approved by the department pursuant to subsection (13)(a) through (c) of
22 this section, if a CDO service is expanded to a point in which expansion necessitates a six
23 (6)-month budget increase, the entire service shall only be covered via traditional (non-

1 CDO) waiver services.

2 (15) A support broker shall:

3 (a) Provide needed assistance to a consumer with any aspect of CDO or blended ser-
4 vices;

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

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

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

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

9 (16)(a) For a CDO participant, a support broker may conduct an assessment or reas-
10 sessment; and

11 (b) A CDO assessment or reassessment performed by a support broker shall comply
12 with the assessment or reassessment provisions established in this administrative regu-
13 lation.

14 Section 9. Annual Expenditure Limit Per Individual. (1) The department shall have an
15 annual expenditure limit per individual receiving services via this administrative regula-
16 tion.

17 (2) The limit referenced in subsection (1) of this section:

18 (a) Shall be an overall limit applied to all services whether CDO services, Michelle P.
19 services not provided via CDO, or a combination of CDO and Michelle P. services; and

20 (b) Shall equal \$63,000 per year.

21 Section 10. Incident Reporting Process. (1) An incident shall be documented on an
22 incident report form.

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

- 1 (a) A class I incident which shall:
- 2 1. Be minor in nature and not create a serious consequence;
- 3 2. Not require an investigation by the provider agency;
- 4 3. Be reported to the case manager or support broker within twenty-four (24) hours;
- 5 4. Be reported to the guardian as directed by the guardian; and
- 6 5. Be retained on file at the provider and case management or support brokerage
- 7 agency.

8 (b) A class II incident which shall:

- 9 1. Be serious in nature;
- 10 2. Involve the use of physical or chemical restraints;
- 11 3. Require an investigation which shall be initiated by the provider agency within
- 12 twenty-four (24) hours of discovery;
- 13 4. Be reported by the provider agency to:
- 14 a. The case manager or support broker within twenty-four (24) hours;
- 15 b. The guardian within twenty-four (24) hours;
- 16 c. The department within ten (10) calendar days of discovery, and shall include a
- 17 complete written report of the incident investigation and follow up; and

18 (c) A class III incident which shall:

- 19 1.a. Be grave in nature;
- 20 b. Involve suspected abuse, neglect, or exploitation;
- 21 c. Involve a medication error which requires a medical intervention; or
- 22 d. Be a death.
- 23 2. Be immediately investigated by the provider agency, and the investigation shall in-

- 1 involve the case manager or support broker; and
- 2 3. Be reported by the provider agency to:
- 3 a. The case manager or support broker within eight (8) hours of discovery;
- 4 b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or ex-
- 5 ploitation in accordance with KRS Chapter 209;
- 6 c. The guardian within eight (8) hours of discovery; and
- 7 d. The department within eight (8) hours of discovery and shall include a complete
- 8 written report of the incident investigation and follow-up within seven (7) calendar days
- 9 of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a week-
- 10 end or holiday, notification to the department shall occur on the following business day.

11 (3) Documentation with a complete written report for a death shall include:

12 (a) The recipient's current plan of care;

13 (b) The recipient's current list of prescribed medications including pro re nata (PRN)

14 medications;

15 (c) The recipient's current crisis plan;

16 (d) Medication administration review forms for the current and previous month;

17 (e) Staff notes from the current and previous month including details of physician and

18 emergency room visits;

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

20 (g) A coroner's report when received; and

21 (h) If performed, an autopsy report when received.

22 (4) All medication errors shall be reported to the department on a monthly medication

23 error report form by the 15th (fifteenth) of the following month.

1 Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and
2 other use of electronic signatures and documents shall comply with the requirements estab-
3 lished in KRS 369.101 to 369.120.

4 (2) A home health provider that chooses to use electronic signatures shall:

5 (a) Develop and implement a written security policy that shall:

- 6 1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
- 7 2. Identify each electronic signature for which an individual has access; and
- 8 3. Ensure that each electronic signature is created, transmitted, and stored in a secure
9 fashion;

10 (b) Develop a consent form that shall:

- 11 1. Be completed and executed by each individual using an electronic signature;
- 12 2. Attest to the signature's authenticity; and
- 13 3. Include a statement indicating that the individual has been notified of his or her re-
14 sponsibility in allowing the use of the electronic signature; and

15 (c) Provide the department with:

- 16 1. A copy of the provider's electronic signature policy;
- 17 2. The signed consent form; and
- 18 3. The original filed signature immediately upon request.

19 Section 12. Reimbursement. (1) The following Michelle P. waiver services, alone or in
20 any combination, are limited to forty (40) hours per calendar week:

21 (a) Homemaker;

22 (b) Personal care;

23 (c) Attendant care;

- 1 (d) Supported employment;
- 2 (e) Adult day health care;
- 3 (f) Adult day training;
- 4 (g) Community living supports;
- 5 (h) Physical therapy;
- 6 (i) Occupational therapy;
- 7 (j) Speech therapy; and
- 8 (k) Behavior supports.

9 (2) Respite services shall not exceed \$4,000 per member, per calendar year.

10 (3) Environmental and minor home adaptation services shall not exceed \$500 per mem-
 11 ber, per calendar year.

12 (4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of
 13 billed charges or the fixed upper payment rate for each unit of service.

14 (b) The following rates shall be the fixed upper payment rate limits:

Service	Fixed Upper Payment Rate Limit	Unit of Service
Case Management	\$200.00	1 month
Respite	\$4,000 per calendar year	15 minutes
Homemaker	\$6.50	15 minutes
Personal Care	\$7.50	15 minutes
Attendant Care	\$2.90	15 minutes
Supported Employment	\$5.54	15 minutes

Adult Day Health Care	\$2.57	15 minutes
Adult Day Training	\$2.75	15 minutes
Community Living Supports	\$5.54	15 minutes
Physical Therapy	\$22.17	15 minutes
Occupational Therapy	\$22.17	15 minutes
Speech Therapy	\$22.17	15 minutes
Behavior Supports	\$33.25	15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year	
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)	15 minutes
Support Broker	\$265.00	One (1) month

1 Section 13. Appeal Rights. An appeal of a department determination regarding ICF-
2 MR-DD level of care or services to a Michelle P. waiver recipient or a consumer shall be
3 in accordance with 907 KAR 1:563.

4 Section 14. Incorporation by Reference. (1) The following material is incorporated by
5 reference:

6 (a) "Person Centered Planning: Guiding Principles", March 2005 edition;

7 (b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Ser-
8 vices, Department for Community Based Services Memorandum", February 2001 edi-
9 tion;

- 1 (f) "MAP-95 Request for Equipment Form" June 2007 edition;
- 2 (g) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", March 2007 edi-
- 3 tion;
- 4 (h) "MAP-350, Long Term Care Facilities and Home and Community Based Program
- 5 Certification Form", January 2000 edition;
- 6 (i) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment",
- 7 March 2007 edition;
- 8 (j) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March
- 9 2007, edition; and
- 10 (k) "MAP-10, Waiver Services", March 2007 edition.

11 (2) This material may be inspected, copied, or obtained, subject to applicable copy-

12 right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,

13 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 1:835E

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 1:835E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen (502) 564-6204 or Kristina Hayden (502) 564-6204

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the provisions for Michelle P. waiver service coverage and reimbursement.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, *Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.*
 - (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 provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, *Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.*
 - (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 provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, *Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.*

- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes:

This is a new administrative regulation.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation is expected to affect thousands of individuals diagnosed with mental retardation or a developmental disability by providing community-based services in lieu of institutional care. This administrative regulation will allow qualified, Medicaid enrolled providers throughout the Commonwealth of Kentucky to provide services and receive corresponding reimbursement for services provided to qualifying enrolled individuals.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those not enrolled as Medicaid providers who wish to provide Michelle P. services will have to enroll into the Medicaid program.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This regulation should not impose additional costs on Medicaid providers. Organizations applying as new providers may incur new business start-up costs.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The new administrative regulation will provide services to citizens of the Commonwealth diagnosed with mental retardation or a developmental disability.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(b) On a continuing basis: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: \$17.5 million has been allocated to the Department for Medicaid Services for the implementation of the Michelle P. waiver program. Of this \$17.5 million, approximately \$12 million will be from Title XIX federal funding and \$5 million will be general fund dollars.

Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:835E

Contact Person: Kristina Hayden (502) 564-6204 or
Stuart Owen (502) 564-6204

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

Yes X No _____
If yes, complete 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid eligible individual diagnosed with mental retardation or development disability choosing to access services through the Michelle P. waiver program.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, *Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.*
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government during the first year of program administration.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government during subsequent years of program administration.
 - (c) How much will it cost to administer this program for the first year? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P."

settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

- (d) How much will it cost to administer this program for subsequent years? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

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

Revenues (+/-): _____

Expenditures (+/-): _____

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

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

907 KAR 1:835E

Summary of Material Incorporated by Reference

The following is incorporated by reference:

- (1) "MAP-95, Request for Equipment Form", Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services,
- (2) "Person Centered Planning: Guiding Principles", March 2005 edition;
- (3) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001 edition;
- (4) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", March 2007 edition;
- (5) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;
- (6) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007 edition;
- (7) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007, edition; and
- (8) "MAP-10, Waiver Services", March 2007 edition.

A total of twenty-eight (28) pages are incorporated by reference into this administrative regulation.