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Donna Little
REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES
2 Department for Medicaid Services
3 Division of Policy and Operations
4 (New Administrative Regulation)
5 907 KAR 10:020. Coverage provisions and requirements regarding outpatient psy-
6 chiatric hospital services.
7 RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)
8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
10 Services, Department for Medicaid Services, has a responsibility to administer the Med-
11 icaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
12 comply with any requirement that may be imposed or opportunity presented by federal
13 law to qualify for federal Medicaid funds. This administrative regulation establishes the
14 coverage provisions and requirements regarding Medicaid Program outpatient services
15 provided by psychiatric hospitals.
16 Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined
17 by KRS 314.011(7).
18 (2) "Approved behavioral health services provider" means
19 (a) A physician;
20 (b) A psychiatrist;
21 (c) An advanced practice registered nurse;

1 (d) A physician assistant;

2 (e) A licensed psychologist;

3 (f) A licensed psychological practitioner;

4 (g) A certified psychologist with autonomous functioning;

5 (h) A licensed clinical social worker;

6 (i) A licensed professional clinical counselor;

7 (j) A licensed marriage and family therapist;

8 (k) A licensed psychological associate;

9 (l) A certified psychologist;

10 (m) A marriage and family therapy associate;

11 (n) A certified social worker;

12 (o) A licensed professional counselor associate;

13 (p) A licensed professional art therapist;

14 (q) A licensed professional art therapist associate;

15 (r) A licensed clinical alcohol and drug counselor in accordance with Section 12 of

16 this administrative regulation;

17 (s) A licensed clinical alcohol and drug counselor associate in accordance with Sec-

18 tion 12 of this administrative regulation; or

19 (t) A certified alcohol and drug counselor.

20 (3) "Behavioral health practitioner under supervision" means an individual who is:

21 (a)1. A licensed professional counselor associate;

22 2. A certified social worker;

23 3. A marriage and family therapy associate;

1 4. A licensed professional art therapist associate;

2 5. A licensed assistant behavior analyst;

3 6. A physician assistant;

4 7. A certified alcohol and drug counselor; or

5 8. A licensed clinical alcohol and drug counselor associate in accordance with Sec-

6 tion 12 of this administrative regulation; and

7 (b) Employed by or under contract with the same billing provider as the billing super-

8 visor.

9 (4) "Billing provider" means the individual who, group of individual providers that, or

10 organization that:

11 (a) Is authorized to bill the department or a managed care organization for a service;

12 and

13 (b) Is eligible to be reimbursed by the department or a managed care organization for

14 a service.

15 (5) "Billing supervisor" means an individual who is:

16 (a)1. A physician;

17 2. A psychiatrist;

18 3. An advanced practice registered nurse;

19 4. A licensed psychologist;

20 5. A licensed clinical social worker;

21 6. A licensed professional clinical counselor;

22 7. A licensed psychological practitioner;

23 8. A certified psychologist with autonomous functioning;

1 9. A licensed marriage and family therapist;

2 10. A licensed professional art therapist; or

3 11. A licensed behavior analyst; and

4 (b) Employed by or under contract with the same billing provider as the behavioral

5 health practitioner under supervision who renders services under the supervision of the

6 billing supervisor.

7 (6) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

8 (7) "Certified psychologist" means an individual who is recognized as a certified psy-

9 chologist in accordance with 201 KAR Chapter 26.

10 (8) "Certified psychologist with autonomous functioning" means an individual who is a

11 certified psychologist with autonomous functioning pursuant to KRS 319.056.

12 (9) "Certified social worker" means an individual who meets the requirements estab-

13 lished in KRS 335.080.

14 (10) "Community support associate" means a paraprofessional who meets the appli-

15 cation, training, and supervision requirements of 908 KAR 2:250.

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

17 (12) "Electronic signature" is defined by KRS 369.102(8).

18 (13) "Enrollee" means a recipient who is enrolled with a managed care organization.

19 (14) "Face-to-face" means occurring:

20 (a) In person; or

21 (b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that in-

22 volves two (2) way interactive video and audio communication.

23 (15) "Federal financial participation" is defined by 42 C.F.R. 400.203.

1 (16) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

2 (17) "Licensed behavior analyst" is defined by KRS 319C.010(6).

3 (18) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

4 (19) "Licensed clinical alcohol and drug counselor associate" is defined by KRS

5 309.080(5).

6 (20) "Licensed clinical social worker" means an individual who meets the licensed

7 clinical social worker requirements established in KRS 335.100.

8 (21) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

9 (22) "Licensed professional art therapist" is defined by KRS 309.130(2).

10 (23) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

11 (24) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

12 (25) "Licensed professional counselor associate" is defined by KRS 335.500(4).

13 (26) "Licensed psychological associate" means an individual who:

14 (a) Currently possesses a licensed psychological associate license in accordance

15 with KRS 319.010(6); and

16 (b) Meets the licensed psychological associate requirements established in 201 KAR

17 Chapter 26.

18 (27) "Licensed psychological practitioner" means an individual who meets the re-

19 quirements established in KRS 319.053.

20 (28) "Licensed psychologist" means an individual who:

21 (a) Currently possesses a licensed psychologist license in accordance with KRS

22 319.010(6); and

23 (b) Meets the licensed psychologist requirements established in 201 KAR Chapter

1 26.

2 (29) "Managed care organization" means an entity for which the Department for Med-
3 icaid Services has contracted to serve as a managed care organization as defined in 42
4 C.F.R. 438.2.

5 (30) "Marriage and family therapy associate" is defined by KRS 335.300(3).

6 (31) "Medically necessary" or "medical necessity" means that a covered benefit is de-
7 termined to be needed in accordance with 907 KAR 3:130.

8 (32) "Peer support specialist" means an individual who meets the peer specialist
9 qualifications established in:

10 (a) 908 KAR 2:220;

11 (b) 908 KAR 2:230; or

12 (c) 908 KAR 2:240.

13 (33) "Person-centered service plan" means a plan of services for a recipient that
14 meets the requirements established in 42 C.F.R. 441.540.

15 (34) "Physician" is defined by KRS 205.510(11).

16 (35) "Physician assistant" is defined by KRS 311.840(3).

17 (36) "Provider" is defined by KRS 205.8451(7).

18 (37) "Provider abuse" is defined by KRS 205.8451(8).

19 (38) "Recipient" is defined by KRS 205.8451(9).

20 (39) "Recipient abuse" is defined by KRS 205.8451(10).

21 (40) "Recipient's representative" means:

22 (a) For a recipient who is authorized by Kentucky law to provide written consent, an
23 individual acting on behalf of, and with written consent from, the recipient; or

1 (b) A legal guardian.

2 (41) "Section 504 plan" means a plan developed under the auspices of Section 504
3 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), to ensure
4 that a child who has a disability identified under the law and is attending an elementary
5 or secondary educational institution receives accommodations to ensure the child's ac-
6 ademic success and access to the learning environment.

7 Section 2. General Coverage Requirements. (1) For the department to reimburse for
8 a service covered under this administrative regulation, the service shall be:

9 (a) Medically necessary; and

10 (b) Provided:

11 1. To a recipient; and

12 2. By a psychiatric hospital that meets the provider participation requirements estab-
13 lished in Section 3 of this administrative regulation.

14 (2)(a) Face-to-face contact between a practitioner and a recipient shall be required
15 for each service except for:

16 1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years
17 if the collateral outpatient therapy is in the recipient's plan of care;

18 2. A family outpatient therapy service in which the corresponding current procedural
19 terminology code establishes that the recipient is not present;

20 3. A psychological testing service comprised of interpreting or explaining results of an
21 examination or data to family members or others in which the corresponding current
22 procedural terminology code establishes that the recipient is not present; or

23 4. A service planning activity in which the corresponding current procedural terminol-

1 ogy code establishes that the recipient is not present.

2 (b) A service that does not meet the requirement in paragraph (a) of this subsection

3 shall not be covered.

4 (3) A billable unit of service shall be actual time spent delivering a service in a face-

5 to-face encounter.

6 (4) A service shall be:

7 (a) Stated in the recipient's plan of care; and

8 (b) Provided in accordance with the recipient's plan of care.

9 (5)(a) A psychiatric hospital shall establish a plan of care for each recipient receiving

10 outpatient services from the psychiatric hospital.

11 (b) A plan of care shall meet the master treatment plan requirements established in

12 902 KAR 20:180.

13 Section 3. Provider Participation. (1)(a) To be eligible to provide services under this

14 administrative regulation, a psychiatric hospital shall:

15 1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accord-

16 ance with 907 KAR 1:672;

17 2. Except as established in subsection (2) of this section, be currently participating in

18 the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

19 3. Be licensed as a psychiatric hospital to provide outpatient behavioral health ser-

20 vices in accordance with 902 KAR 20:180; and

21 4. Have:

22 a. For each service it provides, the capacity to provide the full range of the service as

23 established in this administrative regulation;

1 b. Documented experience in serving individuals with behavioral health disorders;

2 c. The administrative capacity to ensure quality of services;

3 d. A financial management system that provides documentation of services and

4 costs; and

5 e. The capacity to document and maintain individual health records.

6 (b) The documentation referenced in paragraph (a)4.b. of this subsection shall be

7 subject to audit by:

8 1. The department;

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

10 3. A managed care organization, if the psychiatric hospital is enrolled in its network;

11 4. The Centers for Medicare and Medicaid Services;

12 5. The Kentucky Office of the Auditor of Public Accounts; or

13 6. The United States Department of Health and Human Services, Office of the In-

14 spector General.

15 (2) In accordance with 907 KAR 17:015, Section 3(3), a psychiatric hospital which

16 provides a service to an enrollee shall not be required to be currently participating in the

17 fee-for-service Medicaid Program.

18 (3) A psychiatric hospital shall:

19 (a) Agree to provide services in compliance with federal and state laws regardless of

20 age, sex, race, creed, religion, national origin, handicap, or disability; and

21 (b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and

22 any amendments to the Act.

23 Section 4. Covered Services. (1) Except as specified in the requirements stated for a

1 given service, the services covered may be provided for a:

2 (a) Mental health disorder;

3 (b) Substance use disorder; or

4 (c) Co-occurring mental health and substance use disorders.

5 (2) The following services shall be covered under this administrative regulation in ac-

6 cordance with the following requirements:

7 (a) A screening, crisis intervention, or intensive outpatient program service provided

8 by:

9 1. A licensed psychologist;

10 2. A licensed psychological practitioner;

11 3. A certified psychologist with autonomous functioning;

12 4. A licensed clinical social worker;

13 5. A licensed professional clinical counselor;

14 6. A licensed professional art therapist;

15 7. A licensed marriage and family therapist;

16 8. A physician;

17 9. A psychiatrist;

18 10. An advanced practice registered nurse;

19 11. A licensed psychological associate working under the supervision of a board-

20 approved licensed psychologist;

21 12. A certified psychologist working under the supervision of a board-approved li-

22 censed psychologist;

23 13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of

1 this administrative regulation; or

2 14. A behavioral health practitioner under supervision:

3 a. In accordance with Section 12 of this administrative regulation; and

4 b. Except for a licensed assistant behavior analyst;

5 (b) An assessment provided by:

6 1. A licensed psychologist;

7 2. A licensed psychological practitioner;

8 3. A certified psychologist with autonomous functioning;

9 4. A licensed clinical social worker;

10 5. A licensed professional clinical counselor;

11 6. A licensed professional art therapist;

12 7. A licensed marriage and family therapist;

13 8. A physician;

14 9. A psychiatrist;

15 10. An advanced practice registered nurse;

16 11. A licensed behavior analyst;

17 12. A licensed psychological associate working under the supervision of a board-

18 approved licensed psychologist;

19 13. A certified psychologist working under the supervision of a board-approved li-

20 censed psychologist;

21 14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of

22 this administrative regulation; or

23 15. A behavioral health practitioner under supervision in accordance with Section 12

1 of this administrative regulation;

2 (c) Psychological testing provided by:

3 1. A licensed psychologist;

4 2. A licensed psychological practitioner;

5 3. A certified psychologist with autonomous functioning;

6 4. A licensed psychological associate working under the supervision of a board-

7 approved licensed psychologist; or

8 5. A certified psychologist working under the supervision of a board-approved li-

9 censed psychologist;

10 (d) Day treatment or mobile crisis services provided by:

11 1. A licensed psychologist;

12 2. A licensed psychological practitioner;

13 3. A certified psychologist with autonomous functioning;

14 4. A licensed clinical social worker;

15 5. A licensed professional clinical counselor;

16 6. A licensed professional art therapist;

17 7. A licensed marriage and family therapist;

18 8. A physician;

19 9. A psychiatrist;

20 10. An advanced practice registered nurse;

21 11. A licensed psychological associate working under the supervision of a board-

22 approved licensed psychologist;

23 12. A certified psychologist working under the supervision of a board-approved li-

1 censed psychologist;

2 13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of

3 this administrative regulation;

4 14. A behavioral health practitioner under supervision:

5 a. Except for a licensed assistant behavior analyst; and

6 b. In accordance with Section 12 of this administrative regulation; or

7 15. A peer support specialist working under the supervision of an approved behav-

8 ioral health services provider in accordance with Section 12 of this administrative regu-

9 lation;

10 (e) Peer support provided by a peer support specialist working under the supervision

11 of an approved behavioral health services provider in accordance with Section 12 of this

12 administrative regulation;

13 (f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient

14 therapy provided by:

15 1. A licensed psychologist;

16 2. A licensed psychological practitioner;

17 3. A certified psychologist with autonomous functioning;

18 4. A licensed clinical social worker;

19 5. A licensed professional clinical counselor;

20 6. A licensed professional art therapist;

21 7. A licensed marriage and family therapist;

22 8. A physician;

23 9. A psychiatrist;

1 10. An advanced practice registered nurse;

2 11. A licensed behavior analyst;

3 12. A licensed psychological associate working under the supervision of a board-

4 approved licensed psychologist;

5 13. A certified psychologist working under the supervision of a board-approved li-

6 censed psychologist;

7 14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of

8 this administrative regulation; or

9 15. A behavioral health practitioner under supervision in accordance with Section 12

10 of this administrative regulation;

11 (g) Family outpatient therapy provided by:

12 1. A licensed psychologist;

13 2. A licensed psychological practitioner;

14 3. A certified psychologist with autonomous functioning;

15 4. A licensed clinical social worker;

16 5. A licensed professional clinical counselor;

17 6. A licensed professional art therapist;

18 7. A licensed marriage and family therapist;

19 8. A physician;

20 9. A psychiatrist;

21 10. An advanced practice registered nurse;

22 11. A licensed psychological associate working under the supervision of a board-

23 approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavior analyst; and

b. In accordance with Section 12 of this administrative regulation;

(h) Service planning provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

1 14. A behavioral health practitioner under supervision except for:

2 a. A certified alcohol and drug counselor; or

3 b. A licensed clinical alcohol and drug counselor associate;

4 (i) A screening, brief intervention, and referral to treatment for a substance use disor-

5 der or SBIRT provided by:

6 1. A licensed psychologist;

7 2. A licensed psychological practitioner;

8 3. A certified psychologist with autonomous functioning;

9 4. A licensed clinical social worker;

10 5. A licensed professional clinical counselor;

11 6. A licensed professional art therapist;

12 7. A licensed marriage and family therapist;

13 8. A physician;

14 9. A psychiatrist;

15 10. An advanced practice registered nurse;

16 11. A licensed psychological associate working under the supervision of a board-

17 approved licensed psychologist;

18 12. A certified psychologist working under the supervision of a board-approved li-

19 censed psychologist;

20 13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of

21 this administrative regulation; or

22 14. A behavioral health practitioner under supervision:

23 a. Except for a licensed assistant behavior analyst; and

1 b. In accordance with Section 12 of this administrative regulation;

2 (j) Assertive community treatment provided by:

3 1. A licensed psychologist;

4 2. A licensed psychological practitioner;

5 3. A certified psychologist with autonomous functioning;

6 4. A licensed clinical social worker;

7 5. A licensed professional clinical counselor;

8 6. A licensed professional art therapist;

9 7. A licensed marriage and family therapist;

10 8. A physician;

11 9. A psychiatrist;

12 10. An advanced practice registered nurse;

13 11. A licensed psychological associate working under the supervision of a board-

14 approved licensed psychologist;

15 12. A certified psychologist working under the supervision of a board-approved li-

16 censed psychologist;

17 13. A behavioral health practitioner under supervision except for a:

18 a. Licensed assistant behavior analyst;

19 b. Certified alcohol and drug counselor; or

20 c. Licensed clinical alcohol and drug counselor associate;

21 14. A peer support specialist working under the supervision of an approved behav-

22 ioral health services provider except for a:

23 a. Licensed clinical alcohol and drug counselor;

1 b. Licensed clinical alcohol and drug counselor associate; or

2 c. Certified alcohol and drug counselor; or

3 15. A community support associate;

4 (k) Comprehensive community support services provided by:

5 1. A licensed psychologist;

6 2. A licensed psychological practitioner;

7 3. A certified psychologist with autonomous functioning;

8 4. A licensed clinical social worker;

9 5. A licensed professional clinical counselor;

10 6. A licensed professional art therapist;

11 7. A licensed marriage and family therapist;

12 8. A physician;

13 9. A psychiatrist;

14 10. An advanced practice registered nurse;

15 11. A licensed behavior analyst;

16 12. A licensed psychological associate working under the supervision of a board-

17 approved licensed psychologist;

18 13. A certified psychologist working under the supervision of a board-approved li-

19 censed psychologist;

20 14. A behavioral health practitioner under supervision except for a:

21 a. Licensed clinical alcohol and drug counselor associate; or

22 b. Certified alcohol and drug counselor; or

23 15. A community support associate;

1 (l) Therapeutic rehabilitation program services provided by:

2 1. A licensed psychologist;

3 2. A licensed psychological practitioner;

4 3. A certified psychologist with autonomous functioning;

5 4. A licensed clinical social worker;

6 5. A licensed professional clinical counselor;

7 6. A licensed professional art therapist;

8 7. A licensed marriage and family therapist;

9 8. A physician;

10 9. A psychiatrist;

11 10. An advanced practice registered nurse;

12 11. A licensed psychological associate working under the supervision of a board-

13 approved licensed psychologist;

14 12. A certified psychologist working under the supervision of a board-approved li-

15 censed psychologist;

16 13. A behavioral health practitioner under supervision except for a:

17 a. Licensed assistant behavior analyst;

18 b. Licensed clinical alcohol and drug counselor associate; or

19 c. Certified alcohol and drug counselor; or

20 14. A peer support specialist working under the supervision of an approved behav-

21 ioral health services provider except for a:

22 a. Licensed clinical alcohol and drug counselor;

23 b. Licensed clinical alcohol and drug counselor associate; or

1 c. Certified alcohol and drug counselor; or

2 (m) Partial hospitalization provided by:

3 1. A licensed psychologist;

4 2. A licensed professional clinical counselor;

5 3. A licensed clinical social worker;

6 4. A licensed marriage and family therapist;

7 5. A physician;

8 6. A psychiatrist;

9 7. An advanced practice registered nurse;

10 8. A licensed psychological practitioner;

11 9. A certified psychologist with autonomous functioning;

12 10. A licensed clinical alcohol and drug counselor in accordance with Section 12 of

13 this administrative regulation;

14 11. A licensed psychological associate working under the supervision of a board-

15 approved licensed psychologist;

16 12. A certified psychologist working under the supervision of a board-approved li-

17 censed psychologist; or

18 13. A behavioral health practitioner under supervision:

19 a. Except for a licensed assistant behavioral analyst; and

20 b. In accordance with Section 12 of this administrative regulation.

21 (3)(a) A screening shall:

22 1. Determine the likelihood that an individual has a mental health disorder, substance

23 use disorder, or co-occurring disorders;

1 2. Not establish the presence or specific type of disorder; and

2 3. Establish the need for an in-depth assessment.

3 (b) An assessment shall:

4 1. Include gathering information and engaging in a process with the individual that

5 enables the practitioner to:

6 a. Establish the presence or absence of a mental health disorder, substance use dis-

7 order, or co-occurring disorders;

8 b. Determine the individual's readiness for change;

9 c. Identify the individual's strengths or problem areas that may affect the treatment

10 and recovery processes; and

11 d. Engage the individual in the development of an appropriate treatment relationship;

12 2. Establish or rule out the existence of a clinical disorder or service need;

13 3. Include working with the individual to develop a plan of care; and

14 4. Not include psychological or psychiatric evaluations or assessments.

15 (c) Psychological testing shall:

16 1. Include:

17 a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or

18 intellectual disabilities; and

19 b. Interpretation and a written report of testing results; and

20 2. Be performed by an individual who has met the requirements of KRS Chapter 319

21 related to the necessary credentials to perform psychological testing.

22 (d) Crisis intervention:

23 1. Shall be a therapeutic intervention for the purpose of immediately reducing or elim-

1 inating the risk of physical or emotional harm to:

2 a. The recipient; or

3 b. Another individual;

4 2. Shall consist of clinical intervention and support services necessary to provide in-

5 tegrated crisis response, crisis stabilization interventions, or crisis prevention activities

6 for individuals;

7 3. Shall be provided:

8 a. On-site at the psychiatric hospital;

9 b. As an immediate relief to the presenting problem or threat; and

10 c. In a face-to-face, one (1) on one (1) encounter between the provider and the recip-

11 ient;

12 4. Shall be followed by a referral to non-crisis services if applicable; and

13 5. May include:

14 a. Further service prevention planning that includes:

15 (i) Lethal means reduction for suicide risk; or

16 (ii) Substance use disorder relapse prevention; or

17 b. Verbal de-escalation, risk assessment, or cognitive therapy.

18 (e) Mobile crisis services shall:

19 1. Be available twenty-four (24) hours per day, seven (7) days per week, every day of

20 the year;

21 2. Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24)

22 hours per day, seven (7) days per week, every day of the year;

23 3. Be provided for a duration of less than twenty-four (24) hours;

1 4. Not be an overnight service;

2 5. Be a multi-disciplinary team-based intervention in a home or community setting

3 that ensures access to mental health and substance use disorder services and supports

4 to:

5 (i) Reduce symptoms or harm; or

6 (ii) Safely transition an individual in an acute crisis to the appropriate least restrictive

7 level of care;

8 6. Involve all services and supports necessary to provide:

9 a. Integrated crisis prevention;

10 b. Assessment and disposition;

11 c. Intervention;

12 d. Continuity of care recommendations; and

13 e. Follow-up services; and

14 7. Be provided face-to-face in a home or community setting.

15 (f)1. Day treatment shall be a non-residential, intensive treatment program for an in-

16 dividual under the age of twenty-one (21) years who has:

17 a. A mental health disorder, substance use disorder, or co-occurring mental health

18 and substance use disorders; and

19 b. A high risk of out-of-home placement due to a behavioral health issue.

20 2. Day treatment shall:

21 a. Consist of an organized, behavioral health program of treatment and rehabilitative

22 services;

23 b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and on non-instructional weekdays during the school year including scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan or Section 504 plan if the recipient has an individualized educational plan or Section 504 plan;

(iv) Under the supervision of a licensed or certified approved behavioral health services provider in accordance with Section 12 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 12 of this administrative regulation; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a psychiatric hospital shall have:

1 a. The capacity to employ staff authorized to provide day treatment services in ac-
2 cordance with this section and to coordinate the provision of services among team
3 members; and
4 b. Knowledge of substance use disorders.
5 4. Day treatment shall not include a therapeutic clinical service that is included in a
6 child's individualized education plan.
7 (g)1. Peer support services shall:
8 a. Be emotional support that is provided by:
9 (i) An individual who has been trained and certified in accordance with 908 KAR
10 2:220 and who is experiencing or has experienced a mental health disorder, substance
11 use disorder, or co-occurring mental health and substance use disorders to a recipient
12 by sharing a similar mental health disorder, substance use disorder, or co-occurring
13 mental health and substance use disorders in order to bring about a desired social or
14 personal change;
15 (ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of
16 a child having or who has had a mental health, substance use, or co-occurring mental
17 health and substance use disorder to a parent or family member of a child sharing a
18 similar mental health, substance use, or co-occurring mental health and substance use
19 disorder in order to bring about a desired social or personal change; or
20 (iii) A family member who has been trained and certified in accordance with 908 KAR
21 2:230 of a child having or who has had a mental health, substance use, or co-occurring
22 mental health and substance use disorder to a parent or family member of a child shar-
23 ing a similar mental health, substance use, or co-occurring mental health and substance

1 use disorder in order to bring about a desired social or personal change;

2 b. Be an evidence-based practice;

3 c. Be structured and scheduled non-clinical therapeutic activities with an individual

4 recipient or a group of recipients;

5 d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of

6 community living skills for the recipient;

7 e. Be coordinated within the context of a comprehensive, individualized plan of care

8 developed through a person-centered planning process;

9 f. Be identified in each recipient's plan of care; and

10 g. Be designed to contribute directly to the recipient's individualized goals as speci-

11 fied in the recipient's plan of care.

12 2. To provide peer support services, a psychiatric hospital shall:

13 a. Have demonstrated:

14 (i) The capacity to provide peer support services for the behavioral health population

15 being served including the age range of the population being served; and

16 (ii) Experience in serving individuals with behavioral health disorders;

17 b. Employ peer support specialists who are qualified to provide peer support services

18 in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

19 c. Use an approved behavioral health services provider in accordance with Section

20 12 of this administrative regulation to supervise peer support specialists;

21 d. Have the capacity to coordinate the provision of services among team members;

22 and

23 e. Have the capacity to provide on-going continuing education and technical assis-

1 tance to peer support specialists.

2 (h)1. Intensive outpatient program services shall:

3 a. Be an alternative to or transition from inpatient hospitalization or partial hospitaliza-
4 tion for a mental health disorder, substance use disorder, or co-occurring disorders;

5 b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that
6 is significantly more intensive than individual outpatient therapy, group outpatient thera-
7 py, or family outpatient therapy;

8 c. Be provided at least three (3) hours per day at least three (3) days per week; and

9 d. Include:

10 (i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy
11 unless contraindicated;

12 (ii) Crisis intervention; or

13 (iii) Psycho-education.

14 2. During psycho-education the recipient or recipient's family member shall be:

15 a. Provided with knowledge regarding the recipient's diagnosis, the causes of the
16 condition, and the reasons why a particular treatment might be effective for reducing
17 symptoms; and

18 b. Taught how to cope with the recipient's diagnosis or condition in a successful
19 manner.

20 3. An intensive outpatient program services treatment plan shall:

21 a. Be individualized; and

22 b. Focus on stabilization and transition to a lesser level of care.

23 4. To provide intensive outpatient program services, a psychiatric hospital shall have:

1 a. Access to a board-certified or board-eligible psychiatrist for consultation;

2 b. Access to a psychiatrist, physician, or advanced practice registered nurse for med-
3 ication prescribing and monitoring;

4 c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients
5 to one (1) staff person;

6 d. The capacity to provide services utilizing a recognized intervention protocol based
7 on nationally accepted treatment principles; and

8 e. The capacity to employ staff authorized to provide intensive outpatient program
9 services in accordance with this section and to coordinate the provision of services
10 among team members.

11 (i) Individual outpatient therapy shall:

12 1. Be provided to promote the:

13 a. Health and well-being of the individual; and

14 b. Recovery from a substance use disorder, mental health disorder, or co-occurring
15 mental health and substance use disorders;

16 2. Consist of:

17 a. A face-to-face, one (1) on one (1) encounter between the provider and recipient;
18 and

19 b. A behavioral health therapeutic intervention provided in accordance with the recip-
20 ient's identified plan of care;

21 3. Be aimed at:

22 a. Reducing adverse symptoms;

23 b. Reducing or eliminating the presenting problem of the recipient; and

1 c. Improving functioning; and

2 4. Not exceed three (3) hours per day unless additional time is medically necessary.

3 (j)1. Group outpatient therapy shall:

4 a. Be a behavioral health therapeutic intervention provided in accordance with a re-

5 cipient's identified plan of care;

6 b. Be provided to promote the:

7 (i) Health and well-being of the individual; and

8 (ii) Recovery from a substance use disorder, mental health disorder, or co-occurring

9 mental health and substance use disorders;

10 c. Consist of a face-to-face behavioral health therapeutic intervention provided in ac-

11 cordance with the recipient's identified plan of care;

12 d. Be provided to a recipient in a group setting:

13 (i) Of nonrelated individuals except for multi-family group therapy; and

14 (ii) Not to exceed twelve (12) individuals;

15 e. Focus on the psychological needs of the recipients as evidenced in each recipi-

16 ent's plan of care;

17 f. Center on goals including building and maintaining healthy relationships, personal

18 goals setting, and the exercise of personal judgment;

19 g. Not include physical exercise, a recreational activity, an educational activity, or a

20 social activity; and

21 h. Not exceed three (3) hours per day per recipient unless additional time is medically

22 necessary.

23 2. The group shall have a:

1 a. Deliberate focus; and

2 b. Defined course of treatment.

3 3. The subject of group outpatient therapy shall relate to each recipient participating

4 in the group.

5 4. The provider shall keep individual notes regarding each recipient within the group

6 and within each recipient's health record.

7 (k)1. Family outpatient therapy shall consist of a face-to-face behavioral health thera-

8 peutic intervention provided:

9 a. Through scheduled therapeutic visits between the therapist and the recipient and

10 at least one (1) member of the recipient's family; and

11 b. To address issues interfering with the relational functioning of the family and to im-

12 prove interpersonal relationships within the recipient's home environment.

13 2. A family outpatient therapy session shall be billed as one (1) service regardless of

14 the number of individuals (including multiple members from one (1) family) who partici-

15 pate in the session.

16 3. Family outpatient therapy shall:

17 a. Be provided to promote the:

18 (i) Health and well-being of the individual; or

19 (ii) Recovery from a substance use disorder, mental health disorder, or co-occurring

20 mental health and substance use disorders; and

21 b. Not exceed three (3) hours per day per individual unless additional time is medical-

22 ly necessary.

23 (l)1. Collateral outpatient therapy shall:

1 a. Consist of a face-to-face behavioral health consultation:

2 (i) With a parent or caregiver of a recipient, household member of a recipient, recipi-
3 ent's representative, school staff person, treating professional, or other person with cus-
4 todial control or supervision of the recipient; and

5 (ii) That is provided in accordance with the recipient's plan of care; and

6 b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21)
7 years of age.

8 2. Consent to discuss a recipient's treatment with any person other than a parent or
9 legal guardian shall be signed and filed in the recipient's health record.

10 (m)1. Service planning shall:

11 a. Involve assisting a recipient in creating an individualized plan for services needed
12 for maximum reduction of the effects of a mental health disorder;

13 b. Involve restoring a recipient's functional level to the recipient's best possible func-
14 tional level; and

15 c. Be performed using a person-centered planning process.

16 2. A service plan:

17 a. Shall be directed by the recipient;

18 b. Shall include practitioners of the recipient's choosing; and

19 c. May include:

20 (i) A mental health advance directive being filed with a local hospital;

21 (ii) A crisis plan; or

22 (iii) A relapse prevention strategy or plan.

23 (n) Screening, brief intervention, and referral to treatment for a substance use disor-

1 der shall:

2 1. Be an evidence-based early intervention approach for an individual with non-

3 dependent substance use in order to provide an effective strategy for intervention prior

4 to the need for more extensive or specialized treatment; and

5 2. Consist of:

6 a. Using a standardized screening tool to assess an individual for risky substance

7 use behavior;

8 b. Engaging a recipient who demonstrates risky substance use behavior in a short

9 conversation and providing feedback and advice to the recipient; and

10 c. Referring a recipient to additional mental health disorder, substance use disorder,

11 or co-occurring disorders services if the recipient is determined to need additional ser-

12 vices to address substance use.

13 (o)1. Assertive community treatment shall:

14 a. Be an evidence-based psychiatric rehabilitation practice which provides a compre-

15 hensive approach to service delivery for individuals with a severe mental illness; and

16 b. Include:

17 (i) Assessment;

18 (ii) Treatment planning;

19 (iii) Case management;

20 (iv) Psychiatric services;

21 (v) Medication prescribing and monitoring;

22 (vi) Individual outpatient therapy;

23 (vii) Group outpatient therapy;

1 (viii) Mobile crisis services;

2 (ix) Mental health consultation;

3 (x) Family support and basic living skills; or

4 (xi) Peer support.

5 2.a. Mental health consultation shall involve brief, collateral interactions with other
6 treating professionals who may have information for the purpose of treatment planning
7 and service delivery.

8 b. Family support shall involve the assertive community treatment team's working
9 with the recipient's natural support systems to improve family relations in order to:

10 (i) Reduce conflict; and

11 (ii) Increase the recipient's autonomy and independent functioning.

12 c. Basic living skills shall be rehabilitative services focused on teaching activities of
13 daily living necessary to maintain independent functioning and community living.

14 3. To provide assertive community treatment services, a psychiatric hospital shall:

15 a. Employ at least one (1) team of multidisciplinary professionals:

16 (i) Led by an approved behavioral health services provider except for a licensed clini-
17 cal alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate,
18 or a certified alcohol and drug counselor; and

19 (ii) Comprised of at least four (4) full-time equivalents including a psychiatrist, a
20 nurse, a case manager, a peer support specialist, or an approved behavioral health ser-
21 vices provider except for a licensed clinical alcohol and drug counselor, a licensed clini-
22 cal alcohol and drug counselor associate, or a certified alcohol and drug counselor;

23 b. Have adequate staffing to ensure that no team's caseload size exceeds ten (10)

1 participants per team member (for example, if the team includes five (5) individuals, the
2 caseload for the team shall not exceed fifty (50) recipients);
3 c. Have the capacity to:
4 (i) Employ staff authorized to provide assertive community treatment services in ac-
5 cordance with this paragraph;
6 (ii) Coordinate the provision of services among team members;
7 (iii) Provide the full range of assertive community treatment services as stated in this
8 paragraph; and
9 (iv) Document and maintain individual health records; and
10 d. Demonstrate experience in serving individuals with persistent and severe mental
11 illness who have difficulty living independently in the community.
12 (p)1. Comprehensive community support services shall:
13 a. Be activities necessary to allow an individual to live with maximum independence
14 in the community;
15 b. Be intended to ensure successful community living through the utilization of skills
16 training as identified in the recipient's plan of care; and
17 c. Consist of using a variety of psychiatric rehabilitation techniques to:
18 (i) Improve daily living skills;
19 (ii) Improve self-monitoring of symptoms and side effects;
20 (iii) Improve emotional regulation skills;
21 (iv) Improve crisis coping skills; and
22 (v) Develop and enhance interpersonal skills.
23 2. To provide comprehensive community support services, a psychiatric hospital

1 shall:

2 a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to pro-

3 vide comprehensive community support services in accordance with subsection (2)(k) of

4 this section and to coordinate the provision of services among team members; and

5 b. Meet the requirements for comprehensive community support services established

6 in 908 KAR 2:250.

7 (q)1. Therapeutic rehabilitation program services shall be:

8 a. A rehabilitative service for an:

9 (i) Adult with a severe mental illness; or

10 (ii) Individual under the age of twenty-one (21) years who has a severe emotional

11 disability; and

12 b. Designed to maximize the reduction of the effects of a mental health disorder and

13 the restoration of the individual's functional level to the individual's best possible func-

14 tional level.

15 2. A recipient in a therapeutic rehabilitation program shall establish the recipient's

16 own rehabilitation goals within the person-centered service plan.

17 3. A therapeutic rehabilitation program shall:

18 a. Be delivered using a variety of psychiatric rehabilitation techniques;

19 b. Focus on:

20 (i) Improving daily living skills;

21 (ii) Self-monitoring of symptoms and side effects;

22 (iii) Emotional regulation skills;

23 (iv) Crisis coping skills; and

1 (v) Interpersonal skills; and

2 c. Be delivered individually or in a group.

3 (r)1. Partial hospitalization shall be a short-term (average of four (4) to six (6) weeks),
4 less than twenty-four (24)-hour, intensive treatment program for an individual who is ex-
5 periencing significant impairment to daily functioning due to a substance use disorder, a
6 mental health disorder, or co-occurring mental health and substance use disorders.

7 2. Partial hospitalization may be provided to an adult or a child.

8 3. Admission criteria for partial hospitalization shall be based on an inability to ade-
9 quately treat the recipient through community-based therapies or intensive outpatient
10 services.

11 4. A partial hospitalization program shall consist of individual outpatient therapy,
12 group outpatient therapy, family outpatient therapy, or medication management.

13 5.a. The department shall not reimburse for educational, vocational, or job training
14 services provided as part of partial hospitalization.

15 b. An outpatient hospital's partial hospitalization program shall have an agreement
16 with the local educational authority to come into the program to provide all educational
17 components and instruction which are not Medicaid billable or reimbursable.

18 c. The department shall not reimburse for services identified in a Medicaid-eligible
19 child's individualized education program.

20 6. Partial hospitalization shall typically be:

21 a. Provided for at least four (4) hours per day; and

22 b. Focused on one (1) primary presenting problem (i.e. substance use, sexual reac-
23 tivity, or another problem).

1 7. An outpatient hospital's partial hospitalization program shall:

2 a. Include the following personnel for the purpose of providing medical care if neces-

3 sary:

4 (i) An advanced practice registered nurse;

5 (ii) A physician assistant or physician available on site; and

6 (iii) A board-certified or board-eligible psychiatrist available for consultation; and

7 b. Have the capacity to:

8 (i) Provide services utilizing a recognized intervention protocol based on nationally

9 accepted treatment principles;

10 (ii) Employ required practitioners and coordinate service provision among rendering

11 practitioners; and

12 (iii) Provide the full range of services included in the scope of partial hospitalization

13 established in this subsection.

14 (4) The extent and type of a screening shall depend upon the nature of the problem

15 of the individual seeking or being referred for services.

16 (5) A diagnosis or clinical impression shall be made using terminology established in

17 the most current edition of the American Psychiatric Association Diagnostic and Statisti-

18 cal Manual of Mental Disorders™.

19 (6) The department shall not reimburse for a service billed by or on behalf of an entity

20 or individual who is not a billing provider.

21 Section 5. Additional Limits and Non-covered Services or Activities. (1)(a) Except as

22 established in paragraph (b) of this subsection, unless a diagnosis is made and docu-

23 mented in the recipient's health record within three (3) visits, the service shall not be

1 covered.

2 (b) The requirement established in paragraph (a) of this subsection shall not apply to:

3 1. Mobile crisis services;

4 2. Crisis intervention;

5 3. A screening; or

6 4. An assessment.

7 (2) For a recipient who is receiving assertive community treatment, the following shall

8 not be billed or reimbursed for the same date of service for the recipient:

9 (a) An assessment;

10 (b) Case management;

11 (c) Individual outpatient therapy;

12 (d) Group outpatient therapy;

13 (e) Peer support services; or

14 (f) Mobile crisis services.

15 (3) The department shall not reimburse for both a screening and an SBIRT provided

16 to a recipient on the same date of service.

17 (4) The following services or activities shall not be covered under this administrative

18 regulation:

19 (a) A service provided to:

20 1. A resident of:

21 a. A nursing facility; or

22 b. An intermediate care facility for individuals with an intellectual disability;

23 2. An inmate of a federal, local, or state:

1 a. Jail;

2 b. Detention center; or

3 c. Prison; or

4 3. An individual with an intellectual disability without documentation of an additional

5 psychiatric diagnosis;

6 (b) Psychiatric or psychological testing for another agency, including a court or

7 school, that does not result in the individual receiving psychiatric intervention or behav-

8 ioral health therapy from the psychiatric hospital;

9 (c) A consultation or educational service provided to a recipient or to others;

10 (d) A telephone call, an email, a text message, or other electronic contact that does

11 not meet the requirements stated in the definition of "face-to-face" established in Sec-

12 tion 1(14) of this administrative regulation;

13 (e) Travel time;

14 (f) A field trip;

15 (g) A recreational activity;

16 (h) A social activity; or

17 (i) A physical exercise activity group.

18 (5)(a) A consultation by one (1) provider or professional with another shall not be

19 covered under this administrative regulation except as established in Section 4(3)(l)1 of

20 this administrative regulation.

21 (b) A third party contract shall not be covered under this administrative regulation.

22 (6) A billing supervisor arrangement between a billing supervisor and a behavioral

23 health practitioner under supervision shall not:

1 (a) Violate the clinical supervision rules or policies of the respective professional li-
2 censure boards governing the billing supervisor and the behavioral health practitioner
3 under supervision; or
4 (b) Substitute for the clinical supervision rules or policies of the respective profes-
5 sional licensure boards governing the billing supervisor and the behavioral health practi-
6 tioner under supervision.
7 Section 6. No Duplication of Service. (1) The department shall not reimburse for a
8 service provided to a recipient by more than one (1) provider, of any program in which
9 the same service is covered, during the same time period.
10 (2) For example, if a recipient is receiving a behavioral health service from an inde-
11 pendent behavioral health provider, the department shall not reimburse for the same
12 service provided to the same recipient during the same time period by a psychiatric
13 hospital.
14 Section 7. Records Maintenance, Documentation, Protection, and Security. (1) A
15 psychiatric hospital shall maintain a current health record for each recipient.
16 (2)(a) A health record shall document each service provided to the recipient including
17 the date of the service and the signature of the individual who provided the service.
18 (b) The individual who provided the service shall date and sign the health record with-
19 in forty-eight (48) hours of the date that the individual provided the service.
20 (3) A health record shall:
21 (a) Include:
22 1. An identification and intake record including:
23 a. Name;

1 b. Social Security number;

2 c. Date of intake;

3 d. Home (legal) address;

4 e. Health insurance or Medicaid participation information;

5 f. Referral source's name and address;

6 g. Primary care physician's name and address;

7 h. The reason the individual is seeking help including the presenting problem and di-

8 agnosis;

9 i. Any physical health diagnosis, if a physical health diagnosis exists for the individu-

10 al, and information regarding:

11 (i) Where the individual is receiving treatment for the physical health diagnosis; and

12 (ii) The physical health provider's name; and

13 j. The name of the informant and any other information deemed necessary by the

14 psychiatric hospital in order to comply with the requirements of:

15 (i) This administrative regulation;

16 (ii) The psychiatric hospital's licensure board;

17 (iii) State law; or

18 (iv) Federal law;

19 2. Documentation of the:

20 a. Screening;

21 b. Assessment if an assessment was performed; and

22 c. Disposition if a disposition was performed;

23 3. A complete history including mental status and previous treatment;

1 4. An identification sheet;

2 5. A consent for treatment sheet that is accurately signed and dated; and

3 6. The individual's stated purpose for seeking services; and

4 (b) Be:

5 1. Maintained in an organized central file;

6 2. Furnished upon request:

7 a. To the Cabinet for Health and Family Services; or

8 b. For an enrollee, to the managed care organization in which the recipient is enrolled

9 or has been enrolled in the past;

10 3. Made available for inspection and copying by:

11 a. Cabinet for Health and Family Services' personnel; or

12 b. Personnel of the managed care organization in which the recipient is enrolled if

13 applicable;

14 4. Readily accessible; and

15 5. Adequate for the purpose of establishing the current treatment modality and pro-

16 gress of the recipient if the recipient received services beyond a screening.

17 (4) Documentation of a screening shall include:

18 (a) Information relative to the individual's stated request for services; and

19 (b) Other stated personal or health concerns if other concerns are stated.

20 (5)(a) A psychiatric hospital's notes regarding a recipient shall:

21 1. Be made within forty-eight (48) hours of each service visit; and

22 2. Describe the:

23 a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

1 b. Therapist's intervention;

2 c. Changes in the plan of care if changes are made; and

3 d. Need for continued treatment if deemed necessary.

4 (b)1. Any edit to notes shall:

5 a. Clearly display the changes; and

6 b. Be initialed and dated by the person who edited the notes.

7 2. Notes shall not be erased or illegibly marked out.

8 (c)1. Notes recorded by a behavioral health practitioner working under supervision

9 shall be co-signed and dated by the supervising professional within thirty (30) days.

10 2. If services are provided by a behavioral health practitioner working under supervi-

11 sion, there shall be a monthly supervisory note recorded by the supervising professional

12 which reflects consultations with the behavioral health practitioner working under super-

13 vision concerning the:

14 a. Case; and

15 b. Supervising professional's evaluation of the services being provided to the recipi-

16 ent.

17 (6) Immediately following a screening of a recipient, the practitioner shall perform a

18 disposition related to:

19 (a) A provisional diagnosis;

20 (b) A referral for further consultation and disposition, if applicable; or

21 (c)1. If applicable, termination of services and referral to an outside source for further

22 services; or

23 2. If applicable, termination of services without a referral to further services.

1 (7) Any change to a recipient's plan of care shall be documented, signed, and dated
2 by the rendering practitioner and by the recipient or recipient's representative.
3 (8)(a) Notes regarding services to a recipient shall:
4 1. Be organized in chronological order;
5 2. Be dated;
6 3. Be titled to indicate the service rendered;
7 4. State a starting and ending time for the service; and
8 5. Be recorded and signed by the rendering practitioner and include the professional
9 title (for example, licensed clinical social worker) of the provider.
10 (b) Initials, typed signatures, or stamped signatures shall not be accepted.
11 (c) Telephone contacts, family collateral contacts not covered under this administra-
12 tive regulation, or other non-reimbursable contacts shall:
13 1. Be recorded in the notes; and
14 2. Not be reimbursable.
15 (9)(a) A termination summary shall:
16 1. Be required, upon termination of services, for each recipient who received at least
17 three (3) service visits; and
18 2. Contain a summary of the significant findings and events during the course of
19 treatment including the:
20 a. Final assessment regarding the progress of the individual toward reaching goals
21 and objectives established in the individual's plan of care;
22 b. Final diagnosis of clinical impression; and
23 c. Individual's condition upon termination and disposition.

1 (b) A health record relating to an individual who has been terminated from receiving
2 services shall be fully completed within ten (10) days following termination.
3 (10) If an individual's case is reopened within ninety (90) days of terminating services
4 for the same or related issue, a reference to the prior case history with a note regarding
5 the interval period shall be acceptable.
6 (11)(a) Except as established in paragraph (b) of this subsection, if a recipient is
7 transferred or referred to a health care facility or other provider for care or treatment, the
8 transferring psychiatric hospital shall, within ten (10) business days of awareness of the
9 transfer or referral, transfer the recipient's records in a manner that complies with the
10 records' use and disclosure requirements as established in or required by:
11 1.a. The Health Insurance Portability and Accountability Act;
12 b. 42 U.S.C. 1320d-2 to 1320d-8; and
13 c. 45 C.F.R. Parts 160 and 164; or
14 2.a. 42 U.S.C. 290 ee-3; and
15 b. 42 C.F.R Part 2.
16 (b) If a recipient is transferred or referred to a residential crisis stabilization unit, a
17 psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, a Level I
18 psychiatric residential treatment facility, a Level II psychiatric residential treatment facili-
19 ty, or an acute care hospital for care or treatment, the transferring psychiatric hospital
20 shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's rec-
21 ords in a manner that complies with the records' use and disclosure requirements as es-
22 tablished in or required by:
23 1.a. The Health Insurance Portability and Accountability Act;

1 b. 42 U.S.C. 1320d-2 to 1320d-8; and

2 c. 45 C.F.R. Parts 160 and 164; or

3 2.a. 42 U.S.C. 290 ee-3; and

4 b. 42 C.F.R Part 2.

5 (12)(a) If a psychiatric hospital's Medicaid Program participation status changes as a
6 result of voluntarily terminating from the Medicaid Program, involuntarily terminating
7 from the Medicaid Program, a licensure suspension, or death of an owner or deaths of
8 owners, the health records of the psychiatric hospital shall:

9 1. Remain the property of the psychiatric hospital; and

10 2. Be subject to the retention requirements established in subsection (13) of this sec-
11 tion.

12 (b) A psychiatric hospital shall have a written plan addressing how to maintain health
13 records in the event of death of an owner or deaths of owners.

14 (13)(a) Except as established in paragraph (b) or (c) of this subsection, a psychiatric
15 hospital shall maintain a health record regarding a recipient for at least six (6) years
16 from the last date of the service or until any audit dispute or issue is resolved beyond six
17 (6) years.

18 (b) After a recipient's death or discharge from services, a provider shall maintain the
19 recipient's record for the longest of the following periods:

20 1. Six (6) years unless the recipient is a minor; or

21 2. If the recipient is a minor, three (3) years after the recipient reaches the age of ma-
22 jority under state law.

23 (c) If the Secretary of the United States Department of Health and Human Services

1 requires a longer document retention period than the period referenced in paragraph (a)
2 of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary
3 shall be the required period.
4 (14)(a) A psychiatric hospital shall comply with 45 C.F.R. Part 164.
5 (b) All information contained in a health record shall:
6 1. Be treated as confidential;
7 2. Not be disclosed to an unauthorized individual; and
8 3. Be disclosed to an authorized representative of:
9 a. The department;
10 b. Federal government; or
11 c. For an enrollee, managed care organization in which the enrollee is enrolled.
12 (c)1. Upon request, a psychiatric hospital shall provide to an authorized representa-
13 tive of the department, federal government, or managed care organization if applicable,
14 information requested to substantiate:
15 a. Staff notes detailing a service that was rendered;
16 b. The professional who rendered a service; and
17 c. The type of service rendered and any other requested information necessary to de-
18 termine, on an individual basis, whether the service is reimbursable by the department.
19 2. Failure to provide information referenced in subparagraph 1 of this paragraph shall
20 result in denial of payment for any service associated with the requested information.
21 Section 8. Medicaid Program Participation Compliance. (1) A psychiatric hospital
22 shall comply with:
23 (a) 907 KAR 1:671;

1 (b) 907 KAR 1:672; and

2 (c) All applicable state and federal laws.

3 (2)(a) If a psychiatric hospital receives any duplicate payment or overpayment from
4 the department or a manage care organization, regardless of reason, the psychiatric
5 hospital shall return the payment to the department or managed care organization in
6 accordance with 907 KAR 1:671.

7 (b) Failure to return a payment to the department or managed care organization in
8 accordance with paragraph (a) of this section may be:

9 1. Interpreted to be fraud or abuse; and

10 2. Prosecuted in accordance with applicable federal or state law.

11 (3)(a) When the department makes payment for a covered service and the psychiat-
12 ric hospital accepts the payment:

13 1. The payment shall be considered payment in full;

14 2. A bill for the same service shall not be given to the recipient; and

15 3. Payment from the recipient for the same service shall not be accepted by the psy-
16 chiatric hospital.

17 (b)1. A psychiatric hospital may bill a recipient for a service that is not covered by the
18 Kentucky Medicaid Program if the:

19 a. Recipient requests the service; and

20 b. Psychiatric hospital makes the recipient aware in writing in advance of providing
21 the service that the:

22 (i) Recipient is liable for the payment; and

23 (ii) Department is not covering the service.

1 2. If a recipient makes payment for a service in accordance with subparagraph 1 of
2 this paragraph, the:
3 a. Psychiatric hospital shall not bill the department for the service; and
4 b. Department shall not:
5 (i) Be liable for any part of the payment associated with the service; and
6 (ii) Make any payment to the psychiatric hospital regarding the service.
7 (4)(a) A psychiatric hospital attests by the psychiatric hospital's staff's or representa-
8 tive's signature that any claim associated with a service is valid and submitted in good
9 faith.
10 (b) Any claim and substantiating record associated with a service shall be subject to
11 audit by the:
12 1. Department or its designee;
13 2. Cabinet for Health and Family Services, Office of Inspector General, or its design-
14 ee;
15 3. Kentucky Office of Attorney General or its designee;
16 4. Kentucky Office of the Auditor for Public Accounts or its designee;
17 5. United States General Accounting Office or its designee; or
18 6. For an enrollee, managed care organization in which the enrollee is enrolled.
19 (c)1. If a psychiatric hospital receives a request from the:
20 a. Department to provide a claim, related information, related documentation, or rec-
21 ord for auditing purposes, the psychiatric hospital shall provide the requested infor-
22 mation to the department within the timeframe requested by the department; or
23 b. Managed care organization in which an enrollee is enrolled to provide a claim, re-

1 lated information, related documentation, or record for auditing purposes, the psychiatric
2 hospital shall provide the requested information to the managed care organization within
3 the timeframe requested by the managed care organization.
4 2.a. The timeframe requested by the department or managed care organization for a
5 Level I or Level II psychiatric residential treatment facility to provide requested infor-
6 mation shall be:
7 (i) A reasonable amount of time given the nature of the request and the circumstanc-
8 es surrounding the request; and
9 (ii) A minimum of one (1) business day.
10 b. A Level I or Level II psychiatric residential treatment facility may request a longer
11 timeframe to provide information to the department or a managed care organization if
12 the Level I or Level II psychiatric residential treatment facility justifies the need for a
13 longer timeframe.
14 (d)1. All services provided shall be subject to review for recipient or provider abuse.
15 2. Willful abuse by a psychiatric hospital shall result in the suspension or termination
16 of the psychiatric hospital from Medicaid Program participation in accordance with 907
17 KAR 1:671.
18 Section 9. Third Party Liability. A psychiatric hospital shall comply with KRS 205.622.
19 Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and
20 other use of electronic signatures and documents shall comply with the requirements
21 established in KRS 369.101 to 369.120.
22 (2) A psychiatric hospital that chooses to use electronic signatures shall:
23 (a) Develop and implement a written security policy that shall:

1 1. Be adhered to by each of the psychiatric hospital's employees, officers, agents, or
2 contractors;
3 2. Identify each electronic signature for which an individual has access; and
4 3. Ensure that each electronic signature is created, transmitted, and stored in a se-
5 cure fashion;
6 (b) Develop a consent form that shall:
7 1. Be completed and executed by each individual using an electronic signature;
8 2. Attest to the signature's authenticity; and
9 3. Include a statement indicating that the individual has been notified of his or her re-
10 sponsibility in allowing the use of the electronic signature; and
11 (c) Provide the department, immediately upon request, with:
12 1. A copy of the psychiatric hospital's electronic signature policy;
13 2. The signed consent form; and
14 3. The original filed signature.
15 Section 11. Auditing Authority. The department or managed care organization in
16 which an enrollee is enrolled shall have the authority to audit any:
17 (1) Claim;
18 (2) Health record; or
19 (3) Documentation associated with any claim or health record.
20 Section 12. Federal Approval and Federal Financial Participation. (1) The depart-
21 ment's coverage of services pursuant to this administrative regulation shall be contin-
22 gent upon:
23 (a) Receipt of federal financial participation for the coverage; and

1 (b) Centers for Medicare and Medicaid Services' approval for the coverage.

2 (2) The coverage of services provided by a licensed clinical alcohol and drug counse-
3 lor or licensed clinical alcohol and drug counselor associate shall be contingent and ef-
4 fective upon approval by the Centers for Medicare and Medicaid Services.

5 Section 13. Appeals. (1) An appeal of an adverse action by the department regarding
6 a service and a recipient who is not enrolled with a managed care organization shall be
7 in accordance with 907 KAR 1:563.

8 (2) An appeal of an adverse action by a managed care organization regarding a ser-
9 vice and an enrollee shall be in accordance with 907 KAR 17:010.

907 KAR 10:020

REVIEWED:

3-3-15
Date

Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

4/10/15
Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 10:020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 10:020
Contact person: Stuart Owen (502) 564-4321, extension 2015

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient behavioral health services provided by psychiatric hospitals. This administrative regulation is being promulgated in conjunction with 907 KAR 10:025, Reimbursement for outpatient services provided by psychiatric hospitals. To qualify as a provider, a psychiatric hospital must be licensed in accordance with 902 KAR 20:180. Psychiatric hospitals are authorized to provide, to Medicaid recipients, outpatient behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; therapeutic rehabilitation program services; and partial hospitalization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base for outpatient behavioral health services (to include psychiatric hospitals) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(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 complying with federal mandates and enhancing and ensuring Medicaid recipients' access to outpatient behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to outpatient behavioral health services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Psychiatric hospitals, behavioral health professionals authorized to provide outpatient behavioral health services in psychiatric hospitals, and Medicaid recipients in need of outpatient behavioral health services will be affected by the administrative regulation. Currently, there are twelve (12) psychiatric hospitals enrolled in the Medicaid Program. The following behavioral health professionals are authorized to provide services in a Level I or Level II psychiatric residential treatment facility: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning; licensed psychological associates, certified psychologists; certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, community support associates, licensed clinical and alcohol drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services). Currently there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

(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. Psychiatric hospitals who wish to provide outpatient behavioral health services will need to comply with the service requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is projected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Psychiatric hospitals will benefit by receiving Medicaid Program reimbursement for outpatient behavioral health services. Behavioral health professionals au-

thorized to provide outpatient behavioral health services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(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. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 907 KAR 10:020
Contact person: Stuart Owen (502) 564-4321, extension 2015

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 907 KAR 10:020
Contact person: Stuart Owen (502) 564-4321, extension 2015

1. 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 will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

3. 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? The amendment is not expected to generate revenue for state or local government.

(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? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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: