CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(Amended After Comments)

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3), 205.510(11), 205.8451, 309.080, 309.130(2), (3), 311.840(3), 314.011(5), (7), 319.053, 319.056, 319.064, 319C.010(6), (7), 335.080, 335.100, 335.300(2), (3), 335.500(3), (4), 42 C.F.R. 400.203, 438.2, 441.540, 29 U.S.C. 794

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions.

(1) "Administrative Services Organization" means a business entity that:

(a) Is contracted with the department;

(b) Administers:

1. Mobile crisis services;

2. Crisis observation stabilization services;

3. Behavioral health crisis transportation; and

4. Associated crisis residential stabilization services.

(c) Is responsible for:

1. Oversight of crisis continuum services;

2. Required reporting related to crisis continuum services;

3. Billing for crisis continuum services; and

4. Developing a continuum of crisis services providers that is sufficient to ensure access to mobile crisis services, crisis observation stabilization services, behavioral health crisis transportation, and crisis residential services for all residents of the commonwealth on a twenty-four (24) hour, seven (7) day per week, 365 day per year basis.

(2) "Adult peer support specialist" means an individual who meets the certification requirements for an adult peer support specialist established in 908 KAR 2:220.

(3)[~~(2)~~] "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(4)[~~(3)~~] "Approved behavioral health practitioner" means an independently licensed practitioner who is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed professional art therapist;

(l) A licensed clinical alcohol and drug counselor; or

(m) A licensed behavior analyst.

(5)[~~(4)~~] "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)

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

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

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor;[~~-or~~]

9. A licensed assistant behavior analyst;[~~-and~~]

10. A behavioral health associate; or

11. A licensed alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(6)[~~(5)~~] "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(7) "Behavioral health associate" means an individual:

(a) With a minimum of a Bachelor of Arts or Sciences degree in a human service field;

(b) Who only provides outpatient services;

(c)

1.**a.** Who is currently enrolled in a graduate program for a master's degree or doctoral degree in[~~:~~

~~**a. Psychology;**~~

~~**b. Social work; or**~~

~~**c.**~~] a behavioral science field that leads to a credential or license; **and**

b. Who is currently participating in an internship or practicum program as part of an accredited educational institution; or

2. Who is currently working toward a specialized credential [~~**or licensure**~~] in the field of [~~**mental health or**~~] substance use disorder**, and is employed by a narcotic treatment program;**

(d) Who has a collaborative educational agreement with the graduate program and the employing provider;

(e) **Who complies with the supervision requirements of the collaborative educational agreement and complies with billing supervision requirements for rendering Medicaid services**[~~**That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services**~~];

(f) Who is designated as a behavioral health associate by the department during the application process;

(g) **Who does not render a diagnosis for a client;**

(h) Who is designated as a behavioral health associate for no longer than five (5) years; and

(i)[~~(h)~~] That is currently employed by one of the following outpatient treatment providers:

1. A behavioral health services organization;

2. A behavioral health multi-specialty group;

3. A certified community behavioral health clinic;

4. A community mental health center;

5. A federally qualified Health Center or a federally qualified health center look-alike;

6. A rural health clinic;

7. A provider of crisis continuum services, such as:

a. A mobile crisis intervention service provider;

b. A crisis observation stabilization unit; or

c. A behavioral health crisis transportation provider; or

8. An outpatient behavioral health provider approved by the department.

(8) "Behavioral health crisis" means any behavioral, substance use disorder, or psychiatric situation perceived to be a crisis by the individual experiencing or witnessing it.

(9)[~~(6)~~] "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(10)[~~(7)~~] "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(11)[~~(8)~~] "Behavioral health crisis transportation" means the use of a behavioral health support vehicle, to transport a Medicaid recipient alleged to be in a behavioral health crisis to a higher level of care.

(12) "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to:

(a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);

(b) 908 KAR 1:370 and 908 KAR 1:374 for a behavioral health services organization tier II (BHSO II); or

(c) 908 KAR 1:370 and 908 KAR 1:372 for a behavioral health services organization tier III (BHSO III).

(13)[~~(9)~~] "Behavioral health crisis transport vehicle" means an automobile that:

(a) Includes a driver's compartment that is separated from the passenger compartment in a way that allows the driver and passenger to communicate and visualize one another but that prohibits the passenger from easily accessing the driver or any control for operating the vehicle; and

(b) Has a passenger compartment with:

1. Two (2) or more traditional vehicle seats with appropriate seat belts;

2. No exposed sharp edges;

3. Doors that automatically lock and that are not capable of opening while the vehicle is in motion, such as a child lock feature.

(14) "Billing provider" means the individual, group of individual providers, or organization that:

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

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

(15)[(~~10~~)] "Billing supervisor" means an individual who [~~is~~]:

(a) Is:

1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A physician assistant;

5. A licensed clinical alcohol and drug counselor;

6. A licensed psychologist;

7. A licensed clinical social worker;

8. A licensed professional clinical counselor;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed marriage and family therapist;

12. A licensed professional art therapist; or

13. A licensed behavior analyst; [~~and~~]

(b) Is employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor;

(c) Conducts the following supervisory duties and requirements on behalf of the practitioner under supervision:

1. Records a co-signature on a service note within thirty (30) days; and

2. Prepares a monthly supervisory note that reflects consultations with the practitioner or paraprofessional working under supervision that includes the supervising professional's evaluation of the services being provided to each recipient;

(d) Is not required to be the same provider type as the practitioner under supervision.

(16)[~~(11)~~] "Certified alcohol and drug counselor" is defined by KRS 309.083[~~309.080(2)~~].

(17)[~~(12)~~] "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(18)[~~(13)~~] "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(19)[~~(14)~~] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(20)[~~(15)~~] "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.

(21) "Community-based mobile crisis intervention services" or "(MCIS)" means a dispatch of a mobile crisis team to the location of an individual who is experiencing a behavioral health crisis.

(22)[~~(16)~~] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(23)[~~(17)~~] "Co-occurring disorder" means a mental health and substance use disorder.

(24)[~~(18)~~] "Department" means the Department for Medicaid Services or its designee.

(25)[~~(19)~~] "Electronic signature" is defined by KRS 369.102(8).

(26)[~~(20)~~] "Enrollee" means a recipient who is enrolled with a managed care organization.

(27)[~~(21)~~] "Face-to-face" means occurring in person.

(28)[~~(22)~~] "Family peer support specialist" means an individual who meets the certification requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(29)[~~(23)~~] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(30)[~~(24)~~] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(31)[~~(25)~~] "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which current reimbursement rates for physician services are established or published by the department.

(32)[~~(26)~~] "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(33)[~~(27)~~] "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(34)[~~(28)~~] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(35)[~~(29)~~] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(36)[~~(30)~~] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(8)[~~(4)~~].

(37)[~~(31)~~] "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(9)[~~(5)~~].

(38)[~~(32)~~] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(39)[~~(33)~~] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(40)[~~(34)~~] "Licensed professional art therapist" is defined by KRS 309.130(2).

(41)[~~(35)~~] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

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

(43)[~~(37)~~] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(44)[~~(38)~~] "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(45)[~~(39)~~] "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(46)[~~(40)~~] "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6) and (9).

(47)[~~(41)~~] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(48)[~~(42)~~] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(49)[~~(43)~~] "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

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

(51)[(~~45~~)] "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

(52) "Mobile crisis team" means a professional working group that performs a mobile crisis intervention service prior to provision of a behavioral health secure transportation service and that consists of at least:

(a) One (1) approved behavioral health practitioner who is licensed to perform an assessment; and

(b) One (1) approved behavioral health practitioner or approved behavioral health practitioner under supervision.

(53)[(~~46~~)] "Physician" is defined by KRS 205.510(12)[(~~11~~)].

(54)[(~~47~~)] "Physician assistant" is defined by KRS 311.840(3).

(55)[(~~48~~)] "Practitioner working under supervision" means:

(a) An approved behavioral health practitioner under supervision;

(b) A registered behavior technician;

(c) A community support associate;[~~or~~]

(d) A peer support specialist; or

(e) A targeted case manager, as established pursuant to this chapter.

(56)[(~~49~~)] "Provider" is defined by KRS 205.8451(7).

(57)[(~~50~~)] "Provider abuse" is defined by KRS 205.8451(8).

(58)[(~~51~~)] "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

(59)[(~~52~~)] "Recipient" is defined by KRS 205.8451(9).

(60)[~~(53)~~] "Recipient abuse" is defined by KRS 205.8451(10).

(61)[~~(54)~~] "Recipient's representative" means:

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

(b) A legal guardian.

(62)[~~(55)~~] "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(63)[~~(56)~~] "Registered behavior technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:

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

(b) Have a high school diploma or its equivalent; and

(c) Within six (6) months of hire for a new employee or within six (6) months of the effective date of this administrative regulation for an existing employee:

1. Complete a training program that is:

a. Approved by the Behavior Analyst Certification Board;

b. Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and

c. Conducted by Behavior Analyst Certification Board certificants;

2. Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant or by an assistant assessor overseen by a Behavior Analyst Certification Board certificant; and

3. Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

(64)[~~(57)~~] "Registered nurse" is defined by KRS 314.011(5).

(65)[~~(58)~~] "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(66)[~~(59)~~] "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

(67)[~~(60)~~] "Telehealth" is defined by KRS 205.510(16)[~~(15)~~].

(68)[~~(61)~~] "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(69)[~~(62)~~] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

907 KAR 15:005
REVIEWED:

2-14-2024
Date

Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

2/14/2024
Date

Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 15:005
Agency Contact: Jonathan Scott
Phone Number: (502) 564-4321, ext. 2015
Email: jonathant.scott@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-7476
Email: CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15.

(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 definitions for administrative regulations located in 907 KAR Chapter 15.

(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 establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

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

(a) How the amendment will change this existing administrative regulation:

This amendment implements new definitions for "accountable services organization", "behavioral health associate", "behavioral health crisis", "behavioral health secure crisis transportation", "behavioral health support vehicle", "mobile crisis intervention services", and "mobile crisis team". In addition, "approved behavioral health practitioner under supervision" is amended to include a "behavioral health associate", and the term "billing supervisor" is further clarified.

The Amended After Comments version modifies the definition of BHA to include compliance with both supervision requirements of the collaborative educational agreement and compliance with the billing supervision requirements for rendering Medicaid services. The definition now includes that the BHA- with the exception of a narcotic treatment program - must be in a graduate level program and be participating in an internship or practicum at an accredited educational institution. The regulation has been further amended to specify that a BHA cannot render a diagnosis for a client.

(b) The necessity of the amendment to this administrative regulation:

These amendments are necessary to clarify and expand terms used throughout 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes:
The amendments conform to the content of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes:
The amendments will assist in the effective administration of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, residential crisis stabilization units, accountable service organizations, and any entity providing crisis continuum services. There are currently over 2,200 such individuals or entities 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:
As appropriate, providers may need to refer to this administrative regulation to clarify terms used in other administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Providers and provider groups will benefit due to the additional clarity provided by the amendments and new definitions included in this updated administrative regulation.

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

(a) Initially:
DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(b) On a continuing basis:
DMS does not anticipate any additional costs in implementing this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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:
At this time, DMS does not assess that an increase in fees or 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? (Explain why or why not)
Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

Administrative Regulation: 907 KAR 15:005
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Phone Number: (502) 564-4321, ext. 2015
Email: jonathant.scott@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-7476
Email: CHFSregs@ky.gov

(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?
DMS will be affected by 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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

(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?
This administrative regulation 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?
This administrative regulation 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 does not anticipate any additional costs in implementing this amendment on an initial basis.

(d) How much will it cost to administer this program for subsequent years?
DMS does not anticipate any additional costs in implementing this amendment in subsequent years.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?
DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?
DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year?
DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years?
DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):
Expenditures (+/-):
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.
"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars ($500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 907 KAR 15:005
Agency Contact: Jonathan Scott
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(1) Federal statute or regulation constituting the federal mandate.
There is no federal mandate to define terms in an administrative regulation.

(2) State compliance standards.
KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

(3) Minimum or uniform standards contained in the federal mandate.
There is no federal mandate to define terms in an administrative regulation.

(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 or different responsibilities than the 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 or different responsibilities than the federal requirements.

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 15:005

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
Amended After Comments

I. A public hearing on 907 KAR 15:005 was requested, and held on January 22, 2024 via Zoom. Written comments were also received during the public comment period.

II. The following individuals submitted comments during the public comment period:

Name and Title	**Agency/Organization/Entity/Other**
Kathy Adams, Director of Policy	Children's Alliance
Brittany Pape, Division Director	Seven Counties Services
Andrea Brooks, Vice Chair, Program Director	Kentucky Board of Licensed Professional Counselors, Masters Program Counseling – Lindsey Wilson College
Thomas B. Stephens, Executive Director	Kentucky Association of Health Plans
Sara Boswell Janes, Board Counsel	Public Protection Cabinet
Steve Shannon, Executive Director	Kentucky Association of Regional Programs
An Anonymous Practicing Licensed Clinical Social Worker	

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 15:005.

Name and Title	**Agency/Organization/Entity/Other**
Lisa Lee, Commissioner	Department for Medicaid Services, Commissioner's Office
Veronica Judy-Cecil, Senior Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Leslie Hoffman, Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Jonathan Scott, Chief Legislative and Regulatory Officer	Department for Medicaid Services, Commissioner's Office

Angela Sparrow, Behavioral Health Supervisor	Department for Medicaid Services Division of Health Care Policy
Sherri Staley, Behavioral Health Supervisor	Department for Medicaid Services Division of Health Care Policy
Anne Hollen, Behavioral Health Lead	Department for Medicaid Services Division of Health Care Policy
Justin Dearinger, Assistant Director	Department for Medicaid Services Division of Health Care Policy
Nicole Lesniewski, Executive Staff Advisor	Department for Medicaid Services, Commissioner's Office

IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Definition of "behavioral health associate" (BHA)
(a) Comment: Kathy Adams, Director of Policy at the Children's Alliance submitted comments that the definition, as written, would allow for bachelor level staff to provide therapy, which is in conflict with the licensure board. Request that the definition be amended to allow BHAs to provide services in accordance with their licensure board, example provided:

(7) "Behavioral health associate" means an individual: (b) Who only provides outpatient services, consistent with their applicable professional licensure board requirements.

(b) Response: The BHA definition establishes eight major requirements that must be met before the BHA can provide services in any facility. DMS expects that a governing collaborative education agreement with the provider and the graduate program will address scope of practice requirements. This agreement is expected to be comprehensive and may be more restrictive than the applicable professional licensure board requirements. The BHA utilizes the practice model of the mental health associate (MHA) which has been used within the community mental health centers for decades. A substantial need currently exists within the state for additional behavioral and mental health providers. Extending the ability of our currently licensed and employed behavioral health providers and their employers through the use of a BHA-level practitioner is necessary at this point of time to best serve Kentucky's Medicaid members.

The regulation has been amended to modify the definition of BHA to include compliance with both supervision requirements of the collaborative educational agreement and compliance with the billing supervision requirements for rendering Medicaid services. The definition now includes that the BHA- except for an individual working in a narcotic treatment program - must be in a graduate level program and be participating in an internship or practicum at an accredited educational institution. The regulation has been further amended to specify that a BHA cannot render a diagnosis for a client.

(a) Comment: Andrea Brooks, Vice Chair, Kentucky Board of Licensed Professional Counselors, submitted comments that they do not support the definition of BHA because the current definition would allow untrained people to lead treatment and mental health care services. Additionally, they note that this could be harmful to providers as there is not liability insurance available for Bachelor level students or until a student enters practicum and internship courses. They also note that no one should be conducting the scope of practice without a license. There is also concern noted about the who a BHA would be accountable to if they are not licensed or not in a practicum or internship course. They recommend that definition 7(C) be amended to include that BHAs are required to be currently enrolled in a graduate program for a master's degree or doctoral degree in psychology, social work, or in a behavioral science field that leads to a credential or license and be currently enrolled in a practicum or internship course in a qualifying program. Finally, they note that licensure board would also like to suggest eliminating 7(C)(2) in the BHA proposed definition due to lack of clarity and potential for some BHAs to use this definition as validation to work outside of their scope of practice for their certification or license.

(b) Response: The BHA definition establishes eight major requirements that must be met before the BHA can provide services in any facility. Bachelor level students are not currently practicing as MHAs nor are they proposed to practice as BHAs. This is a practice model that has been in use in Kentucky for decades and is a familiar and needed option for many behavioral health providers. Kentucky's behavioral health providers and graduate schools are familiar with this model as it is used throughout Kentucky and other states. The collaborative educational agreements will give graduate programs and employers the ability to govern the conduct of BHAs adequately and effectively while also allowing a serious gap in the behavioral health care workforce to be met.

The regulation has been amended to modify the definition of BHA to include compliance with both supervision requirements of the collaborative educational agreement and compliance with the billing supervision requirements for rendering Medicaid services. The definition now includes that the BHA- except for an individual working in a narcotic treatment program - must be in a graduate level program and be participating in an internship or practicum at an accredited educational institution. The regulation has been further amended to specify that a BHA cannot render a diagnosis for a client.

(a) Comment: Thomas Stephens, Executive Director, Kentucky Association of Health Plans submitted comments related to the definition of a BHA. They note that a master's degree is the minimum standard for providing psychotherapy services and cite federal law (Consolidated Appropriations Act) that establishes criteria for mental health counselors. Additionally, they are concerned that there is no professional governing board for a BHA as they are not a recognized behavioral health professional in Kentucky. Additional concerns noted include diminished quality of care, violations to the Mental Health Parity and Addiction Equity Act, and exacerbated workforce issues. They are supportive of DMS performing a review of governing board to determine if there are any which would authorize a person with less than a master's to provide psychotherapy services.

(b) Response: A BHA will have the ability to provide services besides psychotherapy to the population in CMHCs and other behavioral health provider groups. The individuals who will be working under the collaborative education agreements allowed by this definition will continue to be under the supervision of a practitioner who is licensed to provide psychotherapy. Because the BHA is merely an expansion of an existing practitioner type, DMS does not anticipate the need for a professional governing board for BHAs as existing boards are already addressing the practice of MHAs. Similarly, DMS is not concerned about the diminished quality of care or the violations of the MHPAEA because this is a practitioner type that has been present in Kentucky for several decades.

The regulation has been amended to modify the definition of BHA to include compliance with both supervision requirements of the collaborative educational agreement and compliance with the billing supervision requirements for rendering Medicaid services. The definition now includes that the BHA- except for an individual working in a narcotic treatment program - must be in a graduate level program and be participating in an internship or practicum at an accredited educational institution. The regulation has been further amended to specify that a BHA cannot render a diagnosis for a client.

(a) Comment: Sara Boswell Janes, Board Counsel, Public Protection Cabinet, submitted comments that the Board would only be in support of this proposal for individuals enrolled in a practicum or internship with a CACREP (Council for Accreditation of Counseling and Related Educational Programs) accredited institution.

(b) Response: The BHA utilizes the practice model of the mental health associate (MHA) which has been used within the community mental health centers for decades. A substantial need currently exists within the state for additional behavioral and mental health providers. Extending the ability of our currently licensed and employed behavioral health providers and their employers through the use of a BHA-level practitioner is necessary at this point of time to best serve Kentucky's Medicaid members. This is a practice model that has been in use in Kentucky for decades and is a familiar and needed option for many behavioral health providers. Kentucky's behavioral health providers and graduate schools are familiar with this model as it is used throughout Kentucky and other states. The collaborative educational agreements will give graduate programs and employers the ability to govern the conduct of BHAs adequately and effectively while also allowing a serious gap in the behavioral health care workforce to be met. DMS has not typically required a single accreditation for institutions in the past as multiple accrediting bodies are present in this space. The governing regulations for the institutions in (7)(h) do require accreditation and DMS will continue to enforce the relevant administrative regulation.

The regulation has been amended to modify the definition of BHA to include compliance with both supervision requirements of the collaborative educational agreement and compliance with the billing supervision requirements for rendering Medicaid services. The definition now includes that the BHA- except for an individual working in a narcotic treatment program - must be in a graduate level program and be participating in an internship or practicum at an accredited

educational institution. The regulation has been further amended to specify that a BHA cannot render a diagnosis for a client.

(2) Subject: Include re-evaluation and application process for the BHA designation.
(a) Comment: Kathy Adams, Director of Policy at the Children's Alliance commented that there is not a requirement for a BHA to be reevaluated during their 5-year limit. They suggest a reevaluation requirement be added in regulation including a required application every 2 years for BHA designees to determine their eligibility as a BHA. They request that any application process and timeline be included in regulation and that an application form be incorporated by reference in the regulation, if applicable.

(b) Response: The Department is comfortable establishing a five-year limit for BHAs. This length of time gives an individual the time to gain experience and evaluate educational options in multiple behavioral science fields. The Department is not prepared to incorporate a form by reference at this time.

(a) Comment: Steve Shannon, Executive Director, Kentucky Association of Regional Programs, recommends that there should be language added to allow a BHA/MHA to request an extension beyond five years to allow individuals additional time to complete their educational programs if needed.

(b) Response: The Department is comfortable establishing a five-year limit for BHAs. This length of time gives an individual the time to gain experience and evaluate educational options in multiple behavioral science fields. A lengthier time limit could result in BHAs who are no longer actively pursuing a license-level credential.

This administrative regulation will not be amended in response to the comment.

(3) Subject: DMS Behavioral Health Fee Schedule rate adjustment
(a) Comment: Kathy Adams, Director of Policy at the Children's Alliance commented that there is a need to ensure the BH Fee Schedule rates for BHAs cover the cost of services and are consistent with other states in order to improve access to services.

(b) Response: The Department will continue to follow the rate methodology set out in other administrative regulations. Reimbursement decisions are outside the scope of this policy regulations. This administrative regulation will not be amended in response to the comment.

(4) Subject: Mobile crisis team requirements

(a) Comment: Brittany Pape, Director of Child Crisis Services, Seven Counties Services commented that they are facing difficulties hiring for crisis and mobile crisis teams, including providers under supervision. They are concerned that the requirement for one person in the mobile crisis team to be independently licensed would be a barrier to providing services. They suggest amending 52(a) to "include providers that are under supervision to perform assessments" and note that would include providers in 5(a)1-6.

(b) Response: DMS is currently separately contracting with a provider to ensure provision of services. At this time, we believe there is sufficient flexibility to allow for an independently

licensed individual in each mobile crisis team and mobile crisis response. Of particular note is the allowance of telehealth for some team members. If the behavioral health team needs to be expanded to allow for an in-person response by a provider who is under supervision to perform assessments, an independently licensed individual could still be utilized by telehealth.

This administrative regulation will not be amended in response to the comment.

(a) Comment: Steve Shannon, Executive Director, Kentucky Association of Regional Programs, submitted comments that the effectiveness of the Mobile Crisis initiative could be affected if there is a negative impact to the availability of BHA or MHA as a result of the proposed change.

(b) Response: The Department agrees with this assessment. Furthermore, multiple behavioral health initiatives and areas of need throughout our health care system, including narcotic treatment programs, could be negatively impacted by the elimination of BHAs. The Department will not be amending the regulation in response to this comment.

(5) Subject: Inclusion of additional definitions

(a) Comment: Steve Shannon, Executive Director, Kentucky Association of Regional Programs, commented that the definition of Mental Health Associate (MHA) should be added to Section 1 and included in Section 1(7) as MHAs have been utilized by Community Mental Health Centers for an extended period of time. They also recommend including a definition of certified community behavioral health center (CCBHC) be included in Section 1(7)(h)3. to include that CCBHC is participating in the CCBHC demonstration project, and there is one CCBHS per designated service region.

(b) Response: The Department is consolidating and combining the MHA into the BHA practitioner going forward. The Department agrees that this practitioner type has been present in Kentucky for many years. The provision of mental health services now also include behavioral health services for many providers and practitioners and it is appropriate to update the terminology at this time.

(b) Response: The Department is proceeding under a federal approval in utilizing the CCBHC at this time. The enhanced reimbursement rate that is available under this demonstration requires careful adherence to the federal requirements. Typically, the Department does not include temporary programs in administrative regulation as the approval is not permanent and confusion could be created if there are conflicting federal and state requirements.

The Department will not be amending the regulation in response to this comment.

Subject: Suggested change to billing supervisors in Section 1(15)(c)

(a) Comment: Steve Shannon, Executive Director, Kentucky Association of Regional Programs, recommended that Section 1(15)(c) be changes to allow the provider to determine the best mechanism to record the billing supervisors review.

(b) Response:

Subject: Work experience requirement for targeted case managers

(a) Comment: Steve Shannon, Executive Director, Kentucky Association of Regional Programs, submitted comments recommending that the one-year post baccalaureate work experience for target case managers be removed. They note that Targeted case manager is an approved behavioral health practitioner under supervision and other practitioners under supervision do not have this requirement.

(b) Response: Given the text of the administrative regulation the Department does not designate a mechanism for utilizing a service note or supervisory note. The Department will not be amending the regulation in response to this comment.

Subject: Requirement for a collaborative educational agreement

(a)Comment: Steve Shannon, Executive Director, Kentucky Association of Regional Programs, submitted comments that with the expansion of virtual/online graduate programs CMHC would need several agreements with multiple programs and would have frequent additions. They are requesting additional guidance regarding DMS's expectation for this requirement.

(b)Response: The Department agrees with this comment and will establish or designate a IT option for providers, such as CMHCs, to utilize when drafting, negotiating, or implementing collaborative agreements.

Subject: Support for changes to this regulation

(a) An Anonymous Practicing Licensed Clinical Social Worker submitted comments in support of this regulation. They note that students face hardship in completing their internships as they are mostly unpaid due to agency's not being able to be paid for anything a student does. They also explain that this regulation would allow for appropriate compensation for work being required by the students' academic regulations, allow for the expansion of services to an underserved population, and the potential for paid internships would expand. They also state that this regulation does not seem to make a drastic difference in the work that is already occurring.

(b) Response: The Department appreciates the support for this regulation. The BHA utilizes the practice model of the mental health associate (MHA) which has been used within the community mental health centers for decades. A substantial need currently exists within the state for additional behavioral and mental health providers. Extending the ability of our currently licensed and employed behavioral health providers and their employers through the use of a BHA-level practitioner is necessary at this point of time to best serve Kentucky's Medicaid members.

V. SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 15:005. This administrative regulation is being amended after comments. DMS is amending the administrative regulation as follows:

Section 1(7)
Page 4
Line 7
After line "(c)1.", insert "a.".

Section 1(7)
Page 4
Line 8
Delete ":"

Section 1(7)
Page 4
Line 9
Delete "a. Psychology;".

Section 1(7)
Page 4
Line 10
Delete "b. Social work; or".

Section 1(7)
Page 4
Line 11
Delete "c. In"
Delete "or"
After "license;" insert the following

"and

b. Who is currently participating in an internship or practicum program as part of an accredited educational institution;".

Section 1(7)
Page 4
Line 12
Delete "or licensure" and "mental"

Section 1(7)
Page 4

Line 13

Delete "health or"

After "disorder" insert ", and is only employed by a narcotic treatment program".

Section 1(7)
Page 4
Line 16

Insert "Who complies with the supervision requirements of the collaborative educational agreement and complies with billing supervision requirements for rendering Medicaid services"

Delete "That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services".

Section 1(7)
Page 4
Line 20

After (g) insert "Who does not render a diagnosis for a client;"

Before "Who" insert "(h)".

Section 1(7)
Page 4
Line 21

Insert "(i)"

Delete "(h)".