

FILED WITH LRC
TIME: 1:25 PM
NOV 13 2023
REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amendment)

5 907 KAR 1:044. Coverage provisions and requirements regarding community mental health
6 center behavioral health services.

7 RELATES TO: KRS 194A.060, 202A.011, [~~205.520(3)~~], 205.8451(7), (9), 205.622, 369.101
8 - 369.120, 422.317, 434.840-434.860, 42 C.F.R. Part 2, 400.203, 415.208, 431.17, 431.52, 431
9 Subpart F, 45 C.F.R. Parts 160 and 164, 42 U.S.C. 290ec-3, 1320d-2 to 1320d-8

10 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450[~~42~~
11 ~~U.S.C. 1396a-d~~]

12 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
13 Services, Department for Medicaid Services, has responsibility to administer the Medicaid
14 Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with
15 any requirement that may be imposed or opportunity presented by federal law to qualify for
16 federal Medicaid funds. This administrative regulation establishes the Medicaid program
17 coverage provisions and requirements regarding community mental health center (CMHC)
18 behavioral health services provided to Medicaid recipients.

19 Section 1. Definitions. (1) "Approved behavioral health practitioner" means an independently
20 licensed practitioner who is:

21 (a) A physician;

1 (b) A psychiatrist;

2 (c) An advanced practice registered nurse;

3 (d) A physician assistant;

4 (e) A licensed psychologist;

5 (f) A licensed psychological practitioner;

6 (g) A certified psychologist with autonomous functioning;

7 (h) A licensed clinical social worker;

8 (i) A licensed professional clinical counselor;

9 (j) A licensed marriage and family therapist;

10 (k) A licensed professional art therapist;

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

12 (m) A licensed behavior analyst; or

13 (n) A behavioral health associate.

14 (2) "Approved behavioral health practitioner under supervision" means an individual who is
15 under the billing supervision of an approved behavioral health practitioner and who is:

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

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

20 3. A marriage and family therapy associate;

21 4. A certified social worker;

22 5. A licensed professional counselor associate;

23 6. A licensed professional art therapist associate;

1 7. A licensed clinical alcohol and drug counselor associate;

2 8. A certified alcohol and drug counselor;

3 9. A licensed assistant behavior analyst;

4 10. A behavioral health associate; or

5 11. A licensed alcohol and drug counselor; and

6 (b) Employed by the same CMHC or under contract with the same CMHC as the billing
7 supervisor.

8 (3) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment
9 Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the
10 American Society of Addiction Medicine.

11 (4) "Behavioral health associate" means an individual:

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

13 (b) Who only provides outpatient services;

14 (c)1. Who is currently enrolled in a graduate program for a master's degree or doctoral degree
15 in:

16 a. Psychology;

17 b. Social work; or

18 c. In a behavioral science field that leads to a credential or license; or

19 2. Who is currently working toward a specialized credential or licensure in the field of mental
20 health or substance use disorder;

21 (d) Who has a collaborative educational agreement with the graduate program and the em-
22 ploying provider;

1 (e) That receives, at a minimum, weekly supervision by an approved behavioral health practi-
2 tioner employed by the provider of services;

3 (f) Who is designated as a behavioral health associate by the department during the applica-
4 tion process;

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

6 (h) That is currently employed by one of the following outpatient treatment providers:

7 1. A behavioral health services organization;

8 2. A behavioral health multi-specialty group;

9 3. A certified community behavioral health clinic;

10 4. A community mental health center;

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

12 6. A rural health clinic;

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

14 a. A mobile crisis intervention service provider;

15 b. A crisis observation stabilization unit; or

16 c. A behavioral health crisis transportation provider; or

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

18 (5) "Community mental health center" or "CMHC" means a facility ~~that~~^{which} meets the
19 community mental health center requirements established in 902 KAR 20:091.

20 ~~(6)~~⁽²⁾ "Department" means the Department for Medicaid Services or its designee.

21 ~~(7)~~⁽³⁾ "Enrollee" means a recipient who is enrolled with a managed care organization.

22 ~~(8)~~⁽⁴⁾ "Face-to-face" means occurring[:

23 —~~(a)~~ in person[; ~~or~~

1 ~~—(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves~~
2 ~~two (2) way interactive video and audio communication].~~

3 ~~(9)[(5)] "Federal financial participation" is defined by[~~in~~]~~ 42 C.F.R. 400.203.

4 ~~(10)[(6)] "Medically necessary" means that a covered benefit is determined to be needed in~~
5 ~~accordance with 907 KAR 3:130.~~

6 ~~[(7) "Mental health associate" means an individual who meets the mental health associate~~
7 ~~requirements established in the Community Mental Health Center Behavioral Health Services~~
8 ~~Manual.]~~

9 (11) "Paraprofessional practitioner under supervision" means an individual who performs
10 services under the billing supervision of an approved behavioral health practitioner who is
11 employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

12 Paraprofessional practitioners include:

13 (a) Peer support specialists;

14 (b) Community support associates;

15 (c) Registered behavior technicians; or

16 (d) A targeted case manager, as established pursuant to 907 KAR Chapter 15.

17 ~~(12)[(8)] "Professional equivalent" means an individual who;~~

18 ~~(a) Met[meets] the professional equivalent requirements established in the [Community~~
19 ~~Mental Health Center] Behavioral Health Services Manual for Community Mental Health~~
20 ~~Centers prior to January 1, 2018; and~~

21 (b) Performs services under the billing supervision of an approved behavioral health
22 practitioner, who is employed by the same CMHC or under contract with the same CMHC as the
23 billing supervisor.

1 ~~(13)~~~~(9)~~ "Provider" is defined by KRS 205.8451(7).

2 ~~(14)~~~~(10)~~ "Qualified mental health professional" means an individual who meets the
3 requirements established in KRS 202A.~~011~~~~(12)~~.

4 ~~(15)~~~~(11)~~ "Recipient" is defined by KRS 205.8451(9).

5 (16) "Telehealth" is defined by KRS 205.510(16).

6 Section 2. Requirements for a Psychiatric Nurse. A registered nurse employed by a
7 participating community mental health center shall be considered a psychiatric or mental health
8 nurse if the individual:

9 (1) Possesses a Master of Science in nursing with a specialty in psychiatric or mental health
10 nursing;

11 (2)(a) Is a graduate of a four (4) year nursing educational program with a Bachelor of Science
12 in nursing; and

13 (b) Possesses at least one (1) year of experience in a mental health setting;

14 (3)(a) Is a graduate of a three (3) year nursing educational program; and

15 (b) Possesses at least two (2) years of experience in a mental health setting; or

16 (4)(a) Is a graduate of a two (2) year nursing educational program with an associate degree in
17 nursing; and

18 (b) Possesses at least three (3) years of experience in a mental health setting.

19 Section 3. ~~[Community Mental Health Center]~~ Behavioral Health Services Manual for
20 Community Mental Health Centers. The conditions for participation, services covered, and
21 limitations for the community mental health center behavioral health services component of the
22 Medicaid program shall be as specified in:

23 (1) This administrative regulation; and

1 (2) The [~~Community Mental Health Center~~] Behavioral Health Services Manual for
2 Community Mental Health Centers.

3 Section 4. Covered Services. (1) Behavioral health services covered pursuant to this
4 administrative regulation and pursuant to the [~~Community Mental Health Center~~] Behavioral
5 Health Services Manual for Community Mental Health Centers shall be rehabilitative mental
6 health and substance use disorder services including:

- 7 (a) Individual [~~outpatient~~] therapy;
- 8 (b) Group [~~outpatient~~] therapy;
- 9 (c) Family [~~outpatient~~] therapy;
- 10 (d) Collateral [~~outpatient~~] therapy;
- 11 (e) Therapeutic rehabilitation services;
- 12 (f) Psychological testing;
- 13 (g) Screening;
- 14 (h) An assessment;
- 15 (i) Crisis intervention;
- 16 (j) Service planning;
- 17 (k) A screening, brief intervention, and referral to treatment;
- 18 (l) Mobile crisis services;
- 19 (m) Assertive community treatment;
- 20 (n) Intensive outpatient program services;
- 21 (o) Residential crisis stabilization services;
- 22 (p) Partial hospitalization;
- 23 (q) Residential services for substance use disorders;

- 1 (r) Day treatment;
- 2 (s) Comprehensive community support services;
- 3 (t) Peer support services: [ø]
- 4 (u) Withdrawal management;
- 5 (v) Medication assisted treatment (MAT);
- 6 (w) Applied behavior analysis;
- 7 (x) Chemical dependency treatment center services;
- 8 (y) Prevention education with substance use risk factors and case management services for
- 9 pregnant or postpartum individuals with a substance use disorder; or
- 10 (z) A narcotic treatment program (NTP), if separately licensed pursuant to 908 KAR
- 11 1:374[Parent or family peer support services].

12 (2)(a) To be covered under this administrative regulation, a service listed in subsection (1) of
13 this section shall be:

- 14 1. Provided by a community mental health center that is:
 - 15 a. Currently enrolled in the Medicaid program in accordance with 907 KAR 1:672; and
 - 16 b. Except as established in paragraph (b) of this subsection, currently participating in the
 - 17 Medicaid program in accordance with 907 KAR 1:671;
- 18 2. Provided in accordance with:
 - 19 a. This administrative regulation; and
 - 20 b. The [~~Community Mental Health Center~~] Behavioral Health Services Manual for
 - 21 Community Mental Health Centers; and
- 22 3. Medically necessary.

23 (b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee

1 shall not be required to be currently participating in the fee-for-service Medicaid program.

2 Section 5. Electronic Documents and Signatures. (1) The creation, transmission, storage, or
3 other use of electronic signatures and documents shall comply with requirements established in
4 KRS 369.101 to 369.120 and all applicable state and federal laws and regulations.

5 (2) A CMHC choosing to utilize electronic signatures shall:

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

- 7 1. Be complied with by each of the center's employees, officers, agents, and contractors; and
- 8 2. Stipulate which individuals have access to which electronic signatures and password
9 authorization;

10 (b) Ensure that electronic signatures are created, transmitted, and stored securely;

11 (c) Develop a consent form that shall:

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

16 (d) Provide the department, immediately upon request, with:

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

20 Section 6. No Duplication of Service. (1) The department shall not reimburse for a service
21 provided to a recipient by more than one (1) provider, of any program in which the service is
22 covered, on the same day of service.

23 (2) For example, if a recipient is receiving a behavioral health service from an independently

1 enrolled approved behavioral health practitioner~~[behavioral health service provider]~~, the
2 department shall not reimburse for the same service provided to the same recipient by a
3 community mental health center on the same day of service.

4 Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a
5 current health record for each recipient.

6 (2) A health record shall:

7 (a) Include:

8 1. An identification and intake record including:

9 a. Name;

10 b. Social Security number;

11 c. Date of intake;

12 d. Home (legal) address;

13 e. Health insurance information;

14 f. Referral source and address of referral source;

15 g. Primary care physician and address;

16 h. The reason the individual is seeking help including the presenting problem and diagnosis;

17 i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and
18 information, if available, regarding:

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

20 (ii) The name of the physical health provider; and

21 j. The name of the informant and any other information deemed necessary by the independent
22 provider to comply with the requirements of:

23 (i) This administrative regulation;

- 1 (ii) The provider's licensure board;
- 2 (iii) State law; or
- 3 (iv) Federal law;
- 4 2. Documentation of the:
 - 5 a. Screening if the community mental health center performed the screening;
 - 6 b. Assessment; and
 - 7 c. Disposition;
- 8 3. A complete history including mental status and previous treatment;
- 9 4. An identification sheet;
- 10 5. A consent for treatment sheet that is accurately signed and dated; and
- 11 6. The individual's stated purpose for seeking services:
- 12 (b) Be:
 - 13 1. Maintained in an organized central file;
 - 14 2. Furnished to the:
 - 15 a. Cabinet for Health and Family Services upon request; or
 - 16 b. Managed care organization in which the recipient is enrolled if the recipient is enrolled
 - 17 with a managed care organization;
 - 18 3. Made available for inspection and copying by:
 - 19 a. Cabinet for Health and Family Services' personnel; or
 - 20 b. Personnel of the managed care organization in which the recipient is enrolled if applicable;
 - 21 4. Readily accessible; and
 - 22 5. Adequate for the purpose of establishing the current treatment modality and progress of the
 - 23 recipient; and

1 (c) Document each service provided to the recipient including the date of the service and the
2 signature of the individual who provided the service.

3 (3) The individual who provided the service shall date and sign the health record within forty-
4 eight (48) hours of the date that the individual provided the service.

5 (4)(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall
6 maintain a health record regarding a recipient for at least six (6) years from the date of the
7 service or until any audit dispute or issue is resolved beyond six (6) years.

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

- 10 1. Six (6) years unless the recipient is a minor; or
- 11 2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority
12 under state law.

13 (c) If the Secretary of the United States Department of Health and Human Services requires a
14 longer document retention period than the period referenced in paragraph (a) or (b) of this
15 subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the
16 required period.

17 (5) A provider shall comply with 45 C.F.R. Part 164.

18 (6) Documentation of a screening shall include:

- 19 (a) Information relative to the individual's stated request for services; and
- 20 (b) Other stated personal or health concerns if other concerns are stated.

21 (7)(a) A provider's notes regarding a recipient shall:

- 22 1. Be made within forty-eight (48) hours of each service visit; and
- 23 2. Describe the:

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

2 b. Therapist's intervention;

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

4 d. Need for continued treatment if continued treatment is needed.

5 (b) Include the following:

6 1. The specific service rendered;

7 2. The date and actual time the service or services were rendered;

8 3. The name and practitioner level of the individual who rendered the service;

9 4. The setting of the service rendered and the amount of time to deliver the service;

10 5. The relationship of the service or services to the treatment goals and objectives in the plan
11 of care; and

12 6. The individual's progress toward the treatment goals and objectives in the plan of care.

13 (c)[(b)] 1. Any edit to notes shall:

14 a. Clearly display the changes; and

15 b. Be initialed and dated.

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

17 (d)[(e)] If services are provided by a practitioner working under supervision or a
18 paraprofessional practitioner working under supervision, there shall be:

19 1. A billing supervisor co-signature on the service note within thirty (30) days; and

20 2. A monthly supervisory note recorded by the supervising professional reflecting
21 consultations with the practitioner working under supervision or the paraprofessional practitioner
22 working under supervision concerning the:

23 1. Case; and

- 1 2. Supervising professional's evaluation of the services being provided to the recipient.
- 2 (8) Immediately following a screening of a recipient, the provider shall perform a disposition
- 3 related to:
- 4 (a) A provisional diagnosis;
- 5 (b) A referral for further consultation and disposition, if applicable; or
- 6 (c) 1. If applicable, termination of services and referral to an outside source for further
- 7 services; or
- 8 2. If applicable, termination of services without a referral to further services.
- 9 (9) Any change to a recipient's plan of care shall be documented, signed, and dated by the:
- 10 (a) Rendering practitioner; and
- 11 (b) Recipient or recipient's representative.
- 12 (10)(a) Notes regarding services to a recipient shall:
- 13 1. Be organized in chronological order;
- 14 2. Be dated;
- 15 3. Be titled to indicate the service rendered;
- 16 4. State a starting and ending time for the service; and
- 17 5. Be recorded and signed by the rendering provider and include the professional title (for
- 18 example, licensed clinical social worker) of the provider.
- 19 (b) Initials, typed signatures, or stamped signatures shall not be accepted.
- 20 (c) Telephone contacts, family collateral contacts not covered under this administrative
- 21 regulation, or other nonreimbursable contacts shall:
- 22 1. Be recorded in the notes; and
- 23 2. Not be reimbursable.

1 (11)(a) A termination summary shall:

2 1. Be required, upon termination of services, for each recipient who received at least three (3)
3 service visits; and

4 2. Contain a summary of the significant findings and events during the course of treatment
5 including the:

6 a. Final assessment regarding the progress of the individual toward reaching goals and
7 objectives established in the individual's plan of care;

8 b. Final diagnosis of clinical impression; and

9 3. Individual's condition upon termination and disposition.

10 (b) A health record relating to an individual who was terminated from receiving services shall
11 be fully completed within ten (10) days following termination.

12 (12) If an individual's case is reopened within ninety (90) days of terminating services for the
13 same or related issue, a reference to the prior case history with a note regarding the interval
14 period shall be acceptable.

15 (13)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or
16 referred to a health care facility or other provider for care or treatment, the transferring CMHC
17 shall, if the recipient gives the CMHC written consent to do so, within ten (10) business days of
18 the transfer or referral, transfer the recipient's health records in a manner that complies with the
19 health records' use and disclosure requirements as established in or required by:

20 1.a. The Health Insurance Portability and Accountability Act;

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

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

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

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

2 (b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric
3 hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for
4 care or treatment, the transferring CMHC shall, within forty-eight (48) hours of the transfer or
5 referral, transfer the recipient's health records in a manner that complies with the health records'
6 use and disclosure requirements as established in or required by:

7 1.a. The Health Insurance Portability and Accountability Act;

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

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

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

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

12 (14)(a) If a CMHC's Medicaid program participation status changes as a result of voluntarily
13 terminating from the Medicaid program, involuntarily terminating from the Medicaid program, a
14 licensure suspension, or death of a provider, the health records regarding recipients to whom the
15 CMHC has provided services shall:

16 1. Remain the property of the CMHC; and

17 2. Be subject to the retention requirements established in subsection (4) of this section.

18 (b) A CMHC shall have a written plan addressing how to maintain health records if there is~~in~~
19 ~~the event of~~ a provider's death.

20 Section 8. Medicaid Program Participation Compliance. (1) A CMHC shall comply with:

21 (a) 907 KAR 1:671;

22 (b) 907 KAR 1:672; and

23 (c) All applicable state and federal laws.

1 (2)(a) If a CMHC receives any duplicate payment or overpayment from the department or
2 managed care organization, regardless of reason, the CMHC shall return the payment to the
3 department or managed care organization that issued the duplicate payment or overpayment.

4 (b) Failure to return a payment to the department in accordance with paragraph (a) of this
5 subsection may be:

- 6 1. Interpreted to be fraud or abuse; and
- 7 2. Prosecuted in accordance with applicable federal or state law.

8 Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

9 Section 10. Auditing Authority. The department or the managed care organization in which an
10 enrollee is enrolled shall have the authority to audit any:

- 11 (1) Claim;
- 12 (2) Health record; or
- 13 (3) Documentation associated with the claim or health record.

14 Section 11. Federal Approval and Federal Financial Participation. ~~[(1)]~~ The department's
15 coverage of services pursuant to this administrative regulation shall be contingent upon:

- 16 (1)~~[(a)]~~ Receipt of federal financial participation for the coverage; and
- 17 (2)~~[(b)]~~ Centers for Medicare and Medicaid Services' approval for the coverage.

18 ~~[(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or~~
19 ~~licensed clinical alcohol and drug counselor associate shall be contingent and effective upon~~
20 ~~approval by the Centers for Medicare and Medicaid Services.]~~

21 Section 12. Appeal Rights. (1) An appeal of an adverse action by the department regarding a
22 recipient who is not enrolled with a managed care organization shall be in accordance with 907
23 KAR 1:563.

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

3 Section 13. Incorporation by Reference. (1) The “Behavioral Health Services Manual for
4 Community Mental Health Centers”, November 2023[~~“Community Mental Health Center~~
5 ~~Behavioral Health Services Manual”~~, May 2015], is incorporated by reference.

6 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
7 at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort,
8 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department’s Web
9 site at
10 <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/cmhc.aspx>[~~[18](http://www.chfs.ky.gov/dms/incorpo
11 rated.htm].</p></div><div data-bbox=)~~

907 KAR 1:044
REVIEWED:

11/9/2023

Date

DocuSigned by:

Lisa Lee

7CB9730219D941E

Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

11/9/2023

Date

DocuSigned by:

Eric Friedlander

0AEA1D6C15D6431

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by January 12, 2024, 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. This hearing is open to the public. Any person who attends virtually 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 1:044
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 behavioral health coverage provisions and requirements regarding Medicaid program services provided within a community mental health center (CMHC).

(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 (42 U.S.C. Sec. 18022). mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients.

(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 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 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: The amendment to this administrative regulation incorporates a new manual that is titled the Behavioral Health Services Manual for Community Mental Health Centers. This amendment also contains a definition for "approved behavioral health practitioner" and "approved behavioral health practitioner under supervision" instead of a listing of each provider and each service. This provides for more transparency and compactness in the administrative regulation and manual. The administrative regulation also contains a definition for the "ASAM Criteria", "paraprofessional practitioner under supervision", and "telehealth." New covered services include withdrawal management, medication assisted treatment, applied behavior analysis, chemical dependency treatment center services, and narcotic treatment programs if separately licensed. The amendment also updates language relating to prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder. The administrative regulation also requires a billing supervisor's signature within thirty (30) days when a service is delivered by an approved behavioral health practitioner under supervision.

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

ulation is necessary to align with existing Office of Inspector General (OIG) administrative regulations, to implement an SUD 1115 waiver, to require compliance with the ASAM Criteria, and to provide additional formatting improvements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing an SUD 1115 waiver and making conforming amendments following amendments to 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 statutes by providing additional clarity and requirements relating to all behavioral health services performed in CMHCs.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: CMHCs that wish to expand their behavioral health practice to include the newly covered services. There are currently 14 CMHCs.

(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. All CMHCs utilizing approved practitioner under supervision will need to begin having a billing supervisor sign appropriate documents within 30 days. CMHCs that provide chemical dependency treatment center services or narcotic treatment program services will also need to acquire appropriate certification or licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid program reimbursement for providing behavioral health services to Medicaid recipients. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive certain services.

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

(a) Initially: DMS does not anticipate additional costs as a result of this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of this administrative regulation.

(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? (Explain why or why not): Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE

Administrative Regulation: 907 KAR 1:044
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) 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? The amendment is not expected to cause additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to cause additional costs in administering this program 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. This administrative regulation could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

(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. This administrative regulation could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

(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 1:044
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. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022).

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 (42 U.S.C. Sec. 18022) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment."

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.

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

907 KAR 1:044

Coverage provisions and requirements regarding community mental health center behavioral health services.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Behavioral Health Manual for Community Mental Health Centers is incorporated by reference. This document provides general information about the Kentucky Medicaid Program, establishes conditions of participation for providers and staff, establishes the covered services that can be provided within a CMHC, establishes and clarifies certain non-covered services and other service limitations, and addresses requirements relating to miscellaneous claims.

The total number of pages incorporated by reference for this administrative regulation is fifty-eight (58).

