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June 4, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell, Administrative Regulations Compiler
Legislative Research Commission
702 Capitol Avenue, Room 83
Frankfort, KY 40601

Re: 907 KAR 2:720. 1915(c) Kentucky's Community Health for Improved Lives and Development (CHILD) Waiver Program Requirements.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 2:720, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 2:720.

If you have any questions, please feel free to contact Jonathan Scott, Chief Regulatory and Legislative Officer with the Department for Medicaid Services at JonathanT.Scott@ky.gov.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

Subcommittee Substitute

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long-Term Services and Supports
(Amended After Comments)

907 KAR 2:720. 1915(c) Kentucky's Community Health for Improved Lives and Development (CHILD) Waiver Program Requirements.

RELATES TO: KRS 14A.4, 17.165, 189.125, 200.503, 205.520, 205.5605, 205.8451, 209, 217, 218A, 273.182, 309, 314.011, 315, 319, 319A, 335, 369, 387, 500.080, 600.020, 620.030, 620.055, 42 C.F.R. 430.10, 431.53, 440.150, 440.170, 441.301, 441.530, 441.725, 45 C.F.R. Parts 160, 162, and 164, 20 U.S.C. 1400, 1401, 29 U.S.C. 730, 794, 42 U.S.C. 11434a, 12101, 1320d, 1396a, 1396d, 1396n, H.R.34 - 114th Congress (2015-2016)
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the program and operational requirements to provide expanded services to individuals who have a primary diagnosis of autism, developmental disability, intellectual disability, or serious emotional disturbance.

Section 1. Definitions.

(1) "1915(c) CHILD Waiver" means: the Home and Community-Based Services program titled Community Health for Improved Lives and Development (CHILD) authorized under Section 1915(c) of the Social Security Act, and administered by the Department for Medicaid Services to serve eligible children and youth with intellectual disability or developmental disability including autism.

(2) "1915(c) home and community-based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(3) "Abuse" is defined by KRS 600.020 for children and KRS 209.020(8) for adults.

(4) "Activities of daily living" or "ADLs" means activities that a person normally undertakes in their daily life, including activities such as bathing, eating, dressing, toileting, transferring.

(5) "Allocation" is defined as an individual who has been assigned a slot on the waiver but has not yet started services.

(6) "Americans with Disabilities Act" or "ADA" is defined by 42 U.S.C. 12101.

(7) "Applicant" means an individual applying to receive 1915(c) waiver services.

(8) "Assessment" means the process that authorizes the department or its designee to determine applicant service needs that can be met safely in a community-based setting and determine if the participant is eligible for 1915(c) CHILD waiver services.

(9) "Autism" means autism spectrum disorder (ASD) which is characterized by:

(a) Persistent deficits in social communication and social interaction across multiple contexts;

(b) Restricted, repetitive patterns of behavior, interests, or activities, currently or by history;
(c) Symptoms that shall be present in the early developmental period (but may not become fully manifested until social demands exceed limited capacities, or may be masked by learned strategies in later life);
(d) Symptoms that cause clinically significant impairment in social, occupational, or other important areas of current functioning; and
(e) These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication shall be below that expected for general developmental level.

(10) "Aversive technique" means:
(a) Withholding:
1. Food or hydration as a means to control or impose calm;
2. Access to a:
a. Legal advocate; or
b. Ombudsman;
3. Access to a:
a. Toilet;
b. Bath; or
c. Shower;
4. Access to personal belongings; or
5. Access to natural supports;
(b) Depriving medical attention or prescribed medication;
(c) Depriving sleep;
(d) Dehumanization of the individual, through means such as:
1. Social degradation;
2. Social isolation;
3. Verbal abuse;
4. Techniques inappropriate for the individual's age; or
5. Treatment out of proportion to the target behavior; or
(e) Activities that include:
1. Electric shocking;
2. Sleep or food deprivation;
3. Punitive exercise tasks;
4. Shaming;
5. Yelling;
6. Corporal punishment;
7. Hitting;
8. Sensory triggering;
9. Intimidation; or
10. Use of stress positions.

(11) "Behavior intervention committee" or "BIC" means a group of individuals:

(a) Established to evaluate the technical adequacy of a proposed behavioral intervention for a participant; and

(b) That meets in accordance with the BIC policies established in Section 10 of this administrative regulation.

(12) " Behavioral health practitioner" mean an independently licensed practitioner who is:

(a) An advanced practice registered nurse (APRN);

(b) A certified psychologist with autonomous functioning;

(c) A licensed behavior analyst;

(d) A licensed clinical alcohol and drug counselor;

(e) A licensed clinical social worker (LCSW);

(f) A licensed marriage and family therapist (LMFT);

(g) A licensed professional art therapist;

(h) A licensed professional clinical counselor (LPCC);

(i) A licensed psychological practitioner;

(j) A licensed psychologist;

(k) A physician;

(l) A physician assistant;

(m) A psychiatrist; or

(n) A licensed professional clinical counselor (LPCC).

(13) "Behavioral health practitioner under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate, practicing as defined by KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4);

(f) Licensed professional art therapist associate as defined by KRS 309.130(3); or

(g) Registered behavior technician under the supervision of a licensed behavior analyst.

(14) "Board" means three (3) meals a day or other full nutritional regimen of a caregiver for the purpose of providing shared living services.

(15) "Case manager" means an individual who meets the personnel and training requirements established in Section 5 of this administrative regulation and is responsible for facilitating person-centered service planning, coordination, and oversight of waiver services.

(16) "Case manager supervisor" means an individual who:

(a) Provides professional oversight of case managers;

(b)

1. Has a bachelor's or higher degree in a human service field from an accredited college or university;

2. Has a bachelor's degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability; or

3. Is a registered nurse;

(c) Has at least two (2) years of experience of case management responsibility in an organization that serves individuals with intellectual or developmental disabilities;

(d) Completes a case management supervisory training curriculum approved by the department within six (6) months of beginning supervisory responsibilities; and

(e) Meets all personnel and training requirements established in Section 5 of this administrative regulation.

(17) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the U.S. Department of Health and Human Services responsible for approving Medicaid waivers and ensuring compliance with federal regulations.

(18) "Certification" or "recertification" means the authorization received by a Medicaid enrolled provider who:

(a) Has been determined to meet the requirements of the Centers for Medicare and Medicaid Services (CMS) approved 1915(c) CHILD waiver and this administrative regulation; and

(b) Is approved by the department to provide one (1) or more services to 1915(c) CHILD waiver participants.

(19) "Certified psychologist with autonomous functioning" means a person licensed pursuant to KRS 319.056.

(20) "Certified school psychologist" means an individual certified by the Kentucky Education Professional Standards Board under 16 KAR 2:090.

(21) "Child and Adolescent Needs and Strengths Assessment" or "CANS Assessment" means an assessment tool that is:

(a) Designed to give a profile of the specific current needs and strengths of the child or adolescent and caregiver(s);

(b) A person-centered, consensus-based functional needs assessment for young people with developmental disabilities and their families; and

(c) Used to determine level of care for the 1915(c) CHILD Waiver.

(22) "Chemical restraint" means a drug or medication:

(a) Used to restrict an individual's:

1. Behavior; or
2. Freedom of movement; and

(b)

1. That is not a standard treatment for the individual's condition; or
2. Dosage that is not an appropriate dosage for the individual's condition.

(23) "Child" or "youth" means an individual aged zero ***[(0)]*** up to twenty-one (21) years who meets the eligibility criteria specified in this administrative regulation.

(24) "Controlled substance" is defined by KRS 218A.010(8).

(25) "Corrective action plan" or "CAP" means a document submitted by a 1915(c) CHILD waiver provider to the department that:

(a) States the system changes, processes, or other actions that the provider is required to take to prevent a future occurrence of a founded violation stated in a citation or findings report;

(b) States the timeframe in which the provider shall successfully implement or perform a system change, process, or other action required by the corrective action plan; and

(c) Is not valid or effective until approved by the department.

(26) "Covered services and supports" is defined by Section 6 of 907 KAR 2***:[.]***720.

(27) "Crisis Prevention and Response Plan" means **an individualized and proactive**[~~a~~] document developed as part of the person-centered service plan **that is consistent with trauma-informed and evidence-based practices that**[~~to~~]:

(a) **Identifies and anticipates medical, behavioral, or environmental crises**[~~Anticipate~~];

(b) **Mitigates the impact of any crises**[~~**Mitigate**~~];

(c) **Manages** [~~**Manage behavioral**~~][~~health~~] crises;[~~**and**~~]

(d) **Promotes**[~~**Promote**~~] safety**; and**

(e) Is reviewed and updated at least annually and revised as needed, including any change in the youth's placement or service region to ensure the plan appropriateness and accessibility of identified supports and services.

(28) "Critical incident" means an **alleged, suspected, or actual occurrence of an** incident that**:**

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;

2. A serious medication error;

3. Death;

4. A homicidal or suicidal ideation;

5. A missing person; or

6. Other action or event that the provider determines may result in harm to the participant[~~**is serious in nature and poses an immediate risk to the health, safety, or welfare of a participant. "Critical incident" includes a serious medication error**~~].

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

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

(31) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:

[~~***1.***~~] Results in an impairment of general intellectual functioning **or**[~~**and**~~] adaptive behavior similar to that of a person with an intellectual disability; and

(d)[~~**2.**~~] Is a direct result of, or is influenced by, the person's cognitive deficits.

(32) "Direct support professional" means an individual who:

(a) Provides services to a participant in accordance with Section 6 of this administrative regulation;

(b) Has direct contact with a participant when providing services to the participant;

(c) Is at least twenty-one (21) years old;

(d) Meets the personnel and training requirements established in Section 4 of this administrative regulation;

(e) Has the ability to:

1. Communicate effectively with a participant and the participant's family;
2. Read, understand, and implement written and oral instructions;
3. Perform required documentation; and
4. Participate as a member of the participant's person-centered planning team if requested by the participant; and

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person-centered service plan.

(33) "Direct support professional supervisor" means an individual who:

(a) Provides oversight of direct support professionals in the provision of services to participants;

(b) Is at least twenty-one (21) years old;

(c) Meets the personnel and training requirements established in Section 4 of this administrative regulation;

(d) Has the ability to:

1. Communicate effectively with a participant and the participant's family;
2. Read, understand, and implement written and oral instructions;
3. Perform required documentation; and
4. Participate as a member of the participant's person-centered team if requested by the participant;

(e) Has at least two (2) years of experience in providing direct support to persons with a developmental disability;

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person-centered service plan; and

(g) Completes a supervisory training curriculum approved by department or its designee within six (6) months of beginning supervisory responsibilities.

(34) "Drug paraphernalia" is defined by KRS 218A.500(1).

(35) "Early and Periodic Screening, Diagnostic, and Treatment" or "EPSDT" is defined by 42 U.S.C. 1396d(r).

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

(37) "Electronic Visit Verification" or "EVV" is an electronic system used to record information when delivering home and community-based personal care services (PCS), as required by the 21st Century Cures Act (Pub. L. No. 114-255, 130 Stat. 1033 (2016)).

(38)[~~**(37)**~~] "Employee" means an individual who is employed by a CHILD provider.

(39)[~~**(38)**~~] "Exploitation" is defined by KRS 209.020(9).

(40)[~~**(39)**~~] "Face-to-face" means in person, in the same location, or via telehealth, as consistent with 907 KAR 3:170.

(41)[~~**(40)**~~] "Functional assessment" means an assessment performed using evidenced based tools, direct observation, and empirical measurement to obtain and identify functional relations between behavioral and environmental factors.

(42)[~~**(41)**~~] "Guardian" is defined by KRS 387.010(3) for a minor and by KRS 387.812(3) for an adult.

(43)[~~**(42)**~~] "Home and Community-Based Services" or "HCBS" means services provided under a 1915(c) waiver to support individuals in community settings as an alternative to institutional care.

(44)[~~**(43)**~~] "Human rights committee" means a group of individuals:

(a) Comprised of representatives from home and community-based waiver provider agencies in the community where a participant resides; and

(b) Who meet:

1. To ensure that the rights of participants are respected and protected through due process; and
2. In accordance with the human rights committee requirements established in Section 9 of this administrative regulation.

(45)[~~**(44)**~~] "Human services field" means:

(a) Psychology;

(b) Behavioral analysis;

(c) Counseling;
(d) Rehabilitation counseling;
(e) Public health;
(f) Special education;
(g) Sociology;
(h) Gerontology;
(i) Recreational therapy;
(j) Education;
(k) Occupational therapy;
(l) Physical therapy;
(m) Speech-language pathology;
(n) Social work;
(o) Family studies; or
(p) A similar area of study consistent with the list in this subsection.

(46)[~~(45)~~] "Human services related experience" or "experience in a related human services field" means professional experience that includes:
(a) Experience as a case manager in a related human services field;
(b) Certified nursing assistant experience;
(c) Certified medical assistant experience;
(d) Certified home health aide experience;
(e) Personal care assistant experience;
(f) Paid professional experience with aging or disabled populations or programs as a case manager, a rehabilitation specialist or health specialist, or a social services coordinator;
(g) Assessment and care planning experience with clients;
(h) Experience in working directly with persons with serious mental illness, serious emotional disturbance, or substance use disorder; or
(i) Work providing assistance to individuals and groups with economically disadvantaged, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, or cultural issues.

(47)[~~(46)~~] "IDEA" means the Individuals with Disabilities Education Act.

(48)[~~(47)~~] "Illicit substance" means:
(a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels;
(b) A prohibited drug; or
(c) A prohibited substance.

(49)[~~(48)~~] "Immediate family member" is defined by KRS 205.8451(3).

(50)[~~(49)~~] "Incident" means any occurrence that impacts health, safety, welfare, or lifestyle choices of a participant and include a:
(a) Minor injury;
(b) Medication error without a serious outcome; or
(c) Behavior or situation that is not a critical incident.

(51)[~~(50)~~] "Independent functioning" means someone working alone with a participant and who is a fully trained staff.

(52)[~~**(51)**~~] "Instrumental activities of daily living" (IADLs) means actions that require more advanced skills than basic ADLs. IADLs support overall well-being and not just basic physical needs. IADLs include:

(a) Managing money;

(b) Managing a household;

(c) Communicating with healthcare providers;

(d) Preparing meals;

(e) Communicating with others;

(f) Managing transportation; or

(g) Shopping.

(53)[~~**(52)**~~] "Integrated setting" means a setting that:

(a) Enables a participant to interact with non-disabled persons to the fullest extent possible;

(b) Includes access to community activities and opportunities at times, frequencies, and with persons of a participant's choosing; and

(c) Affords a participant choice in the participant's daily activities.

(54)[~~**(53)**~~] "Intellectual disability" or "ID" means a neurodevelopmental disorder as defined by the most current Diagnostic and Statistical Manual of Mental Disorders.

(55)[~~**(54)**~~] "Intermediate Care Facility for Individuals with Intellectual Disabilities" or "ICF/IID" means an institutional setting that provides care to individuals with intellectual or developmental disabilities, as defined in 42 C.F.R. Sec. 440.150.

(56)[~~**(55)**~~] "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A parent, whether biological, step, adoptive, or foster, who provides care to the parent's minor child;

(b) A legal guardian who is a court-appointed person who has the authority to make decisions for the participant; or

(c) A spouse of a participant.

(57)[~~**(56)**~~] "Level of care determination" means a determination by the department that an individual:

(a) Meets patient status criteria for an intermediate care facility for individuals with intellectual disabilities as established in 907 KAR 1:022; or

(b) Meets patient status criteria for inpatient psychiatric hospitalization established in 907 KAR 10:016 and demonstrates requiring direct support as a result of at least one ***(1)*** of the following:

1. Has functional psychoses without significant concurrent illness;

2. Requires brief periods of protection from consequences of their behavior during acute disturbance or depression episodes, which may include suicidal or homicidal ideation, or refusal to eat;

3. Is diagnosed with an acute or chronic psychiatric illness;

4. Has a diagnosed chronic mental illness requiring regular and frequent protection, symptom management, and treatment during periods of disruptive behavior;

5. Demonstrates having a neurocognitive disorder, which is unresponsive to medication and cannot be managed in an acute care hospital due to physical aggression or risk of danger to themselves; or

6. Has episodes of agitation or restlessness produced by stressful situations which may require brief hospital treatment.

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

(59)[~~**(58)**~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(60)[~~**(59)**~~] "Licensed practical nurse" is defined by KRS 314.011(9).

(61)[~~**(60)**~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(62)[~~**(61)**~~] "Licensed psychological associate" means an individual who:

(a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.

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

(64)[~~**(63)**~~] "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(65)[~~**(64)**~~] "Management experience" means professional or volunteer work:

(a) In an organization that served individuals with an intellectual or developmental disability; and

(b) That includes experience in the execution of the overall administration of an agency including:

1. Development, implementation, and maintenance of the agency's budget;
2. Development, review, implementation, and revisions as needed of the organization's policies and procedures; and
3. Supervision of employees or volunteers including conducting performance evaluations.

(66)[~~**(65)**~~] "Mechanical or physical restraint" means any manual, physical, or mechanical method, device, material, or equipment that:

(a) Immobilizes or reduces the ability of a person to move his or her arms, legs, body, or head freely; and

(b) Does not include orthopedically prescribed devices or other devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a person for the purpose of:

1. Conducting routine physical examinations or tests;
2. Protecting the person from falling out of bed; or
3. Permitting the person to participate in activities without the risk of physical harm.

(67)[~~**(66)**~~] "Medically complex" means a child who is determined to have a medical condition as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 6.

(68)[~~**(67)**~~] "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal.

(69)[~~**(68)**~~] "Natural supports" means unpaid relationships and resources that participants rely on within their families and communities that:

(a) Support the participant in the community;

(b) Promote the participant's independence and well-being, including their sense of belonging, dignity, and self-esteem; and

(c) Are based on ordinary social relationships in family, friendships, school, clubs, activities, and in the community.

(70)[~~**(69)**~~] "Neglect" is defined by KRS 209.020(16).

(71)[~~**(70)**~~] "Participant" means a Medicaid recipient who:

(a) Meets **level of care**[~~**patient status**~~] criteria **in accordance with this section**[~~**for an intermediate care facility for individuals with intellectual disabilities as established in 907 KAR 1:022 or inpatient psychiatric hospitalization as established in 907 KAR 10:016**~~];

(b) Is service authorized by the department to receive CHILD waiver services; and

(c) Utilizes CHILD waiver services and supports in accordance with a person-centered service plan.

(72)[~~**(71)**~~] "Person-centered service plan" or "PCSP" means a written individualized plan of 1915(c) CHILD waiver services developed in accordance with the participant and family's wants, assessed needs, and preferences that may include a transition plan to a more intense or less intense level of services, and that meets the requirements of Section 7 of this administrative regulation.

(73)[~~**(72)**~~] "Person-centered team" means a participant, the participant's legal guardian, family, or representative, and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced-based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant and their family based on informed choice;

(b) Work together to identify what roles they shall assume to assist the participant in gaining stabilization and related skill development; and

(c) Include providers who receive payment for services who shall:

1. Be active, contributing members of the person-centered team meetings;
2. Base their input upon evidence-based information; and
3. Not request reimbursement for person-centered team meetings.

(74)[~~**(73)**~~] "Prohibited drug" means a drug or substance that is illegal under KRS Chapter 218A or other statutes or administrative regulations of the Commonwealth of Kentucky.

(75)[~~**(74)**~~] "Registered agent" means an individual meeting the requirements of KRS 14A.4-010(1)(b).

(76)[~~**(75)**~~] "Registered nurse" is defined by KRS 314.011(5).

(77)[~~**(76)**~~] "Registered office" means an office meeting the requirements of KRS 14A.4-010(1)(a).

(78)[~~**(77)**~~] "Representative" is defined by KRS 205.5605(6).

(79)[~~**(78)**~~] "Rights restriction" means any intervention that restricts a participant's:

(a) Movement;

(b) Access to:

1. Other individuals;
2. Locations; or
3. Activities; or

(c) Rights.

(80)[~~**(79)**~~] "Room" means the aggregate expense of housing costs for the purpose of providing shared living, including:

(a) Rent, lease, or mortgage payments;
(b) Real estate taxes;
(c) Insurance;
(d) Maintenance; and
(e) Utilities.

(81)[~~**(80)**~~] "Seclusion" means the involuntary confinement of a participant alone in:
(a) A room; or
(b) An area from which the participant is physically prevented from leaving.

(82)[~~**(81)**~~] "Serious emotional disability" or "SED" is defined by KRS 200.503.

(83)[~~**(82)**~~] "Serious medication error" means a medication error that requires or has the potential to require a medical intervention or treatment.

(84)[~~**(83)**~~] "State plan" is defined by 42 C.F.R. 430.10.

(85)[~~**(84)**~~] "Subcontractor" means an entity or an individual:
(a) Who is a currently credentialed professional or other service provider;
(b) Who has signed an agreement with a certified CHILD agency to provide CHILD services and supports; and
(c) To whom the employee requirements in this administrative regulation apply.

(86)[~~**(85)**~~] "Substance use disorder" or "SUD" means individuals with a diagnosis designated in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders, which reflects an individual's continued use of a substance despite significant substance related problems.

(87)[~~**(86)**~~] "TB" means tuberculosis.

(88)[~~**(87)**~~] "Unhoused or at risk of being unhoused" is defined by 42 U.S. Code Sec.11434a.

Section 2. General Coverage Requirements.
(1) To be eligible to receive a service in the CHILD waiver program, an individual shall:
(a) Be a child or youth up to age twenty-one (21), and classified as having a primary diagnosis of autism, developmental disability, intellectual disability, or serious emotional disability;
(b) Be designated as eligible, based on review of the child and adolescent needs and strengths (CANS) assessment;
(c) Have:
1. An approved person-centered service plan (PCSP); and
2. Prior authorization for that service pursuant to the requirements established in this administrative regulation;
(d) Meet the coverage requirements established in this administrative regulation; and
(e) Be provided services by a provider who is enrolled in accordance with this administrative regulation.
(2) The department shall ensure that duplication of services does not occur by prohibiting payment for services without prior authorization.

Section 3. 1915(c) CHILD waiver Participant Eligibility, Enrollment, and Termination.
(1) To be eligible to receive a service in the 1915(c) CHILD waiver, an individual [~~**or an individual's representative**~~]shall:
(a) Meet participant eligibility requirements:
1. Be zero ***[(0)]*** to twenty-one (21) years of age;

2. With an intellectual or developmental disability, or both, or **serious**[~~severe~~] emotional disability;[~~and~~]

3. Have been unresponsive to other services and supports enabling them to remain in a community setting and meet one ***(1)*** or more of the following criteria:

a. Be currently unhoused or at risk of being unhoused as a direct result of the intensity of their disability and care needs;

b. Have a history (within the last year) of at least two ***(2)*** different out-of-home care placements as a direct result of the intensity of their disability and care needs;

c. Within the last year, as a direct result of the intensity of the individual's disability and care needs, the individual has had any incident that involved at least five (5) contacts with:

(i) A police department;

(ii) A sheriff's office;

(iii) Emergency services; or

(iv) A fire department**; and**[.]

d. Be **recently discharged,** identified for discharge**,** or recommended for discharge from an inpatient psychiatric hospital, ICF/IID, or other similar institution, as defined in 907 KAR 1:022, Section 4 (5)(a) - (d), within the next forty-five (45) days; **or**[~~and~~]

e. Require support offered through the CHILD waiver.

(b) Complete an application in MWMA with required supporting documentation to validate that the individual meets criteria for CHILD waiver program**.*[;]***

(2) Supporting documentation to validate that the individual meets criteria for CHILD waiver shall include:

(a) For individuals aged eight (8) and under with a reported diagnosis of intellectual or developmental disability documentation of the applicant's intellectual disability, developmental disability, or other related developmental condition diagnosis.

(b) For individuals aged nine (9) to eighteen (18) with a reported diagnosis of intellectual or developmental disability, supporting documentation shall include a psychological or psycho-educational report of assessment results that has been signed by the licensed psychologist, licensed psychological associate under supervision of a board approved licensed psychologist, certified psychologist with autonomous functioning, licensed psychological practitioner, or certified school psychologist who prepared the report. The report shall include at minimum:

1. An individual, standardized test of intelligence or test of non-verbal intelligence, that is not brief or abbreviated in nature, and which results in a Full Scale IQ or equivalent score;

2. The results of a standardized assessment of adaptive behavior abilities; and

3. Documentation **that the diagnosis of intellectual or developmental disability is not solely due to the substance use or psychiatric disorder or solely due to a medical disorder not known to cause an intellectual or developmental disability**[~~**ruling out factors or conditions that may contribute to diminished cognitive and adaptive functioning, including applicant's substance use, psychiatric disorders, or medical conditions**~~].

(c) For individuals aged eighteen (18) and above with a reported diagnosis of intellectual or developmental disability, supporting documentation shall include a psychological or psycho-educational report of assessment results that has been signed by the licensed psychologist, licensed psychological associate under supervision of a board approved licensed psychologist,

certified psychologist with autonomous functioning, licensed psychological practitioner, or certified school psychologist who prepared the report. The report shall include at minimum:

1. An individual, standardized test of intelligence or non-verbal intelligence that is not brief or abbreviated in nature, and which results in a Full Scale IQ or equivalent score;
2. The results of a standardized assessment of adaptive behavior abilities; and
3. The documentation provides evidence that the condition had an onset prior to age eighteen (18).

(d) For individuals with a reported SED, supporting documentation shall include:

1. A SED checklist completed by a qualified licensed behavioral professional; and
2. Any inpatient psychiatric treatment records within the last year, if applicable.

(3) A participant shall receive notification of potential CHILD funding in accordance with eligibility requirements in Section 2 of this administrative regulation.

(4) Upon receiving notification of potential CHILD funding, the participant's case manager shall upload the following into the MWMA:

(a) The results of a physical examination that was conducted within the last twelve (12) months; and

(b) Documentation of a participant's status change.

(5) To maintain eligibility as a participant, each participant shall:

(a) Maintain Medicaid eligibility requirements established in 907 KAR 20:010; and

(b) Be reassessed and meet ICF-IID or inpatient psychiatric hospitalization level of care determination criteria, in accordance with this section, annually utilizing the CANS assessment tool.

(6) 1915(c) CHILD waiver services shall not be provided to an individual who is:

(a) Receiving a service in another 1915(c) home and community-based program;

(b) Receiving a duplicate service provided through another funding source; or

(c) An inpatient of a hospital, ICF-IID, or other facility.

(7) Involuntary termination and loss of a 1915(c) CHILD waiver service shall:

(a) Be subject to an appeal or hearing in accordance with 907 KAR 1:563; and

(b) Occur when:

1. An applicant fails to access a CHILD waiver service within ***120*** ***~~[one-hundred twenty (120)]~~*** days of receiving notice of potential funding; or
2. A participant:
   a. Fails to access any services outlined in the participant's service plan for a period greater than ***120*** ***~~[one-hundred twenty (120)]~~*** consecutive days;
   b. Moves to a residence outside of the Commonwealth of Kentucky; or
   c. Does not meet ICF-IID or inpatient psychiatric hospital level of care determination criteria in accordance with this administrative regulation.

(c) If initiated by a 1915(c) CHILD waiver provider:

1. At least thirty (30) days prior to the effective date of the termination, the 1915(c) CHILD waiver provider shall simultaneously notify electronically or in writing the:
   a. Participant or the participant's guardian;
   b. Participant's case manager; and
   c. Department or its designee.

2. The participant's case manager, in conjunction with the 1915(c) CHILD waiver provider, shall immediately act to:

a. Provide the participant or participant's guardian with the name, address, and telephone number of each current 1915(c) CHILD waiver provider in Kentucky;

b. Facilitate contacts and referrals for the participant or participant's guardian in making contact with other 1915(c) CHILD waiver provider(s);

c. Arrange or provide transportation for a requested visit to a 1915(c) CHILD waiver provider site;

d. Provide a copy of pertinent information to the participant or participant's guardian;

e. Ensure the health, safety, and welfare of the participant until another provider is chosen;

f. Continue to provide supports until alternative services or another provider is secured; and

g. Provide assistance to ensure a safe and effective service transition; and

3. The notice referenced in this paragraph shall include:

a. A statement of the intended action;

b. The basis for the intended action;

c. The authority by which the intended action is taken; and

d. The participant's right to appeal the intended action through the provider's appeal or grievance process.

(8) In the instance of a voluntary termination and loss of a 1915(c) CHILD waiver service:

(a) The department or its designee shall initiate an intent to discontinue a participant's participation in the 1915(c) CHILD waiver services if the participant or participant's guardian submits a written notice of intent to discontinue services to:

1. The 1915(c) CHILD waiver provider; and

2. The department or its designee.

(b) An action to terminate 1915(c) CHILD waiver participation shall not be initiated until thirty (30) calendar days from the date of the notice referenced in paragraph (a) of this subsection.

(c) A participant or guardian may reconsider and revoke the notice referenced in paragraph (a) of this subsection in writing during the thirty (30) calendar day period.

Section 4. 1915(c) CHILD Waiver Provider Participation Requirements.

(1) A 1915(c) CHILD waiver provider shall comply with:

(a) 907 KAR 1:671 and 672;

(b) 907 KAR 7:005;

(c) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164;

(d) 42 U.S.C. 1320d to 1320d-8; and

(e) Local laws and ordinances governing smoke-free environments, as relevant.

(2) To provide a 1915(c) CHILD waiver service, a 1915(c) CHILD waiver provider shall:

(a) Be certified by the department or its designee prior to the initiation of a service;

(b) Be recertified by the department or its designee at least biennially;

(c) In accordance with KRS 273.182, maintain a registered agent and a registered office in Kentucky with the Office of the Secretary of State and file appropriate statement of change documentation with the filing fee with the Office of Secretary of State if the registered office or agent changes;

(d) Be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky;

(e) Abide by the laws that govern the chosen business or tax structure of the 1915(c) CHILD waiver provider;

(f) Maintain policy that complies with this administrative regulation concerning the operation of the 1915(c) CHILD waiver provider and the health, safety, and welfare of all people supported or served by the 1915(c) CHILD waiver provider; and

(g) Maintain administrative oversight, which shall include management by a director.

(3) A director shall:

(a) Lead the design, development, and implementation of strategic plans for a CHILD provider;

(b) Maintain responsibility for the day-to-day operation of the CHILD provider organization;

(c) Have at least a bachelor's degree in a human service field or be a registered nurse and have two (2) years of documented experience with the target population, and two (2) years of management experience;

(d) Have at least two (2) years of:

1. Experience in the field of intellectual or developmental disabilities or inpatient psychiatric hospitals; and

2. Management experience***;[:]***

(e) Meet all personnel and training requirements specified in this section;

(f) If providing professional oversight or supervision of employees, meet the supervisory qualifications specified for each service;

(g) Assume authority and responsibility for the management of the affairs of the 1915(c) CHILD waiver provider in accordance with written policy and procedures that comply with this administrative regulation; and

(h) Participate in all department directed survey initiatives.

(4) A 1915(c) CHILD waiver provider:

(a) Shall ensure that 1915(c) CHILD waiver services are not provided to a participant by a staff person of the 1915(c) CHILD waiver provider who is a guardian, legally responsible individual, or immediate family member of the participant;

(b) Shall not agree to serve a participant whose needs the 1915(c) CHILD waiver provider is unable to meet;

(c) Shall have and follow written criteria that comply with this administrative regulation for determining the appropriateness of a participant for admission to services;

(d) Shall document:

1. Each denial by the provider for a service requested or necessary for the 1915(c) CHILD waiver participant; and

2. The reason for the denial;

(e) Shall maintain documentation of its operations including:

1. A written description of available 1915(c) CHILD waiver services;

2. A current table of organizational structure;

3. Any memorandum of understanding between a participant's case management agency and the participant's service providers;

4. Information regarding participants' satisfaction with services and the utilization of that information;

5. A quality improvement plan that:

a. Includes updated findings and corrective actions, and corrective action plans as a result of department and case management quality assurance monitoring; and

b. Addresses how the provider shall:

(i) Ensure that the participant receives person-centered 1915(c) CHILD waiver services;

(ii) Enable the participant to be safe, healthy, and respected in the participant's chosen community;

(iii) Enable the participant to live in the community with effective, individualized assistance; and

(iv) Enable the participant to enjoy living and working in the participant's community;

6. A written plan of how the 1915(c) CHILD waiver provider shall participate in the human rights committee in the area the 1915(c) CHILD waiver provider is located;

(f) Shall maintain accurate fiscal information including documentation of revenues and expenses;

(g) Shall meet the following requirements, if responsible, for the management of a participant's funds:

1. Separate accounting shall be maintained for each participant or for the participant's interest in a common trust or special account;

2. Account balance and records of transactions shall be provided to the participant or the participant's guardian on a quarterly basis; and

3. The participant or the participant's guardian shall be notified if a balance is accrued that may affect Medicaid eligibility;

(h) Shall have a written statement of its mission and values, related to the 1915(c) CHILD waiver, which shall:

1. Support participant empowerment and informed decision-making;

2. Support and assist participants to form and remain connected to natural support networks;

3. Promote participant dignity and self-worth;

4. Support team meetings that help ensure and promote the participant's right to choice, inclusion, employment, growth, and privacy;

5. Foster a restraint-free environment where the use of physical restraints, seclusion, chemical restraints, or aversive techniques shall be prohibited; and

6. Support the 1915(c) CHILD waiver goal that all participants:

a. Receive person-centered 1915(c) CHILD waiver services;

b. Are safe, healthy, and respected in the participant's community;

c. Live in the community with effective, individualized assistance; and

d. Enjoy living and working in the participant's community;

(i) Shall have written policy and procedures for communication and interaction with a participant, family, or participant's guardian, which shall include:

1. A response within seventy-two (72) hours of an inquiry;

2. The guidelines for interaction with direct support professionals;

3. Notification timelines surrounding critical and non-critical incidents;

4. Visitation with the participant at any reasonable time, without prior notice, and with due regard for the participant's right to privacy;

5. Involvement in decision making regarding the selection and direction of the person-centered service provided; and

6. Consideration of the cultural, educational, language, and socioeconomic characteristics of the participant and family being supported;

(j) Shall ensure the rights of a participant by:

1. Providing conflict-free services and supports that are person-centered; and

2. Making available a description of the rights and means by which the rights may be exercised and supported including the right to:

a. Live and work in an integrated setting;

b. Time, space, and opportunity for personal privacy;

c. Communicate, associate, and meet privately with the person of choice;

d. Send and receive unopened mail;

e. Retain and use personal possessions including clothing and personal articles;

f. Private, accessible use of a telephone or cell phone;

g. Access accurate and easy-to-read information;

h. Be treated with dignity and respect and to maintain one's dignity and individuality;

i. Voice grievances and complaints regarding services and supports that are furnished without fear of retaliation, discrimination, coercion, or reprisal;

j. Choose among service providers;

k. Accept or refuse services;

l. Be informed of and participate in preparing the PCSP and any changes in the PCSP;

m. Be advised in advance of the:

(i) Provider or providers who shall furnish services; and

(ii) Frequency and duration of services;

n. Confidential treatment of all information, including information in the participant's records;

o. Receive services in accordance with the current PCSP;

p. Be informed of the name, business, telephone number, and business address of the person supervising the services and how to contact the person;

q. Have the participant's property and residence treated with respect;

r. Be fully informed of any cost sharing liability and the consequences if any cost sharing is not paid;

s. Review the participant's records upon request;

t. Receive adequate and appropriate services without discrimination;

u. Be free from and educated on mental, verbal, sexual, and physical abuse, neglect, exploitation, isolation, and corporal or unusual punishment, including interference with daily functions of living; and

v. Be free from mechanical, chemical, or physical restraints;

3. Having a grievance and appeals system that includes an external mechanism for review of complaints; and

4. Ensuring access to participation in the local human rights committee in accordance with the human rights committee requirements established in Section 9 of this administrative regulation;

(k) Shall maintain, as applicable, fiscal records, service records, investigations, medication error logs, and incident reports for seven (7) years from the date of final payment for services;
(l) Shall make available all records, internal investigations, and incident reports:
1. To the:
a. Department or its designee;
b. Office of Inspector General or its designee;
c. Office of the State Budget Director or its designee;
d. Office of the Auditor of Public Accounts or its designee;
e. Office of the Attorney General or its designee;
f. Department for Community Based Services (DCBS); and
g. Centers for Medicare and Medicaid Services; or
2. Pertaining to a participant to:
a. The participant, the participant's guardian, or the participant's case manager upon request; or
b. Protection and Advocacy upon written request;
(m) Shall cooperate with monitoring visits from monitoring agents;
(n) Shall maintain a record in MWMA for each participant served that shall:
1. Contain all information necessary to support person-centered practices;
2. Be cumulative;
3. Be readily available;
4. Contain the following:
a. The participant's name, Social Security number, and Medicaid identification number;
b. The results of a department approved functional assessment;
c. The current PCSP;
d. The goals and objectives identified by the participant and the participant's person-centered team that facilitates achievement of the participant's chosen outcomes as identified in the participant's PCSP;
e. A list containing emergency contact telephone numbers;
f. The participant's history of allergies with appropriate allergy alerts;
g. The participant's medication record, including a copy of the signed or authorized current prescription or medical orders and the medication administration record if medication is administered at the service site;
h. A recognizable photograph of the participant;
i. Legally adequate consent, updated annually, and a copy of which is located at each service site for the provision of services or other treatment requiring emergency attention;
j. The prior authorization notifications;
k. Incident reports, if any exist;
l. The results of a physical examination that was conducted within the last twelve (12) months; and
m. Documentation of a participant's status change.
5. Be maintained by the provider in a manner that:
a. Ensures the confidentiality of the participant's record and other personal information; and
b. Allows the participant or guardian to determine when to share the information in accordance with law; and

6. Be safe from loss, destruction, or use by an unauthorized person;

(o) Shall ensure that an employee or volunteer:

1. Behaves in a legal and ethical manner in providing a service;

2. Has a valid Social Security number or valid work permit if not a citizen of the United States of America; and

3. If responsible for driving a participant during a service delivery, has a valid driver's license with proof of current mandatory liability insurance for the vehicle used to transport the participant;

(p) Shall ensure that an employee or volunteer:

1. Completes a tuberculosis (TB) risk assessment, as defined in 902 KAR 20:205, performed by a licensed medical professional (a physician, an advanced practice registered nurse, a physician assistant, a registered nurse, a licensed practical nurse, or a pharmacist), and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider within thirty (30) days of the date of hire or date the individual began serving as a volunteer; or

2. Who tests positive for TB or has a history of positive TB skin tests:

a. Shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and

b. If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work or volunteer, is administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease;

(q) Shall maintain documentation:

1. Of an annual TB risk assessment or negative TB test for each employee who performs direct support or a supervisory function; or

2. Annually for each employee with a positive TB test that ensures no active disease symptoms are present;

(r) Shall provide a written job description for each staff person that describes the required qualifications, duties, and responsibilities for the person's job;

(s) Shall maintain an employee record for each employee that includes:

1. The employee's experience;

2. The employee's training;

3. Documented competency of the employee;

4. Evidence of the employee's current licensure or registration if required by law; and

5. An annual evaluation of the employee's performance;

(t) Shall require a background check:

1. And drug testing for each employee who is paid with funds administered by the department and who:

a. Provides support to a participant who utilizes 1915(c) CHILD waiver services; or

b. Manages funds or services on behalf of a participant who utilizes 1915(c) CHILD waiver services; or

2. For a volunteer recruited and placed by an agency or provider who has the potential to interact with a participant;

(u)

1. Shall for a potential employee or volunteer obtain:

a. The results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteerism;

b. The results of a nurse aide abuse registry check as described in 906 KAR 1:100 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteerism;

c. The results of a vulnerable adult maltreatment registry check as described in 922 KAR 5:120 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteerism; and

d. Within thirty (30) days of the date of hire or initial date of volunteerism, the results of a central registry check as described in 922 KAR 1:470 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteerism; or

2. May use Kentucky's National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph;

(v) Shall for each potential employee obtain negative results of drug testing for illicit substances or prohibited drugs;

(w) Shall on an annual basis:

1. Randomly select and perform criminal history background checks, nurse aide abuse registry checks, central registry checks, and vulnerable adult maltreatment registry checks of at least twenty-five (25) percent of employees; and

2. Conduct drug testing of at least five (5) percent of employees;

(x) Shall not use an employee or volunteer to provide 1915(c) CHILD waiver services if the employee or volunteer:

1. Has a prior conviction of an offense delineated in KRS 17.165(1) - (3);

2. Has a prior felony conviction or diversion program that has not been completed;

3. Has a drug related conviction within the past two (2) years;

4. Has a positive drug test conducted by the employer within the previous six (6) months for prohibited drugs;

5. Has a conviction of abuse, neglect, or exploitation;

6. Has a Cabinet for Health and Family Services finding of:

a. Child abuse or neglect pursuant to the central registry; or

b. Adult abuse, neglect, or exploitation pursuant to the vulnerable adult maltreatment registry; or

7. Is listed on the nurse aide abuse registry; or

8. Is listed on the List of Excluded Individuals and Entities maintained by the Office of Inspector General of the U.S. Department of Health and Human Services;

(y) Shall not permit an employee to transport a participant if the employee has a driving under the influence conviction, amended plea bargain, or diversion during the past year;

(z) Shall:

1. Maintain adequate staffing and supervision to implement services being billed; and

2. Ensure that any direct support professionals are managed by a direct support professional supervisor;

(aa) Shall establish written guidelines that address and ensure the health, safety, and welfare of a participant, which shall include:

1. A basic infection control plan that includes:
   a. Universal precautions;
   b. Hand washing;
   c. Proper disposal of biohazards and sharp instruments; and
   d. Management of common illness likely to be emergent in the particular service setting;
2. Effective cleaning procedures sufficient to maintain a sanitary and comfortable environment that prevents the development and transmission of infection;
3. Ensuring that each site operated by the provider is equipped with:
   a. An operational smoke detector placed in all bedrooms and other strategic locations; and
   b. At least two (2) correctly charged fire extinguishers placed in strategic locations, at least one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
4. For a site operated by a provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature complying with the safety limits established in the participant's PCSP;
5. Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080, which shall ensure:
   a. Safe storage and use; and
   b. That firearms and ammunition are permitted:
      (i) Only in non-provider owned or leased residences; and
      (ii) Only if stored separately and under double lock;
6. Establishing written procedures concerning the safe storage of common household items;
7. Ensuring that the nutritional needs of a participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
8. Ensuring that an adequate and nutritious food supply is maintained as needed by the participant;
9. Ensuring a smoke-free environment in settings in which the participant is expected to spend any amount of time, including home, a meeting site, or any other location;
10. Ensuring that:
   a. Every case manager and any employee who shall be administering medication, unless the employee is a currently licensed or registered nurse, has:
      (i) Specific training provided by a registered nurse per a department approved medication administration curriculum; and
      (ii) Documented competency on medication administration, medication cause and effect, and proper administration and storage of medication; and
   b. An individual administering medication documents all medication administered, including self-administered and over-the-counter drugs, on a medication administration record, with the date, time, and initials of the person who administered the medication, and ensure that the medication shall:
      (i) Be kept in a locked container;
      (ii) If a controlled substance, be kept under double lock and stored separately from other medications, with a documented medication count performed every shift;

(iii) Be carried in a proper container labeled with medication and dosage pursuant to KRS 315.010(9) and 217.182(6);

(iv) Accompany and be administered to a participant at a program site other than the participant's residence if necessary; and

(v) Be documented on a medication administration record and properly disposed of, if discontinued; and

11. Adhering to policies and procedures for ongoing monitoring of medication administration;

(bb) Shall establish and follow written guidelines for handling an emergency or a disaster, which shall:

1. Be readily accessible on site;
2. Include instruction for notification procedures and the use of alarm and signal systems to alert a participant according to the participant's disability;
3. Include documentation of training and competency of staff and training of participants on emergency disaster drills;
4. Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and, for a participant who receives residential support services, is scheduled to include a time when the participant is asleep; and
5. Mandate that the result of an evacuation drill be evaluated and if not successfully completed within three (3) minutes shall modify staffing support as necessary and repeat the evacuation drill within seven (7) days;

(cc) Shall provide orientation for each new employee, which shall include the mission, goals, organization, and practices, policies, and procedures of the agency;

(dd) Shall require documentation of all face-to-face training, which shall include:

1. The type of training provided;
2. The name and title of the trainer;
3. The training objectives;
4. The length of the training;
5. The date of completion;
6. The signature of the trainee verifying completion; and
7. Verification of competency of the trainee as demonstrated by post-training assessments, competency checklists, or post-training observations and evaluations;

(ee) Shall require documentation of web-based training, which shall include transcripts verifying successful completion of training objectives with scores of 85% or higher; and competency checklist listing date of completion, signature of evaluator, and signature of trainee for all modules required in department approved web-based training within the timeframe specified;

(ff) Shall ensure that each case manager or employee prior to independent functioning and no later than six (6) months from the date of employment successfully completes training that shall include:

1. First aid and cardiopulmonary resuscitation certification by a nationally accredited entity;
2. Successful completion of all required department-approved web-based training for CHILD waiver providers;

3. Individualized instruction about the person-centered service plan of the participant to whom the trainee provides supports including training on behavior support plans, if applicable; and

4. Verification of trainee competency as demonstrated by department-approved training, competency checklists, and post-training observations or evaluations; and

(gg) A provider that accepts placement of a child in DCBS custody with medical complexity who is in the custody of the cabinet shall:

1. Consult with the cabinet medically complex liaison about the child prior to accepting the placement;

2. Obtain written documentation from a licensed health care provider stating that the direct care staff has received training on meeting the specific needs of the child prior to placement;

3. Submit to the cabinet medically complex liaison written documentation containing the plan to meet the child's specific medical needs based on the licensed health care provider's plan of care and the training required by subparagraph 2. of this paragraph prior to placement;

4. Ensure that services are provided in locations within a one (1) hour drive of a medical hospital with an emergency room and within a thirty (30) minute drive of a local medical facility; and

5. Require designated staff to have attended the cabinet training on children with medical complexity.

(5) A 1915(c) CHILD waiver provider, employee, or volunteer shall:

(a) Not manufacture, distribute, dispense, be under the influence of, purchase, possess, use, or attempt to purchase or obtain, sell, or transfer any of the following in the workplace or while performing work duties:

1. An alcoholic beverage;

2. A controlled substance, except a 1915(c) CHILD waiver provider, employee, or volunteer may use or possess a medically necessary and legally prescribed controlled substance;

3. An illicit substance;

4. A prohibited drug or prohibited substance;

5. Drug paraphernalia; or

6. A substance that resembles a controlled substance, if there is evidence that the individual intended to pass off the item as a controlled substance; and

(b) Not possess a prescription drug for the purpose of selling or distributing it.

(6) If transportation is provided directly, contracted for, or arranged, a provider shall require:

(a) Compliance with state laws pertaining to vehicles, drivers, and insurance;

(b) A separate seat for each child and that the child remain seated while the vehicle is in motion;

(c) That a vehicle used to transport a child provides a seat for each passenger that is manufactured standard equipment for that vehicle is available;

(d) That a **participant**[~~**child**~~] is never left unattended in a vehicle;

(e) A child under the age of eight (8) who is less than fifty-seven (57) inches tall shall not be transported unless restrained in a safety seat that meets the requirements established in KRS 189.125(3);

(f) That a seat belt or child seat be used to secure each passenger;

(g) That a vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult;

(h) If transportation is provided by a means other than licensed public transportation:

1. The vehicle shall be maintained in a safe mechanical and operable condition;

2. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and

3. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.

Section 5. Case Management Services Provided within the CHILD Waiver.

(1) Case Management.

(a) Case management activities shall include:

1. Assisting participants in gaining access to waiver services and other needed services through the Medicaid state plan and other non-Medicaid funded community-based programs to support the participant's home and community-based needs.

2. Working with the participant, the participant's legal guardian, or their authorized representative and others who the participant identifies, such as immediate family member(s), in developing a person-centered service plan (PCSP).

3. Using a person-centered planning process, case managers assist in identifying and implementing support strategies to enable the PCSP to advance the participant's identified goals while meeting assessed community-based needs using waiver and non-waiver funded services. Support strategies incorporate:

a. The principles of empowerment;

b. Community inclusion;

c. Health and safety assurances; and

d.

(i) The use of formal, informal, and community supports; and

(ii) Utilizing the resultant PCSP identifies applicable unpaid natural supports and provides for transition plans when a child or youth is expected to age out or otherwise transition from the CHILD waiver program.

(b) In accordance with federal requirements, case managers adhere to the following person-centered principles during all planning, coordination, and monitoring activities that:

1. Activities are documented, and

2. The person-centered service plan is updated at least annually and more often as needed using the person-centered planning processes described in this regulation and in 42 C.F.R. 441.725.

(c) Case management may be provided in-person or virtually via telehealth (as approved in a participant's PCSP) to provide coordination and oversight to assure the following:

1. Conflict-free options counseling to select appropriate services to meet identified needs and HCBS goals, along with education about available HCBS service providers;

2. The desires and needs of the participant are determined through a person-centered planning process;

3. The development or review of the PCSP, including monitoring of the effectiveness of the PCSP to advance person-centered goals and objectives and respond to changes in participant goals and objectives;

4. The coordination of multiple services or among multiple providers;

5. Linking waiver participants to services that support their home and community-based needs, regardless of funding source;

6. Monitoring the implementation of the PCSP and participant health and welfare;

7. Addressing problems in service provision;

8. Implementing participant crisis mitigation plans and making appropriate referrals to address active or potential crisis, when appropriate;

9. Detecting, reporting, and mitigating suspected abuse, neglect, and exploitation of participants, including adherence to mandatory reporter laws, and monitoring the quality of the supports and services;

10. Assisting participants in developing and coordinating access to social networks to promote community inclusion as requested by the participant;

11. Assess the quality of services, safety of services, and cost-effectiveness of services being provided to a participant to ensure that implementation of the participant's PCSP is successful and completed in a way that is efficient regarding the participant's financial assets and benefits;

12. Collaborate with involved [**~~MCO~~**]care teams on:

a. Identifying necessary non-waiver (Medicaid and non-Medicaid funded services) to include in PCSPs;

b. Coordinate state plan non-emergency medical transportation; and

c. Other activities as required to wholly support the child or youth in the community.

(d) This service:

1. Shall be provided in-person or face-to-face via telehealth.

a. This service may be provided via telehealth at the request or benefit of the participant.

b. Participation in services via telehealth shall be documented in the PCSP.

c. Participants who are offered telehealth by the provider have the right to request and receive in-person services instead.

d. Provision of services via telehealth shall be carried out in accordance with KAR 907 3:170.

2. Shall be provided in-person, at least every other month, and shall be provided in the participant's residence at least every three (3) months.

(e) Case managers shall document the use of the identified telehealth technology in the PCSP and when appropriate, shall connect participants with trainings.

(f) A 1915(c) CHILD waiver case manager provider shall comply with the following personnel requirements of having or attaining experience or licensure:

1. Bachelor's degree in social work, human services, or a similar relevant field;

2.

a. Bachelor's degree in any field not closely related; and

b. One (1) year of human services related experience;

3. A registered nurse;

4. A behavioral health practitioner; or

5. A behavioral health practitioner under clinical supervision.

(g) A case manager shall complete department approved case management training within six (6) months of beginning to provide case management services through the CHILD waiver.

(2) A case manager shall:

(a) Be able to identify and meet the needs of the participant through coordination of Medicaid and non-Medicaid services within the participant's home and community to align with the participant's goals as identified in the functional assessment and documented in the PCSP.
(b) Be competent in the participant's language whether through possessing linguistic proficiency, fluency of the language, or through interpretation, and able to communicate effectively with a participant in the participant's preferred manner of communication and with the participant's family.
(c) Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant.
(d) Read, understand, and implement written and oral instructions.
(e) Perform required documentation.
(f) Demonstrate competence and knowledge of topics required to safely support the participant as described in the participant's PCSP.
(g) Ensure that:
1. The participant is educated in a way that addresses the participant's:
a. Need for knowledge of the case management process;
b. Personal rights; and
c. Risks and responsibilities as well as awareness of available services;
2. All individuals involved in implementing the participant's PCSP are informed of changes in the scope of services related to the PCSP as applicable;
3. The participant is educated on how case management services support 1915(c) CHILD waiver; and
4. Case management services are available to a participant by phone or in person:
a. Twenty-four (24) hours per day, seven (7) days per week; and
b. To assist the participant in obtaining community resources as needed to:
(i) Comply with applicable federal and state laws and requirements;
(ii) Continually monitor a participant's health, safety, and welfare; and
(iii) Complete or revise a PCSP;
(h) Have a code of ethics to guide the case manager in providing case management, which shall address:
1. Advocating for standards that promote outcomes of quality;
2. Ensuring that no harm is done;
3. Respecting the rights of others to make their own decisions;
4. Treating others fairly; and
5. Being faithful and following through on promises and commitments;
(i) Assist the participant to lead the person-centered service planning team to:
1. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's PCSP;
2. Include the participant's participation and legal guardian participation, if applicable, in the case management process; and
3. Make the participant's preferences and participation in decision making a priority;
(j) Document:
1. Interactions and communications with other agencies involved in implementing the participant's PCSP; and

2. Personal observations;

(k) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's PCSP;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant to ensure that implementation of the participant's PCSP is successful and completed in a way that is efficient regarding the participant's financial assets and benefits;

(m) Utilize the MWMA to fulfill case management responsibilities, including:

1. Documenting that the participant's health, safety, and welfare are not at risk;

2. Gathering data regarding the participant's satisfaction with the services for use in guiding the person-centered planning process; and

3. Recording how the person-centered team shall address the following:

a. Expanding and deepening the participant's relationships;

b. Increasing the participant's presence in local community life; and

c. Helping the participant to have more choice and control; and

4. Document via an entry into the MWMA, when available, if a participant is:

a. Terminated from a waiver program;

b. Admitted to a hospital;

c. Unable to access services;

d. Admitted to an intermediate care facility;

e. Admitted to a nursing facility;

f. Modifying providers and services;

g. Changing the case management agency;

h. Transferred to another Medicaid 1915(c) home and community-based waiver service program; or

i. Relocated to a different address;

(n) [~~**Complete the required National Center on Advancing Person-Centered Practices and Systems (NCAPPS) Training;**~~]

[~~**(o)**~~] Present to or engage with a human rights committee on the participant's behalf as needed; and

(o)[~~**(p)**~~] Ensure that rights restrictions are reviewed at least every six (6) months or less, as determined necessary by the human rights committee.

(3) Case management for any participant who begins receiving 1915(c) CHILD waiver services after the effective date of this administrative regulation shall be conflict free except as allowed in paragraph (b) of this subsection.

(a) Conflict free case management shall be a scenario in which a provider, including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant, shall not also provide another 1915(c) CHILD waiver service to that same participant.

(b) An exemption to the conflict free case management requirement shall be granted if:

1. The participant's case manager provides accurate documentation of evidence to the department or its designee that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence; and

2. The participant or participant's representative and case manager shall submit the Conflict Free Case Management Exemption within the MWMA.

(c) If a case management service is approved to be provided despite not being conflict free, the case management provider shall:

1. Document conflict of interest protections;
2. Separate case management and service provision functions within the provider entity; and
3. Demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

(d) An exemption to the conflict free case management requirement shall be requested upon re-evaluation or at least annually.

(4) A case management agency providing case management to a 1915(c) CHILD waiver participant shall not make a referral to any 1915(c) CHILD waiver services provider to provide services for the same participant if the provider agency has an individual with an ownership interest who is an immediate family member of an individual with an ownership interest in the referring case management agency.

(5) Case management shall:

(a) Assist a participant in the identification, coordination, arrangement, and facilitation of the person-centered team and person-centered team meetings;

(b) Assist a participant and the person-centered team to develop an individualized PCSP and update it as necessary based on changes in the participant's medical condition and supports;

(c) Assist a participant to gain access to and maintain employment, membership in community clubs and groups, activities, and opportunities at the times, frequencies, and with the people the participant chooses;

(d) Be provided by a case manager who:

1. Meets the requirements of subsection (1) of this section;
2. Shall provide a participant and legal representative with a listing of each available 1915(c) CHILD waiver provider in the service area;
3. Shall maintain documentation signed by a participant or legal representative of informed choice of a 1915(c) CHILD waiver provider and of any change to the selection of a CHILD waiver provider and the reason for the change;
4. Shall provide a distribution of the crisis prevention and response plan, transition plan, PCSP, and other documents within the first thirty (30) days of the service to the chosen 1915(c) CHILD waiver service provider and as information is updated;
5. Shall provide twenty-four (24) hour telephone access to a participant and chosen 1915(c) CHILD waiver provider;
6. Shall work in conjunction with a 1915(c) CHILD waiver provider selected by a participant to develop a crisis prevention and response plan, which shall be:
   a. Individual-specific and person-centered;
   b. Updated as a change occurs; and
   c. Reviewed and updated as necessary at each recertification; and

(e) Case management under the CHILD 1915(c) waiver shall not duplicate or supplant targeted case management or care coordination offered under the Medicaid state plan[~~**or a child's MCO, respectively**~~].

(6) A monthly summary for case management shall follow the calendar month, shall be inclusive of all service dates within the calendar month, and shall be written and available for review in

the MWMA no later than fifteen (15) business days following the last day of the month. The monthly summary shall contain:

(a) A description of progress toward the participant's outcome(s) as noted by the pertinent waiver requirements;

(b) Reflect the monitoring of the services;

(c) Documentation of pertinent contacts and communications conducted with or on behalf of the participant;

(d) If the participant has a guardian, regular check-ins with the guardian;

(e) Month and year for the time period the note covers; and

(f) Name, date, title, and signature of the person completing the summary.

(7) The case manager shall have these additional PCSP monitoring requirements:

(a) All service documentation shall be reviewed by the case manager to assist with monitoring services for each participant;

(b) A case manager shall address concerns with the quality of services or documentation with a provider as part of managing the PCSP;

(c) A case manager shall ensure that documentation thoroughly addresses:

1. The current status of the client;
2. The services utilized to address specific goals established in the PCSP; and
3. Resolution of any concern expressed by the client or provider.

(8) A case management agency providing case management services pursuant to this section shall employee a case manager supervisor to oversee case managers and case management duties pursuant to this administrative regulation.

Section 6. Covered Services. Services shall be covered under this administrative regulation in accordance with the requirements established in this section.

(1) Respite.

(a) Respite services are provided to CHILD waiver participants who are unable to independently care for themselves.

(b) Respite services are provided on a short-term basis due to the absence of or need for relief of the primary caregiver.

(c) Respite may be provided in a variety of settings including:

1. The participant's own residence;
2. In the community; or
3. A CHILD certified residential setting.

(d) A provider may not use another person's bedroom or another person's belongings to provide respite for a different person.

(e) Respite care shall not be furnished for the purpose of compensating relief or to substitute staff for a supervised residential care agency staff member. The costs of any substitute residential care agency staff shall be met from payments for supervised residential care services.

(f) Respite provided under the CHILD waiver shall not supplant educational services available under the IDEA (20 U.S.C. 1401 et seq.).

(g) Respite services made available through the CHILD waiver shall not supplant or duplicate similar services available under the Kentucky Medicaid state plan.

(h) The following limitations shall apply to the respite service as provided under the CHILD waiver:

1. Unit of service: fifteen (15) minutes.
2. Limited to 830 hours per waiver eligibility span, unless otherwise approved through the established exceptional review process pursuant to 907 KAR 2:725.
3. Children and youth currently authorized and receiving supervised residential care shall not receive respite services.
4. Respite shall not be authorized during school hours except when the CHILD waiver participant is unable to attend school or receive educational services due to a disciplinary exclusion, if the CHILD waiver participant attends a partial school day, or when the CHILD waiver participant receives educational services while in a home-hospital setting.

(i) Service documentation requires the use of electronic visit verification and shall align with 21st Century Cures Act.

(j) A respite service shall be documented **via EVV, and**[~~**in the MWMA by a note which**~~] shall be entered at the time the service is rendered and shall include:

1. The participant's health, safety, and welfare;
2. Type of service provided;
3. Name of the individual receiving the service;
4. The date of the service;
5. Location of the service [~~**(not specific address)**~~];
6. The beginning and ending times of service provision; and
7. The signature and title of the individual providing the service.

(2) Community living supports.

(a) Community living supports assists enrolled children and youth with age-appropriate tasks that would otherwise be accomplished but for the participant's disability.

(b) Community living supports are intended to provide direct one-on-one assistance, including:

1. Assistance, as described in (3)(b);
2. Support, which shall include reminding, observing, and guiding; and
3. Training in activities such as:
   a. ADLs such as bathing, eating, dressing, toileting, transferring;
   b. IADLs such as shopping**,** ***[;]*** money management, meal preparation**,** or light housework;
   c. Medication monitoring; or
   d. Non-medical care not requiring nurse or physician intervention.

(c) Community living supports also includes:

1. Socialization;
2. Relationship building; or
3. Leisure choice and participation in generic community activities.

(d) Community living supports facilitates independence and promotes integration into the community.

(e) Community living supports are based upon therapeutic goals, are not diversional in nature, and are not intended to replace other work or day activities.

(f) This service may take place in an individual's home or the community, based on the child or youth's assessed needs and in accordance with the approved PCSP.

(g) Community living supports shall only be authorized for children or youth who are not currently authorized to receive and receiving supervised residential care, unless the conditions noted in paragraphs (p)-(s) of this subsection are otherwise met.

(h) Community living supports shall not be authorized during school hours except:

1. When the CHILD waiver participant is unable to attend school or receive educational services due to a disciplinary exclusion;
2. If the CHILD waiver participant attends a partial school day; or
3. When the CHILD waiver participant receives educational services while in a home-hospital setting.

(i) Providers of community living supports shall be limited to certified waiver providers.

(j) Legally responsible individuals, relatives (as consistent with 922 KAR 2:160), and guardians shall be prohibited from becoming providers of community living supports for their child, relative, or ward.

(k) Community living supports shall not be available when medically necessary personal care is covered by EPSDT.

(l) Community living supports are limited to additional services intended to avoid institutionalization that are not otherwise covered under the Kentucky Medicaid state plan, including EPSDT.

(m) Community living supports shall not supplant education services available under the IDEA.

(n) Community living supports shall be limited to 448 fifteen (15)-minute units (112 hours) per week, with no more than sixteen (16) hours per day delivered, unless otherwise approved through the established exceptional review process as enumerated in Kentucky 907 KAR 2:725.

(o) Community living supports shall not be authorized for children or youth who are currently authorized and receiving supervised residential care, unless the participant's person-centered service plan includes documented evidence that the individual and their support system are reintegrating the individual back to the individual's family (including foster parent's) residential home. When participants are working to reintegrate into their family (including foster parent's) home, these additional community living supports restrictions shall apply:

1. Authorizations shall be limited to no more than a total of eighty (80), fifteen (15) minute units per week; and
2. Authorization shall expire if the child or youth is no longer actively working towards reintegration.

(p) Documentation requirements for 1915(c) CHILD waiver community living supports providers:

1. Service documentation shall require the use of electronic visit verification as outlined in the 21st Century Cures Act.
2. A community living supports service shall be documented **via EVV, and**[~~**in the MWMA by a note, which**~~] shall be entered at the time the service is rendered and shall include:
   a. The participant's health, safety, and welfare;
   b. Type of service provided;
   c. Name of the individual receiving the service;
   d. The date of the service;
   e. Location of the service (not specific address);
   f. The beginning and ending times of service provision; and

g. The signature and title of the individual providing the service.

3. **Community living supports providers shall maintain** documentation **that** shall be person centered and reflect the support provided to the participant, including:

a. The goal from the PCSP addressed by the service;

b. The activity completed to meet the goal and the outcome;

c. How the participant responded to the service; and

d. Any progress or lack thereof toward the goals and objectives reflected on the PCSP.

(3) Environmental and Minor Home Modifications.

(a) Environmental and minor home modifications consist of any necessary adaptations to a private or family residence required to ensure the child or youth's health, welfare, and safety.

(b) Environmental and minor home modifications shall be delineated in the PCSP and may include adaptations to the home such as:

1. Installation of ramps and grab-bars;

2. Wheelchair accessibility modifications, including widening of doorways, lowering of counters ***or[/]***cabinets, and modification of bathroom facilities; or

3. Installation of specialized electric and plumbing systems that are necessary to accommodate those medical equipment and supplies which are necessary for the welfare of the individual.

(c) Environmental and minor home modifications shall not include certain adaptations or improvements to the home that are not of direct medical or remedial benefit to the waiver participant.

(d) Approval from the department shall be required for requested items not included pursuant to paragraph (b) of this subsection when a clinician overseeing the child or youth's care provides documentation of the medical need.

(e) Environmental and minor home modifications may be authorized up to 120 days prior to discharge of a child or youth transitioning from an ICF/IID or an inpatient psychiatric hospital to a family, guardian, or foster care home.

(f) Environmental and minor home modifications shall not be reimbursed by the department until the date a child or youth is enrolled in the waiver following discharge from the institution.

(g) Adaptations that add to the total square footage of the home shall be excluded from this benefit except when necessary to complete an adaptation.

(h)

1. Environmental and minor home modifications may be approved for children and youth living in a family, guardian, or foster care home.

2. Children and youth who are residing in a supervised residential care setting shall not be authorized for environmental and minor home modifications.

(i) Environmental and minor home modifications shall be limited to additional services intended to avoid institutionalization that are not otherwise covered under the Kentucky Medicaid state plan, including EPSDT.

(j) Environmental and minor home modifications, shall be provided:

1. In accordance with applicable state and local building codes; and

2. By a vendor who shall be in good standing with the Office of the Secretary of State.

(k) Environmental and minor home modifications shall have a CHILD waiver lifetime cost limit as established pursuant to 907 KAR 2:725, unless otherwise approved through the established exceptional review process.

(l) Documentation requirements for 1915(c) CHILD waiver environmental and minor home modifications providers shall include:

1. A description of each adaptation purchased;
2. A receipt for every adaptation made, which shall include the:
   a. Date of purchase;
   b. Description of the item;
   c. Quantity and per unit price; and
   d. Total amount of the purchase.
3. The signature and title of the case manager; and
4. The date the entry was made in the record.

(4) Clinical Therapeutic Services.

(a) Clinical therapeutic services shall be for the purpose of supporting children, youth, and their families, based on assessed needs, in understanding, mitigating, and providing long term solutions for behavior challenges.

(b) This service is designed to provide family crisis prevention and stabilization supports to the waiver enrolled child or youth, primary caregiver, or family (including foster care families).

(c) Clinical therapeutic services may be used to support other waiver providers[**~~, with the exception of those providing environmental and minor home modifications,~~**] working with a child or youth on the types of prevention and stabilization techniques best suited to the child's needs.

(d) Activities provided through clinical therapeutic services to achieve the service's intended outcomes include:

1. Identification of behavioral triggers through review of the CANS assessment and other clinical or therapeutic documentation to identify behavioral triggers that may lead to crisis situations or escalated negative behaviors;
2. Training for primary caregivers in trauma-informed methods for:
   a. Preventing crisis; mitigation and support techniques for when crises occur; and
   b. Implementation of positive coping strategies to directly address crisis or negative behavior escalation.
3. Development and incorporation of individualized wraparound support plans within a PCSP, as informed by the CANS and other clinical or therapeutic documentation to prevent crisis or escalated negative behaviors.
4. Parental and family support (e.g. family-to-family networking).
5. Assistance to the child or youth in the acquisition, retainment, or improvement of age-appropriate behavior and social skills necessary to help avoid institutionalization. Assistance may take the form of:
   a. Training the youth, family, or provider in stabilization techniques;
   b. Working with the individual, family, or provider to identify triggers and developing person-centered approaches for preventing behavioral crisis prior to occurrence; and
   c. Assisting the waiver enrolled individual in acquiring, retaining, and improving areas of self-help and socialization.

6. Additional activities that may occur in situations in which a child or youth is stepping down from institutional care or is otherwise transitioning between residential settings may include:

a. Support for establishing or re-establishing the child or youth in a family home, foster home, or other community-based residential setting, such as:

(i) Development of schedules;

(ii) Practices; or

(iii) Expectations within the new setting;

b. Implementation of specialized behavior management techniques focused on mitigating disruptions resulting from the transition; or

c. Other activities as deemed appropriate by the child or youth's family, foster family, and broader care team to effectively mitigate the impacts of transitions out of and between institutional or residential settings.

(e) This service**:**

1. Shall be provided in-person or face-to-face via telehealth at the request or benefit of the participant.

2. If provided via telehealth:

a. Shall be documented in the PCSP;

b. Shall include the option for a participant to request and receive services in-person instead of via telehealth; and

c. Shall be conducted in accordance with 907 KAR 3:170[~~**may take place in an individual's home or the community, based on the child or youth's assessed needs and in accordance with the approved PCSP**~~].

(f) The appropriate staffing ratio shall be determined based on assessed needs and unique circumstances of the individual and family with input from the individual's case manager.

(g) Clinical therapeutic services shall be limited to additional services intended to avoid institutionalization that are not otherwise covered under the Kentucky Medicaid state plan, including EPSDT.

(h) Clinical therapeutic services shall be initially limited to 160 units per year, unless otherwise approved through the established exceptional review process pursuant to 907 KAR 2:725.

(i) Documentation requirements for 1915(c) CHILD waiver clinical therapeutic services providers.

1. A clinical therapeutic service shall be documented [~~**in the MWMA**~~] by a note which [~~**shall be entered within seventy-two (72) hours from the date of the service being rendered and**~~] shall include:

a. The participant's health, safety, and welfare;

b. Description of the service provided;

c. The date of the service;

d. Location of the service (not specific address);

e. The beginning and ending times of service provision; and

f. The signature and title of the individual providing the service.

2. Documentation shall be person centered and reflect the support provided to the participant, including:

a. The goal from the PCSP addressed by the service;

b. The activity completed to meet the goal and the outcome;

c. How the participant responded to the service;

d. Any progress or lack thereof toward the goals and objectives reflected on the PCSP; and

e. Family collateral, telephone and other significant contacts, or collateral information shall also be recorded in the staff notes.

(5) Supervised Residential Care.

(a) Supervised residential care shall be focused on children and youth who require twenty-four (24) hour intense residential services.

(b) The supports provided in a supervised residential care setting shall be individually tailored to assist with the acquisition, retention, or improvement in skills related to living in the community.

(c) Supervised residential care shall be intended to support children or youth who are:

1. Discharged from a psychiatric hospital or ICF/IID but are not yet able to return back to their family, guardian, or foster care residence;

2. Unable to be cared for within their family, guardian, or foster care residence due to high-risk behaviors or complex medical conditions, but who do not wish to receive services in an appropriate institutional setting; or

3. Currently unhoused as a result of their disability and care needs and who are unable to access appropriate community-based supports through another funding source.

(d) Supervised residential care supports include:

1. Adaptive skill development;

2. Assistance with activities of daily living;

3. Community inclusion; or

4. Social and leisure skill development to assist the child or youth to reside in the most integrated setting appropriate to his ***or[/]***her needs.

(e) Supervised residential care shall be delivered in a home or community setting, which shall not include:

1. A nursing facility;

2. An institution for mental disease; or

3. An intermediate care facility for individuals with intellectual disability.

(f) The supports required for each participant shall be outlined in their PCSP.

(g) Supervised residential care services shall also include:

1. Protective oversight and supervision;

2. Transportation;

3. Personal assistance; or

4. The provision of medical and health care services that are integral to meeting the daily needs of residents.

(h) Supervised residential care settings shall have no more than three (3) residents at any given time.

(i) To the extent feasible, supervised residential care settings shall not serve children or youth for whom there is an age difference of more than five (5) years between the oldest and youngest resident, unless the children are siblings, and efforts shall be made to provide children and youth with alternative setting choices where there is not an age difference of more than five (5) years between residents.

(j) Case managers are required to aid in finding supervised residential care settings that meet the individual safety needs of the participant to prevent harm to themselves or others.

1. To meet the requirement in this paragraph, the case manager shall **collaborate with**[~~**conduct a**~~] supervised residential care **providers to determine appropriate fit per regulatory criteria**[~~**provider review of individual PCSPs and health risk screening results,**~~] prior to placement.
2. A child with a history of aggressive behavior or sexual acting out shall be assessed by their treatment team to ensure the safety of the child and other children in the home and community with the appropriate safety measures documented in the PCSP.

(k) The agency providing supervised residential care shall be responsible to arrange for or provide transportation to:

1. A family, guardian, or foster care home;
2. School, as applicable;
3. A place of employment, as applicable; or
4. Other community locations when the provision of transportation covered pursuant to 907 KAR 3:066 is unavailable.

(l) Supervised residential care may include the provision of up to five (5) unsupervised hours per day per child or youth who is at least eighteen (18) years of age as identified in the PCSP. Unsupervised hours shall be intended to promote increased independence and are based on the individual needs of a child or youth as reflected in the PCSP. These general restrictions shall apply to any unsupervised time:

1. Participants who cannot safely be unsupervised shall not be unsupervised. For each child or youth approved for any unsupervised time, a safety plan shall be created based upon their assessed needs.
2. Unsupervised hours shall not be authorized solely due to staffing shortages or lack of qualified staff coverage.
3. Unsupervised hours shall be intended to facilitate transition planning and community integration towards developing independence.

(m) The case manager, as well as other team members, shall ensure the child or youth is able to implement the safety plan.

(n) Ongoing monitoring of the safety plan, procedures, or assistive devices required shall be conducted by the case manager to ensure relevance, ability to implement, and functionality of devices if required.

(o)

1. If a child or youth experiences a change in support needs or status, adjustments in supervised residential care shall be made to meet the support needs.
2. If a change in support need or status is anticipated to be chronic (lasting more than three (3) months), the supervised residential care provider may request reassessment to determine if needs have changed.

(p) Any increase in funding based on assessed needs shall be used for provision of additional supports, as outlined in a revised PCSP and approved through the exceptional supports process.

(q)

1. Cameras shall be prohibited in bedrooms and bathrooms.

2. Provider-owned or leased residences where supervised residential care services are furnished shall be compliant with the Americans with Disabilities Act (PL No: 101-336) based on the needs of the persons supported.

(r) Payment shall not be made for the cost of room and board, including the cost of building maintenance, upkeep, and improvement.

1. The method by which the costs of room and board are excluded from payment for supervised residential services is specified in 907 KAR 2:725.

2. Supervised residential services shall be furnished in a provider-owned or leased residence.

(s) Children and youth authorized and receiving supervised residential care may not be authorized to receive respite, community living supports, or environmental and minor home modifications, unless otherwise noted in the service definitions and limitations of these other CHILD waiver services.

(t) Supervised residential care shall be limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(u) The participant's guardian shall be notified and approve any changes to the location in which residential services are being provided prior to any changes being made.

(v) The participant and their guardian have the right to have input on choice of roommates and preferences in staff.

(w) The supervised residential care provider shall notify the case manager in advance of any changes and document the discussion and decisions made by the team.

(x) Supervised residential care shall be limited to one (1) unit per participant per calendar day.

(y) These additional documentation requirements for 1915(c) CHILD waiver supervised residential care shall apply:

1. A daily note which shall be entered within seventy-two (72) hours from the date of the service being rendered and shall describe relevant services and activities in which the participant participated and shall include:
   a. The participant's health, safety, and welfare;
   b. Description of the service provided;
   c. The date of the service;
   d. Location of the service (not specific address);
   e. The beginning and ending times of service provision; and
   f. The signature and title of the individual providing the service;
2. Relevant services and activities included in the note shall include:
   a. Skills training, including adaptive skill development;
   b. Assistance with ADLs;
   c. Community inclusion;
   d. Social and leisure development;
   e. Protective oversight or supervision;
   f. Transportation;
   g. Personal assistance provided; **and**
   h. The provision of medical or health care services[~~; and~~]
   [~~i.~~] [~~**A copy of the participants immunization records as defined in 902 KAR 2:060**~~].

3. Documentation shall be person centered and reflect the support provided to the participant, including:

a. The goal from the PCSP addressed by the service;

b. The activity completed to meet the goal and the outcome;

c. How the participant responded to the service; and

d. Any progress or lack thereof toward the goals and objectives reflected on the PCSP.

Section 7. Person-Centered Service Plan Requirements.

(1) The enrollment notice sent to the child or youth shall advise the CHILD participant and the participant's legal guardian or authorized representative, if applicable, that they shall select a case manager to initiate service planning prior to receiving CHILD waiver services.

(2)

(a) The enrollment notice shall contain instructions on how to access information on case management agencies so that the participant may initiate contact and selection of a case manager.

(b) When a case management agency is selected, that agency is able to be associated with the participant in the MWMA and a case manager can be assigned.

(3) The participant's PCSP shall be developed utilizing completed assessments and screenings, including the CANS and other medical and behavioral assessments as applicable.

(4) The person-centered planning process and development of the PCSP shall take place as follows:

(a) Identify individuals that comprise a participant's support system and their roles on the participant's person-centered team as defined in Section 1 ***of this administrative regulation***.

(b) A participant and their legal guardian may designate any family, friends, and other caregivers, both paid and unpaid, to participate in this process.

(c) The case manager shall document the individuals included in the person-centered team on the department approved form and upload it to MWMA.

(d) The case manager shall document when a support is removed from the person-centered planning team.

(e)

1. For the development of the initial PCSP, the full person-centered planning team shall participate.

2. For the annual redetermination of the PCSP, the child or youth and the participant's guardian or authorized representative, if applicable, has final authority to determine whether there is satisfactory team participation to conduct the PCSP annual review meeting.

(f) The case manager shall document how information about the meeting was provided to absent members.

(g) Members of the person-centered planning team who do not attend the annual review meeting or who attend by phone shall provide written attestation that they understand the contents of the PCSP and can support the participant's service needs at the requested amount, frequency, and duration.

(h) Once the person-centered planning team is confirmed, the case manager shall complete the primary activities:

1. The team shall collectively review the findings of the participant's assessment. This process includes documenting any non-Medicaid paid or unpaid support including information on the access and limitations of such supports and Medicaid state plan services. For annual review meetings, the team shall also review the participant's current PCSP.

2. The team shall work collectively under the leadership of the participant and the participant's legal guardian or authorized representative, if applicable, to complete an additional review of the participant's person-centered planning needs and wishes to establish goals and objectives that enhance health, safety, and welfare, community-based independence, community participation, and quality of life.

3. Not all goals and objectives shall be accomplished using 1915(c) CHILD waiver funded services.

(i) The process of setting goals shall include education and team support for the participant and the participant's legal guardian or the participant's authorized representative, if applicable.

(j) Goals and objectives for all services on the PCSP shall be:

1. Stated clearly;
2. Measurable;
3. Attainable;
4. Relevant;
5. Time-bound; and
6. Adhere to specifications detailed in the approved CMS CHILD waiver application.

(k) Goals and objectives shall be documented, including:

1. An inventory of a participant's personal preferences;
2. Individualized considerations for service delivery; and
3. Information about the participant's needs, wants, and future aspirations.

(l) The results of the conversation or meeting documenting the goals and objectives shall be:

1. Included in the PCSP, which is housed in MWMA; and
2. Signed by the participant and the participant's legal guardian or authorized representative, if applicable.

(m) The case manager, and all other individuals responsible for the implementation of services shall demonstrate this information:

1. Was collected;
2. Was shared with all person-centered team members; and
3. Is accessible to inform ongoing development and implementation of the PCSP.

(n) The case manager shall provide education on available service options to meet a participant's person-centered goals and objectives as established in Section 3(1) ***of this administrative regulation***, using the process for educating the participant and other team members on service providers as described in Section 6(2)(e) ***of this administrative regulation***.

(o)

1. Once a child or youth and the participant's legal guardian or authorized representative, if applicable, selects providers to deliver services pursuant to the frequency and amount, the case manager shall facilitate the referral process.

2. After the person-centered planning process has taken place, the case manager shall acquire the signatures of all the team members, including:

a. The participant and the participant's legal guardian or authorized representative, if applicable;

b. The case manager; and

c. All 1915(c) waiver providers.

3.

a. Prior authorization of service shall not be valid without signatures; and

b. Prior authorization of service shall be necessary prior to delivery of service.

4. Services rendered prior to signed attestation of understanding of the contents of the PCSP by all parties required pursuant to subparagraph 2. ***of this paragraph*** shall not be reimbursed.

(p) The case manager shall:

1. Ensure that the scope, frequency, amount, and duration of services falls within the allowable utilization criteria and limitations set by the CMS approved 1915(c) CHILD waiver;

2. Clearly document any planned changes in utilization anticipated over the course of the year, including:

a. Any anticipated change in utilization while a participant under the age of ***eighteen (18)*** ~~***[18]***~~ is out of school for the summer; or

b. Anticipated increases due to anticipated changes in caregiver availability; and

3. Maintain documentation showing that all:

a. Needs identified through the functional assessment are addressed via unpaid or paid supports; and

b. Paid services are appropriate in amount, duration, and frequency as identified by the functional assessment.

(5) Initial development of the PCSP for a new participant shall involve these steps and requirements:

(a) Once the assessment is complete and the participant chooses a case manager, the participant and the participant's legal guardian or authorized representative, if applicable, shall begin the process of developing the PCSP with the case manager's assistance.

(b) Upon acceptance of a new participant, the case manager shall conduct an initial in-person visit to begin the person-centered planning process.

(c) Person-centered service planning and development of the PCSP shall follow the steps described pursuant to subsection (4) of this section.

(d) A participant's PCSP shall be updated on at least an annual basis.

(e) If a case manager chooses to attend the functional assessment, the case manager shall support the participant in answering questions and not answer questions on the behalf of the participant or influence the participant's response or lack of response.

(f) Person-centered service planning may begin forty-five (45) calendar days prior to the end of the current level of care period, pending the completed level of care evaluation.

(g) The PCSP shall be completed and uploaded to MWMA at least seven (7) calendar days prior to the end of the current level of care period.

Section 8. Ongoing Management and Use of the PCSP.

(1) A participant and a participant's legal guardian, if applicable, may request a modification to their PCSP due to changes in their condition or service needs at any time.

(2) Throughout the course of plan monitoring, the case manager shall address instances when a modification to the PCSP may be appropriate.

(3)

(a) The case manager shall not initiate any modification to the PCSP without the consent of the participant and the participant's legal guardian, if applicable.

(b) The service providers affected by an event-based modification to the PCSP shall be involved in the modification process as well.

(4) Certain modifications or event-based circumstances may require the completion of an updated CANS assessment of the participant's needs and necessary adjustments to the participant's PCSP. These events or modifications that may merit completion of a functional assessment outside of the annual assessment cycle include:

(a) Inpatient admission to an institutional care setting with changes at discharge in functional ability from previous assessment;

(b) Change in care setting that increases the participant's level of care needs, including transitions between community-based settings such as moving from a participant's own home to a residential setting;

(c) Long-term change in access to or ability of an unpaid caregiver to provide care; and

(d) Observed or reported changes that result in the inability of the participant to meet goals and objectives based on the current PCSP.

(5) If circumstances necessitate initiation of an event-based assessment pursuant to subsection (4) of this section, the case manager shall:

(a) Request an updated CANS assessment in MWMA;

(b) After completion of the updated CANS assessment, review the updated assessment;

(c) Share information about the assessment outcomes with the participant and the participant's legal guardian, if applicable; and

(d) Work with the participant, and any members of the participant's person-centered team as requested by the participant, to modify the PCSP to address any requested or necessary modifications.

(6)

(a) An updated PCSP shall be signed by:

1. The participant and the participant's legal guardian, if applicable;
2. The case manager; and
3.
   a. Any new service providers;
   b. Providers for whom the scope, amount, or duration of service has been adjusted from what was previously agreed; or
   c. Providers for whom services have been impacted.

(b) Any signatures required by paragraph (a) of this subsection shall not be obtained until the person-centered planning process and the PCSP are complete.

(7) The updated PCSP shall remain in effect until the end of the participant's **eligibility**[~~**original enrollment**~~] year.

(8) An event-based functional assessment shall not eliminate the need for a participant's annual PCSP redetermination.

(9) All providers delivering services shall be responsible for reviewing changes and working with the participant's case manager and person-centered team to make any adjustments or deploy mitigation strategies to ensure continuity of care.

(10) A case manager shall not maintain a case load of more than thirty (30) participants during any monthly period.

Section 9. Human Rights Committee.

(1) A human rights committee shall meet on a routine, scheduled basis, no less than quarterly, to ensure that the rights of participants utilizing 1915(c) CHILD waiver services are respected and protected through due process review of any modifications of home and community-based settings as listed under 42 C.F.R. 441.301(c)(4)(vi)(A) through (D).

(2) A human rights committee shall include at least:

(a) One (1) self-advocate;

(b) One (1) member from the community at large with experience in developmental disabilities or SED;

(c) One (1) appointed guardian or family member of a 1915(c) waiver participant;

(d) One (1) professional in the medical field; and

(e) One (1) professional with:

1. A bachelor's degree from an accredited college or university; and

2. Three (3) years of experience in the field of child behavioral health or developmental disabilities.

(3) Each 1915(c) CHILD waiver provider shall:

(a) Actively participate in the human rights committee process of the local human rights committee; and

(b) Provide the necessary documentation to the local human rights committee for review and approval prior to:

1. Implementation of any rights restrictions; or

2. Positive behavior support plans involving rights restrictions.

(4) A human rights committee meeting shall have a quorum of at least three (3) members, including at least one (1) self-advocate and one (1) community at large member.

(5) A human rights committee shall:

(a) Maintain a record of each meeting; and

(b) Send a summary of each PCSP reviewed to the:

1. Relevant participant; or

2. Participant's guardian and case manager.

(6) Each member of a human rights committee shall:

(a) Complete an orientation approved by department or its designee;

(b) Sign a confidentiality agreement; and

(c) Function in accordance with the Health Insurance Portability and Accountability Act codified as 45 C.F.R. Parts 160, 162, and 164.

(7)

(a) A human rights committee shall ensure that any restriction imposed on a participant is:

1. Temporary in nature;

2. Defined with specific criteria outlining how the restriction is to be imposed;

3. Paired with learning or training components to assist the participant in eventual reduction or elimination of the restriction;

4. Removed upon reaching clearly defined objectives; and

5. Reviewed by the human rights committee at least once every six (6) months if the restriction remains in place for at least six (6) months.

(b) In an emergency where there is imminent danger or potential harm to a participant or other individuals, the participant's 1915(c) CHILD waiver service provider, in consultation with the case manager and participant's guardian, as appropriate, may limit or restrict the participant's rights for a maximum of one (1) week.

(c) If a participant is under the care of a psychologist, counselor, psychiatrist, or behavior support specialist, a restriction plan:

1. Shall be developed with the input of the psychologist, counselor, psychiatrist, or behavior support specialist; and

2. May be implemented for up to two (2) weeks.

(d) A proposed continuation of a restriction shall be immediately reviewed and approved by three (3) members of the local human rights committee while alternative strategies are being developed.

(e) If a rights restriction needs to be continued and addressed in the participant's PCSP, the restriction shall be submitted to the local human rights committee at the next regularly scheduled meeting.

Section 10. Behavior Intervention Committee.

(1) A behavior intervention committee shall include at least:

(a) One (1) self-advocate, representative, or family member;

(b) At least one (1) member from the community at large with experience in human rights issues or in the field of intellectual or developmental disabilities;

(c) One (1) professional in the medical field; and

(d) At least one (1) of the following:

1. A positive behavior support specialist;

2. A licensed psychologist;

3. A certified psychologist; or

4. A licensed clinical social worker.

(2)

(a) A behavior intervention committee shall meet at least quarterly to review, approve, and as necessary, make written technical recommendations for each new or revised positive behavior support plan as submitted.

(b) A behavior intervention committee meeting shall have a quorum of at least three (3) members including at least one (1):

1. Self-advocate, representative, or family member; and

2. Member from the community at large with experience in:

a. Human rights issues; or

b. The field of intellectual or developmental disabilities.

(3) A behavior intervention committee shall ensure that:

(a) Positive behavior supports are clinically sound and based on person-centered values considering what is important for the participant;

(b) Assessments and interventions utilize evidenced based and best practices for treatment of a behavioral health condition as the primary support services when supplemental behavioral interventions are needed;

(c) The use of both behavioral health treatment and positive behavioral supports shall be utilized in a collaborative manner; and

(d) A new or revised positive behavior support plan is not implemented until it is approved by:

1. The behavior intervention committee; and
2. If rights restrictions are recommended, the human rights committee.

(4) A behavior intervention committee shall:

(a) Maintain a record of each meeting; and

(b) Send a summary of each person-centered service plan reviewed to the:

1. Relevant participant; or
2. Participant's guardian and case manager.

(5) Each behavior intervention committee member shall:

(a) Complete an orientation approved by department or its designee;

(b) Sign a confidentiality agreement; and

(c) Function in accordance with the Health Insurance Portability and Accountability Act codified as 45 C.F.R. Parts 160, 162, and 164.

Section 11. Other Assurances Required by Provider.

(1) For each participant to whom it provides services, a 1915(c) CHILD waiver provider shall ensure:

(a) The participant's:

1. Right to privacy, dignity, and respect; and
2. Freedom from coercion or restraint;

(b) The participant's freedom of choice as defined by the experience of independence, individual initiative, or autonomy in making life choices in all matters;

(c) That the participant or participant's representative chooses services, providers, and any service settings;

(d) That the participant is provided with a choice of where to live with as much independence as possible and in the most community-integrated environment;

(e) That the service setting options are:

1. Identified and documented in the participant's PCSP; and
2. Based on the participant's needs and preferences; and

(f) That a provider may not move a participant from one approved location to another without approval from the participant or their legal guardian.

(2) A 1915(c) CHILD waiver provider shall not use an aversive technique with a participant.

(3) Any right restriction imposed by a 1915(c) CHILD waiver provider shall:

(a) Be reviewed at least every six (6) months by a human rights committee;

(b) Be subject to approval by a human rights committee; and

(c) Include a plan to restore the participant's rights.

(4) A participant with a history of aggressive behavior or sexual acting out shall have the following actions taken by the care team to address the needs of the participant:

(a) The care team shall assess the participant's history to ensure the safety of the child and other children in supervised residential services, including any sleeping arrangements;

(b) Information about the appropriate safety measures and the safety measures taken shall be included in the child's PCSP; and

(c) A plan of action shall be developed and implemented.

Section 12. Incident Reporting Process.

(1) The incident reporting process shall follow the processes outlined in the "Incident Reporting Instructional Guide for 1915(c) HCBS Waiver Services" available at: https://www.chfs.ky.gov/agencies/dms/dca/Documents/irinstructionalguide.pdf.

(2) The department or its designee shall continually monitor incident trends and patterns and may require additional incident types beyond those listed above as needed.

(3) A provider shall identify individuals and entities, as consistent with KRS 209.030(2) and KRS 620.030, that are required to report critical events and incidents and have a policy that any individual who witnesses or discovers a critical or non-critical incident is responsible to report it.

(4) If an incident occurs that requires reporting, a provider shall:

(a) Notify all pertinent entities including:

1. The case manager or service advisor;
2. Law enforcement; or
3. Protective services;

(b) Ensure that any employee or agent who witnesses or discovers a critical incident shall immediately take steps to:

1. Secure the participant's health, safety, and welfare; and
2. Notify the necessary authorities, including calling law enforcement and reporting any suspected abuse, neglect, or exploitation; and

(c) Comply with existing requirements for reporting of critical and non-critical incidents; and

(d) Complete an investigation report or Risk Mitigation and Investigation Report (RMIR) for all critical incident reports.

(5) The department or its designee shall regularly review critical and non-critical incident summary data generated by MWMA to identify systemic issues and conduct follow-up activities as warranted. Actions taken may include corrective action plans or quality improvements plans as needed to enhance performance and ensure safety.

(6) Following the death of a participant receiving services from a CHILD waiver provider:

(a) The CHILD waiver provider shall immediately notify the:

1. County coroner;
2. Child's parent, guardian, or custodian; and
3. Cabinet staff, including any department [~~**and BHDID**~~] staff contacted during the provider's regular course of business in providing services under the CHILD waiver;

(b) A verbal report of the death shall be made immediately to the:

1. Commissioner of the Department for Medicaid Services or designee; **and**

2. Commissioner of the Department for Community Based Services or designee[~~; and 3. Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities or designee~~];

(c) A written comprehensive report from the director outlining the incident shall be forwarded on the next working day following the verbal report to the Office of the Commissioner of the:

1. Department for Medicaid Services; **and**
2. Department for Community Based Services;

[~~3.~~] [~~Department for Behavioral Health, Developmental and Intellectual Disabilities;~~] and

(d)[~~4.~~] If a child's death occurred as a result of alleged abuse or neglect, the director of the CHILD waiver provider shall make verbal and written reports as required by KRS 620.030(1) and (2).

(7) A child fatality or near fatality shall also participate in the processes established pursuant to KRS 620.055 relating to external child fatality or near fatalities and the process established pursuant to subsection (8) of this section.

(8)

(a) In addition to the process described in subsection (7) of section, following the death of a participant receiving CHILD waiver services, the CHILD waiver provider shall enter mortality data documentation into the MWMA within fourteen (14) days of the death.

(b) Mortality data documentation shall include:

1. The participant's person-centered service plan at the time of death;
2. Any current assessment forms regarding the participant;
3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription, if applicable;
4. Service documentation regarding the participant from all service elements for the past thirty (30) days, including case management notes;
5. The results of the participant's most recent physical exam;
6. All incident reports, if any exist, regarding the participant for the previous six (6) months;
7. Any medication error log related to the participant for the previous six (6) months;
8. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;
9. Emergency medical services notes regarding the participant, if available;
10. The police report, if available;
11. A copy of:
    a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive, if applicable;
    b. Any functional assessment of behavior or positive behavior support plan regarding the participant that is been in place over any part of the previous twelve (12) months; and
    c. The cardiopulmonary resuscitation (CPR) and first aid card for any CHILD waiver provider's staff member who was present at the time of the incident that resulted in the participant's death;
12. A record of all medical appointments or emergency room visits by the participant within the previous twelve (12) months; and

13. A record of any crisis training for any staff member present at the time of the incident that resulted in the participant's death.

Section 13. CHILD Waiver Waiting List.

(1) If an individual is determined to meet criteria for allocation to the CHILD waiver as identified in Section 3 ***of this administrative regulation*** but no capacity is available at the time of the review, an individual shall be placed on the CHILD waiver waiting list.

(2) An individual's order of placement on the CHILD waiver waiting list shall be determined by the chronological date of receipt of complete application into the MWMA.

(3) A written notification of placement on the CHILD waiver waiting list shall be mailed to an individual or the individual's guardian and case management provider if identified.

(4)

(a) In determining chronological status, the original date of an individual's complete application information being entered into the MWMA shall be maintained.

(b) The department shall, at a minimum, annually review and update the waiting list information about an individual during the birth month of that individual.

(c) The individual or individual's guardian and case management provider, if identified, shall be contacted annually in writing to verify the accuracy of the information on the CHILD waiver waiting list and the individual's or individual's guardian's continued desire to pursue enrollment in the CHILD waiver.

(d) If a discrepancy in diagnosis or other criteria to qualify for CHILD waiver is noted at the time of the review, the department may request updated supporting documentation to validate that the individual meets CHILD waiver criteria.

(e) The information referenced in paragraph (c) of this subsection shall be received by the department within thirty (30) days from the date of the written request in order to be considered timely.

(f) The criteria for removal from the CHILD waiver waiting list shall be if:

1. After a documented attempt, the department is unable to locate the individual or the individual's guardian;
2. The individual is deceased;
3. A review of documentation reveals that the individual no longer meets criteria for the CHILD waiver as defined in Section 3 ***of this administrative regulation***;
4. Information requested during the waiting list maintenance review is not received by the department or its designee within **thirty (30)**[~~20~~] days of the written request;
5. A notification of potential CHILD waiver funding is made and the individual or the individual's guardian does not request to be maintained on the CHILD waiver waiting list; or
6. Notification of potential CHILD waiver funding is made and the individual or the individual's guardian does not complete the enrollment process with the department or its designee within 120 days.

(5) The removal of an individual from the CHILD waiting list shall not prevent the submission of a new application at a later date.

Section 14. Use of Electronic Signatures. The creation, transmission, storage, or other use of electronic signatures and documents shall comply with:

(1) The requirements established in KRS 369.101 to 369.120; and
(2) All applicable state and federal statutes and regulations.

Section 15. Employee Policies and Requirements Apply to Subcontractors. Any policy or requirement established in this administrative regulation regarding an employee shall apply to a subcontractor.

Section 16. 1915(c) CHILD Waiver Participant Appeal Rights.
(1) An appeal of a department decision regarding a Medicaid beneficiary made pursuant to this administrative regulation shall be in accordance with 907 KAR 1:563.
(2) An appeal of a department decision regarding Medicaid eligibility of an individual made pursuant to this administrative regulation shall be in accordance with 907 KAR 1:560.

Section 17. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the reimbursement; and
(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Contact Person: Krista Quarles/ Jonathan Scott Phone Number: (502) 564-7476/(502) 564-4321, ext. 2015 Email: CHFSregs@ky.gov/ jonathant.scott@ky.gov.

Andy Beshear
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Steven Stack, MD
SECRETARY

Lisa D. Lee
COMMISSIONER

June 3, 2026

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ange Darnell, Administrative Regulations Compiler
Legislative Research Commission
702 Capitol Avenue, Room 83
Frankfort, KY 40601

Re: 907 KAR 2:725. 1915(c) Kentucky's Community Health for Improved Lives and Development (CHILD) Waiver Reimbursement.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 2:725, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 2:725.

If you have any questions, please feel free to contact Jonathan Scott, Chief Regulatory and Legislative Officer with the Department for Medicaid Services at JonathanT.Scott@ky.gov.

Sincerely,

Office of Legislative and Regulatory Affairs
Cabinet for Health and Family Services

Subcommittee Substitute

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Services and Supports
(Amended After Comments)

907 KAR 2:725. 1915(c) Kentucky's Community Health for Improved Lives and Development (CHILD) Waiver Reimbursement.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions to provide expanded services to individuals who have a primary diagnosis of Autism, Developmental Disability, Intellectual Disability, or Serious Emotional Disturbance.

Section 1. Definitions.

(1) "Assessed or Assessment" means the process that authorizes department or its designee to determine applicant service needs that can be met safely in a community-based setting and determine if the participant is eligible for 1915(c) CHILD Waiver services.

(2) "Autism Spectrum Disorder" (ASD) ***[~~which~~]*** is characterized by:

(a) Persistent deficits in social communication and social interaction across multiple contexts;

(b) Restricted, repetitive patterns of behavior, interests, or activities, currently or by history;

(c) Symptoms ***that shall*** ***[~~must~~]*** be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life);

(d) Symptoms ***that*** cause clinically significant impairment in social, occupational, or other important areas of current functioning; and

(e) ***[~~These~~]*** Disturbances ***that*** are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

(3) "Case Manager" means an individual who meets the personnel and training requirements established in Section 5 of 907 KAR 2:720 and is responsible for facilitating person-centered planning, coordination, and oversight of **all waiver and other state plan services as well as medical, social, educational, and other services, regardless of the funding source for the services to which access is gained**[~~waiver services~~].

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

(5) "Incident" means any occurrence that impacts health, safety, welfare, or lifestyle choice of a participant which can include a:

(a) Minor injury;

(b) Medication error without a serious outcome; or

(c) Behavior or situation that is not a critical incident.

(6) "Person-centered service plan" or "PCSP" means a written individualized plan of 1915(c) CHILD Waiver services developed in accordance with the participant and family's wants, assessed needs, and preferences that may include a transition plan to more intense or less intense level of services.

(7) "Serious Emotional Disability" or "SED" is consistent with KRS 200.503.

Section 2. Coverage.

(1) The department shall reimburse a participating 1915(c) CHILD waiver provider for a covered service provided to a participant.

(2) ***[In order]*** To be reimbursable by the department, a service shall be:

(a) Provided in accordance with the terms and conditions established in 907 KAR 2:720; and

(b) Prior authorized by the department.

Section 3. General Reimbursement Requirements.

(1) For the department to reimburse for a service or item, the requirements of 907 KAR 2:720 shall be met.

(2) The department shall reimburse a participating provider for a covered service as established pursuant to the 1915(c) Fee Schedule as available at: https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx.

Section 4. Exceptional Supports Process.

(1) A service listed in 907 KAR 2:720 that includes benefit limitations, regardless of delivery method, shall qualify for review as an exception to the benefit limitations:

(a) Based on the needs of the participant for whom the exception is requested;

(b) For a limited period of time;

(c) If the service meets the requirements for an exception in accordance with the Kentucky 1915(c) CHILD Exceptional Supports Protocol found on the 1915(c) CHILD waiver website located at: https://www.chfs.ky.gov/agencies/dms/dca/Pages/default.aspx; and

(d) If approved by the department or designee to be an exception.

(2) An exception granted pursuant to this section shall be for the sole purpose of ensuring the health, safety, and welfare of the 1915(c) CHILD Waiver participant.

(3) Each exceptional supports request shall be agreed upon by a consensus vote of the person-centered team by a person-centered team meeting.

(4) Within one (1) day of the person-centered team meeting in which an exceptional supports request is approved, the case manager shall submit the exception request through the Medicaid Waiver Management Application (MWMA), including:

(a) The name and identifying information of the participant;

(b) A description of the exceptional support being requested;

(c) Specific challenges presented by the participant and interventions provided that have resulted in the request, including dates, times, and locations of occurrences;
(d) Summary notes of the person-centered team meeting held to determine if the request for the requested exception was appropriate, including signatures of the team members and date, time, and location of the meeting;
(e) Documentation of any intervention attempted to stabilize the challenges and the resulting outcomes for any repeat exception requests; and
(f) Submission of a modified plan with the exceptional support request.

(5) The department or designee shall:
(a) Review the exception request submission within three (3) business days; and
(b) Approve, deny the request, or request additional information.

(6) An approved exception request shall be **for a limited period of time, not to exceed a full person-centered plan year**[~~**prior authorized for a period of up to six (6) months or until the end of the participant's eligibility year, whichever is shorter**~~].

(7) The prior authorization shall follow the participant if a transition to another provider occurs through an amendment to the prior authorization.

(8) A new exception request that will continue an existing exception shall be submitted no later than fifteen (15) days prior to the end of a prior authorization period.

Section 5. Auditing and Reporting. A CHILD provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 2:720.

Section 6. Appeal Rights. A CHILD provider may appeal a department decision regarding the application of this administrative regulation. An appeal shall be in accordance with 907 KAR 1:563.

Section 7. Federal Approval and Federal Financial Participation. The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the reimbursement; and
(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

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