

CHAPTER 132

(HB 90)

AN ACT relating to health services and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 216B.450 is amended to read as follows:

As used in this section and KRS 216B.455:

- (1) "Cabinet" means the Cabinet for Health Services;
- (2) "Community-based" means a facility that is located in an existing residential neighborhood or community;
- (3) ***"Freestanding" means a completely detached building or two (2) residences under one (1) roof that are clearly separate and can serve youth independently.***
- (4) "Home-like" means a residence with living space designed to accommodate the daily living needs and tasks of a family unit, with opportunity for adult-child communication, shared tasks, adult-child learning, congregate meals, and family-type routines appropriate to the ages and levels of functioning of the residents; and
- (5)~~(4)~~ "Psychiatric residential treatment facility" means a licensed, community-based, and home-like facility with a maximum of ***nine (9)***~~eight (8)~~ beds which provides inpatient psychiatric residential treatment to residents ***age six (6) to twenty-one (21) years*** who have an emotional disability or severe emotional disability as defined in KRS 200.503,~~age six (6) years to twenty-one (21) years~~ with an age range of no greater than five (5) years ***at the time of admission*** in a living unit.

Section 2. KRS 216B.455 is amended to read as follows:

- (1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:
 - (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;
 - (b) Department for Community Based Services;
 - (c) Local school districts;
 - (d) ***At least one (1) psychiatric hospital***~~hospitals~~; and
 - (e) Any other agency, organization, or facility deemed appropriate by the cabinet.
- (2) ***Notwithstanding provisions for granting of a nonsubstantive review of a certificate of need application under KRS 216B.095, the cabinet shall review and approve the nonsubstantive review of an application seeking to increase the number of beds as permitted by Section 1 of this Act if the application is submitted by an eight (8) bed or sixteen (16) bed psychiatric residential treatment facility licensed and operating on the effective date of this Act. The cabinet shall base its approval of expanded beds upon the psychiatric residential treatment facility's ability to meet standards designed by the cabinet to provide stability of care. The standards shall be promulgated by the cabinet in***

an administrative regulation in accordance with KRS Chapter 13A. An application under this subsection shall not be subject to any moratorium relating to certificate of need.

- (3) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.
- ~~(4)~~~~(3)~~ All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation, or any other accrediting body with comparable standards that is recognized by the state.
- ~~(5)~~~~(4)~~ A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital. *More than one (1) freestanding psychiatric residential treatment facility may be located on the same campus that is not in or on the grounds of a psychiatric hospital.*
- ~~(6)~~~~(5)~~ The total number of psychiatric residential treatment facility beds shall not exceed *three hundred and fifteen (315) beds statewide, and shall be distributed among the state mental hospital districts established by administrative regulations promulgated by the Cabinet for Health Services under KRS 210.300 as follows:*
- (a) District I for seventy-two (72) beds;*
 - (b) District II for ninety-nine (99) beds;*
 - (c) District III for ninety (90) beds; and*
 - (d) District IV for fifty-four (54) beds*~~[sixteen (16) beds in any area development district with less than 275,000 population; thirty two (32) beds in any area development district with 275,000 to 550,000 population; and forty eight (48) beds in any area development district with over 550,000 population].~~
- (7) (a) *The Cabinet for Health Services and the Cabinet for Families and Children shall investigate the need for children's psychiatric residential treatment services for specialized populations including, but not limited to, sexual offenders, children with physical and developmental disabilities, and children with dual diagnoses.*
- (b) *The cabinets shall report to the Governor and the Legislative Research Commission by August 1, 2005, on a plan to enable children with specialized needs to be served in community-based psychiatric treatment facilities in Kentucky. The plan shall include methods to:*
- 1. Identify the specialized populations;*
 - 2. Develop services targeted for the specialized populations; and*
 - 3. Establish a Medicaid reimbursement rate for specialized facilities in Kentucky.*

Section 3. KRS 216B.459 is amended to read as follows:

The rate of reimbursement for Medicaid eligibles residing in *nine (9)*~~[eight (8)]~~ bed psychiatric residential treatment facilities shall not exceed the rate of reimbursement for Medicaid eligibles residing in *eighteen (18)*~~[sixteen (16)]~~ bed psychiatric residential treatment facilities.

Section 4. KRS 6.940 is amended to read as follows:

- (1) There is hereby established a Medicaid~~[-Managed-Care]~~ Oversight *and* Advisory Committee, consisting of ten (10) members appointed as follows: four (4) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the

Senate appointed by the Minority Floor Leader in the Senate; four (4) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. The committee shall meet at least four (4) times annually and shall provide oversight on the implementation of Medicaid~~[managed care]~~ within the Commonwealth including access to services, utilization of services, quality of services, and cost containment.

- (2) A majority of the entire membership of the Medicaid~~[Managed Care]~~ Oversight *and* Advisory Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership.

Section 5. KRS 158.832 is amended to read as follows:

As used in KRS 158.830 to 158.836:

- (1) *"Anaphylaxis" means an allergic reaction resulting from sensitization following prior contact with an antigen which can be a life-threatening emergency. Anaphylaxis may be triggered by, among other agents, foods, drugs, injections, insect stings, and physical activity.*
- (2) "Medications" means all medicines individually prescribed by a health care practitioner for the student that pertain to his or her asthma *or used to treat anaphylaxis, including but not limited to EpiPen or other auto-injectible epinephrine;*
- (3)~~(2)~~ "Health care practitioner" means a physician or other health care provider who has prescriptive authority; and
- (4)~~(3)~~ "Self-administration" means the student's use of his or her prescribed asthma *or anaphylaxis* medications, pursuant to prescription or written direction from the health care practitioner.

Section 6. KRS 158.834 is amended to read as follows:

- (1) The board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of medications by a student with asthma *or by a student who is at risk of having anaphylaxis* if the student's parent or guardian:
- (a) Provides written authorization for self-administration to the school; and
- (b) Provides a written statement from the student's health care practitioner that the student has asthma *or is at risk of having anaphylaxis* and has been instructed in self-administration of *the student's prescribed medications to treat asthma or anaphylaxis*~~[medications]~~. The statement shall also contain the following information:
1. The name and purpose of the medications;
 2. The prescribed dosage;
 3. The time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered; and

4. The length of time for which the medications are prescribed.
- (2) The statements required in subsection (1) of this section shall be kept on file in the office of the school nurse or school administrator.
- (3) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall incur no liability as a result of any injury sustained by the student from the self-administration of *his or her medications to treat asthma or anaphylaxis*~~[medications]~~. The parent or guardian of the student shall sign a statement acknowledging that the school shall incur no liability and the parent or guardian shall indemnify and hold harmless the school and its employees against any claims relating to the self-administration of *medications used to treat asthma or anaphylaxis*~~[medications]~~. Nothing in this subsection shall be construed to relieve liability of the school or its employees for negligence.
- (4) The permission for self-administration of medications shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (1) to (3) of this section.

Section 7. KRS 158.836 is amended to read as follows:

Upon fulfilling the requirements of KRS 158.834, a student with asthma *or a student who is at risk of having anaphylaxis* may possess and use *medications to treat the asthma or anaphylaxis*~~[medications]~~ when at school, at a school-sponsored activity, under the supervision of school personnel, or before and after normal school activities while on school properties including school-sponsored child care or after-school programs.

Section 8. Whereas, Kentucky students who have severe allergies are at risk of having a life-threatening anaphylactic reaction which can be stabilized by the self-administration of epinephrine using an auto-injector and other medications prescribed by the student's health care provider, and a statewide protocol does not exist for the self-administration of these medications at school, an emergency is declared to exist, and Sections 5 through 7 of this Act take effect upon their passage and approval by the Governor or upon their otherwise becoming a law.

Approved April 22, 2004