

**STATEMENT OF EMERGENCY
902 KAR 20:430E**

This emergency administrative regulation is being filed concurrently with 907 KAR 15:005E, 15:010E, 15:015E, 15:020E, 15:022E, and 15:025E. This emergency administrative regulation is being promulgated in accordance with 2018 Ky. Acts ch. 61 (HB 124), which required the Cabinet for Health and Family Services to conduct a comprehensive review of all current state licensure and quality standards that apply to substance use disorder treatment and recovery programs and develop enhanced licensure and quality standards. In addition to the Cabinet's recent efforts to enhance standards for alcohol and other drug treatment entities (AODE) licensed under 908 KAR 1:370, this amendment therefore seeks to streamline the licensure process for greater efficiency by eliminating the requirement for AODE programs to be separately licensed as a behavioral health services organization (BHSO) for purposes of enrollment in the Kentucky Medicaid Program. This emergency administrative regulation is needed pursuant to KRS 13A.190(a)1. and 2., the same reason established by the statement of emergency for 907 KAR 15:020E. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM MEIER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Amendment)**

902 KAR 20:430E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.

RELATES TO: KRS 17.500, 198B.260, 200.503(2), 205.510, 210.005(2), (3), 216B.050, 216B.105,~~[309.080,]~~ 309.130, 311.860, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401,~~[42 C.F.R. Part 2,]~~ 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 1320d-2 – 1320d-8,~~42 U.S.C. 290ee-3]~~

STATUTORY AUTHORITY: KRS 216B.042

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations (BHSO) ~~that~~~~[which]~~ provide behavioral health services necessary to treat, support, and encourage individuals with~~[a substance use disorder,]~~ mental health disorder~~[, or co-occurring disorder]~~ to achieve and maintain the highest possible level of health and self-sufficiency.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established by 908 KAR 2:220.

(2) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist as defined by ~~[licensed and practicing in accordance with]~~ KRS 335.300;

(i) A licensed professional clinical counselor as defined by ~~[licensed and practicing in accordance with]~~ KRS 335.500;~~[or]~~

(j) A licensed professional art therapist as defined by KRS 309.130(2); or

(k) A licensed behavior analyst as defined by KRS 319C.010(6).

(3)[(2)] "Behavioral health professional under clinical supervision" means a:

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

(b) Licensed psychological associate licensed and practicing in accordance with 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); ~~[or]~~

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

(g) Licensed assistant behavioral analyst defined by KRS 319C.010(7).

(4)[(3)] "Behavioral health services organization" means an entity licensed under this administrative regulation to provide behavioral health services as described in Section 5 [6] of this administrative regulation.

(5)[(4)] "Cabinet" means the Cabinet for Health and Family Services.~~[(5) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).]~~

(6) "Child with a serious~~[severe]~~ emotional disability" is defined by KRS 200.503(3).

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

(8) "Family peer support specialist" means an individual who meets the requirements for a family peer support specialist established by 908 KAR 2:230.

~~(9) ["Licensed assistant behavior analyst" is defined by KRS 319C.010(7).~~

~~(9) "Licensed behavior analyst" is defined by KRS 319C.010(6).~~

~~(10) "Peer support specialist" means a paraprofessional who:~~

~~(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and~~

~~(b) Works under the supervision of one (1) of the following:~~

~~1. Physician;~~

~~2. Psychiatrist;~~

~~3. Licensed psychologist;~~

- 4. ~~Licensed psychological practitioner;~~
- 5. ~~Licensed psychological associate;~~
- 6. ~~Licensed clinical social worker;~~
- 7. ~~Licensed marriage and family therapist;~~
- 8. ~~Licensed professional clinical counselor;~~
- 9. ~~Certified social worker;~~
- 10. ~~Licensed marriage and family therapist associate;~~
- 11. ~~Licensed professional counselor associate;~~
- 12. ~~Licensed professional art therapist;~~
- 13. ~~Licensed professional art therapist associate;~~
- 14. ~~Advanced practice registered nurse;~~
- 15. ~~Physician assistant; or~~
- 16. ~~Certified alcohol and drug counselor.~~

~~(11)] "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).~~

~~(10) "Targeted case manager" is defined by 908 KAR 2:260, Section 1(16).~~

~~(11) "Telehealth" is defined by KRS 205.510(15).~~

~~(12) "Youth peer support specialist" means an individual who meets the requirements for a youth peer support specialist established by 908 KAR 2:240[(12) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:~~

- ~~(a) Intoxication;~~
- ~~(b) Withdrawal; or~~
- ~~(c) A substance induced mental health disorder].~~

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3) A behavioral health services organization:

(a) May provide behavioral health services as described in Section ~~5~~[6] of this administrative regulation at extension locations separate from its permanent facility; and

(b) Shall pay a fee in the amount of \$250 per extension, submitted to the Office of Inspector General at the time of initial licensure, renewal, or the addition of a new extension to the organization's license.

(4)(a) Name change. A behavioral health services organization shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the organization's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A behavioral health services organization shall not change the location where a program is operated until an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$100 is filed with the Office of Inspector

General.

(c) Change of ownership.

1. The new owner of a behavioral health services organization shall submit to the Office of Inspector General an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing behavioral health services organization or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(5) To obtain approval of initial licensure or renew a license to operate a behavioral health services organization, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 3. Scope of Operation and Services. (1) A behavioral health services organization shall:

(a) Provide behavioral health services, as described in Section 5[6] of this administrative regulation, to meet client needs; and

(b) Unless an extension is granted pursuant to subsection (2) of this section, become accredited within one (1) year of initial licensure by one (1) of the following:

1. Joint Commission;
2. Commission on Accreditation of Rehabilitation Facilities;
3. Council on Accreditation; or
4. A nationally recognized accreditation organization.

(2)(a) If a behavioral health services organization has not obtained accreditation in accordance with subsection (1)(b) of this section within one (1) year of initial licensure, the organization may request a one (1) time only extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;

2. Include evidence that the organization initiated the process of becoming accredited within sixty (60) days of initial licensure and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(3) The cabinet shall revoke a license if a behavioral health services organization fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1)(b) of this section;

(b) Request an extension in accordance with subsection (2) of this section if accreditation has not been obtained within one (1) year of initial licensure; or

(c) Maintain accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 4. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

(a) The behavioral health services organization;

(b) The establishment of administrative policy; and

(c) Ensuring compliance with federal, state, and local laws and regulations pertaining to the

operation of the organization.

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the organization's program director described in subsection (5)(a) of this section;

(b) Shall be responsible for the administrative management of the organization, including:

1. The total program of the organization in accordance with the organization's written policies; and

2. Evaluation of the program as it relates to the needs of each client; and

(c) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:

1. Social work;

2. Sociology;

3. Psychology;

4. Guidance and counseling;

5. Education;

6. Religion;

7. Business administration;

8. Criminal justice;

9. Public administration;

10. Child care administration;

11. Christian education;

12. Divinity;

13. Pastoral counseling;

14. Nursing;

15. Public health; or

16. Another human service field related to working with children with serious~~severe~~ emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have a minimum of two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) Personnel. A behavioral health services organization shall employ the following personnel directly or by contract:

(a) A program director who shall be a:

1. Psychiatrist;

2. Physician;

3. Certified or licensed psychologist;

4. Licensed psychological practitioner;

5. Advanced practice registered nurse;

6. Licensed professional clinical counselor;

7. Licensed marriage and family therapist;

8. Licensed professional art therapist;

9. Licensed board certified behavior analyst; or

10. Licensed clinical social worker; and

(b) A sufficient number of personnel to provide behavioral health services, which may include:

1. Behavioral health professionals;

2. Behavioral health professionals under clinical supervision;
3. ~~Targeted~~[Licensed behavior analysts; 4. ~~Licensed assistant behavior analysts; 5.] case managers[as described in subsections (6), (7), and (8) of this section];~~
- 4.~~[6.] Peer support specialists; or~~
- 5.~~[7. Certified alcohol and drug counselors; or~~
- 8.] Community support associates.

(6)[A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Have a bachelor's degree in a human services field, including:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or

8. Another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders;

(b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of a bachelor's degree as described in paragraph (a) of this subsection; or

2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;

(c)1. Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) in accordance with 908 KAR 2:260 within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.

(7) A case manager who provides targeted case management services to clients with co-occurring mental health or substance use disorders and chronic or complex physical health issues shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or

2. After completion of a master's degree in social work, family studies, clinical counseling, psychology, nursing, or another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;

(c)1. Have successfully completed case management training approved by the DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and

~~2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and~~

~~(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:~~

~~1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and~~

~~2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual in person basis.~~

~~(8) A case manager who provides targeted case management services to children with a severe emotional disability or clients with a severe mental illness shall:~~

~~(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;~~

~~(b)1. Have a minimum of one (1) year of full-time employment working directly with individuals with behavioral health needs after completion of a bachelor's degree in a behavioral science field as described in subsection (6)(a) of this section; or~~

~~2. Have a master's degree in a human services field as described in subsection (6)(a) of this section;~~

~~(c)1. Have successfully completed case management training approved by DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and~~

~~2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and~~

~~(d) Be supervised by a behavioral health professional who:~~

~~1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and~~

~~2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.~~

~~(9)] Background checks.~~

~~(a) The executive director and all personnel of a behavioral health services organization shall:~~

~~1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;[and]~~

~~2. Not have a criminal conviction, or plea of guilty, to a:~~

~~a. Sex crime as specified in KRS 17.500;~~

~~b. Violent crime as specified in KRS 439.3401;~~

~~c. Criminal offense against a minor as specified in KRS 17.500; or~~

~~d. Class A felony; and~~

~~3. Not be listed on the following:~~

~~a. Central registry established by 922 KAR 1:470, if the BHSO provides services to clients under age eighteen (18);~~

~~b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or~~

~~c. Caregiver misconduct registry established by [922 KAR 5:120E and] 922 KAR 5:120.~~

~~(b)[A behavioral health services organization may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.~~

~~(c)] A behavioral health services organization shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.~~

~~(7)[(40)] Policies. The behavioral health services organization shall establish written policies for the administration and operation of the organization which shall be available to all person-~~

nel and include:

(a) A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;

(b) The organization's method and procedure for storage, dispensing, and administering a drug or biological agent;

(c) A client grievance procedure as described in subsection ~~(11)~~~~(44)~~ of this section;

(d) The organization's procedure for maintaining the confidentiality of client records in accordance with federal, state, and local statutes and regulations; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. A plan for orientation of personnel to the policies and objectives of the organization and on-the-job training, if necessary; and

3. An annual training program for staff which shall include:

a. Detection and reporting of abuse, neglect, or exploitation;

b. Behavioral management, including de-escalation training;

c. Physical management procedures and techniques; and

d. Emergency and safety procedures.

~~(8)~~~~(41)~~ Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:

(a) Name and address;

(b) Verification of all training and experience, including licensure, certification, registration, or renewals;

(c) Verification of submission to the background check requirements of subsection ~~(6)~~~~(9)~~ of this section;

(d) Annual performance appraisals; and

(e) Employee incident reports.

~~(9)~~~~(42)~~ After hours services.

(a) The behavioral health services organization shall provide, directly or through written agreement with another behavioral health services provider, access to ~~face-to-face~~ emergency services face-to-face or via telehealth twenty-four (24) hours per day, seven (7) days per week.

(b) Emergency services shall include interventions necessary to screen, assess, refer, and treat an individual from the point of the identified emergency or behavioral health crisis to the point of resolution of the emergency or crisis.

~~(10)~~~~(43)~~ Quality assurance and utilization review.

(a) The behavioral health services organization shall have a quality assurance and utilization review program designed to:

1. Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

2. Provide an effective mechanism for review and evaluation of the service needs of each client.

(b) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

1. Discharge;

2. Transfer; or

3. Referral to another service provider, if appropriate.

~~(11)~~~~(44)~~ Client grievance policy. The behavioral health services organization shall have written policies and procedures governing client grievances which shall include the following:

- (a) Identification of a behavioral health services organization ombudsman;
- (b) A process for filing a written client grievance;
- (c) An appeals process with time frames for filing and responding to a grievance in writing;
- (d) Protection for a client from interference, coercion, discrimination, or reprisal; and
- (e) Conspicuous posting of the grievance procedures in a public area to inform a client of:
 1. His or her right to file a grievance;
 2. The process for filing a grievance; and
 3. The address and telephone number of the behavioral health services organization's and cabinet's ombudsman.

~~Section 5. Services.[Residential Services for Substance Use Disorders. (1) If a behavioral health services organization licensed under this administrative regulation provides residential services to clients with a substance use disorder, the organization shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.~~

~~(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a behavioral health services organization that provides residential services for substance use disorders shall:~~

- ~~(a) Provide intensive treatment and skills building in a structured and supportive environment;~~
- ~~(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;~~
- ~~(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;~~
- ~~(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;~~
- ~~(e) Provide services under the medical direction of a physician; and~~
- ~~(f) Provide continuous nursing services in which a registered nurse shall be:

 1. On-site during traditional first shift hours, Monday through Friday;
 2. Continuously available by phone after hours; and
 3. On-site as needed in follow-up to telephone consultation after hours.~~

~~Section 6. Services. (1) A behavioral health services organization licensed under this administrative regulation shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370 if the organization provides any of the following outpatient services for the treatment of individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:~~

- ~~(a) Screening;~~
- ~~(b) Assessment;~~
- ~~(c) Crisis intervention;~~
- ~~(d) Mobile crisis services;~~
- ~~(e) Day treatment;~~
- ~~(f) Peer support;~~
- ~~(g) Intensive outpatient program services;~~
- ~~(h) Individual outpatient therapy;~~
- ~~(i) Group outpatient therapy;~~
- ~~(j) Family outpatient therapy;~~
- ~~(k) Collateral outpatient therapy;~~
- ~~(l) Screening, brief intervention and referral to treatment; or~~

~~(m) Targeted case management.~~

~~(2)] A behavioral health services organization shall provide treatment to meet client needs, including one (1) or more of the following:~~

~~(1)[(a)] Screening which shall be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision~~[, or certified alcohol and drug counselor]~~ to determine the:~~

~~(a)[4.] Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and~~

~~(b)[2.] Need for an in-depth assessment;~~

~~(2)[(b)] Assessment which shall:~~

~~(a)[4.] Be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision~~[, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor]~~ who gathers information and engages in a process with the client ~~[, thereby enabling the professional]~~ to:~~

~~1.[a.] Establish the presence or absence of a mental health~~[, substance use, or co-occurring]~~ disorder;~~

~~2.[b.] Determine the client's readiness for change;~~

~~3.[c.] Identify the client's strengths or problem areas that~~[which]~~ may affect the treatment and recovery processes; and~~

~~4.[d.] Engage the client in developing an appropriate treatment relationship;~~

~~(b)[2.] Establish or rule out the existence of a clinical disorder or service need;~~

~~(c)[3.] Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and~~

~~(d)[4.] Not include psychological or psychiatric evaluations or assessments;~~

~~(3)[(c)] Psychological testing which shall:~~

~~(a)[4.] Be performed by a licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, licensed psychological associate, or licensed psychological practitioner; and~~

~~(b)[2.] Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;~~

~~(4)[(d)] Crisis intervention which:~~

~~(a)[4.] Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;~~

~~(b)[2.] Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;~~

~~(c)[3.] Shall be provided:~~

~~1.[a.] On-site at the behavioral health services organization's facility or office;~~

~~2.[b.] As an immediate relief to the presenting problem or threat; and~~

~~3.[c.] In a face-to-face, one (1) on one (1) encounter or as a comparable service provided via telehealth;~~

~~(d)[4. May include verbal de-escalation, risk assessment, or cognitive therapy; 5.] Shall be provided by a:~~

~~1.[a.] Behavioral health professional; or~~

~~2.[b.] Behavioral health professional under clinical supervision; [or~~

~~c. Certified alcohol and drug counselor;]~~

~~(e)[6.] Shall be followed by a referral to noncrisis services, if applicable; and~~

~~(f)[7.] May include:~~

~~1.[a.] Further service prevention planning, including ~~[:(+)]~~ lethal means reduction for suicide~~

risk; or

~~2.[(ii) Substance use disorder relapse prevention; or b.]~~ Verbal de-escalation, risk assessment, or cognitive therapy;

~~(5)[(e)]~~ Mobile crisis services which shall:

~~(a)[1-]~~ Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

~~(b)[2-]~~ Be provided for a duration of less than twenty-four (24) hours;

~~(c)[3-]~~ Not be an overnight service;

~~(d)[4-]~~ Be a multi-disciplinary team based intervention that ensures access to acute mental health~~[and substance use]~~ services and supports to:

~~1.[a-]~~ Reduce symptoms or harm; or

~~2.[b-]~~ Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;

~~(e)[5-]~~ Involve all services and supports necessary to provide:

~~1.[a-]~~ Integrated crisis prevention;

~~2.[b-]~~ Assessment and disposition;

~~3.[c-]~~ Intervention;

~~4.[d-]~~ Continuity of care recommendations; and

~~5.[e-]~~ Follow-up services;

~~(f)[6-]~~ Be provided face-to-face in a home or community setting by[a]:

~~1. A[a-]~~ behavioral health professional;

~~2. A[b-]~~ behavioral health professional under clinical supervision; or

~~3. An adult, family, or youth peer support specialist, as appropriate, working under the supervision of a behavioral health professional~~~~[c. Certified alcohol and drug counselor]; and~~

~~(g)[7-]~~ Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

~~(6)[(f)]~~ Day treatment which shall:

~~(a)[1-]~~ Be a nonresidential, intensive treatment program designed for children who:

~~1.[a-]~~ Have a ~~[substance use disorder,]~~ mental health disorder~~[, or co-occurring disorder];~~

~~2.[b-]~~ Are under twenty-one (21) years of age; and

~~3.[c-]~~ Are at high risk of out-of-home placement due to a behavioral health issue;

~~(b)[2-]~~ Consist of an organized, behavioral health program of treatment and rehabilitative services for~~[substance use disorder,]~~ mental health disorder~~[, or a co-occurring disorder];~~

~~(c)[3-]~~ Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;

~~(d)[4-]~~ Include the following:

~~1.[a-]~~ Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

~~2.[b-]~~ Behavior management and social skill training;

~~3.[c-]~~ Independent living skills that correlate to the age and development stage of the client;

or

~~4.[d-]~~ Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

~~(e)[5-]~~ Be provided as follows:

~~1.[a-]~~ In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

~~2.[b-]~~ On school days and during scheduled school breaks;

~~3.[c-]~~ In coordination with the child's individual educational plan or Section 504 plan if the

child has an individual educational plan or Section 504 plan;

4.[d.] By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, or a family or youth peer support specialist, as appropriate, and working under the supervision of a behavioral health professional~~[a certified alcohol and drug counselor or a peer support specialist]~~; and

5.[e.] According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(f)[6.] Not include a therapeutic clinical service that is included in a child's individualized education plan;

(7)[(g)] Peer support which shall:

(a)[1.] Be provided face-to-face by an adult, family, or youth[a] peer support specialist, as appropriate, working under the supervision of a behavioral health professional;

(b)[2.] Be a structured and scheduled nonclinical therapeutic activity with a client or group of clients;

(c)[3.] Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills;~~[and]~~

(d)[4.] Be identified in the client's plan of care developed through a person-centered planning process; and

(e) If provided to clients in a group setting, not to exceed eight (8) individuals within any group at a time;

(8)[(h)] Intensive outpatient program services which shall:

(a)[1.] Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

(b)[2.] Be provided at least:

1. Three (3) hours per day at least three (3) days per week for adults; or

2. Six (6) hours per week for adolescents;

(c)[3.] Include~~[the following]~~:

1.[a-] Individual outpatient therapy;~~;~~b-] group outpatient therapy, or~~;~~c-] family outpatient therapy unless contraindicated;

2.[d-] Crisis intervention; or

3.[e-] Psycho-education that is related to identified goals in the client's treatment plan. If psycho-education is provided,~~[during which]~~ the client or client's family member shall be:

a.[(i)] Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b.[(ii)] Taught how to cope with the client's diagnosis or condition in a successful manner;

(e)[4.] Include a treatment plan which shall:

1.[a-] Be individualized; and

2.[b-] Focus on stabilization and transition to a lower level of care;

(f)[5-] Be provided by a behavioral health professional or~~;~~ behavioral health professional under clinical supervision~~;~~ ~~or a certified alcohol and drug counselor~~];

(g)[6-] Include access to a board-certified or board-eligible psychiatrist for consultation;

(h)[7-] Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

(i)[8-] Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(9)[(i)] Individual outpatient therapy which shall:

(a)[1-] Be provided to promote the:

1.[a-] Health and wellbeing of the client; and

2. Restoration of a client to his or her best possible functional level;

~~(b)[or b. Recovery from a substance related disorder;~~

2.] Consist of a:

1.a.[A] Face-to-face, one (1) on one (1) encounter between program staff and~~[with]~~ the client; or

b. Telehealth consultation; and

~~2.[b.-A] Behavioral health therapeutic intervention provided in accordance with the client's plan of care;~~

~~(c)[3.] Be aimed at:~~

~~1.[a.] Reducing adverse symptoms;~~

~~2.[b.] Reducing or eliminating the presenting problem of the client; and~~

~~3.[c.] Improving functioning;~~

~~(d)[4.] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and~~

~~(e)[5.] Be provided by a behavioral health professional or behavioral health professional under clinical supervision~~[-licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor];~~~~

~~(10)[(j)] Group outpatient therapy which shall:~~

~~(a)[4.] Be provided to promote the:~~

~~1.[a.] Health and wellbeing of the client; and~~

~~2. Restoration of a client to his or her best possible functional level;~~

~~(b)[or b. Recovery from a substance related disorder; 2.] Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;~~

~~(c)[3.] Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;~~

~~(d)[4.] Focus on the psychological needs of the client as evidenced in the client's plan of care;~~

~~(e)[5.] Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;~~

~~(f)[6.] Not include physical exercise, a recreational activity, an educational activity, or a social activity;~~

~~(g)[7.] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy~~[per client]~~ unless additional time with the client is medically necessary in accordance with 907 KAR 3:130;~~

~~(h)[8.] Ensure that the group has a deliberate focus and defined course of treatment;~~

~~(i)[9.] Ensure that the subject of group outpatient therapy is ~~[shall be]~~ related to each client participating in the group; and~~

~~(j)[10.] Be provided by a behavioral health professional or behavioral health professional under clinical supervision~~[-licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor]~~ who shall maintain individual notes regarding each client within the group in the client's record;~~

~~(11)[(k)] Family outpatient therapy which shall:~~

~~(a)[1.]~~ Consist of a ~~[face-to-face]~~ behavioral health therapeutic intervention provided face-to-face or via telehealth through scheduled therapeutic visits between the therapist, the client, and at least one (1) member of the client's family;

~~(b)[2.]~~ Address issues interfering with the relational functioning of the family;

~~(c)[3.]~~ Seek to improve interpersonal relationships within the client's home environment;

~~(d)[4.]~~ Be provided to promote the health and wellbeing of the client, including restoration of a client to his or her best possible functional level ~~[or recovery from a substance use disorder];~~

~~(e)[5.]~~ Not exceed three (3) hours per day alone or in combination with any other outpatient therapy~~[per client]~~ unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

~~(f)[6.]~~ Be provided by a behavioral health professional or~~[, a] behavioral health professional under clinical supervision~~~~[, or a certified alcohol and drug counselor];~~

~~(12)[(4)]~~ Collateral outpatient therapy which shall consist of a face-to-face or telehealth~~[behavioral health]~~ consultation:

~~(a)[1.]~~ With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

~~(b)[2.]~~ Provided by a behavioral health professional or~~[,] behavioral health professional under clinical supervision~~ ~~[, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor];~~ and

~~(c)[3.]~~ Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

~~(13)[(m)]~~ Service planning which shall be provided face-to-face by a behavioral health professional or~~[,] behavioral health professional under clinical supervision~~, either of which shall be of the client's choosing~~[, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst] to:~~

~~(a)[1.]~~ Assist the~~[a] client in creating an individualized plan for services and developing measurable goals and objectives~~ needed for maximum reduction of the effects of~~[a] mental health disorder;~~

~~(b)[2.]~~ Restore the~~[a] client's functional level to the client's best possible functional level; and~~

~~(c)[3.]~~ Develop a service plan which:

~~1.[a.]~~ Shall be directed and signed by the client; and

~~2.[b.]~~ May include:

~~a.[(i)]~~ A mental health advance directive being filed with a local hospital;

~~b.[(ii)]~~ A crisis plan; or

~~c.[(iii)]~~ A relapse prevention strategy or plan;

~~(14)[(n)]~~ Residential services for substance use disorders as described in Section 5 of this administrative regulation;

~~(o)~~ Screening, brief intervention and referral to treatment for substance use disorders which shall:

~~1.~~ Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

~~2.~~ Consist of:

~~a.~~ Using a standardized screening tool to assess the individual for risky substance use behavior;

~~b.~~ Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

~~c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and~~

~~3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;~~

~~(p)~~ Assertive community treatment for mental health disorders which shall:

~~(a)[1.] Include assessment, treatment planning, case management, psychiatric services, [medication prescribing and monitoring,] individual, family, or [and] group therapy, peer support, mobile crisis services, crisis intervention, mental health consultation with other treating professionals who may have information for the purpose of treatment planning and service delivery, family support to improve family relations to reduce conflict and increase the client's autonomy and independent functioning, or [and] basic living skills focused on teaching activities of daily living necessary to maintain independent functioning and community living;~~

~~(b)[2.] Be provided face-to-face by a multidisciplinary team of at least four (4) professionals, including a [psychiatrist,] nurse, case manager, peer support specialist, and any other behavioral health professional or behavioral health professional under clinical supervision; and~~

~~(c)[3.] Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;~~

~~(15)[(q)] Comprehensive community support services which shall:~~

~~a)[4.] Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;~~

~~(b)[2.] Consist of using a variety of psychiatric rehabilitation techniques to:~~

~~1.[a.] Improve daily living skills;~~

~~2.[b.] Improve self-monitoring of symptoms and side effects;~~

~~3.[c.] Improve emotional regulation skills;~~

~~4.[d.] Improve crisis coping skills; and~~

~~5.[e.] Develop and enhance interpersonal skills; and~~

~~(c)[3.] Be provided face-to-face by a:~~

~~1.[a.] Behavioral health professional;~~

~~2.[b.] Behavioral health professional under clinical supervision;~~

~~3.[c.] Community support associate under the supervision of a behavioral health professional; or~~

~~4. Licensed assistant behavioral analyst under the supervision of a licensed behavioral analyst;~~

~~(16)[d. Licensed behavior analyst; or~~

~~e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;~~

~~(r) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a serious [severe] emotional disability which shall:~~

~~(a)[4.] Include face-to-face services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;~~

~~(b) Require the client to be responsible for establishing his or her [2. ~~Establish the client's~~] own rehabilitative goals within the person-centered plan of care;~~

~~(c)[3.] Be delivered using a variety of psychiatric rehabilitation techniques focused on:~~

~~1.[a.] Improving daily living skills;~~

~~2.[b.] Self-monitoring of symptoms and side effects;~~

~~3.[c.] Emotional regulation skills;~~

~~4.[d.] Crisis coping skills; and~~

- ~~5.[e.]~~ Interpersonal skills; and
- ~~(d)[4.]~~ Be provided individually or in a group by a:
- ~~1.[a.]~~ Behavioral health professional, except for a licensed behavioral analyst;
- ~~2.[b.]~~ Behavioral health professional under clinical supervision, except for a licensed assistant behavioral analyst; or
- ~~3.[c.]~~ Peer support specialist under the supervision of a behavioral health professional;
- ~~(17)[or (s)]~~ Targeted case management services which shall:
- ~~(a)[4.]~~ Include services to ~~one (1) or more of the following target groups]:~~
- ~~1.[a.]~~ An adult or a child with substance use disorder; b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues; ~~c.]~~ A child with a serious[severe] emotional disability; or
- ~~2.[d.]~~ An adult with severe mental illness;
- ~~(b)[2.]~~ Be provided by a targeted case manager~~[as described in Section 4(6), (7), or (8) of this administrative regulation];~~ and
- ~~(c)[3.]~~ Include the following assistance:
- ~~1.[a.]~~ Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;
- ~~2.[b.]~~ Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;
- ~~3.[c.]~~ Referral and related activities, which may include:
- ~~a.[+]~~ Scheduling appointments for the client to help the individual obtain needed services;
- or
- ~~b.[(ii)]~~ Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan; and
- ~~4.[d.]~~ Monitoring which shall be face-to-face and occur no less than once every three (3) months to determine that:
- ~~a.[+]~~ Services are furnished according to the client's care plan;
- ~~b.[(ii)]~~ Services in the care plan are adequate; and
- ~~c.[(iii)]~~ Changes in the needs or status of the client are reflected in the care plan; and
- ~~5.[e.]~~ Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:
- ~~a.[+]~~ Access services;
- ~~b.[(ii)]~~ Identify needs and supports to assist the client in obtaining services; and
- ~~c.[(iii)]~~ Identify changes in the client's needs; or
- ~~(18)~~ Partial hospitalization which:
- ~~(a)~~ Shall be short-term, with an average of four (4) to six (6) weeks;
- ~~(b)~~ Shall be an intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder;
- ~~(c)~~ May be provided to an adult or a minor;
- ~~(d)~~ Shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the client;
- ~~(e)~~ Shall consist of:
- ~~1.~~ Individual outpatient therapy;
- ~~2.~~ Group outpatient therapy;
- ~~3.~~ Family outpatient therapy; or
- ~~4.~~ Medication management;
- ~~(f)~~ If provided to minors, shall include an agreement with the local educational authority in-

cluding those provided through 20 U.S.C. 1400 et seq. or 29 U.S.C. 701 et seq.:

(g) Shall be provided for at least five (5) hours per day, four (4) days per week, and focused on one (1) primary presenting problem;

(h) Shall include the following personnel for the purpose of providing medical care, if necessary:

1. An on-site advanced practice registered nurse, physician assistant, or physician; and

2. A board-certified or board-eligible psychiatrist available for consultation; and

(i) Shall provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles.~~[(3) Excluding methadone-based treatment which is restricted to regulation under 908 KAR 1:340, a behavioral health services organization may employ or have an affiliation with a physician or physicians who prescribe FDA-approved drugs for the treatment of opioid addiction in adult patients. The behavioral health services organization shall comply with the following requirements:~~

~~(a) Ensure that the physician documents in the patient's record whether the patient is compliant with prescribed dosing as evidenced by the results of:~~

~~1. A KASPER report released to the physician pursuant to KRS 218A.202(6)(c); and~~

~~2. Drug testing;~~

~~(b) Offer individual and group outpatient therapy as a service and document monitoring of compliance with recommended non-medication therapies even if the therapies are provided in another behavioral health setting; and~~

~~(c) Ensure that the physician complies with the prescribing and dispensing standards in 201 KAR 9:270 for FDA-approved drugs used for the treatment of opioid addiction.~~

~~(4) A narcotic treatment program (NTP) licensed under 908 KAR 1:340 may obtain licensure as a behavioral health services organization if the NTP employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs other than methadone for the treatment of opioid addiction in adult patients.]~~

Section ~~6.~~7. Plan of Care. (1) Each client receiving direct treatment from a behavioral health services organization shall have an individual plan of care signed by a behavioral health professional.

(2) A plan of care shall:

(a) Describe the services to be provided to the client, including the frequency of services;

(b) Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

(c) Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

(d) Specify each staff member assigned to work with the client;

(e) Identify methods of involving the client's family or significant others if indicated;

(f) Specify criteria to be met for termination of treatment;

(g) Include any referrals necessary for services not provided directly by the behavioral health services organization; and

(h) The date scheduled for review of the plan.

(3) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(4)(a) The initial plan of care shall be developed through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment.

(b)1. The plan of care for individuals receiving~~[residential services for substance use disorder or]~~ intensive outpatient program services or partial hospitalization shall be reviewed every

thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

2. The plan of care for individuals receiving any other outpatient service~~[services,]~~ as described by Section 5~~[in Section 6(2)(a) through (g) and (i) through (s)]~~ of this administrative regulation~~[,]~~ shall be reviewed and updated every six (6) months thereafter or earlier if clinically indicated.

(c) The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(5) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

Section 7~~[8,]~~ Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Screening information pertaining to the mental health~~[or substance use]~~ disorder;

(e) If applicable, a psychosocial history;

(f) If applicable, staff notes on services provided;

(g) If applicable, the client's plan of care;

(h) If applicable, disposition;

(i) If applicable, assigned status;

(j) If applicable, assigned therapists; and

(k) If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established by subsection (6) of this section.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The organization shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164 ~~[, or as provided by applicable federal or state law, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(b) The organization may use and disclose client records. Use and disclosure shall be as

established or required by [~~1.~~] HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164 [~~or 2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(c) A behavioral health services organization may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164 [~~or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

Section ~~8.~~9. Client Rights. (1) A behavioral health services organization shall have written policies and procedures to ensure that the rights of a client are protected while receiving one (1) or more services as described in Section ~~5~~6] of this administrative regulation.

(2) A behavioral health services organization shall have written policies and procedures governing client grievances pursuant to Section ~~4(11)~~(14)] of this administrative regulation.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a service.

(4) During a behavioral health services organization's intake procedures, a client shall sign a statement which specifies that the client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A parent, caregiver, or person who has custodial control of a child shall sign an informed consent for the child to receive a service;

(b) Have input into his or her plan of care and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation, or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study with the exception of a child whose parent or guardian shall give informed written consent;

(f) Confidentiality according to Section 7(6) of this administrative regulation;

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct and responsibilities [~~including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge~~];

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his or her client record in accordance with the organization's policy; and

(k) Receive one (1) free copy of his or her client record.

(5) The statement of client rights as described in subsection (4) of this section shall be:

(a) Provided to the client;

(b) If the client is a minor or incapacitated, provided to the client's parent, guardian, or other legal representative in addition to the client; and

(c) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read.

(6)~~[A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:~~

~~(a) Vote in a political election; and~~

~~(b) Reasonable accommodations to afford privacy in bathing and toileting.~~

~~(7)]~~ If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.

Section ~~9.~~^{10.} Physical Environment. (1) Accessibility. A behavioral health services organization shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. A behavioral health services organization shall be approved by the State Fire Marshal's office prior to initial licensure or if an organization changes location.

(3) Physical location and overall environment.

(a) A behavioral health services organization shall:

1. Comply with building codes, ordinances, and administrative regulations ~~that~~^{which} are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section ~~10.~~^{11.} License Procedures. The behavioral health services organization shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section ~~11.~~^{12.} Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Behavioral Health Services Organization if:

(a) Any person with ownership interest in the organization has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(b) Any person with ownership interest in the organization has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program; or

(c) The applicant fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section ~~2(13)~~⁽⁵⁾.

(2) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the behavioral health services organization to comply with the provisions of this administrative regulation;

(b) The behavioral health services organization fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section ~~2(13)~~⁽⁵⁾; or

~~(c) The behavioral health services organization fails to comply with the requirements of Section 6(3) of this administrative regulation if the organization employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs, excluding methadone, to adults for the treatment of opioid addiction; or~~

~~(d) The behavioral health services organization is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.~~

(3) The denial or revocation of a behavioral health services organization's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) The denial or revocation shall become final and conclusive thirty (30) days after notice is

given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Urgent action to suspend a license.

(a) The cabinet shall take urgent action to suspend a behavioral health services organization's license if the cabinet has probable cause to believe that ~~1. the continued operation of the organization would constitute an immediate danger to the health, welfare, or safety of its patients; or 2. A physician employed by or affiliated with the organization may be engaged in the improper or inappropriate prescribing or dispensing of an FDA-approved drug for the treatment of opioid addiction].~~

(b)1. The behavioral health services organization shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.

2. Notice of the urgent suspension shall set forth the particular reasons for the action. ~~[(c) If the cabinet issues an urgent suspension of the behavioral health services organization's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician to the Kentucky Board of Medical Licensure and appropriate law enforcement agency.]~~

(6) Notice of a hearing on an urgent suspension shall be served on the behavioral health services organization by certified mail, return receipt requested, or by personal service.

(7)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the urgent suspension.

(b) The urgent suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(8) The decision rendered under subsection (7) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(9) If the cabinet issues an urgent suspension, the cabinet shall take action to revoke the behavioral health services organization's license pursuant to subsection (3) of this section if:

(a) The organization fails to attend the expedited hearing; or

(b) The decision rendered under subsection (7) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare ~~;~~ or

~~(c) Referral to the Kentucky Board of Medical Licensure and law enforcement agency in accordance with subsection (5)(c) of this section results in an administrative sanction or criminal conviction against a physician employed by or affiliated with the organization].~~

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 13. Incorporation by Reference. (1) The OIG 20:430, "Application for License to Operate a Behavioral Health Services Organization", July 2019~~[October 2014]~~ edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations (BHSO) for mental health treatment. The BHSO licensure category was originally created via emergency administrative regulation on July 15, 2014, to enhance access to behavioral health services and address the Kentucky Medicaid Program's efforts to expand the behavioral health network.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of BHSOs that provide services to treat, support, and encourage individuals with mental health disorder to achieve and maintain the highest possible level of health and self-sufficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed BHSOs for mental health treatment.

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

(a) How the amendment will change this existing administrative regulation: This amendment is being filed concurrently with the Department for Medicaid Services' behavioral health services regulation, 907 KAR 15:020. Changes to this administrative regulation, 902 KAR 20:430, are as follows: Adds clarifying language to the title of this administrative regulation that aligns with the title of 907 KAR 15:020, thereby emphasizing that this licensure level will be for the treatment of mental health disorder only; Deletes the definition of "peer support specialist" and adds definitions for "adult peer support specialist", "family peer support specialist", and "youth peer support specialist" to Section 1; Adds definitions for "targeted case manager" and "telehealth" to Section 1; Moves "licensed behavioral analyst" under the definition of "behavioral health professional"; Moves "licensed assistant behavioral analyst" under the definition of "behavioral health professional under clinical supervision"; Deletes "certified alcohol and drug counselor" and "substance use disorder" from Section 1 and removes references to these terms throughout the body of this administrative regulation; Amends Section 4 to delete unnecessarily duplicative language related to case managers because the training requirements and qualifications for targeted case managers are established in 908 KAR 2:260; Removes language allowing BHSOs to use the Kentucky National Background Check Program (NBCP) to satisfy the State-level criminal record check requirements. Use of the NBCP was originally included in this administrative regulation by error, prior to receiving additional information from the Federal Bureau of Investigation which clarified that the Kentucky State Police relies upon a federal statute, Section 6201 of the Affordable Care Act, for the submission of fingerprints to the FBI for direct patient access employees in voluntarily participating long-term care settings. Because BHSOs are not included in the statutory definition of a "long-term care facility" or otherwise covered under Section 6201 of the ACA, BHSOs cannot voluntarily participate in the NBCP; Allows for after-hours services to be provided via telehealth; Removes the requirement for a BHSO to be separately licensed as an alcohol and other drug treatment entity (AODE) if

the BHSO provides residential or outpatient services to clients with substance use disorder (SUD) or a co-occurring disorder in which SUD is the primary diagnosis. This change aligns with efforts to streamline the licensure process and improve the AODE regulations pursuant to the passage of HB 124 from the 2018 legislative session. Therefore, all requirements related to treatment of SUD have been deleted from this administrative regulation as such is covered under 908 KAR Chapter 1; Allows for screening, assessment, crisis intervention, individual outpatient therapy, family outpatient therapy, and collateral outpatient therapy to be provided via telehealth; Adds partial hospitalization as a service that a BHSO for mental health treatment may provide; and Makes technical changes for clarity.

(b) The necessity of the amendment to this administrative regulation: The passage of HB 124 from the 2018 legislative session required the Cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to SUD treatment programs as well as develop enhanced standards for treatment and recovery services. Therefore, in addition to the Cabinet's efforts to enhance the AODE standards under 908 KAR Chapter 1, this amendment seeks to streamline the licensure process for greater efficiency by eliminating the requirement for AODE programs to be separately licensed as a BHSO for purposes of Medicaid enrollment. Eliminating the dual licensure requirement will have the effect of transforming the BHSO licensure category so that BHSO services will be for the treatment of mental health disorder only. SUD treatment programs are subject to AODE licensure standards established under 908 KAR Chapter 1 and will be allowed to enroll in Medicaid under the appropriate tier.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 by establishing standards for licensed behavioral health services organizations for mental health treatment.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing standards for licensed behavioral health services organizations for mental health treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed behavioral health services organizations. A directory of all currently licensed BHSO programs may be downloaded from the following link: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/hcf.aspx>.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in applying for licensure as a BHSO for mental health treatment will be required to comply with the standards established by this administrative regulation, including: State Fire Marshall approval of the facility's location prior to initial licensure or a change of location; Accreditation within one (1) year of initial licensure, unless an extension is granted; Implementation of administrative and personnel policies as well as policies that ensure that the rights of clients are protected; Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the organization; Designation of an executive director who may also serve as the organization's program director if the individual is a behavioral health professional as defined by Section 1 of this administrative regulation; Employment of a sufficient number of personnel to provide behavioral health services; Compliance with abuse registry and criminal background check requirements; Implementation of a process for quality assurance and utilization review; Client records; Implementation of a process for responding to client grievances; and The delivery of one (1) or more of the following outpatient behavioral health services: Screening; As-

assessment; Psychological testing; Crisis intervention; Mobile crisis services; Day treatment; Peer support; Intensive outpatient program (IOP); Individual outpatient therapy; Group outpatient therapy; Family outpatient therapy; Collateral outpatient therapy; Service planning; Assertive community treatment; Comprehensive community support services; Therapeutic rehabilitation for adults with severe mental illness or children with serious emotional disabilities; Targeted case management services; or Partial hospitalization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed behavioral health services organizations may enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients in need of mental health treatment.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from licensure fees collected from behavioral health services organizations and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not increase licensure fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts licensed behavioral health services organizations and the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? This amendment im-

poses no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 - 1320d-8

2. State compliance standards. KRS 216B.042

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.