

**STATEMENT OF EMERGENCY
902 KAR 20:440E**

This emergency administrative regulation is being filed concurrently with 907 KAR 15:070E to align with changes the Kentucky Medicaid Program is making to implement new services relating to withdrawal management for residential crisis stabilization units. As amended, this emergency administrative regulation will implement the licensure requirements for new services relating to withdrawal management and medication assisted treatment for residential crisis stabilization units. The primary reason for promulgating this administrative regulation as an emergency administrative regulation is to better ensure the availability of a full continuum of care within the Medicaid Program for substance use disorder services pursuant to the American Society of Addiction Medicine's (ASAM) Criteria. Without the authority granted by this administrative regulation, the full continuum of care for substance use disorder established in the ASAM Criteria will not be reimbursable by Medicaid. Nationwide, and within Kentucky, the opioid epidemic has been exacerbated by the ongoing COVID-19 pandemic, and this administrative regulation will give the Department for Medicaid Services (DMS) and Kentucky providers additional vital tools to confront this serious threat to Kentucky citizens. Specifically, this administrative regulation is being filed as an emergency administrative regulation in accordance with KRS 13A.190(1)(a)1., 2., and 4. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. in order to thoroughly confront the serious and imminent danger posed to Kentucky citizens by any exacerbation of the opioid epidemic. This emergency administrative regulation is also needed pursuant to KRS 13A.190(1)(a)2. in order to preserve state and federal funding. In order to continue the SUD 1115 Waiver, Kentucky Medicaid is required to establish and maintain the availability of the full spectrum of the ASAM level of care to Kentucky Medicaid members. Failure to fully implement the ASAM criteria may risk continued federal coverage and approval of the SUD 1115 Waiver. If that happens, there would be a loss of federal funding. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)4. to protect human health by increasing access to treatment for substance use disorder (SUD), and to address all aspects of the SUD epidemic within Kentucky. Beyond the immediate imminent danger of any exacerbation of the opioid epidemic, this administrative regulation is necessary to bolster innovative efforts to continue to confront and address the long standing opioid epidemic. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Secretary

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

902 KAR 20:440E. Facilities specifications, operation and services; residential crisis stabilization units.

EFFECTIVE: October 13, 2020

RELATES TO: KRS 17.500, 200.503(2), 210.005, 216B.050, 216B.105(2), 309.080(4), 309.0831, 309.130(2), 311.571, 311.840 – 311.862, 314.042, 319.050, 319.056, 319.064,

319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

STATUTORY AUTHORITY: KRS 216B.042

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 residential crisis stabilization units ~~that~~^[which] serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

Section 1. Definitions. (1) "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 as defined by KRS 311.840(3)~~[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~~(2)~~;

(i) A licensed professional clinical counselor as defined by ~~[licensed and practicing in accordance with]~~ KRS 335.500~~(3)~~; or

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

(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 therapy~~[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).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Chemical restraint" means the use of a drug that:

(a) Is administered to manage a resident's behavior in a way that reduces the ~~[safety]~~ risk to the resident or others;

(b) Has the temporary effect of restricting the resident's freedom of movement; and

(c) Is not a standard treatment for the resident's medical or psychiatric condition.

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

(7) "Crisis stabilization unit" means a community-based facility that is not part of an inpatient unit and ~~that~~~~[which]~~ provides crisis services to no more than sixteen (16) ~~[twelve (12)]~~ clients who require overnight stays.

(8) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4);

(9) "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

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

(a) Is a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

(b) 1. Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

2. [(b)] Works under the supervision of one (1) of the following:

a. [4.] Physician;

b. [2.] Psychiatrist;

c. [3.] Licensed psychologist;

d. [4.] Licensed psychological practitioner;

e. [5.] Licensed psychological associate;

f. [6.] Licensed clinical social worker;

g. [7.] Licensed marriage and family therapist;

h. [8.] Licensed professional clinical counselor;

i. [9.] Certified social worker;

j. [10.] Licensed marriage and family ~~therapy~~~~[therapist]~~ associate;

k. [11.] Licensed professional counselor associate;

l. [12.] Licensed professional art therapist;

m. [13.] Licensed professional art therapist associate;

n. [14.] Advanced practice registered nurse;

o. [15.] Physician assistant; ~~or~~

p. [16.] Certified alcohol and drug counselor; or

q. Licensed clinical alcohol and drug counselor.

(11) ~~[(10)]~~ "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.

(12) ~~[(11)]~~ "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(13) ~~[(12)]~~ (12) "Serious mental illness", "severe mental illness", or "SMI" means a diagnosis of a major mental disorder as included in the current edition of the Diagnostic and Statistical Manual of Mental Disorders under:

(a) Schizophrenia spectrum and other psychotic disorders;

(b) Bipolar and related disorders;

(c) Depressive disorders; or

(d) Post-traumatic stress disorders (under trauma and stressor related disorders) ["Severe mental illness" means the conditions defined by KRS 210.005(2) and (3)].

(14) ~~[(13)]~~ "Substance use disorder" is defined by KRS 222.005(12)~~[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].~~

~~(15) [(14)] "Time out" means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.~~

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; 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 residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

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

(3)(a) Name change. A residential crisis stabilization unit shall:

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

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

(b) Change of location. A residential crisis stabilization unit shall not change the location where the unit is operating~~[operated]~~ until an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a residential crisis stabilization unit shall submit to the Office of Inspector General an Application for License to Operate a Residential Crisis Stabilization Unit 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 in accordance with the criteria of 902 KAR 20:008, Section 2(16)~~[if more than twenty-five (25) percent of an existing residential crisis stabilization unit or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another].~~

(4) To obtain approval of initial licensure or renew a license to operate a residential crisis stabilization unit, the applicant or licensee shall be in compliance with this administrative regulation and federal, state, and local laws and administrative regulations pertaining to the operation of the unit.

~~Section 3. [Location. If an alcohol and other drug abuse treatment program licensed pursuant to 908 KAR 1:370 obtains separate licensure under this administrative regulation to operate a residential crisis stabilization unit, the unit shall be located off the campus of any residential treatment program licensed pursuant to 908 KAR 1:370.~~

~~Section 4.] Accreditation. (1) Unless an extension is granted pursuant to subsection (2) of this section, an entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall become accredited within one (1) year of initial licensure by ~~one (1) of the following~~]:~~

~~(a) The Joint Commission;~~

- (b) The Commission on Accreditation of Rehabilitation Facilities;
- (c) The Council on Accreditation; or
- (d) A nationally recognized accreditation organization.

(2)(a) If a residential crisis stabilization unit has not obtained accreditation in accordance with subsection (1) of this section within one (1) year of initial licensure, the facility 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 facility 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 the license if the residential crisis stabilization unit fails to ~~meet one (1) of the following requirements~~:

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

2.a. ~~(b)~~ Request an extension in accordance with subsection (2) of this section if accreditation will not be ~~has not been~~ obtained within one (1) year of initial licensure; and

b. Become accredited during the extension granted in accordance with subsection (2) of this section; or

~~(b)~~~~(c)~~ Maintain accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal estab-
lished~~described~~ in Section 2(2) of this administrative regulation.

Section 4.~~5.~~ Administration and Operation. (1) The licensee shall be legally responsible for:

- (a) The residential crisis stabilization unit;
- (b) The establishment of administrative policy; and
- (c) Ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the residential crisis stabilization unit.

(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 residential crisis stabilization unit's program director es-
tabished~~described~~ in subsection (5) of this section;

(b) May serve in a dual role as the executive director of a behavioral health services organization (BHSO) or alcohol and other drug treatment entity (AODE) if:

1. The residential crisis stabilization unit and the BHSO or AODE are owned by the same entity; and

2. The residential crisis stabilization unit has a linkage with the BHSO or AODE to assist with continuity of care if needed after discharge from the residential crisis stabilization unit;

(c) Shall be responsible for the administrative management of the residential crisis stabilization unit, including:

1. The total program of the unit in accordance with the unit's written policies; and
2. Evaluation of the unit as it relates to the needs of each resident; and

(d) 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 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) A residential crisis stabilization unit shall have a program director who:

(a) May serve in a dual role as the program director of a BHSO or AODE if:

1. The residential crisis stabilization unit and the BHSO or AODE are owned by the same entity; and

2. The residential crisis stabilization unit has a linkage with the BHSO or AODE to assist with continuity of care if needed after discharge from the residential crisis stabilization unit; and

(b) Shall be a:

1. Psychiatrist;
2. Physician;
3. ~~Certified or~~ Licensed psychologist or certified psychologist with autonomous functioning;
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.

Section 5.~~[6.]~~ License Procedures. An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 6.~~[7.]~~ Background Checks and Personnel Records. (1) All personnel of a residential crisis stabilization unit shall:

(a) Have a criminal record check performed upon initial hire and every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as defined by~~[specified in]~~ KRS 17.500(8);
2. Violent crime as established~~[specified]~~ in KRS 439.3401;
3. Criminal offense against a minor as established~~[specified]~~ in KRS 17.500; or
4. Class A felony; and

(c) Not be listed on the ~~following~~:

1. Central registry established by 922 KAR 1:470;
2. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or
3. Caregiver misconduct registry established by ~~922 KAR 5:120E and~~ 922 KAR 5:120.

(2)~~(a)~~ Prior to initial hire, an out-of-state criminal background information check shall be obtained for any applicant recommended for employment in a residential crisis stabilization unit who has resided or resides outside of the Commonwealth. [

~~(b) A residential crisis stabilization unit may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of subsections (1) and (2)(a) of this section.]~~

(3) A residential crisis stabilization unit shall perform annual criminal record and registry checks as established~~described~~ in subsection (1) of this section on a random sample of at least twenty-five (25) percent of all personnel.

(4) 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 subsections (1), (2), and (3) of this section;
- (d) Performance appraisals conducted no less than annually; and
- (e) Employee incident reports.

Section 7~~[8]~~ Quality Assurance and Utilization Review. (1) The residential crisis stabilization unit shall have a quality assurance and utilization review program designed to:

(a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

(b) Provide an effective mechanism for review and evaluation of the service needs of each client.

(2) 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:

- (a) Discharge;
- (b) Transfer; or
- (c) Referral to another service provider, if appropriate.

Section 8~~[9]~~ Client Grievance Policy. The residential crisis stabilization unit shall have written policies and procedures governing client grievances, which shall include ~~the following~~:

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

Section 9~~[10]~~ Services and Staffing. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall provide ~~the following services~~:

- (a) Screening as established by 907 KAR 15:070, Section 3(2)(a);

- (b) Assessment as established by 907 KAR 15:070, Section 3(2)(b);
- (c) Treatment planning as established by 907 KAR 15:070, Section 3(2)(e);
- (d) Individual [outpatient] therapy as established by 907 KAR 15:070, Section 3(2)(c);
- (e) Group [outpatient] therapy as established by 907 KAR 15:070, Section 3(2)(d); and
- (f) Psychiatric services.

(2) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit may provide:

- (a) Family therapy as established by 907 KAR 15:070, Section 3(2)(f); or
- (b) Peer support by a peer support specialist as established by 907 KAR 15:070, Section 3(2)(g).

(3)(a) Except as provided by paragraph (b) of this subsection, the services identified in subsection (1) and (2)(a) of this section shall be delivered by a behavioral health professional or a behavioral health professional under clinical supervision.

(b) In addition to the professionals identified in paragraph (a) of this subsection, the services identified in subsection (1)(a), (b), (d), and (e) and subsection (2)(a) of this section may be provided by a certified alcohol and drug counselor or licensed clinical alcohol and drug counselor.

(c)1. A residential crisis stabilization unit shall have access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week.

2. The psychiatrist may serve more than one (1) residential crisis stabilization unit and be available through telehealth consultation.

(d) The psychiatrist shall be available to evaluate, provide treatment, and participate in treatment planning.

(4) If a crisis stabilization program serves adults with a severe mental illness or substance use disorder and children with severe emotional disabilities:

- (a) The programs shall not be located on the same campus; and
- (b) The children's program shall serve clients:
 1. Under the age of eighteen (18); or
 2. Up to the age of twenty-one (21) if developmentally appropriate for the client.

(5) A residential crisis stabilization unit shall:

(a) Provide treatment for acute withdrawal as established by 907 KAR 15:070, Section 3(2)(h), if appropriate;

(b) Complete a mental status evaluation and physical health questionnaire of the client upon admission;

(c) Have written policies and procedures for:

1. Crisis intervention; and
2. Discharge planning, which shall begin at the time of admission and aftercare planning processes;

(d) Make referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the residential crisis stabilization unit or identified during the admission assessment;

(e) Have a description of linkages with behavioral health services organizations licensed under 902 KAR 20:430 or other programs, including entities licensed as an AODE, that [which]:

1. Address identified needs and achieve goals specified in the treatment plan; and
 2. Help promote continuity of care after discharge;
- (f) Have at least one (1) direct-care staff member assigned direct-care responsibility for:
1. Every four (4) clients during normal waking hours; and
 2. Every six (6) clients during normal sleeping hours;

(g) Ensure that administrative management of the unit is provided by the unit's executive director;

(h) Provide a training program for direct-care staff pertaining to:

1. The care of clients in a residential crisis stabilization unit;
2. Detection and reporting of abuse, neglect, or exploitation;
3. Emergency and safety procedures;
4. Behavior management, including de-escalation training;
5. Physical management procedures and techniques;
6. Suicide prevention and care; and
7. Trauma informed care; and

(i) Assure that each client shall be:

1. In need of short-term behavior management and at risk of placement in a higher level of care;
2. Able to take care of his or her own personal needs, if an adult;
3. Medically able to participate in services; and
4. Served in the least restrictive environment available in the community.

Section 10.[44.] 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, date of birth, gender, marital status, expected source of payment, and referral source;

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

(c) If applicable, consent via signature of an appropriate family member or guardian~~[members or guardians]~~ for admission, evaluation, and treatment;

(d) Mental status evaluation and physical health questionnaire of the client taken upon admission;

(e) Staff notes for all services provided;

(f) Documentation of treatment planning, including diagnosis and all services to be provided; and

(g) Documentation of medication prescribing and monitoring used in treatment.

(4) Ownership.

(a) Client records shall be the property of the residential crisis stabilization unit.

(b) The original client record shall not be removed from the unit 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 be retained for at least the longer of:

(a) ~~[Retained for]~~ Six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority pursuant to KRS 2.015~~[under state law, whichever is the longest].~~

(6) Confidentiality and Security: Use and Disclosure.

(a) The residential crisis stabilization unit 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 through~~[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, Subparts A and C, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The residential crisis stabilization unit may use and disclose client records. Use and disclosure shall be as established or required by:

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

(c) A residential crisis stabilization unit may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 through[tø] 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 11,~~[12]~~ Client Rights. (1) A residential crisis stabilization unit shall have written policies and procedures to ensure that the rights of a client are protected, including a statement of rights and responsibilities, which shall be:

(a) Provided at the time of admission:

1. To the client; or
2. If the client is a minor or incapacitated, to the client, client's parent, guardian, or other legal representative;

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

(c) Written in language that is understandable to the client;

(d) Conspicuously posted in a public area of the facility; and

(e) Cover the ~~[following]~~:

1. ~~[The]~~ Right to treatment, regardless of race, religion, or ethnicity;
2. ~~[The]~~ Right to recognition and respect of personal dignity in the provision of all treatment and care;
3. ~~[The]~~ Right to be provided treatment and care in the least restrictive environment possible;
4. ~~[The]~~ Right to an individualized plan of care;
5. ~~[The]~~ Right of the client, including the client's parent, guardian, or other legal representative~~[parents or guardian]~~ if the client is a minor or incapacitated, to participate in treatment planning;
6. ~~[The]~~ Nature of care, procedures, and treatment provided;
7. ~~[The]~~ Right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used;
8. ~~[The]~~ Right to be free from verbal, sexual, physical, or mental abuse; and
9. ~~[The]~~ Right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

(2) A residential crisis stabilization unit's written policies and procedures concerning client rights shall assure and protect the client's personal privacy within the constraints of his or her plan of care, including:

(a) Visitation by family or significant others in a suitable area of the facility; and

(b) Telephone communications with family or significant others at a reasonable frequency.

(3)(a) If a privacy right is limited, a full explanation shall be given to the client or the client's parent, ~~[or]~~ guardian, or other legal representative if the client is a minor or incapacitated.

(b) Documentation shall be included in the client's record of any privacy limitation.

(4) Information shall be provided to the client, or the client's parent, ~~or~~ guardian, or other legal representative if the client is a minor or incapacitated, regarding the use and disposition of special observation and audio visual techniques, which may include ~~[the following]~~:

- (a) One (1) way vision mirror;
- (b) Audio recording;
- (c) Video tape recording;
- (d) Television;
- (e) Movie; or
- (f) Photographs.

(5)(a) If the residential crisis stabilization unit serves children as established~~[described]~~ in Section ~~9~~~~[10]~~(4)(b) of this administrative regulation, written policy and procedures shall be developed in consultation with professional and direct-care staff to provide for behavior management of residents, including the use of a time-out room.

(b)1. Behavior management techniques:

a. Shall be explained fully to each client and, if the client is a minor or incapacitated, the client's parent, guardian, or other legal representative; and

b. May include time out or personal restraint.

2. Prone holds, chemical restraint, and mechanical restraint shall be prohibited in a residential crisis stabilization unit.

(c) The unit shall prohibit cruel and unusual disciplinary measures including ~~[the following]~~:

- 1. Corporal punishment;
- 2. Forced physical exercise;
- 3. Forced fixed body positions;
- 4. Group punishment for individual actions;
- 5. Verbal abuse, ridicule, or humiliation;
- 6. Denial of three (3) balanced nutritional meals per day;
- 7. Denial of clothing, shelter, bedding, or personal hygiene needs;
- 8. Denial of access to educational services;
- 9. Denial of visitation, mail, or phone privileges for punishment;
- 10. Exclusion of the resident from entry to his or her assigned living unit; and
- 11. Personal restraint or seclusion as a punishment or employed for the convenience of staff.

(d) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(6) If personal restraint is used as a safe behavioral management technique, the residential crisis stabilization unit shall have a policy that~~[which]~~ shall:

(a) Establish~~[Describe]~~ criteria for appropriate use of personal restraint;

(b) Establish~~[Describe]~~ documentation requirements; and

(c) Ensure that staff who implement the use of personal restraint shall:

- 1. Have documented training in the proper use of the procedure used;
- 2. Be certified in physical management by a nationally-recognized training program in which certification is obtained through skilled-out testing; and
- 3. Receive annual training and recertification in crisis intervention and behavior management.

Section ~~12~~~~[13]~~ Reports of Abuse, Neglect, or Exploitation. (1) A residential crisis stabilization unit shall have written policies that~~[which]~~ assure:

(a) The reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620; and

(b) That a resident may file a complaint with the cabinet concerning resident abuse, neglect, or exploitation.

(2) The unit shall have evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally[;] and shall prevent further potential abuse while the investigation is in progress.

Section 13[44.] Medication Prescribing and Monitoring in a Residential Crisis Stabilization Unit. (1) Medication prescribing and monitoring shall be under the direction of a licensed psychiatrist, a licensed physician supervised by a psychiatrist, or an APRN certified in psychiatric-mental health nursing practice who meets the requirements established in 201 KAR 20:057.

(2) Prescriptions concerning medication shall not exceed an order for more than five (5) refills.

(3) Medication prescribing and monitoring used in treatment shall be recorded in the staff notes and on a special medications chart in the client record.

(4) A copy of the prescription shall be kept in the client record.

(5) A blood or other laboratory test or examination shall be performed in accordance with accepted medical practice on each client receiving medication prescribed or administered by the residential crisis stabilization unit staff.

(6) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.

(7) Medication kept by the unit shall be properly labeled.

(8) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication.

(9) Medication kept in the unit shall be kept in a locked cabinet.

(10) A controlled substance shall be kept under double lock (for example, in a locked box in a locked cabinet).

(11) There shall be a controlled substances record, in which is recorded:

(a) The name of the client;

(b) The date, time, dosage, balance remaining, and method of administration of each controlled substance;

(c) The name of the prescribing physician or other ordering practitioner acting within the scope of his or her license to practice; and

(d) The name of the nurse who administered it[;] or staff who supervised the self-administration.

(12) Access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel.

(13) Medication to be self-administered shall be made available to the client at the time of administration.

Section 14[45.] Facility Requirements. (1) Living Unit. A living unit shall be located within a single building in which there is at least 120 square feet of space for each resident in the facility.

(2) Bedrooms.

(a) More than four (4) clients shall not sleep in the same[a] bedroom.

(b) A bedroom shall be equipped with a bed for each client.

(c) A bed shall:

1. Be at least thirty-six (36) inches wide and at least five (5) feet in length;

2. Be long and wide enough to accommodate the client's size;
 3. Have a mattress cover, two (2) sheets, a pillow, and bed covering to keep the client comfortable;
 4. Be equipped with a support mechanism and a clean mattress; and
 5. Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.
- (d) There shall be separate sleeping quarters for males and females.
 - (e) A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.
- (3) Bathrooms.
- (a) For every eight (8) residents, each residential crisis stabilization unit shall have at least one (1):
 1. Wash basin with hot and cold water;
 2. Bath or shower with hot and cold water; and
 3. Flush toilet.
 - (b) If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.
- (4) Living area.
- (a) The living area shall provide comfortable seating for all clients housed within the residential crisis stabilization unit.
 - (b) Each living unit shall be equipped with a:
 1. Working sink; and
 2. Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.
- (5) There shall be adequate lighting, heating, heated water, and ventilation.
- (6) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked.
- (7) The residential crisis stabilization unit shall be kept in good repair, neat, clean, free from accumulations of dirt and rubbish, and free from foul, stale, and musty odors.
- (8) The residential crisis stabilization unit shall be kept free from insects and rodents with their harborages eliminated.
- (9) The residential crisis stabilization unit shall establish an infection control system ~~that~~^{which} includes training personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.
- (10) Services shall be provided in an area where clients are ensured privacy and confidentiality.

Section ~~15.~~^{146.} Facility Specifications. (1) A residential crisis stabilization unit shall:

- (a) Be of safe and substantial construction;
 - (b) Be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation;
 - (c) Be approved by the State Fire Marshal's office prior to initial licensure or if the unit changes location; and
 - (d) 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) A residential crisis stabilization unit shall:
- (a) Have a written emergency plan and procedures for meeting potential disasters such as fires or severe weather;

(b) Post the emergency plan conspicuously in a public area of the unit and provide a copy to all personnel;

(c) Provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) Practice fire drills monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.

Section 16.~~[47.]~~ Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Residential Crisis Stabilization Unit if:

(a) Any person with ownership interest in the residential crisis stabilization unit 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 residential crisis stabilization unit 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 residential crisis stabilization unit to comply with the provisions of this administrative regulation;

(b) The residential crisis stabilization unit 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 residential crisis stabilization unit is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.

(3) The denial or revocation of a residential crisis stabilization unit'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 state~~[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 residential crisis stabilization unit's license if the cabinet has probable cause to believe that the continued operation of the unit would constitute an immediate danger to the health, welfare, or safety of its residents.

(b)1. The residential crisis stabilization unit 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 state~~[set forth]~~ the particular reasons for the action.

(6) Notice of a hearing on an urgent suspension shall be served on the residential crisis stabilization unit 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 health, safety, or welfare of the residents.

(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 residential crisis stabilization unit's license pursuant to subsection (3) of this section if:

- (a) The facility 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 health, safety, or welfare of the residents.
- (10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 17.[18.] Incorporation by Reference. (1) The OIG 20:440, "Application for License to Operate a Residential Crisis Stabilization Unit", 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.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 2, 2020

FILED WITH LRC: October 13, 2020 at 12:30 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: persons: Kara L. Daniel or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of residential crisis stabilization units that serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing minimum licensure requirements for the operation of residential crisis stabilization units.

(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 residential crisis stabilization units.

(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 administrative regulation, 907 KAR 15:070, Coverage provisions and requirements regarding services provided by residential crisis stabilization units. Key changes to this administrative regulation, 902 KAR 20:440, are as follows:

Amends Section 1(1)(a) to clarify that a psychiatrist, as included under the definition of "behavioral health professional", may be certified or eligible to apply for certification by the American Osteopathic Board of Neurology;

Amends Section 1(7) to allow a crisis stabilization unit to serve sixteen (16) clients rather than twelve (12) clients who require overnight stays;

Adds a definition for “licensed clinical alcohol and drug counselor”;

Updates the definition of “peer support specialist” to include a registered alcohol and drug peer support specialist, and allow for peer support specialists to work under the supervision of a licensed clinical alcohol and drug counselor;

Deletes the prohibition against co-locating a residential alcohol and other drug treatment entity (AODE) and a residential crisis stabilization program on the same campus;

Adds language to allow the executive director to serve in a dual role as the executive director of a residential crisis stabilization unit and an AODE if both facilities are owned by the same entity and meet other criteria;

Adds language to allow the program director to serve in a dual role as the program director of a residential crisis stabilization unit and an AODE if both facilities are owned by the same entity and meet other criteria;

Removes language allowing residential crisis stabilization units 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 (ACA), for the submission of fingerprints to the FBI for direct patient access employees in voluntarily participating long-term care settings. Because residential crisis stabilization units are not included in the statutory definition of a “long-term care facility” or otherwise covered under Section 6201 of the ACA, residential crisis stabilization units cannot voluntarily participate in the Kentucky NBCP;

Adds a cross-reference to applicable sections in 907 KAR 15:070 as it relates to the following services provided by residential crisis stabilization units: screening, assessment, treatment planning, individual therapy, group therapy, family therapy, and peer support;

Allows a licensed clinical alcohol and drug counselor to provide screening, assessment, treatment planning, individual therapy, group therapy, and family therapy;

Adds a cross-reference to 907 KAR 15:070, Section 3, if a residential crisis stabilization unit provides treatment for acute withdrawal; and

Adds licensed AODE programs as one of the programs with which residential crisis stabilization units may have a linkage to help promote continuity of care after discharge.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the proposed changes to 907 KAR 15:070.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 because it establishes minimum licensure requirements for the operation of residential crisis stabilization units.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards for licensed residential crisis stabilization units.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the four (4) currently licensed residential crisis stabilization units.

(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 licensed in accord-

ance with this administrative regulation are required to comply with the standards established by this administrative regulation, including:

State Fire Marshal 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;

Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the residential crisis stabilization unit;

Designation of an executive director who may also serve as the residential crisis stabilization unit's program director if the individual is a behavioral health professional as defined by Section 1 of this administrative regulation;

Compliance with abuse registry and criminal background check requirements;

Implementation of a process for quality assurance and utilization review;

Implementation of a process for responding to client grievances;

Mandatory delivery of screening, assessment, treatment planning, individual therapy, group therapy, and psychiatric services;

Optional delivery of family therapy and peer support services;

Treatment for acute withdrawal, if appropriate;

Retention of client records;

Implementation of administrative and personnel policies as well as policies that ensure that the rights of clients are protected;

Medication prescribing and monitoring;

Compliance with basic facility requirements for bedrooms, bathrooms, living areas, infection control, and cleanliness; and

Compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation as well as emergency plans in the effect of a disaster or severe weather.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed residential crisis stabilization units may enroll in the Kentucky Medicaid Program for reimbursement of covered services provided to Medicaid recipients in need of short-term crisis services.

(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: State general funds and agency monies are used to implement and enforce this administrative regulation.

(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 administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be 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 the Cabinet for Health and Family Services, Office of Inspector General, and licensed residential crisis stabilization units.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Cabinet collects an initial fee of \$750 and annual renewal fee of \$500 from each licensed residential crisis stabilization unit. These fees are existing requirements and are not being amended by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an initial licensure fee of \$750 and annual licensing fee of \$500 for each entity licensed as a residential crisis stabilization unit. These fees are existing requirements and are not being amended by this amendment.

(c) How much will it cost to administer this program for the first year? This amendment imposes 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 (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

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, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

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. 42 U.S.C. 209ee-3 pertains to the confidentiality of patient records. 42 C.F.R. Part 2 prohibits programs from disclosing any information that would identify a person as having or having had substance use disorder, unless that person provides written consent.

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.