907 KAR 1:145. Supports for community living services for an individual with an intellectual or developmental disability.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the covered service policies and requirements relating to home and community-based services provided to an individual with an intellectual or developmental disability as an alternative to placement in an intermediate care facility for an individual with an intellectual or developmental disability, including a consumer directed option pursuant to KRS 205.5606 until individuals transition to receiving services via 907 KAR 12:010.

Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351; and

(b) Submitted to the department:

1. For a level of care determination; and

2. Annually thereafter.

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

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

(b) Which meets in accordance with the BIC policies established in the Supports for Community Living Manual.

(3) "Behavior support specialist" means an individual who has a master's degree from an accredited institution with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(4) "Blended services" means a nonduplicative combination of SCL waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 5 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(5) "Budget allowance" is defined by KRS 205.5605(1).

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

(7) "Consumer" is defined by KRS 205.5605(2).

(8) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waivers that allow recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(9) "Covered services and supports" is defined by KRS 205.5605(3).

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

(11) "DDID" means the Division of Developmental and Intellectual Disabilities in the De-

partment for Behavioral Health, Developmental and Intellectual Disabilities.

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

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

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

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

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

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

2. Is a direct result of, or is influenced by, the person’s cognitive deficits.

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

(15) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less; or

(c) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(16) "Human rights committee" means a group of individuals:

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

(b) Who meet:

1. To ensure that the rights of participants are respected and protected through due process; and

2. In accordance with the Human Rights Committee requirements established in the Supports for Community Living Policy Manual.

(17) "ICF-IID" means an intermediate care facility for an individual with an intellectual or developmental disability.

(18) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(19) "Level of care determination" means a determination by the department that an individual meets patient status criteria for an intermediate care facility for an individual with an intellectual disability as established in 907 KAR 1:022.

(20) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).
(21) ‘‘Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).
(22) "Occupational therapist" is defined by KRS 319A.010(3).
(23) "Occupational therapy assistant" is defined in KRS 319A.010(4).
(24) "Physical therapist" is defined by KRS 327.010(2).
(25) "Physical therapist assistant" means a skilled health care worker who:
(a) Is certified by the Kentucky Board of Physical Therapy; and
(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.
(26) "Plan of Care" or "POC" means a written individualized plan developed by:
(a) An SCL recipient or an SCL recipient’s legal representative;
(b) The case manager or support broker; and
(c) Any other person designated by the SCL recipient if the SCL recipient designates any other person.
(27) "Psychologist" is defined by KRS 319.010(9).
(28) "Registered nurse" or "RN" is defined by KRS 314.011(5).
(29) "Representative" is defined in KRS 205.5605(6).
(30) "SCL intellectual disability professional" or "SCL IDP" means an individual who has at least one (1) year of experience working with persons with intellectual or developmental disabilities and:
(a) Is a doctor of medicine or osteopathy;
(b) Is a registered nurse; or
(c) Holds at least a bachelor’s degree from an accredited institution in a human services field including sociology, special education, rehabilitation counseling, or psychology.
(31) "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.
(32) "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.
(33) "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or 335.100.
(34) "Speech-language pathologist" is defined by KRS 334A.020(3).
(35) "Support broker" means an individual designated by the department to:
(a) Provide training, technical assistance, and support to a consumer; and
(b) Assist the consumer in any other aspects of CDO.
(36) "Support spending plan" means a plan for a consumer that identifies:
(a) CDO services requested;
(b) Employee name;
(c) Hourly wage;
(d) Hours per month;
(e) Monthly pay;
(f) Taxes; and
(g) Budget allowance.
(37) "Supports for community living services" or "SCL services" means home and community-based waiver services for an individual with an intellectual or developmental disability.

Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:
(a) Receive notification of potential SCL funding in accordance with Section 7 of this administrative regulation;

(b) Meet ICF-IID patient status requirements established in 907 KAR 1:022;

(c) Meet Medicaid eligibility requirements established in 907 KAR 20:010;

(d) Submit an application packet to the department which is included in the Supports for Community Living Manual and which shall contain:

1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. The MAP-351 Assessment Form;

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

4. A MAP-10, statement of the need for long-term care services, which shall be signed and dated by a physician or an SCL IDP and be less than one (1) year old;

5. The results of a psychological examination completed by a licensed psychologist or certified with autonomous functioning;

6. A social case history which is less than one (1) year old;

7. A projection of the needed supports and a preliminary MAP-109 Plan of Care for meeting those needs;

8. A MAP-24C documenting an individual's status change; and

9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and

(e) Receive notification of an admission packet approval from the department.

(2) To maintain eligibility as an SCL recipient:

(a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;

(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 20:010; and

(c) An ICF-IID level of care determination shall be performed by the department at least once every twelve (12) months.

(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF-IID or other facility.

(4) Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without receiving an extension based on demonstration of good cause.

1. The individual or legal representative shall have the burden of documenting good cause.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(b) An SCL recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without receiving an extension based on demonstration of good cause.

1. The recipient or legal representative shall have the burden of providing documentation of good cause.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or

(d) An SCL recipient does not meet ICF-IID patient status criteria.

(5) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:

(a) Simultaneous notice to the SCL recipient or legal representative, the case manager or support broker, the department, and DDID at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24C to the department and to DDID at the time of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;

2. Provide assistance to the SCL recipient in making contact with another SCL provider;

3. Arrange transportation for a requested visit to an SCL provider site;

4. Provide a copy of pertinent information to the SCL recipient or legal representative;

5. Ensure the health, safety, and welfare of the SCL recipient until an appropriate placement is secured;

6. Continue to provide supports until alternative services or another placement is secured; and

7. Provide assistance to ensure a safe and effective service transition.

(6) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider, to the department, and to DDID.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice.

(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Non-CDO Provider Participation. The SCL waiver service provider policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers.

Section 4. Non-CDO Covered Services. (1) A non-CDO SCL waiver service shall:

(a) Be prior authorized by the department; and

(b) Be provided pursuant to the plan of care.

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Adult day training which shall:

1. Support the SCL recipient to participate in daily meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a nonresidential or community setting that may;

a. Be a fixed location; or

b. Occur in public venues.

4. Not be diversional in nature;

5.a. Be provided as on-site services which shall:

(i) Include facility-based services provided on a regularly-scheduled basis;

(ii) Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or

(iii) Prepare the participant for transition from school to work or adult support services; or

b. Be provided as off-site services which:

(i) Shall include services provided in a variety of community settings;

(ii) Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;

(iii) Shall be designed to result in increased ability to access community resources without paid supports;

(iv) Shall provide the opportunity for the participant to be involved with other members of the general population;

(v) May be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;

(vi) May be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; and

(vii) May be provided as entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

6. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;

7. Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities in the community at least annually;

8. Be provided at a time mutually agreed to by the recipient and provider;

9.a. Be provided to recipients age twenty-two (22) or older; or

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;

10. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary staff note which shall include:

(i) The month, day, and year for the time period covered by each note written;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of individual preparing the summary staff note;

11. Be limited to five (5) days per week, 255 days maximum per year;

12. Not exceed eight (8) hours per day, five (5) days per week; and

13. Not exceed sixteen (16) hours per day if provided in combination with community living supports or supported employment;

(b) An assessment service including a comprehensive assessment which shall:

1. Identify an SCL recipient's needs and the services that the SCL recipient or his or her family cannot manage or arrange for on his or her behalf;

2. Evaluate an SCL recipient's physical health, mental health, social supports, and environ-

ment;

3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;

4. Be conducted within seven (7) calendar days of receipt of the request for assessment;

5. Include at least one (1) face-to-face contact with the SCL recipient and, if appropriate, his or her family by the assessor in the SCL recipient's home; and

6. Not be reimbursable if the individual does not receive a level of care certification;

(c) A reassessment service which shall:

1. Determine the continuing need for SCL waiver services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures as for an assessment service;

4. Be conducted by a SCL case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and

6. Not be retroactive;

(d) Behavioral support which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the SCL recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by SCL provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

g. Reflect the use of positive approaches; and

h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;

6. Include the monitoring of an SCL recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of an SCL provider involved in implementing the behavioral support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modi-

fications;

8. Be provided by a behavior support specialist who shall have:

a. A master's degree with formal graduate course work in a behavioral science; and

b. One (1) year of experience in behavioral programming;

9. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the behavioral specialist; and

10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;

(e) Case management which shall include:

1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;

3. Assisting an SCL recipient and the support team to develop, update, and monitor the plan of care which shall:

a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;

b. Be updated at least annually or as changes occur;

c. Be submitted on the MAP-351; and

d. Include any modification to the plan of care and be sent to the department within fourteen (14) days of the effective date that the change occurs with the SCL recipient;

4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;

5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;

6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;

7. Timely distribution of the plan of care, crisis prevention plan, assessment, and other documents to chosen SCL service providers;

8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;

9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:

a. Individual-specific;

b. Annually reviewed; and

c. Updated as a change occurs;

10. Assisting an SCL recipient in planning resource use and assuring protection of resources;

11. Services that are exclusive of the provision of a direct service to an SCL recipient;

12. Monthly face-to-face contact with an SCL recipient;

13. Monitoring the health, safety, and welfare of an SCL recipient;

14. Monitoring all of the supports provided to an SCL recipient;

15. Notifying the local DCBS office, the department, and DMR on a MAP-24C form if an SCL recipient is:

a. Terminated from the SCL Waiver Program;

b. Admitted to an ICF-IID;

c. Admitted to a hospital;
d. Transferred to another Medicaid Waiver Program; or
e. Moved to another SCL residence;
16. Establishing a human rights committee which shall:
a. Include an:
(i) SCL recipient;
(ii) Individual not affiliated with the SCL provider; and
(iii) Individual who has knowledge and experience in rights issues;
b. Review and approve, prior to implementation and at least annually thereafter, all plans of care with rights restrictions;
c. Review and approve prior to implementation and at least annually thereafter, in conjunction with the SCL recipient's team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and
d. Review the use of a psychotropic medication by an SCL recipient without an Axis I diagnosis;
17. Establishing a behavior intervention committee which shall:
a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;
b. Be separate from the human rights committee;
c. Review and approve prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient's team, all behavior support plans; and
d. Review the use of a psychotropic medication by an SCL recipient without an Axis I diagnosis and recommend an alternative intervention if appropriate;
18. Documentation with a monthly summary note which shall include:
a. Documentation of monthly contact with each chosen SCL provider which shall include monitoring of the delivery of services and the effectiveness of the plan of care;
b. Documentation of monthly face-to-face contact with an SCL recipient; and
c. Progress towards outcomes identified in the plan of care;
19. Provision by a case manager who shall:
a. Have a bachelor's degree from an accredited institution in a human services field;
b. Be a registered nurse;
c. Be a qualified social worker;
d. Be a licensed marriage and family therapist;
e. Be a licensed professional clinical counselor;
f. Be a certified psychologist; or
g. Be a licensed psychological practitioner;
20. Supervision by a case management supervisor who shall be an SCL IDP; and
21. Documentation with a detailed monthly summary note which shall include:
a. The month, day, and year for the time period each note covers;
b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
c. The signature, date of signature, and title of the individual preparing the note;
(f) Children's day habilitation which shall be:
1. The provision of support, training, and intervention in the areas of:
a. Self-care;
b. Sensory or motor development;
c. Daily living skills;
d. Communication; and
e. Adaptive and social skills;

2. Provided in a nonresidential or community setting;
3. Provided to enable the recipient to participate in and access community resources;
4. Provided to help remove or diminish common barriers to participation in typical roles in community life;
5. Provided at a time mutually agreed upon by the recipient and provider;
6. Limited to:
a. Individuals who are in school and up to sixteen (16) years of age;
b. Up to eight (8) hours per day, five (5) days per week; and
c. Up to sixteen (16) hours per day in combination with community living supports; and
7. Documented by:
a. A time and attendance record which shall include:
(i) The date of service;
(ii) The beginning and ending time of the service;
(iii) The location of the service; and
(iv) The signature, date of signature, and title of the individual providing the service; and
b. A detailed monthly staff note which shall include:
(i) The month, day, and year for the time period each note covers;
(ii) Progression, regression, or maintenance of outcomes identified in the plan of care; and
(iii) The signature, date of signature, and title of the individual preparing the summary staff note;
(g) Community living supports which shall:
1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;
2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:
a. Routine household tasks and maintenance;
b. Activities of daily living;
c. Personal hygiene;
d. Shopping;
e. Money management;
f. Medication management;
g. Socialization;
h. Relationship building;
i. Leisure choices;
j. Participation in community activities;
k. Therapeutic goals; or
l. Nonmedical care not requiring nurse or physician intervention;
3. Not replace other work or day activities;
4. Be provided on a one-on-basis;
5. Not be provided at an adult day-training or children’s day- habilitation site;
6. Be documented by:
a. A time and attendance record which shall include:
(i) The date of the service;
(ii) The beginning and ending time of the service; and
(iii) The signature, date of signature, and title of the individual providing the service; and
b. A detailed monthly summary note which shall include:
(i) The month, day, and year for the time period each note covers;
(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;

(h) Occupational therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date of signature, and title of the individual providing the service;

(i) Physical therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;

2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of another SCL provider on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and

6. Documented by a detailed staff note which shall include:

a. Progress made toward outcomes identified in the plan of care;

b. The date of the service;

c. Beginning and ending time of the service; and

d. The signature, date of signature, and title of the individual providing the service;

(j) Psychological services which shall:

1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;

2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;

3. Include:

a. The administration of psychological testing;

b. Evaluation;

c. Diagnosis; and

d. Treatment;

4. Be incorporated into the plan of care with input from the psychological service provider for the development of program-wide support;

5. Be provided by a psychologist or a psychologist with autonomous functioning; and

6. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time of the service; and

c. The signature, date of signature, and title of the individual providing the service;

(k) Residential support service which shall:

1. Include twenty-four (24) hour supervision in:

a. A staffed residence which shall not have greater than three (3) recipients of publicly-funded supports in a home rented or owned by the SCL provider;

b. A group home which shall be licensed in accordance with 902 KAR 20:078 and shall not have greater than eight (8) SCL recipients;

c. A family home provider which shall not have greater than three (3) recipients of publicly-funded supports living in the home; or

d. An adult foster care home which shall not have greater than three (3) recipients of publicly-funded supports aged eighteen (18) or over living in the home;

2. Utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;

3. Not utilize a motor home;

4. Provide a sleeping room which ensures that an SCL recipient:

a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;

b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;

c. Does not share a room with an individual who presents a potential threat; and

d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the SCL recipient's health and comfort;

5. Provide assistance with daily living skills which shall include:

a. Ambulation;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning; or

k. Medication management;

6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care;

7. Provide or arrange for transportation to services, activities, and medical appointments as needed;

8. Include participation in medical appointments and follow-up care as directed by the medical staff; and

9. Be documented by a detailed monthly summary note which shall include:

a. The month, day, and year for the time period the note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. Pertinent information regarding the life of the SCL recipient; and

d. The signature, date of signature, and title of the individual preparing the staff note;

(l) Respite service which shall be:

1. Provided only to an SCL recipient unable to independently administer self-care;

2. Provided in a variety of settings;
3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;
4. Provided only to an SCL recipient who resides in a family home provider, adult foster care home, or his or her own or family's home;
5. Limited to 1,440 hours per calendar year; and
6. Documented by a detailed staff note which shall include:
a. The date of the service;
b. The beginning and ending time; and
c. The signature, date of signature, and title of the individual providing the service;
(m) Specialized medical equipment and supplies which shall:
1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
2. Enable an SCL recipient to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
3. Be ordered by a physician and submitted on a MAP-95;
4. Include equipment necessary to the proper functioning of specialized items;
5. Not be available through the department’s durable medical equipment, vision, hearing, or dental programs;
6. Meet applicable standards of manufacture, design and installation; and
7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;
(n) Speech therapy which shall be:
1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;
2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;
3. Training of other SCL providers on improving the level of functioning;
4. Exclusive of maintenance or the prevention of regression;
5. Provided by a speech-language pathologist; and
6. Documented by a detailed staff note which shall include:
a. Progress toward outcomes identified in the plan of care;
b. The date of the service;
c. The beginning and ending time; and
d. The signature, date of signature, and title of the individual providing the service; or
(o) Supported employment which shall be:
1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed;
2. Provided in a variety of settings;
3. Provided on a one-to-one basis;
4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;
5. Exclusive of work performed directly for the supported employment provider;
6. Provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;
7. Documented by:
a. A time and attendance record which shall include:
(i) The date of service;

(ii) The beginning and ending time; and
(iii) The signature, date of signature, and title of the individual providing the service; and
b. A detailed monthly summary note which shall include:
(i) The month, day, and year for the time period the note covers;
(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
(iii) The signature, date of signature, and title of the individual preparing the note; and
8. Limited to forty (40) hours per week alone or in combination with adult day training.

Section 5. Consumer Directed Option. (1) Covered services and supports provided to an SCL recipient participating in CDO shall include:
(a) A home and community support service which shall:
1. Be available only under the consumer directed option;
2. Be provided in the consumer's home or in the community;
3. Be based upon therapeutic goals and not be diversional in nature;
4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and
5.a. Be respite for the primary caregiver; or
b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:
(i) Routine household tasks and maintenance;
(ii) Activities of daily living;
(iii) Personal hygiene;
(iv) Shopping;
(v) Money management;
(vi) Medication management;
(vii) Socialization;
(viii) Relationship building;
(ix) Leisure choices; or
(x) Participation in community activities;
(b) A community day support service which shall:
1. Be available only under the consumer directed option;
2. Be provided in a community setting;
3. Be tailored to the consumer’s specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure, or retirement activities;
4. Be based upon therapeutic goals and not be diversional in nature; and
5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and
(c) Goods or services which shall:
1. Be individualized;
2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;
3. Not include experimental goods or services; and
4. Not include chemical or physical restraints.
(2) To be covered, a CDO service shall be specified in a consumer’s plan of care and support spending plan.
(3) Reimbursement for a CDO service shall not exceed the department’s allowed reim-

bursement for the same or a similar service provided in a non-CDO SCL setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice of CDO provider shall be documented in the consumer's plan of care.

(5) A consumer may designate a representative to act on his or her behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form, which is included in the Supports for Community Living Manual.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if imminent danger to the consumer's health, safety, or welfare exists.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the SCL assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete, and submit to the department and to DMR, a MAP-2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional SCL services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract, which is included in the Supports for Community Living Manual, to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a US citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Kentucky Administrative Office of the Courts or equivalent agency from any other state, for each state in which the individual resided or worked during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry.

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days.

2. If a consumer does not obtain a central registry check result within thirty (30) days of em-

ploying a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of SCL recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare.

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals in an ICF-IID.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 6. Incident Reporting Process. The incident report policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers and participants.

Section 7. SCL Waiting List. The SCL waiting list policies and requirements established in 907 KAR 12:010 shall apply to all individuals on the SCL waiting list or attempting to be placed on the SCL waiting list.

Section 8. Use of Electronic Signatures. The electronic signature policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers.

Section 9. Transition to New SCL Waiver. (1) The policies established in Sections 2, 4, and 5 of this administrative regulation shall apply to SCL waiver services provided:

(a) To an SCL waiver service recipient until the recipient transitions to the new SCL waiver program:

1. In accordance with 907 KAR 12:010; and

2. During the month of the SCL waiver recipient's next birthday; and

(b) By an SCL waiver service provider who provides a service to an SCL waiver service recipient who has not transitioned to the new SCL waiver service program established pursuant to 907 KAR 12:010.

(2) During the month of an SCL waiver recipient's next birthday, the SCL waiver recipient who remains approved to receive SCL waiver services shall:

(a) Transition to the new SCL waiver program; and

(b) Receive services in accordance with 907 KAR 12:010 rather than in accordance with this administrative regulation.

(3) The policies established in this administrative regulation shall become null and void at the time that every eligible SCL waiver recipient served in accordance with this administrative regulation:

(a) Has transitioned to the new SCL waiver program; and

(b) Receives SCL waiver services in accordance with the policies established in 907 KAR 12:010.

Section 10. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) An individual shall not appeal a category of need specified in 907 KAR 12:010, Section 7.

Section 11. Incorporation by Reference. (1) "Supports for Community Living Manual", October 2007 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (24 Ky.R. 1819; 2126; 2384; eff. 5-18-98; 30 Ky.R. 732; 1770; eff. 1-15-2004; 32 Ky.R. 2169; 33 Ky.R. 486; 782; eff. 10-6-06; 34 Ky.R. 1556; eff. 428; 1021; 1453; eff. 1-4-2008; 39 Ky.R. 632; 1221; 1416; eff. 2-1-2013; TAm 9-30-2013; Crt eff. 12-6-2019.)