

907 KAR 1:155. Payments for supports for community living services for an individual with an intellectual or developmental disability.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n
STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement policies relating to home and community based waiver 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 disability.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

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

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

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

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

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.

(3) "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.

(4) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a standardized tool used for the measurement of supportive services needed by an individual with a disability.

(5) "Overall level of eligible support" means the highest of three (3) scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.

(6) "Supports for community living services" or "SCL services" means community-based waiver services for an individual with an intellectual or developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a Medicaid recipient who:

- (a) Meets patient status criteria for an intermediate care facility for individuals with intellectual disabilities (ICF-IID) as established in 907 KAR 1:022; and
 - (b) Is authorized for an SCL service by the department.
- (2) In order to be covered, a service shall be provided in accordance with the terms and conditions specified in 907 KAR 1:145.
- (3) The reimbursement provisions established in this administrative regulation shall apply until the recipient transitions to the new SCL waiver program established in 907 KAR 12:010 during the month of the recipient's next birthday. After that transition, the reimbursement provisions established in 907 KAR 12:020 shall apply.

Section 3. SCL Reimbursement. (1) Specialized medical equipment and supplies shall:

- (a) Be a unit of service in which one (1) unit equals one (1) item as provided in Section 4 of this administrative regulation;
 - (b) Be reimbursed:
 - 1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and
 - 2. Based on the submission of three (3) price estimates of which the lowest shall determine the amount of reimbursement; and
 - (c) Not include furniture, a recreational item, or a leisure item.
- (2) A functional assessment to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.
- (3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.
- (4) Monitoring a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. (1) The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of service:

| Service | Unit of Service | Upper Payment Limit |
|-----------------------------|-------------------------------|---------------------|
| Adult day training on-site | 15 minutes | \$2.50 |
| Adult day training off-site | 15 minutes | \$3.00 |
| Adult foster care | 24 hours | \$112.49 |
| Assessment or re-assessment | 1 assessment or re-assessment | \$75.00 |
| Behavior support | 15 minutes | \$33.25 |
| Case management | 1 month | \$376.06 |
| Children's day habilitation | 15 minutes | \$2.50 |
| Community living supports | 15 minutes | \$5.54 |
| Family home provider | 24 hours | \$112.49 |

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|------------------------------------------------------------------|------------|----------------------------------------------------------------------------------------------------------------------|
| Group home | 24 hours | \$126.35 |
| Occupational therapy by occupational therapist | 15 minutes | \$22.17 |
| Occupational therapy by certified occupational therapy assistant | 15 minutes | \$22.17 |
| Physical therapy by physical therapist | 15 minutes | \$22.17 |
| Physical therapy by physical therapy assistant | 15 minutes | \$22.17 |
| Psychological services | 15 minutes | \$38.79 |
| Respite | 15 minutes | \$2.77 |
| Specialized medical equipment and supplies | 1 item | Based on submission of 3 price estimates and reimbursed as described in Section 3 of this administrative regulation. |
| Speech therapy | 15 minutes | \$22.17 |
| Staffed residence | 24 hours | \$168.46 |
| Supported Employment | 15 minutes | \$5.54 |

(2) Adult day training on-site and off-site shall be limited to:

(a) Forty (40) hours (160 units) per week; and

(b) 255 days per calendar year with the specific days established in the individual support plan and approved by the department.

(3) Children's day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Non-Level II Intensity Payment. (1) In addition to the rates specified in Section 4 of this administrative regulation, a provider shall receive an intensity payment if the provider meets the criteria established in subsection (2) of this section.

(2) A non-Level II intensity payment for a unit of service shall be:

(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;

(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and

(c) For the following SCL services:

1. Staffed residence;
2. Community living supports;
3. Respite;
4. Family home provider;
5. Group home;
6. Adult foster care home;
7. Adult day training on-site;
8. Adult day training off-site; or
9. Children's day habilitation.

(3) A non-Level II intensity payment for a unit of service shall be as follows:

| Service | Intensity Payment |
|-----------------------------|-------------------|
| Adult day training on-site | \$0.40 |
| Adult day training off-site | \$0.40 |
| Children's day habilitation | \$0.40 |
| Staffed residence | \$33.69 |
| Community living | \$0.83 |
| Respite | \$0.42 |
| Family home provider | \$16.87 |
| Group home | \$25.27 |
| Adult foster care home | \$16.87 |

Section 6. Level II Intensity Payment. (1) The department shall reimburse an adult day health care center which qualifies for Level II reimbursement pursuant to 907 KAR 1:170 with an intensity payment of fifty (50) cents per unit for adult day training on-site or adult day training off-site provided to an SCL recipient.

(2) If an SCL recipient qualifies an adult day health care center for a non-Level II intensity payment and a Level II intensity payment, the department shall pay the Level II intensity payment.

Section 7. All-Inclusive Enhanced Rate. (1) Effective September 1, 2006, the department shall reimburse an all-inclusive rate of \$125,000 per recipient per year to a group home, staffed residence, family home provider, or adult foster care home for SCL services that are provided, in accordance with 907 KAR 1:145, Section 4, to an individual who has transitioned from an institutional setting to a community setting.

(2) The rate established in subsection (1) of this section shall be paid for care to an individual who:

(a) Prior to the transition, expressed, or whose legal guardian expressed, a desire to transition from the facility in which he or she resided to a community placement; and

(b)1. Prior to the transition, resided in an ICF-IID for the entire two (2) year period, with the period ending no earlier than July 1, 2006, immediately preceding transitioning out of the ICF-IID and who was approved by the department for transitioning;

2. Resided in an ICF-IID for a period of less than two (2) years but more than six (6) months, with the period ending no earlier than July 1, 2006, immediately preceding transitioning out of the ICF-IID and who was approved for transitioning by the department; or

3.a. Transitioned from an institutional setting other than an ICF-IID;

b. Had a primary diagnosis of intellectual disability or developmental disability;

c. Had resided in an ICF-IID for a period of at least six (6) months within the preceding two (2)

years;

d. Had received prior SCL funding; and

e. Had been reviewed and approved for transitioning by the department.

(3) To be considered for providing services to an individual meeting the criteria established in subsection (2) of this section, a provider shall:

(a) Demonstrate its ability to ensure that the potential recipient will have access to each service identified in his or her individual support plan through:

1. The provider's own operation; or

2. An established network of providers that are:

a. Enrolled in the Medicaid Program; or

b. Certified or licensed in accordance with state law governing their specific area of practice;

(b) Notify the department in writing:

1. Of the number of individuals it is willing and able to accept;

2. The date it will be able to accept an individual or individuals; and

3. That it is willing and able to provide services to a minimum of one (1) individual who has scored at least five (5) on the NC-SNAP; and

(c) Be able to serve a minimum of three (3) individuals, regardless of funding source, in the residence. A provider shall not be required to serve a minimum of three (3) individuals referenced in subsection (2) of this section, but shall be able to serve a minimum of three (3) individuals in the residence.

(4) To receive the rate established in subsection (1) of this section, a provider shall submit documentation to the department of each SCL service provided to the recipient for whom the special rate is paid.

(5) The reimbursement established in subsection (1) of this section:

(a) Shall expire if approval from the Centers for Medicare and Medicaid Services ceases and corresponding funding becomes unavailable; and

(b) Shall be all inclusive, meaning that it shall cover residential as well as all other SCL services, in accordance with 907 KAR 1:145, Section 4, provided to the recipient for a year.

(6) Recipient freedom of choice provisions shall apply during an individual's transition from an institution to a group home, staffed residence, family home provider, or adult foster care home.

(7) An individual may transition to a group home, staffed residence, family home provider, or adult foster care home if:

(a) The individual is eligible for SCL services pursuant to 907 KAR 1:145;

(b) The department determines that the group home, staffed residence, family home provider, or adult foster care home satisfies the requirements established in this section; and

(c) The group home, staffed residence, family home provider, or adult foster care home meets the SCL provider requirements established in 907 KAR 1:145.

(8)(a) If a group home, staffed residence, family home provider, or adult foster care home declines to accept an individual referenced in subsection (2) of this section, the provider, except as established in paragraph (b) of this subsection, shall be ineligible to:

1. Provide services to any future individual who meets the criteria established in subsection (2) of this section; and

2. Receive the corresponding rate referenced in subsection (1) of this section for care provided to any future individual.

(b) If the department determines that a provider who declines to accept an individual is not equipped to serve the individual and that the placement would be inappropriate, the provider may be considered for future placements and payments.

(c) Refusing to accept an individual referenced in subsection (2) of this section shall not preclude a provider from continuing to:

1. Serve an individual meeting the criteria established in subsection (2) of this section who is already residing in the provider's residence; or
2. Be reimbursed at the rate established in subsection (1) of this section for services provided to an individual already residing in the provider's residence.

Section 8. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A recipient of an SCL waiver service shall have an NC-SNAP administered:

- (a) By the department; and
 - (b) In accordance with the NC-SNAP Instructor's Manual.
- (2) A new NC-SNAP shall be administered:
- (a) At the department's discretion; or
 - (b) At the timely request of an SCL provider if a change in a recipient's circumstances results in the need for increased or decreased supportive services.
- (3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:
- (a) In accordance with subsection (2)(b) of this section; or
 - (b) As a result of an appeal filed in accordance with Section 11(1) of this administrative regulation.

Section 9. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3(10).

Section 10. Transition to New SCL Waiver. (1) The reimbursement policies established in this administrative regulation shall:

- (a) Apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 1:145; and
 - (b) Not apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010.
- (2) An SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010 shall be reimbursed pursuant to 907 KAR 12:020.
- (3) The policies established in this administrative regulation shall become null and void at the time that:
- (a) All SCL waiver service recipients receive SCL waiver services pursuant to 907 KAR 12:010; and
 - (b) No SCL waiver recipient receives SCL waiver services pursuant to 907 KAR 1:145.

Section 11. Appeal Rights. (1) An appeal of an NC-SNAP score in accordance with 907 KAR 1:671 shall not be allowed if the change in score does not affect the provider's reimbursement level.

(2) An appeal of a department decision regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding the eligibility of an individual shall be in accordance with 907 KAR 1:560.

(4) A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "MAP-95 Request for Equipment Form", Department for Medicaid Services, September 2002 Edition;
- (b) "North Carolina Support Needs Assessment Profile (NC-SNAP)", 2000 Edition, copyright

Murdoch Center Foundation; and

(c) "NC-SNAP Instructor's Manual", copyright 1999, Murdoch Center Foundation.

(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. 1822; 2129; 2386; eff. 5-18-1998; 26 Ky.R. 1591; 1805; eff. 4-12-2000; 28 Ky.R. 956; 1412; eff. 12-19-2001; 30 Ky.R. 452; 1264; eff. 12-5-2003; 31 Ky.R. 469; 718; eff. 11-5-2004; 33 Ky.R. 1169; 1859; 2314; eff. 3-9-2007; 39 Ky.R. 646; 1235; 1429; eff. 2-1-2013; Crt eff. 12-6-2019.)