

## 907 KAR 3:090. Acquired brain injury waiver services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441.300 - 310, 42 C.F.R. 455.100 - 106, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3)

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 participant-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a participant-directed services program pursuant to KRS 205.5606.

Section 1. Definitions. (1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "ABI" means an acquired brain injury.

(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(4) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch of the Department for Medicaid Services, Division of Community Alternatives.

(5) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service provided to a Medicaid eligible individual who has acquired a brain injury.

(6) "Advanced practice registered nurse" is defined by KRS 314.1011(7).

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that:

(a) Serves as the basis for a level of care determination;

(b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MWMA; and

(c) Occurs at least once every twelve (12) months thereafter.

(8) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(9) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and participant directed services identified in Section 10 of this administrative regulation provided pursuant to a recipient's approved person-centered service plan.

(10) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

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

(12) "Case manager" means an individual who manages the overall development and monitoring of a recipient's person-centered service plan.

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

(14) "Crisis prevention and response plan" means a plan developed by the person centered team to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

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

- (16) "Department" means the Department for Medicaid Services or its designee.
- (17) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, including:
- (a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
  - (b) Death or incapacitation of the primary caregiver;
  - (c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or
  - (d) 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.
- (18) "Human rights committee" or "HRC" means a group of individuals established to protect the rights and welfare of an ABI recipient.
- (19) "Level of care certification" means verification, by the department, of ABI program eligibility for:
- (a) An individual; and
  - (b) A specific period of time.
- (20) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).
- (21) "Licensed medical professional" means:
- (a) A physician;
  - (b) An advanced practice registered nurse;
  - (c) A physician assistant;
  - (d) A registered nurse;
  - (e) A licensed practical nurse; or
  - (f) A pharmacist.
- (22) "Licensed professional clinical counselor" is defined by KRS 335.500(3).
- (23) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
- (24) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <http://chfs.ky.gov/dms/mwma.htm>.
- (25) "Occupational therapist" is defined by KRS 319A.010(3).
- (26) "Occupational therapy assistant" is defined by KRS 319A.010(4).
- (27) "Participant directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs that allows recipients to receive non-medical services in which the individual:
- (a) Assists with the design of the program;
  - (b) Chooses the providers of services; and
  - (c) Directs the delivery of services to meet their needs.
- (28) "Patient liability" means the financial amount, determined by the department, that an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.
- (29) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 4 of this administrative regulation.
- (30) "Person centered team" means a participant, the participant's guardian or representative, and other individuals who are natural or paid supports and who:
- (a) Recognize that evidenced based decisions are determined within the basic frame-work of what is important for the participant and within the context of what is important to the participant based on informed choice;
  - (b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and
  - (c) Include providers who receive payment for services who shall:

1. Be active contributing members of the person centered team meetings;
  2. Base their input upon evidence-based information; and
  3. Not request reimbursement for person-centered team meetings.
- (31) "Personal services agency" is defined by KRS 216.710(8).
- (32) "Psychologist" is defined by KRS 319.010(9).
- (33) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.
- (34) "Qualified mental health professional" is defined by KRS 202A.011(12).
- (35) "Representative" is defined by KRS 205.5605(6).
- (36) "Speech-language pathologist" is defined by KRS 334A.020(3).
- (37) "Support broker" means an individual designated by the department to:
- (a) Provide training, technical assistance, and support to a participant; and
  - (b) Assist a participant in any other aspects of PDS.
- (38) "Support spending plan" means a plan for a participant that identifies the:
- (a) PDS requested;
  - (b) Employee name;
  - (c) Hourly wage;
  - (d) Hours per month;
  - (e) Monthly pay;
  - (f) Taxes; and
  - (g) Budget allowance.
- (39) "Transition plan" means a plan that is developed by the person centered team to aid an ABI recipient in exiting from the ABI program into the community.

Section 2. Non-PDS Provider Participation Requirements. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a participant-directed service, an ABI provider shall:

- (a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;
  - (b) Be certified by the department prior to the initiation of the service;
  - (c) Be recertified at least annually by the department;
  - (d) Have an office within the Commonwealth of Kentucky; and
  - (e) Complete and submit a MAP-4100a to the department.
- (2) An ABI provider shall comply with:
- (a) 907 KAR 1:671;
  - (b) 907 KAR 1:672;
  - (c) 907 KAR 1:673;
  - (d) 907 KAR 7:005;
  - (e) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; and
  - (f) 42 U.S.C. 1320d to 1320d-8.
- (3) An ABI provider shall have a governing body that shall be:
- (a) A legally-constituted entity within the Commonwealth of Kentucky; and
  - (b) Responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency.
- (4) An ABI provider shall:
- (a) Unless providing PDS, ensure that an ABI waiver service is not provided to a participant by a staff member of the ABI provider who has one (1) of the following blood relationships to the participant:
    1. Child;

2. Parent;
3. Sibling; or
4. Spouse;

(b) Not enroll a participant for whom the ABI provider cannot meet the service needs; and  
(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall meet the following requirements if responsible for the management of a participant's funds:

(a) Separate accounting shall be maintained for each participant or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the participant or legal representative on a quarterly basis; and

(c) The participant or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(6) An ABI provider shall have a written statement of its mission and values.

(7) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of a participant, which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the participant at a reasonable time and with due regard for the participant's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language, and socioeconomic characteristics of the participant.

(8)(a) An ABI provider shall have written policies and procedures for all settings that assure the participant has:

1. Rights of privacy, dignity, respect, and freedom from coercion and restraint;

2. Freedom of choice:

a. As defined by the experience of independence, individual initiative, or autonomy in making life choices, both in small everyday matters (what to eat or what to wear), and in large, life-defining matters (where and with whom to live and work); and

b. Including the freedom to choose:

(i) Services;

(ii) Providers;

(iii) Settings from among setting options including non-disability specific settings; and

(iv) Where to live with as much independence as possible and in the most community-integrated environment.

(b) The setting options and choices shall be:

1. Identified and documented in the person-centered service plan; and

2. Based on the participant's needs and preferences.

(c) For a residential setting, the resources available for room and board shall be documented in the person-centered service plan.

(9) An ABI provider shall have written policies and procedures for residential settings that assure the participant has:

(a) Privacy in the sleeping unit and living unit in a residential setting;

(b) An option for a private unit in a residential setting;

(c) A unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors;

- (d) A choice of roommate or housemate;
- (e) The freedom to furnish or decorate their sleeping or living units within the lease or other agreement;
- (f) Visitors of the participant's choosing at any time and access to a private area for visitors; and
- (g) Physical accessibility, defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability.
  1. Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting.
  2. All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e. keys, security codes, etc.).
  3. Bedrooms shall be accessible to the appropriate persons.
  - 4.a. Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed need and justified in the participant's person-centered service plan.
    - b. Regarding a modification, the following shall be documented in a participant's person-centered service plan:
      - (i) That the modification is the result of an identified specific and individualized assessed need;
      - (ii) Any positive intervention or support used prior to the modification;
      - (iii) Any less intrusive method of meeting the participant's need that was tried but failed;
      - (iv) A clear description of the condition that is directly proportionate to the specific assessed need;
      - (v) Regular collection and review of data used to measure the ongoing effectiveness of the modification;
      - (vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated;
      - (vii) Informed consent by the participant or participant's representative for the modification; and
      - (viii) An assurance that interventions and supports will cause no harm to the participant.
- (10) An ABI provider shall cooperate with monitoring visits from monitoring agents.
- (11) An ABI provider shall maintain a record for each participant served that shall:
  - (a) Be recorded in permanent ink;
  - (b) Be free from correction fluid;
  - (c) Have a strike through each error which is initialed and dated; and
  - (d) Contain no blank lines between each entry.
- (12) A record of each participant who is served shall:
  - (a) Be cumulative;
  - (b) Be readily available;
  - (c) Contain a legend that identifies any symbol or abbreviation used in making a record entry; and
  - (d) Contain the following specific information:
    1. The participant's name and Medical Assistance Identification Number (MAID);
    2. An assessment summary relevant to the service area;
    3. The person-centered service plan;
    4. The crisis prevention and response plan that shall include:
      - a. A list containing emergency contact telephone numbers; and
      - b. The participant's history of any allergies with appropriate allergy alerts for severe allergies;
    5. The transition plan that shall include:
      - a. Skills to be obtained from the ABI waiver program;

- b. A listing of the on-going formal and informal community services available to be accessed;
- c. A listing of additional resources needed; and
- d. Expected date of transition from the ABI waiver program;
- 6. The training objective for any service that provides skills training to the participant;
- 7. The participant's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;
- 8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention, which shall be located at each service site;
- 9. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification form updated at recertification; and
- 10. Current level of care certification;
- (e) Be maintained by the provider in a manner to ensure the confidentiality of the participant's record and other personal information and to allow the participant or legal representative to determine when to share the information as provided by law;
- (f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider; and
- (g) Be available to the participant or legal representative according to the provider's written policy and procedures, which shall address the availability of the record.

(13) An ABI provider:

(a) Shall:

- 1. Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;
- 2. Maintain, for existing staff, documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test required by subparagraph 1 of this paragraph;
- 3. Ensure that an employee or volunteer who tests positive for TB or has a history of a positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;
- 4. Before allowing a staff person or volunteer determined to have signs or symptoms of active disease to work, ensure that follow-up testing is administered by a physician with the test results indicating the person does not have active TB disease; and
- 5. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present;

(b)1. Shall for each potential employee or volunteer expected to perform direct care or a supervisory function, obtain:

a. Prior to the date of hire or date of service as a volunteer, the results of:

- (i) A criminal record check from the Administrative Office of the Courts or equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;
- (ii) A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and
- (iii) A Caregiver Misconduct Registry check as described in 922 KAR 5:120; and

b. Within thirty (30) days of the date of hire or date of service as a volunteer, the results of a Central Registry check as described in 922 KAR 1:470; or

2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph;

(c) Shall annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during

the year prior to employment;

(d) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(e) Shall not permit an employee or volunteer to transport an ABI recipient if the employee or volunteer:

1. Does not possess a valid operator's license issued pursuant to KRS 186.410; or
2. Has a conviction of Driving Under the Influence (DUI) during the past year;

(f) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of trafficking, manufacturing, or possession of an illegal drug during the past five (5) years;

(g) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse, neglect or exploitation;

(h) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a Cabinet for Health and Family Services finding of:

1. Child abuse or neglect pursuant to the Central Registry; or
2. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry;

(i) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the:

1. Nurse Aide Abuse Registry pursuant to 906 KAR 1:100; or
2. Caregiver Misconduct Registry pursuant to 922 KAR 5:120;

(j) Shall evaluate and document the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(k) Shall conduct and document periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the participant.

(14) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;
2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years' experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(15) An ABI provider shall establish written guidelines that address the health, safety and welfare of a participant, which shall include:

(a) Ensuring the health, safety and welfare of the participant;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) For a supervised residential care or adult day training provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the participant not exceeding 120 degrees Fahrenheit;

(e) Ensuring that the nutritional needs of the participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(f) Ensuring that staff who supervise medication administration:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional and documented competency on cause and effect and proper administration and storage of medication; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, time of administration, and the recipient's name if administered to the participant or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(g) Establish policies and procedures for on-going monitoring of medication administration as approved by the department.

(16) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time overnight when a participant is typically asleep;

(c) Mandate that:

1. The result of an evacuation drill be evaluated and modified as needed; and

2. Results of the prior year's evacuation drill be maintained on site.

(17) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department prior to working independently with a participant, which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes at least six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, 2,000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;
2. A psychologist or psychologist with autonomous functioning providing psychological services;
3. A speech-language pathologist providing speech-language pathology services; or
4. A board certified behavior analyst; and

(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:

1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;
2. Orientation to the agency;
3. A confidentiality statement; and
4. Individualized instruction on the needs of the participant to whom the volunteer will provide services.

(18) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each participant served by the provider.

(19) A case management provider shall meet the requirements established in Section 5 of this administrative regulation.

Section 3. Participant Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program:

(a) An individual shall:

1. Be at least eighteen (18) years of age;
2. Have acquired a brain injury of the following nature, to the central nervous system:
  - a. An injury from physical trauma;
  - b. Damage from anoxia or from a hypoxic episode; or
  - c. Damage from an allergic condition, toxic substance, or another acute medical incident;
3. Apply to be placed on the ABI waiting list in accordance with Section 9 of this administrative regulation; and
4. Be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for ABI waiver services;

(b) An individual or the individual's representative shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA; and
2. Complete and upload to the MWMA a MAP - 115 Application Intake - Participant Authorization;

(c) A case manager or support broker, on behalf of an applicant, shall enter into the MWMA a certification packet containing the following:

1. A copy of the allocation letter;
2. A MAP 351, Medicaid Waiver Assessment;
3. A statement for the need for ABI waiver services which shall be signed and dated by a physician on a MAP-10, Waiver Services – Physician's Recommendation;
4. A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification form; and
5. A person-centered service plan;

(d) An individual shall receive notification of potential funding allocated for ABI services for the individual;

(e) An individual shall meet the patient status criteria for nursing facility services established

in 907 KAR 1:022 including nursing facility services for a brain injury;

(f) An individual shall meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;
2. Be medically stable;
3. Meet Medicaid eligibility requirements established in 907 KAR 20:010;
4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and
5. Have a rating of at least four (4) on the Family Guide to the Rancho Levels of Cognitive Functioning; and

(g) An individual shall receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The person-centered service plan goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with an intellectual disability; or

(b) Receiving a service in another 1915(c) home and community based services waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility patient status criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as a participant:

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

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) The department may exclude an individual from receiving ABI waiver services if the projected cost of ABI waiver services for the individual is reasonably expected to exceed the cost of nursing facility services for the individual.

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

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the participant or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) A participant or legal representative fails to access the required service as outlined in the person-centered service plan for a period greater than sixty (60) consecutive days without good cause shown.

1. The participant or legal representative shall have the burden of providing documentation of good cause including:

- a. A statement signed by the participant or legal representative;
- b. Copies of letters to providers; and
- c. Copies of letters from providers; and

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; and
- b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;
- (c) A participant changes residence outside the Commonwealth of Kentucky;
- (d) A participant does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;
- (e) A participant is no longer able to be safely served in the community;
- (f) The participant has reached maximum rehabilitation potential; or
- (g) The participant is no longer actively participating in services within the approved person-centered service plan as determined by the person-centered team.

(9) Involuntary termination of a service to a participant by an ABI provider shall require:

(a) Simultaneous notice to the department, the participant or legal representative and the case manager 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 participant's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

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

2. Provide assistance to the participant in making contact with another ABI provider;

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

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

5. Ensure the health, safety and welfare of the participant 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.

(10) Voluntary termination and loss of an ABI waiver program placement shall be initiated if a participant or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

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

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

Section 4. Person-centered Service Plan Requirements. (1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered service plan team.

(2) A participant's person-centered service plan shall:

- (a) Be developed by:
  1. The participant, the participant's guardian, or the participant's representative;
  2. The participant's case manager;
  3. The participant's person-centered team; and
  4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;
- (b) Use a process that:
  1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the recipient's schedules and activities without coercion or restraint;
  2. Is timely and occurs at times and locations convenient for the participant;
  3. Reflects cultural considerations of the participant;
  4. Provides information:
    - a. Using plain language in accordance with 42 C.F.R. 435.905(b); and
    - b. In a way that is accessible to an individual with a disability or who has limited English proficiency;
  5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;
  6. Includes a method for the participant to request updates to the person-centered service plan as needed;
  7. Enables all parties to understand how the participant:
    - a. Learns;
    - b. Makes decisions; and
    - c. Chooses to live and work in the participant's community;
  8. Discovers the participant's needs, likes, and dislikes;
  9. Empowers the participant's person-centered team to create a person-centered service plan that:
    - a. Is based on the participant's:
      - (i) Assessed clinical and support needs;
      - (ii) Strengths;
      - (iii) Preferences; and
      - (iv) Ideas;
    - b. Encourages and supports the participant's:
      - (i) Rehabilitative needs;
      - (ii) Habilitative needs; and
      - (iii) Long term satisfaction;
    - c. Is based on reasonable costs given the participant's support needs;
    - d. Includes:
      - (i) The participant's goals;
      - (ii) The participant's desired outcomes; and
      - (iii) Matters important to the participant;
    - e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;
    - f. Includes:
      - (i) Information necessary to support the participant during times of crisis; and
      - (ii) Risk factors and measures in place to prevent crises from occurring;
    - g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;

- h. Records the alternative home and community-based settings that were considered by the participant;
- i. Reflects that the setting in which the participant resides was chosen by the recipient;
- j. Is understandable to the participant and to the individuals who are important in supporting the participant;
- k. Identifies the individual or entity responsible for monitoring the person-centered service plan;
- l. Is finalized and agreed to with the informed consent of the participant or recipient's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;
- m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;
- n. Includes those services that the individual elects to self-direct; and
- o. Prevents the provision of unnecessary or inappropriate services and supports; and
- (c) Includes in all settings the ability for the participant to:
  - 1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience; and
  - 2.a. Choose when and what to eat;
  - b. Have access to food at any time;
  - c. Choose with whom to eat or whether to eat alone; and
  - d. Choose appropriating clothing according to the:
    - (i) Participant's preference;
    - (ii) Weather; and
    - (iii) Activities to be performed.
- (3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.
- (4)(a) A participant's person-centered service plan shall be:
  - 1. Entered into the MWMA by the participant's case manager; and
  - 2. Updated in the MWMA by the participant's case manager.
- (b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

Section 5. Case Management Requirements. (1) A case manager shall:

- (a)1. Be a registered nurse;
- 2. Be a licensed practical nurse; or
- 3. Be an individual with a bachelor's degree or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:
  - a. Psychology;
  - b. Sociology;
  - c. Social work;
  - d. Rehabilitation counseling; or
  - e. Occupational therapy;
- (b)1. Be independent as defined as not being employed by an agency that is providing ABI waiver services to the participant; or
- 2. Be employed by or work under contract with a free-standing case management agency; and
- (c) Have completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services.
- (2) A case manager shall:

- (a) Communicate in a way that ensures the best interest of the participant;
- (b) Be able to identify and meet the needs of the participant;
- (c) 1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and
  - 2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;
- (d) Ensure that:
  - 1. The participant is educated in a way that addresses the participant's:
    - a. Need for knowledge of the case management process;
    - b. Personal rights; and
    - c. Risks and responsibilities as well as awareness of available services; and
  - 2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;
- (e) Have a code of ethics to guide the case manager in providing case management, which shall address:
  - 1. Advocating for standards that promote outcomes of quality;
  - 2. Ensuring that no harm is done;
  - 3. Respecting the rights of others to make their own decisions;
  - 4. Treating others fairly; and
  - 5. Being faithful and following through on promises and commitments;
- (f) 1. Lead the person-centered service planning team;
  - 2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;
- (g) 1. Include the participant's participation or legal representative's participation in the case management process; and
  - 2. Make the participant's preferences and participation in decision making a priority;
- (h) Document:
  - 1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and
  - 2. Personal observations;
- (i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;
- (j) Be accountable to:
  - 1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;
  - 2. A participant's person-centered service plan team and provide leadership to the team and follow through on commitments made; and
  - 3. The case manager's employer by following the employer's policies and procedures;
- (k) Stay current regarding the practice of case management and case management research;
- (l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;
- (m) Document services provided to a participant by entering the following into the MWMA:
  - 1. A monthly department-approved person centered monitoring tool; and
  - 2. A monthly entry, which shall include:
    - a. The month and year for the time period the note covers;
    - b. An analysis of progress toward the participant's outcome or outcomes;

- c. Identification of barriers to achievement of outcomes;
- d. A projected plan to achieve the next step in achievement of outcomes;
- e. The signature and title of the case manager completing the note; and
- f. The date the note was generated;
- (n) Document via an entry into the MWMA if a participant is:
  - 1. Admitted to the ABI long term care waiver program;
  - 2. Terminated from the ABI long-term care waiver program;
  - 3. Temporarily discharged from the ABI long term care waiver program;
  - 4. Admitted to a hospital;
  - 5. Admitted to a nursing facility;
  - 6. Changing the primary ABI provider;
  - 7. Changing the case management agency;
  - 8. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
  - 9. Relocated to a different address; and
- (o) Provide information about participant-directed services to the participant or the participant's guardian:
  - 1. At the time the initial person-centered service plan is developed;
  - 2. At least annually thereafter; and
  - 3. Upon inquiry from the participant or participant's guardian.
- (3) A case management provider shall:
  - (a) Establish a human rights committee which shall:
    - 1. Include an:
      - a. Individual with a brain injury or a family member of an individual with a brain injury;
      - b. Individual not affiliated with the ABI provider; and
      - c. Individual who has knowledge and experience in human rights issues;
    - 2. Review and approve each person-centered service plan with human rights restrictions at a minimum of every six (6) months;
    - 3. Review and approve, in conjunction with the participant's team, behavior intervention plans that contain human rights restrictions; and
    - 4. Review the use of a psychotropic medication by a participant without an Axis I diagnosis;
  - (b) Establish a behavior intervention committee which shall:
    - 1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;
    - 2. Be separate from the human rights committee; and
    - 3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the participant's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and
- (c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each participant:
  - 1. Within thirty (30) days of the participant's admission into the ABI program;
  - 2. Annually thereafter; and
  - 3. Upon discharge from the ABI waiver program.
- (4)(a) Case management for any participant who begins receiving ABI waiver services after the effective date of this administrative regulation shall be conflict free.
  - (b)1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified ABI waiver services provider within thirty (30) miles of the partic-

ipant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separating case management and service provision functions within the provider entity, and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives ABI waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management ABI waiver services.

(5) Case management shall:

(a) Include initiation, coordination, implementation, and monitoring of the assessment or re-assessment, evaluation, intake, and eligibility process;

(b) Assist a participant in the identification, coordination, and facilitation of the person centered team and person centered team meetings;

(c) Assist a participant and the person-centered team to develop an individualized person-centered service plan and update it as necessary based on changes in the participant's medical condition and supports;

(d) Include monitoring of the delivery of services and the effectiveness of the person-centered service plan, which shall:

1. Be initially developed with the participant and legal representative if appointed prior to the level of care determination;

2. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

3. Include the person-centered service plan being sent to the department or its designee prior to the implementation of the effective date the change occurs with the participant;

(e) Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, and updated thirty (30) days prior to discharge, and shall include:

1. The skills or service obtained from the ABI waiver program upon transition into the community;

2. A listing of the community supports available upon the transition; and

3. The expected date of transition from the ABI waiver program;

(f) Assist a participant in obtaining a needed service outside those available by the ABI waiver;

- (g) Be provided by a case manager who:
  - 1.a. Is a registered nurse;
  - b. Is a licensed practical nurse;
  - c. Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;
  - d. Is an independent case manager; or
  - e. Is employed by a free-standing case management agency;
  - 2. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
  - 3. Shall provide a participant and legal representative with a listing of each available ABI provider in the service area;
  - 4. Shall maintain documentation signed by a participant or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;
  - 5. Shall provide a distribution of the crisis prevention and response plan, transition plan, person-centered service plan, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;
  - 6. Shall provide twenty-four (24) hour telephone access to a participant and chosen ABI provider;
  - 7. Shall work in conjunction with an ABI provider selected by a participant to develop a crisis prevention and response plan, which shall be:
    - a. Individual-specific; and
    - b. Updated as a change occurs and at each recertification;
  - 8. Shall assist a participant in planning resource use and assuring protection of resources;
  - 9.a. Shall conduct two (2) face-to-face meetings with a participant within a calendar month occurring at a covered service site with one (1) visit quarterly at the participant's residence; and
  - b. For a participant receiving supervised residential care, shall conduct at least one (1) of the two (2) monthly visits at the participant's supervised residential care provider site;
  - 10. Shall ensure twenty-four (24) hour availability of services; and
  - 11. Shall ensure that the participant's health, welfare, and safety needs are met; and
- (h) Be documented in the MWMA by a detailed staff note, which shall include:
  - 1. The participant's health, safety, and welfare;
  - 2. Progress toward outcomes identified in the approved person-centered service plan;
  - 3. The date of the service;
  - 4. The beginning and ending times;
  - 5. The signature and title of the individual providing the service; and
  - 6. A quarterly summary, which shall include:
    - a. Documentation of monthly contact with each chosen ABI provider; and
    - b. Evidence of monitoring of the delivery of services approved in the participant's person-centered service plan and of the effectiveness of the person-centered service plan.
- (6) Case management shall involve:
  - (a) A constant recognition of what is and is not working regarding a participant; and
  - (b) Changing what is not working.

Section 6. Covered Services. (1) An ABI waiver service shall:

- (a) Not be covered unless it has been prior-authorized by the department; and
- (b) Be provided pursuant to the participant's person-centered service plan.
- (2) The following services shall be provided to a participant by an ABI waiver provider:
  - (a) Case management services in accordance with Section 4 of this administrative regula-

tion;

(b) Behavior programming services, which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
2. Include a functional analysis of the participant's behavior which shall include:
  - a. An evaluation of the impact of an ABI on cognition and behavior;
  - b. An analysis of potential communicative intent of the behavior;
  - c. The history of reinforcement for the behavior;
  - d. Critical variables that precede the behavior;
  - e. Effects of different situations on the behavior; and
  - f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;
3. Include the development of a behavioral support plan, which shall:
  - a. Be developed by the behavioral specialist;
  - b. Not be implemented by the behavior specialist who wrote the plan;
  - c. Be revised as necessary;
  - d. Define the techniques and procedures used;
  - e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
  - f. Reflect the use of positive approaches; and
  - g. 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;
4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;
5. Include the monitoring of a participant's progress, which shall be accomplished through:
  - a. The analysis of data concerning the frequency, intensity, and duration of a behavior;
  - b. Reports involved in implementing the behavioral service plan; and
  - c. A monthly summary, which assesses the participant's status related to the plan of care;
6. Be provided by a behavior specialist who shall:
  - a.(i) Be a psychologist;
  - (ii) Be a psychologist with autonomous functioning;
  - (iii) Be a licensed psychological associate;
  - (iv) Be a psychiatrist;
  - (v) Be a licensed clinical social worker;
  - (vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;
  - (vii) Be an advanced practice registered nurse;
  - (viii) Be a board certified behavior analyst; or
  - (ix) Be a licensed professional clinical counselor; and
  - b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and
7. Be documented in the MWMA by a detailed staff note which shall include:
  - a. The date of the service;
  - b. The beginning and ending time; and
  - c. The signature and title of the behavioral specialist;
- (c) Companion services, which shall:
  1. Include a nonmedical service, supervision or socialization as indicated in the recipient's plan of care;
  2. Include assisting with but not performing meal preparation, laundry and shopping;
  3. Include light housekeeping tasks which are incidental to the care and supervision of a par-

participant;

4. Include services provided according to the approved plan of care which are therapeutic and not diversional in nature;
5. Include accompanying and assisting a participant while utilizing transportation services;
6. Include documentation in the MWMA by a detailed staff note which shall include:
  - a. Progress toward goal and objectives identified in the approved plan of care;
  - b. The date of the service;
  - c. Beginning and ending time; and
  - d. The signature and title of the individual providing the service;
7. Not be provided to a participant who receives supervised residential care; and
8. Be provided by:
  - a. A home health agency licensed and operating in accordance with 902 KAR 20:081;
  - b. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department;
  - c. A community habilitation program certified by the department; or
  - d. A supervised residential care provider;
  - (d) Supervised residential care level I services, which:
    1. Shall be provided by:
      - a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or
      - b. An ABI provider;
    2. Shall not be provided to a participant unless the participant has been authorized to receive residential care by the department's residential review committee, which shall:
      - a. Consider applications for residential care in the order in which the applications are received;
      - b. Base residential care decisions on the following factors:
        - (i) Whether the applicant resides with a caregiver or not;
        - (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or
        - (iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;
      - c. Be comprised of three (3) Cabinet for Health and Family Services employees:
        - (i) With professional or personal experience with brain injury or other cognitive disabilities; and
        - (ii) None of whom shall be supervised by the manager of the acquired brain injury branch; and
      - d. Only consider applications at a monthly committee meeting if the applications were received at least three (3) business days before the committee convenes;
  3. Shall not have more than three (3) participants simultaneously in a residence rented or owned by the ABI provider;
  4. Shall provide twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5 of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;
  5. May include the provision of up to five (5) unsupervised hours per day per participant if the provider develops an individualized plan for the participant to promote increased independence. The plan shall:
    - a. Contain provisions necessary to ensure the participant's health, safety, and welfare;
    - b. Be approved by the participant's treatment team, with the approval documented by the

provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant's status;

6. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the participant's person-centered service plan;

8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

9. Shall include accompanying or assisting a participant while the participant utilizes transportation services as specified in the participant's person-centered service plan;

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented in the MWMA by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved person-centered service plan;

b. The date of the service;

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

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

12. Shall not include the cost of room and board;

13. Shall be provided to a participant who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May 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 an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that a participant:

a. Does not share a room with an individual of the opposite gender who is not the participant's spouse;

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

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

17. Shall provide service and training to obtain the outcomes for the participant as identified in the approved person-centered service plan;

(e) Supervised residential care level II services, which shall:

1. Meet the requirements established in paragraph (d) of this subsection, except for the requirements established in paragraph (d)4 and 5;

2. Provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:

a. Be based on the participant's needs;

b. Be approved by the participant's treatment team; and

c. Be documented in the participant's person-centered service plan, which shall also contain periodic reviews and updates based on changes, if any, in the participant's status; and

3. Include provision of twenty-four (24) hour on-call support;

(f) Supervised residential care level III services, which shall:

1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)4 and 5;

2. Be provided in a single family home, duplex, or apartment building to a participant who lives alone or with an unrelated roommate;

3. Not be provided to more than two (2) participants simultaneously in one (1) apartment or home;

4. Not be provided in more than two (2) apartments in one (1) building;

5. If provided in an apartment building, have staff:

a. Available twenty-four (24) hours per day and seven (7) days per week; and

b. Who do not reside in a dwelling occupied by a participant; and

6. Provide less than twelve (12) hours of supervision or support in the residence based on an individualized plan developed by the provider to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the participant's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant's status;

(g) Counseling services, which:

1. Shall be designed to help a participant resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an approved person-centered service plan;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment, if needed;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is:

a. Provided to a minimum of two (2) and a maximum of eight (8) participants; and

b. Included in the participant's approved person-centered service plan for:

(i) Substance abuse or chemical dependency treatment, if needed;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the participant's functioning and social interactions;

9. Shall be provided by:

- a. A psychiatrist;
  - b. A psychologist;
  - c. A psychologist with autonomous functioning;
  - d. A licensed psychological associate;
  - e. A licensed clinical social worker;
  - f. A clinical nurse specialist with a master's degree in psychiatric nursing;
  - g. An advanced practice registered nurse; or
  - h. A certified alcohol and drug counselor;
  - i. A licensed marriage and family therapist;
  - j. A licensed professional clinical counselor;
  - k. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or
  - l. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and
10. Shall be documented in the MWMA by a detailed staff note, which shall include:
- a. Progress toward the goals and objectives established in the person-centered service plan;
  - b. The date of the service;
  - c. The beginning and ending time; and
  - d. The signature and title of the individual providing the service;
- (h) Occupational therapy which shall be:
- 1. A physician-ordered evaluation of a participant's level of functioning by applying diagnostic and prognostic tests;
  - 2. Physician-ordered services in a specified amount and duration to guide a participant in the use of therapeutic, creative, and self-care activities to assist the participant in obtaining the highest possible level of functioning;
  - 3. Exclusive of maintenance or the prevention of regression;
  - 4. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupational therapist in accordance with 201 KAR 28:130; and
  - 5. Documented in the MWMA by a detailed staff note, which shall include:
    - a. Progress toward goal and objectives identified in the approved person-centered service plan;
    - b. The date of the service;
    - c. The beginning and ending times; and
    - d. The signature and title of the individual providing the service;
- (i) Personal care services, which shall:
- 1. Include the retraining of a participant in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;
  - 2. Be provided by:
    - a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066;
    - b. A home health agency licensed and operating in accordance with 902 KAR 20:081;
    - c. A personal services agency; or
    - d. Another ABI provider;
  - 3. Include the following activities of daily living:
    - a. Eating, bathing, dressing or personal hygiene;
    - b. Meal preparation; and
    - c. Housekeeping chores including bed-making, dusting and vacuuming;
  - 4. Be documented in the MWMA by a detailed staff note which shall include:
    - a. Progress toward goal and objectives identified in the approved person-centered service plan;

- b. The date of the service;
  - c. Beginning and ending time; and
  - d. The signature and title of the individual providing the service; and
5. Not be provided to a participant who receives supervised residential care
- (j) A respite service, which shall:
- 1. Be provided only to a participant unable to administer self-care;
  - 2. Be provided by a:
    - a. Nursing facility;
    - b. Community mental health center;
    - c. Home health agency;
    - d. Supervised residential care provider; or
    - e. Community habilitation program;
  - 3. Be provided on a short-term basis due to absence or need for relief of a non-paid primary caregiver;
  - 4. Be limited to 336 hours per one (1) year authorized person-centered service plan period unless an individual's non-paid caregiver is unable to provide care due to a:
    - a. Death in the family;
    - b. Serious illness; or
    - c. Hospitalization;
  - 5. Not be provided to a participant who receives supervised residential care;
  - 6. Not include the cost of room and board if provided in a nursing facility; and
  - 7. Be documented in the MWMA by a detailed staff note, which shall include:
    - a. Progress toward goals and objectives identified in the approved person-centered service plan;
    - b. The date of the service;
    - c. The beginning and ending time; and
    - d. The signature and title of the individual providing the service;
- (k) Speech- language pathology services, which shall be:
- 1. A physician-ordered evaluation of a participant with a speech, hearing, or language disorder;
  - 2. A physician-ordered habilitative service in a specified amount and duration to assist a participant with a speech and language disability in obtaining the highest possible level of functioning;
  - 3. Exclusive of maintenance or the prevention of regression;
  - 4. Provided by a speech language pathologist; and
  - 5. Documented in the MWMA by a detailed staff note, which shall include:
    - a. Progress toward goals and objectives identified in the approved person-centered service plan;
    - b. The date of the service;
    - c. The beginning and ending time; and
    - d. The signature and title of the individual providing the service;
- (l) Adult day training services, which shall:
- 1. Be provided by:
    - a. An adult day health care center that is certified by the department and licensed and operating in accordance with 902 KAR 20:066;
    - b. An outpatient rehabilitation facility that is certified by the department and licensed and operating in accordance with 902 KAR 20:190;
    - c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;
    - d. A community habilitation program;

- e. A sheltered employment program; or
- f. A therapeutic rehabilitation program;
- 2. Rehabilitate, retrain and reintegrate a participant into the community;
- 3. Not exceed a staffing ratio of five (5) participants per one (1) staff person, unless a participant requires individualized special service;
- 4. Include the following services:
  - a. Social skills training related to problematic behaviors identified in the participant's person-centered service plan;
  - b. Sensory or motor development;
  - c. Reduction or elimination of a maladaptive behavior;
  - d. Prevocational; or
  - e. Teaching concepts and skills to promote independence including:
    - (i) Following instructions;
    - (ii) Attendance and punctuality;
    - (iii) Task completion;
    - (iv) Budgeting and money management;
    - (v) Problem solving; or
    - (vi) Safety;
- 5. Be provided in a nonresidential setting;
- 6. Be developed in accordance with a participant's overall approved person-centered service plan;
- 7. Reflect the recommendations of a participant's interdisciplinary team;
- 8. Be appropriate:
  - a. Given a participant's age, level of cognitive and behavioral function and interest;
  - b. Given a participant's ability prior to and since his or her injury; and
  - c. According to the approved person-centered service plan and be therapeutic in nature and not diversional;
- 9. Be coordinated with occupational, speech, or other rehabilitation therapy included in a participant's person-centered service plan;
- 10. Provide a participant with an organized framework within which to function in his or her daily activities;
- 11. Entail frequent assessments of a participant's progress and be appropriately revised as necessary; and
- 12. Be documented in the MWMA by a detailed staff note, which shall include:
  - a. Progress toward goal and objectives identified in the approved person-centered service plan;
  - b. The date of the service;
  - c. The beginning and ending time;
  - d. The signature and title of the individual providing the service; and
  - e. A monthly summary that assesses the participant's status related to the approved person-centered service plan;
- (m) Supported employment services, which shall be:
  - 1. Intensive, ongoing services for a participant to maintain paid employment in an environment in which an individual without a disability is employed;
  - 2. Provided by a:
    - a. Supported employment provider;
    - b. Sheltered employment provider; or
    - c. Structured day program provider;
  - 3. Provided one-on-one;
  - 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. Parts 300 to 399), proof of which shall be documented in the participant's file;

5. Limited to forty (40) hours per week alone or in combination with structured day services;

6. An activity needed to sustain paid work by a participant receiving waiver services including supervision and training;

7. Exclusive of work performed directly for the supported employment provider; and

8. Documented in the MWMA by a time and attendance record, which shall include:

a. Progress towards the goals and objectives identified in the person-centered service plan;

b. The date of service;

c. The beginning and ending time; and

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

(n) Specialized medical equipment and supplies, which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;

2. Enable a participant 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, documented in a participant's person-centered service plan, and entered into the MWMA by the participant's case manager or support broker, and include three (3) estimates if the equipment is needed for vision and hearing;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision or hearing programs;

6. Not be necessary for life support;

7. Meet applicable standards of manufacture, design and installation; and

8. Exclude those items which are not of direct medical or remedial benefit to a participant;

(o) Environmental modifications, which shall:

1. Be provided in accordance with applicable state and local building codes;

2. Be provided to a participant if:

a. Ordered by a physician;

b. Prior-authorized by the department;

c. Specified in the participant's approved person-centered service plan and entered into the MWMA by the participant's case manager or support broker;

d. Necessary to enable a participant to function with greater independence within his or her home; and

e. Without the modification, the participant would require institutionalization;

3. Not include a vehicle modification;

4. Be limited to no more than \$2,000 for a participant in a twelve (12) month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber;

(p) An assessment, which shall:

1. Be a comprehensive assessment which shall identify:

a. A participant's needs; and

b. Services that a participant's family cannot manage or arrange for the participant;

2. Evaluate a participant's physical health, mental health, social supports, and environment;

3. Be requested by:

a. An individual requesting ABI waiver services;

b. A family member of the individual requesting ABI services; or

c. A legal representative of the individual requesting ABI services;

4. Be conducted:

- a. By an ABI case manager or support broker; and
- b. Within seven (7) calendar days of receipt of the request for an assessment;
- 5. Include at least one (1) face-to-face contact in the participant's home between the assessor, the participant, and, if appropriate, the participant's family; and
- 6. Not be reimbursable if the individual no longer meets ABI program eligibility requirements;

or

- (q) A reassessment, which shall:
  - 1. Be performed at least once every twelve (12) months;
  - 2. Be conducted:
    - a. Using the same procedures as for an assessment; and
    - b. By an ABI case manager or support broker;
  - 3. Be timely conducted to enable the results to be submitted to the department within three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
  - 4. Not be reimbursable if the individual no longer meets ABI program eligibility requirements;
- and
- 5. Not be retroactive.

Section 7. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

- (1) A stroke treatable in a nursing facility providing routine rehabilitation services;
- (2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;
- (3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;
- (4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
- (5) A birth defect;
- (6) An intellectual disability without an etiology to an acquired brain injury;
- (7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or
- (8) Determination that the participant has met his or her maximum rehabilitation potential.

Section 8. Incident Reporting Process. (1)(a) There shall be two (2) classes of incidents.

(b) The following shall be the two (2) classes of incidents:

- 1. An incident; or
- 2. A critical incident.
- (2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
  - (a) A minor injury;
  - (b) A medication error without a serious outcome; or
  - (c) A behavior or situation which is not a critical incident.
  - (3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
    - (a) Can reasonably be expected to result in harm to a participant; and
    - (b) Shall include:
      - 1. Abuse, neglect, or exploitation;
      - 2. A serious medication error;
      - 3. Death;

4. A homicidal or suicidal ideation;
5. A missing person; or
6. Other action or event that the provider determines may result in harm to the participant.

(4)(a) If an incident occurs, the ABI provider shall:

1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and

2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:

1. The incident shall immediately be considered a critical incident;

2. The critical incident procedures established in subsection (5) of this section shall be followed; and

3. The ABI provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

(5)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA by the individual who witnessed or discovered the critical incident; or

2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery.

(c) The ABI provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and

2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:

- a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

- b. Details of the critical incident; and

- c. Relevant participant information including:

- (i) Axis I diagnosis or diagnoses;

- (ii) Axis II diagnosis or diagnoses;

- (iii) Axis III diagnosis or diagnoses;

- (iv) A listing of recent medical concerns;

- (v) An analysis of causal factors; and

- (vi) Recommendations for preventing future occurrences.

(6) (a) Following a death of a participant receiving ABI services from an ABI provider, the ABI provider shall enter mortality data documentation into the MWMA within fourteen (14) days of the death.

(b) Mortality data documentation shall include:

1. The participant's person-centered service plan at the time of death;

2. Any current assessment forms regarding the participant;

3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;

4. Progress notes regarding the participant from all service elements for the past thirty (30) days;

5. The results of the participant's most recent physical exam;
  6. All incident reports, if any exist, regarding the participant for the past six (6) months;
  7. Any medication error report, if any exists, related to the participant for the past six (6) months;
  8. The most recent psychological evaluation of the participant;
  9. A full life history of the participant including any update from the last version of the life history;
  10. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;
  11. Emergency medical services notes regarding the participant if available;
  12. The police report if available;
  13. A copy of:
    - a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable;
    - b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
    - c. The cardiopulmonary resuscitation and first aid card for any ABI provider's staff member who was present at the time of the incident that resulted in the participant's death;
  14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and
  15. A record of any crisis training for any staff member present at the time of the incident that resulted in the participant's death.
- (7)(a) An ABI provider shall report a medication error to the MWMA.
- (b) An ABI provider shall document all medication error details on a medication error log retained on file at the ABI provider site.

Section 9. ABI Waiting List. (1) An individual of age eighteen (18) years or older applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual or individual's representative shall:

- (a) Apply for 1915(c) home and community based waiver services via the MWMA;
- (b) Complete and upload into the MWMA a MAP – 115 Application Intake – Participant Authorization; and
- (c) Upload to the MWMA a completed MAP-10, Waiver Services – Physician's Recommendation that has been signed by a physician.

(3) The order of placement on the ABI waiting list shall be determined by the:

(a) Chronological date of complete application information regarding the individual being entered into the MWMA; and

(b) Category of need.

(4) The ABI waiting list categories of need shall be emergency or nonemergency.

(5) To be placed in the emergency category of need, an individual shall be determined by the emergency review committee to meet the emergency category criteria established in subsection (8) of this section.

(6) The emergency review committee shall:

(a) Be comprised of three (3) individuals from the department:

1. Who shall each have professional or personal experience with brain injury or cognitive disabilities; and

2. None of whom shall be supervised by the branch manager of the department's acquired brain injury branch; and

(b) Meet during the fourth (4th) week of each month to review and consider applications for the acquired brain injury waiver program to determine if applicants meet the emergency category of need criteria established in subsection (8) of this subsection.

(7) An individual's application via the MWMA shall be completed no later than three (3) business days prior to the fourth (4th) week of each month in order to be considered by the emergency review committee during that month's emergency review committee meeting.

(8) An applicant shall meet the emergency category of need criteria if the applicant is currently demonstrating behavior related to his or her acquired brain injury:

(a) That places the individual, caregiver, or others at risk of significant harm; or

(b) Which has resulted in the applicant being arrested.

(9) An applicant who does not meet the emergency category of need criteria established in subsection (8) of this subsection shall be considered to be in the nonemergency category of need.

(10) In determining chronological status of an applicant, the original date of the individual's complete application information being entered into the MWMA shall:

(a) Be maintained; and

(b) Not change if the individual is moved from one (1) category of need to another.

(11) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(12) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(13) A written notification of placement on the waiting list shall be mailed to the individual or his or her legal representative and case management provider if identified.

(14) Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual and his or her legal representative and also the ABI case manager; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice required by subsection (13) of this section.

(15) Reassignment of an applicant's category of need shall be completed based on the updated information and validation process.

(16) An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time that an individual's status changes.

(17) An individual shall be removed from the ABI waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) The individual or individual's legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list;

(d) An ABI placement for services offer is refused by the individual or legal representative; or

(e) The individual does not access services without demonstration of good cause within sixty (60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty

(60) day extension in writing.

(18) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or individual's legal representative and the ABI case manager.

(19) The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(20) Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list.

Section 10. Participant-Directed Services. (1) Covered services and supports provided to a participant receiving PDS shall include:

(a) Home and community support services;

(b) Community day support services;

(c) Goods or services; or

(d) Financial management.

(2) A home and community support service shall:

(a) Be available only as a participant-directed service;

(b) Be provided in the participant's home or in the community;

(c) Be based upon therapeutic goals;

(d) Not be diversional in nature;

(e) Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS ABI services; and

(f) 1. Be respite for the primary caregiver; or

2. 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:

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. Meal planning;

j. Meal preparation;

k. Grocery shopping; or

l. Participation in community activities.

(3) A community day support service shall:

(a) Be available only as a participant-directed service;

(b) Be provided in a community setting;

(c) Be based upon therapeutic goals;

(d) Not be diversional in nature;

(e) Be tailored to the participant's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant for:

1. Work;

2. Community activities;

3. Socialization;

4. Leisure; or

5. Retirement activities; and
  - (f) Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS ABI services.
  - (4) Goods or services shall:
    - (a) Be individualized;
    - (b) Be utilized to:
      1. Reduce the need for personal care; or
      2. Enhance independence within the participant's home or community;
    - (c) Not include experimental goods or services; and
    - (d) Not include chemical or physical restraints.
  - (5) To be covered, a PDS shall be specified in a participant's person-centered service plan.
  - (6) Reimbursement for a PDS shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-PDS ABI setting.
  - (7) A participant, including a married participant, shall choose providers and the choice of PDS provider shall be documented in his or her person-centered service plan.
  - (8)(a) A participant may designate a representative to act on the participant's behalf.
  - (b) The PDS representative shall:
    1. Be twenty-one (21) years of age or older;
    2. Not be monetarily compensated for acting as the PDS representative or providing a PDS;
 and
    3. Be appointed by the participant on a MAP-2000 form.
  - (9) A participant may voluntarily terminate PD services by completing a MAP-2000 and submitting it to the support broker.
  - (10) The department shall immediately terminate a participant from CDO services if:
    - (a) Imminent danger to the participant's health, safety, or welfare exists;
    - (b) The recipient's person-centered service plan indicates he or she requires more hours of service than the program can provide, thus jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present; or
    - (c) The recipient, caregiver, family member, or guardian threatens or intimidates a support broker or other PDS staff.
  - (11) The department may terminate a participant from PDS if it determines that the participant's PDS provider has not adhered to the person-centered service plan.
  - (12) Prior to a participant's termination from PDS, the support broker shall:
    - (a) Notify the assessment or reassessment service provider of potential termination;
    - (b) Assist the participant in developing a resolution and prevention plan;
    - (c) Allow at least thirty (30), but no more than ninety (90), days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;
    - (d) Complete and submit to the department a MAP-2000 form terminating the participant from PDS if the participant fails to meet the requirements in paragraph (c) of this subsection;
 and
    - (e) Assist the participant in transitioning back to traditional ABI services.
  - (13) Upon an involuntary termination of PDS, the department shall:
    - (a) Notify a participant in writing of its decision to terminate the participant's PDS participation; and
    - (b) Inform the participant of the right to appeal the department's decision in accordance with Section 10 of this administrative regulation.
  - (14) A PDS provider:
    - (a) Shall be selected by the participant;
    - (b) Shall submit a completed Kentucky Participant-Directed Services Employee Provider Contract 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 U.S. citizen;
  - (e) Shall be able to communicate effectively with the participant, participant's representative, or family;
  - (f) Shall be able to understand and carry out instructions;
  - (g) Shall be able to keep records as required by the participant;
  - (h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of PDS;
  - (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 participant may employ a provider prior to a Central Registry check result being obtained for up to thirty (30) days; and
    2. If a participant does not obtain a Central Registry check result within thirty (30) days of employing a provider, the participant shall cease employment of the provider until a favorable result is obtained;
  - (j) Shall submit to a check of the:
    1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry; and
    2. Caregiver Misconduct Registry maintained in accordance with 922 KAR 5:120 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 participant;
  - (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 participant.
- (15) A PDS provider may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subsection (14)(h), (i), and (j) of this section.
- (16) 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.
- (17)(a)1. The department shall establish a budget for a participant based on the individual's historical costs minus five (5) percent to cover costs associated with administering the participant-directed services.
2. If no historical cost exists for the participant, the participant's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.
- (b) Cost of services authorized by the department for the individual's prior year person-centered service plan but not utilized may be added to the budget if necessary to meet the individual's needs.
- (c) The department may adjust a participant's budget based on the participant's needs and in accordance with paragraphs (d) and (e) of this subsection.
- (d) A participant's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:
1. The participant'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;

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

4. If a significant change has occurred in the recipient's:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the recipient's relocation.

(f) A participant's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(18) Unless approved by the department pursuant to subsection (16)(b) through (e) of this section, if a PDS is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-PDS) waiver service provider.

(19)(a) A support broker shall:

1. Provide needed assistance to a participant with any aspect of PDS or blended services;

2. Be available to a participant by phone or in person:

a. Twenty-four (24) hours per day, seven (7) days per week; and

b. To assist the participant in obtaining community resources as needed;

3. Comply with applicable federal and state laws and requirements;

4. Continually monitor a participant's health, safety, and welfare; and

5. Complete or revise a person-centered service plan in accordance with Section 4 of this administrative regulation.

(b) For a PDS participant, a support broker may conduct an assessment or reassessment.

(c) Services provided by a supporter broker shall meet the conflict free requirements established for case management in Section 5(4) of this administrative regulation.

(20) Financial management shall:

(a) Include managing, directing, or dispersing a participant's funds identified in the participant's approved PDS budget;

(b) Include payroll processing associated with the individual hired by a participant or the participant's representative;

(c) Include:

1. Withholding local, state, and federal taxes; and

2. Making payments to appropriate tax authorities on behalf of a participant;

(d) Be performed by an entity that:

1. Is enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

2. Is currently compliant with 907 KAR 1:671;

3. Has at least two (2) years of experience working with individuals with an acquired brain injury; and

(e) Include preparation of fiscal accounting and expenditure reports for:

1. A participant or participant's representative; and

2. The department.

Section 11. Electronic Signature Usage. The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 12. Appeal Rights. (1) An appeal of a department decision regarding a participant or applicant 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.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "MAP-10, Waiver Services – Physician’s Recommendation", June 2015;
  - (b) "MAP – 115 Application Intake – Participant Authorization", May 2015;
  - (c) "MAP – 116 Service Plan – Participant Authorization", May 2015;
  - (d) "MAP – 531 Conflict-Free Case Management Exemption", October 2015;
  - (e) "MAP-2000, Initiation/Termination of Participant-Directed Services (CDO)", June 2015;
  - (f) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;
  - (g) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006;
  - (h) "MAP-351, Medicaid Waiver Assessment", July 2015;
  - (i) "Mayo-Portland Adaptability Inventory-4", March 2003;
  - (j) "MAP-4100a", September 2010; and
  - (k) "Kentucky Participant-Directed Services Employee Provider Contract", June 2015.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
- (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
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