

907 KAR 3:100. Reimbursement for acquired brain injury waiver services.

RELATES TO: 42 C.F.R. 441.300 - 310, 42 U.S.C. 1396a, b, d, n

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health 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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the payment 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 for the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the provider criteria established in 907 KAR 3:090, Section 2.

(3) "ABI recipient" means an individual who meets the ABI recipient criteria established in 907 KAR 3:090, Section 3.

(4) "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.

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

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

- (a) Assist with the design of their programs;
- (b) Choose their providers of services; and
- (c) Direct the delivery of services to meet their needs.

(7) "Department" means the Department for Medicaid Services or its designated agent.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

Section 2. Coverage. The department shall reimburse a participating provider for an ABI waiver service if the service is:

- (1) Provided to an ABI recipient;
- (2) Prior authorized;
- (3) Included in the recipient's plan of care;
- (4) Medically necessary; and
- (5) Essential for the rehabilitation and retraining of the recipient.

Section 3. Exclusions to Acquired Brain Injury Waiver Program. Under the ABI waiver program, the department shall not reimburse a provider for a service provided:

- (1) To an individual who has a condition identified in 907 KAR 3:090, Section 5; or
- (2) Which has not been prior authorized as a part of the recipient's plan of care.

Section 4. Payment Amounts. (1) A participating ABI waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a recipient.

(2) A participating ABI waiver service provider certified in accordance with 907 KAR 3:090 shall be reimbursed at the lesser of:

- (a) The provider's usual and customary charge; or
- (b) The Medicaid fixed upper payment limit per unit of service as established in Section 5 of this administrative regulation.

Section 5. Fixed Upper Payment Limits. (1) Except as provided by subsection (2) of this section, the following respective rates shall be the fixed upper payment limits for the corresponding respective ABI waiver services in conjunction with the corresponding units of service and unit of service limits:

Service	Unit of Service	Unit of Service Limit	Upper Payment Limit
Case management	1 month	1 unit per ABI recipient per month	\$434.00 per month
Personal care	15 minutes	80 units per week	\$5.56 per unit
Respite care	15 minutes	1,344 units per 12-month period	\$4.00 per unit
Companion	15 minutes	200 units per week	\$5.56 per unit
Adult day training	15 minutes	160 units, alone or in combination with supported employment, per calendar week	\$4.03 per unit
Supported employment	15 minutes	160 units, alone or in combination with adult day training, per calendar week	\$7.98 per unit
Behavior programming	15 minutes	16 units per day	\$33.61
Counseling - group	15 minutes	2 - 8 people in a group setting and 48 units per ABI recipient per calendar month	\$5.75 per unit
Counseling - individual	15 minutes	16 units per day	\$23.84 per unit
Occupational therapy	15 minutes	16 units per day	\$25.90 per unit
Speech, hearing and Language services	15 minutes	16 units per day	\$28.41 per unit
Specialized medical equipment and supplies (see subsection (2) of this section)	Per item	As negotiated by the department	As negotiated by the department
Environmental modification	Per modification	Actual cost not to exceed \$2,000.00 per 12-month period	Actual cost not to exceed \$2,000.00 per 12-month pe-

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Supervised residential care level I	1 calendar day	1 unit per ABI recipient per calendar day	\$200.00 per unit
Supervised residential care level II	1 calendar day	1 unit per ABI recipient per calendar day	\$150.00 per unit
Supervised residential care level III	1 calendar day	1 unit per ABI recipient per calendar day	\$75.00 per unit
Assessment	The entire assessment equals 1 unit	1 unit per ABI recipient	\$100.00 per unit
Reassessment	The entire reassessment equals 1 unit	1 unit per ABI recipient	\$100.00 per unit
CDO home and community supports	not applicable	not applicable	Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO community day supports	not applicable	not applicable	Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
CDO goods and services	not applicable	not applicable	Service limited by prior authorized dollar amount based on the consumer's budget approved by the department
Support broker	1 calendar month	1 unit per ABI recipient per calendar month	\$375.00
Financial management	15 minutes	8 units or \$100.00 per month	\$12.50 per unit

(2) Specialized medical equipment and supplies shall be reimbursed on a per-item basis based on a reasonable cost as negotiated by the department if the equipment or supply is:

(a) Not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and

(b) Provided to an individual participating in the ABI waiver program.

(3) Respite care may exceed 336 hours in a twelve (12) month period if an individual's normal care giver is unable to provide care due to a death in the family, serious illness, or hospitalization.

(4) If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual.

(5) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall:

(a) Be made only for the supervision and training required as the result of the ABI recipient's disabilities; and

(b) Not include payment for supervisory activities normally rendered.

(6)(a) The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(b) For an individual receiving supported employment services, documentation shall be maintained in his or her record demonstrating that the services are not otherwise available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

Section 6. Payment Exclusions. Payment shall not include: (1) The cost of room and board, unless provided as part of respite care in a Medicaid certified nursing facility;

(2) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;

(3) Excluding an environmental modification, the cost of maintenance, upkeep, or an improvement to a recipient's place of residence;

(4) The cost of a service that is not listed in the recipient's approved plan of care; or

(5) A service provided by a family member.

Section 7. Records Maintenance. A participating provider shall: (1) Maintain fiscal and service records for at least six (6) years;

(2) Provide, as requested by the department, a copy of, and access to, each record of the ABI waiver program retained by the provider pursuant to:

(a) Subsection (1) of this section; or

(b) 907 KAR 1:672; and

(3) Upon request, make available service and financial records to a representative or designee of:

(a) The Commonwealth of Kentucky, Cabinet for Health and Family Services;

(b) The United States Department for Health and Human Services, Comptroller General;

(c) The United States Department for Health and Human Services, the Centers for Medicare and Medicaid Services (CMS);

(d) The General Accounting Office;

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

(f) The Commonwealth of Kentucky, Office of the Attorney General.

Section 8. Appeal Rights. An ABI waiver provider may appeal department decisions as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9. (25 Ky.R. 2993; 26 Ky.R. 402; eff. 8-16-1999; 28 Ky.R. 987; eff. 12-19-2001; 29 Ky.R. 1141; 1657; eff. 12-18-2002; 37 Ky.R. 601; 1487; eff. 12-2-2010; Crt eff. 7-23-2018; TAm eff. 3-20-2020.)