STATEMENT OF EMERGENCY
907 KAR 15:005E

This emergency administrative regulation is being promulgated to implement needed changes to terms used throughout the behavioral health administrative regulations administered by the department. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation, as this emergency administrative regulation includes an additional Section 2 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Emergency Amendment)

907 KAR 15:005E. Definitions for 907 KAR Chapter 15.


STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

EFFECTIVE: June 28, 2019

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 a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.
(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).
(3) "Approved behavioral health practitioner[services provider]" means an independently licensed[a] practitioner who is:
(a) A physician;
(b) A psychiatrist;
(c) An advanced practice registered nurse;
(d) A physician assistant;
(e) A licensed psychologist;
(f) A licensed psychological practitioner;
(g) A certified psychologist with autonomous functioning;
(h) A licensed clinical social worker;
(i) A licensed professional clinical counselor;
(j) A licensed marriage and family therapist;
(k) A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
(l) A certified psychologist working under the supervision of a board-approved licensed psychologist;
(m) A marriage and family therapy associate working under the supervision of a billing supervisor;
(n) A certified social worker working under the supervision of a billing supervisor;
(o) A licensed professional counselor associate working under the supervision of a billing supervisor;
(p) A licensed professional art therapist;
(q) A licensed professional art therapist associate working under the supervision of a billing supervisor;
(r) A licensed clinical alcohol and drug counselor; or
(s) A licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor;
(t) A certified alcohol and drug counselor working under the supervision of a billing supervisor;
(u) A licensed behavior analyst; or
(v) A licensed assistant behavior analyst working under the supervision of a billing supervisor.

(4) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a) 1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
   2. A certified psychologist working under the supervision of a board-approved licensed psychologist;
   3. A marriage and family therapy associate;
   4. A certified social worker;
   5. A licensed professional counselor associate;
   6. A licensed professional art therapist associate;
   7. A licensed clinical alcohol and drug counselor associate;
   8. A certified alcohol and drug counselor; or
   9. A licensed assistant behavior analyst; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(5) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(6) "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

(a) Render behavioral health services; and
(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(7) "Behavioral health practitioner under supervision" means an individual who is:

(a) 1. A licensed psychological associate;
   2. A licensed professional counselor associate;
   3. A licensed clinical alcohol and drug counselor associate;
   4. A certified social worker;
5. A marriage and family therapy associate;
6. A licensed professional art therapist associate;
7. A licensed assistant behavior analyst;
8. A certified psychologist; or
9. A certified alcohol and drug counselor; and
(b) Employed by or under contract with the same billing provider as the billing supervisor.
(6) "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:
(a) Render behavioral health services; and
(b) Bill the Medicaid Program for services rendered to Medicaid recipients.
(8)[(7)] "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to:
(a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);
(b) 908 KAR 3:170 and 908 KAR 3:174 for a behavioral health services organization tier II (BHSO II); or
(c) 908 KAR 3:170 and 908 KAR 3:172 for a behavioral health services organization tier III (BHSO III).
(9)[(8)] "Billing provider" means the individual, group of individual providers, or organization that:
(a) Is authorized to bill the department or a managed care organization for a service; and
(b) Is eligible to be reimbursed by the department or a managed care organization for a service.
(10)[(9)] "Billing supervisor" means an individual who is:
(a) 1. A physician;
2. A psychiatrist;
3. An advanced practice registered nurse;
4. A physician assistant;
5. A licensed clinical alcohol and drug counselor;
6. A certified psychologist;
7. A licensed clinical social worker;
8. A licensed professional clinical counselor;
9. A licensed psychological practitioner;
10. A certified psychologist with autonomous functioning;
11. A licensed marriage and family therapist;
12. A licensed professional art therapist; or
13. A licensed behavior analyst; and
(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.
(11)[(10)] "Certified alcohol and drug counselor" is defined by KRS 309.080(2).
(12)[(11)] "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.
(13)[(12)] "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.
(14)[(13)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.
(15)[(14)] "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.
(16) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(17) "Co-occurring disorder" means a mental health and substance use disorder.

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

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

(20) "Enrollee" means a recipient who is enrolled with a managed care organization.

(21) "Face-to-face" means occurring:

(a) in person;

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two-way interactive video and audio communication.

(22) "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(23) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(24) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(25) "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which current reimbursement rates for physician services are established or published by the department in accordance with 907 KAR 3:010, Section 3.

(26) "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(27) "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(28) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(29) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(30) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(31) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(32) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(33) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(34) "Licensed professional art therapist" is defined by KRS 309.130(2).

(35) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(36) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(37) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(38) "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(39) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(40) "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6).

(41) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(42) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(43) "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

(44) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
"Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

"Physician" is defined by KRS 205.510(11).

"Physician assistant" is defined by KRS 311.840(3).

"Practitioner working under supervision" means:
(a) An approved behavioral health practitioner under supervision;
(b) A registered behavioral health technician;
(c) A community support associate; or
(d) A peer support specialist.

"Provider" is defined by KRS 205.8451(7).

"Provider abuse" is defined by KRS 205.8451(8).

"Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

"Recipient" is defined by KRS 205.8451(9).

"Recipient abuse" is defined by KRS 205.8451(10).

"Recipient’s representative" means:
(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or
(b) A legal guardian.

"Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

"Registered behavioral technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:
(a) Be at least eighteen (18) years of age;
(b) Have a high school diploma or its equivalent;
(c) Complete a training program approved by the Behavior Analyst Certification Board conducted by Behavior Analyst Certification Board certificants;
(d) Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant; and
(e) Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

"Registered nurse" is defined by KRS 314.011(5).

"Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

"Section 504 plan" means a plan developed:
(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and
(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child’s academic success and access to the learning environment.

"Telehealth" is defined by KRS 205.510(15).

"Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient’s care as needed throughout the appropriate levels of care.

"Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.
Section 2. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: June 13, 2019
FILED WITH LRC: June 28, 2019 at 4 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units. Medicaid programs are federally-mandated to cover behavioral health services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation add definitions for the following: "approved behavioral health professional under supervision", "ASAM Criteria", "co-occurring disorder", "medication assisted treatment", "practitioner working under supervision", "registered behavior technician", "telehealth", and "withdrawal management". Definitions for "approved behavioral health practitioner", "behavioral health services organization", and "face-to-face" have been expanded to reflect changes to 907 KAR 15:010, 15:020, and a new administrative regulation 907 KAR 15:022.
(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify and expand terms used throughout 907 KAR Chapter 15. Amendments are being instituted in various places of 907 KAR Chapter 15 in order to implement 2018’s HB 124 and an SUD 1115 Waiver for Kentucky HEALTH. The new terms also will assist in consolidating the length of certain administrative regulations in 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid- behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, and residential crisis stabilization units. There are currently over 2,200 such individuals or entities enrolled in the Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As appropriate, providers may need to refer to this administrative regulation to clarify terms used in other administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers and provider groups will benefit due to the additional clarity provided by the amendments and new definitions included in this updated administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost is necessary to implement the amendments to this administrative regulation.

(b) On a continuing basis: No cost is necessary to implement the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied to the extent that behavioral health services organizations are now separated depending on whether services are provided for only mental
health, outpatient substance use disorder, or residential substance use disorder services. However, within each tier of services the requirements apply equally to all providers.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to define terms in an administrative regulation.

2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."

   KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations...to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define terms in an administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The department anticipates that these amendments will generate no new revenue in the first year.

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The department projects that these amendments will generate no new revenue in subsequent years.

   (c) How much will it cost to administer this program for the first year? The department projects no additional costs in order to implement this administrative regulation in the first year.

   (d) How much will it cost to administer this program for subsequent years? The department projects no additional costs in order to implement this administrative regulation in subsequent years.

   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

   Revenues (+/-):
   Expenditures (+/-):
   Other explanation: