

908 KAR 2:090. Decriminalization of mental illness.

RELATES TO: KRS Chapters 202A, 202B, 645

STATUTORY AUTHORITY: KRS 194A.050, 202A.008, 202A.028(3), (4), 202A.041(1), 202A.051(6), 202A.101(3), 202A.241, 645.120, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, created the Cabinet for Health and Family Services and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet. This administrative regulation sets forth the cabinet's services and procedures for: providing crisis stabilization units; transporting and holding individuals; using restraints; providing privacy to individuals who are held for evaluation; identifying rights for individuals held to communicate by phone; and planning and coordinating the required services.

Section 1. Definitions. (1) "Community behavioral health, developmental and intellectual disabilities center" or "center" means a facility licensed by the cabinet pursuant to KRS Chapter 216B that provides inpatient, outpatient, psychosocial rehabilitation, emergency, consultation, and education services to persons needing behavioral health, developmental and intellectual disabilities, and substance abuse services as provided within KRS 210.410 and 908 KAR 2:010.

(2) "Evaluation" means a mental health evaluation performed by a qualified mental health professional, as defined in KRS 202A.011 and 600.020, conducted to determine if an individual meets the criteria for involuntary hospitalization as defined in KRS 202A.026 or 645.090.

(3) "Facility" means any hospital or psychiatric facility as defined in KRS 202A.011 or a mental health facility as defined in KRS 645.020 used for the purpose of conducting an evaluation pursuant to KRS Chapters 202A or 202B or 645.120.

(4) "Hold", "held" or "holding" means the detainment of an individual by a peace officer or a provider of transportation services authorized by the peace officer.

(5) "Individual" means a person who is being held and evaluated under KRS Chapters 202A, 202B or 645.

(6) "Peace officer" means a law enforcement officer as defined in KRS 446.010(24).

(7) "Providers of transportation services" or "providers" means peace officers and ambulance services designated by the cabinet, service providers, or agencies on contract with the cabinet. The providers of emergency or nonemergency transportation services include those service providers or agencies that are approved by the Department for Medicaid Services or the centers.

Section 2. Crisis Stabilization Unit. (1) Centers may establish crisis stabilization units for the purpose of reducing hospitalization in the treatment of mental illness. Services shall include:

- (a) Evaluations;
- (b) Crisis intervention and emergency mental health services; and
- (c) Referral for follow-up care.

(2) Crisis stabilization units shall be operated as twenty-four (24) hour per day, seven (7) days per week facilities.

(3) Crisis stabilization units may admit individuals who voluntarily seek mental health services or who are in need of evaluation pursuant to KRS Chapters 202A or 202B or 645.120.

Section 3. Transportation. (1) A peace officer shall:

- (a) Transport an individual pursuant to KRS Chapter 202A or 645.120 for evaluation; and
- (b) Hold the individual until the evaluation is completed, unless the facility agrees to hold the individual.

(2) Following the evaluation, the provider shall transport the individual to:

- (a) A hospital if the evaluation criteria are met and so ordered by the court; or
- (b) The location of the individual's choice in either the individual's home county or county where the holding originated, if the evaluation criteria are not met.
- (3) The provider shall not use sirens or emergency lights of any kind except in a bona fide emergency.
- (4) The peace officer who has taken the individual into custody under KRS 202A.041 shall:
 - (a) Document the behavior of the individual by describing:
 - 1. How the situation was brought to the attention of the peace officer; and
 - 2. The behavior of the individual that was considered a danger to self or others; and
 - (b) Provide this documentation to the qualified mental health professional evaluating the individual.
- (5) Reimbursement of transportation costs may be negotiated by the center in accordance with the center's contract with the cabinet.
- (6) Reimbursement for the individual transported to a facility shall be paid by the center if:
 - (a) The individual is transported pursuant to KRS 202A.028, 202A.041, 202A.051, or 645.120; and
 - (b) A center or a designated subcontractor of the center conducts the evaluation.
- (7) Transportation provided to the individual upon discharge from the hospital to their home county shall be:
 - (a) Reimbursed by the center, if a provider is the most appropriate means of transportation; or
 - (b) The responsibility of the hospital, if the hospital determines that an alternate form of transportation is more appropriate.
- (8) No payment shall be made by the center if reimbursement of these costs is otherwise available from:
 - (a) Private insurance;
 - (b) Other source of payment;
 - (c) Medicare; or
 - (d) The Department for Medicaid Services.
- (9) The authority of the cabinet to negotiate rates of reimbursement and enter into contracts with providers may be delegated to the center.

Section 4. Use of Restraints. (1) A peace officer, ambulance provider, physician or facility may use restraints only if the individual exhibits or is threatening to exhibit assaultive or self-injurious behavior.

(2) Restraints may be applied through physical contact or devices used by peace officers, ambulance providers, or facilities in a manner consistent with the practice of each profession. Restraint may also be applied through the appropriate use of medications ordered by a licensed physician and administered by a qualified health care professional.

(3) The peace officers, ambulance providers, physician or facility shall document in writing the use of any restraint. The documentation shall include:

- (a) The reason for using the restraint;
 - (b) Type of restraint used;
 - (c) When the restraint was initiated; and
 - (d) Length of time the restraint was used, or if medication was used, name of medications, dosage and effect on individual.
- (4) Documentation concerning the use of restraint shall be given to:
- (a) The qualified mental health professional who performs the evaluation; and
 - (b) The facility, crisis stabilization unit, or intermediate care facility where the individual is being held or treated.

Section 5. Privacy. (1) A provider or facility shall not disclose the psychiatric condition or other personal information regarding the individual except to:

- (a) Persons acting under the provisions of KRS Chapters 202A, 202B and 645;
 - (b) The individual;
 - (c) The individual's legal guardian;
 - (d) The individual's parent(s) or person exercising custodial control or supervision of the individual, if a minor; or
 - (e) Any person given legal authority to receive that information on the individual's behalf.
- (2) Facilities shall maintain the individual's privacy during the holding period.
- (3) The qualified mental health professional shall evaluate the individual in an examining room or clinician's office.
- (4) The individual or the other persons identified in subsection (1) of this section may receive copies of all documents generated during the transportation and holding as provided in KRS 61.878 and 61.884.
- (5) The qualified mental health professional who performed the evaluation or other facility staff shall inform the individual of the availability of the documents and the opportunity to review the individual's medical record.

Section 6. Communication. (1) At the time of holding, the provider shall inform the individual that reasonable access to telephone communication shall be offered at the facility.

- (2) The facility shall:
 - (a) Inform the individual of the availability of phone calls;
 - (b) Provide telephone communications to the individual at the earliest opportunity available;
 - (c) Assist the individual in completing phone calls to persons of their choice; and
 - (d) Pay for no more than two (2) completed long distance phone calls, if the individual has insufficient funds.

Section 7. Community Behavioral Health, Developmental and Intellectual Disabilities Centers Responsibilities. (1) Under the authority of KRS 210.040(7) and (8), the cabinet may delegate to the community behavioral health, developmental and intellectual disabilities centers the responsibility to plan, prepare written protocols, and coordinate services as provided within KRS Chapters 202A and 202B and 645.120.

- (2) The center shall:
 - (a) Designate facilities for the purpose of conducting evaluations by qualified mental health professionals;
 - (b) Notify providers of transportation services, district judges and the cabinet of the identity and location of the facilities that are designated for the purpose of evaluating individuals;
 - (c) Make qualified mental health professionals available twenty-four (24) hours per day, seven (7) days per week at designated facilities to perform evaluations;
 - (d) Conduct evaluation requested by facilities within three (3) hours of the time of the request unless extensions of time are negotiated between the facility and the centers; and
 - (e) Assist the facility in referring the individual to a hospital for treatment if the evaluation criteria are met and the individual has not been admitted to the hospital where the evaluation is conducted. (21 Ky.R. 2008; Am. 2718; eff. 5-17-1995; TAm eff. 4-27-2016.)