

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Services and Supports
(Amendment)

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

RELATES TO: KRS 205.5605(2), 34 C.F.R. Subtitle B, Chapter III, 42 C.F.R. 441.300 - 310, 29 U.S.C. Chapter 16, 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 per unit of service as established in Section 5 of this administrative regulation.

Section 5. Base Payment Rate Table and Reimbursement Requirements.

(1) The rates established in the following table shall establish the base payment rate for ABI waiver services:

Service	Unit	Base Rate Effective January 1, 2025
Adult Day Training	15-minute	\$4.88
Assessment & Reassessment	Per assessment	\$121.00
Behavior Programming	15-minute	\$40.67
Case Management	Per month	\$525.14
Companion	15-minute	\$6.73
Companion - PDS	15-minute	\$6.73
Counseling, Individual	15-minute	\$28.85
Counseling, Group	15-minute	\$6.96
Environmental or Minor Home Adaptation	Per year	Up to \$2,420.00
Financial Management Services	Per month	\$121.00
Occupational Therapy	15-minute	\$31.34
Personal Care	15-minute	\$6.73
Personal Care - PDS	15-minute	\$6.73
Respite	15-minute	\$5.92
Respite - PDS	15-minute	\$5.92
Speech Therapy	15-minute	\$34.38
Supervised Residential Care - Level I	Per day	\$300.00
Supervised Residential Care - Level II	Per day	\$225.00
Supervised Residential Care - Level III	Per day	\$112.50
Supported Employment	15-minute	\$10.54
Supported Employment - PDS	15-minute	\$10.54

(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 caregiver 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.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by March 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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