

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 ~~fixed upper payment limit~~ per unit of service as established in Section 5 of this administrative regulation.

Section 5. Base Payment Rate Table and Reimbursement Requirements. ~~Fixed Upper Payment Limits.~~

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

~~[(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.]~~

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

{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 period}
{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 caregiver~~{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~~^[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.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) waiver services.

(b) The necessity of this administrative regulation:

The administrative regulation is necessary to establish coverage policies for the Medicaid ABI waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. A new table has been inserted to reflect the new rates. In addition, a federal approval clause and an updated website link are included, as well as amendments to conform to KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

DMS anticipates that up to 383 recipients will utilize the services available under this waiver.

(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:

No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Regulated entities will experience no new costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Recipients will be able to participate in the expanded reimbursement available for this waiver.

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

(a) Initially:

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis:

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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 will be necessary to implement the amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

Cabinet for Health and Family Services, Department for Medicaid Services

(a) Estimate the following for the first year:

Expenditures:DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

Revenues:The department does not anticipate revenues as a result of this administrative regulation.

Cost Savings:The department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

N/A

(a) Estimate the following for the first year:

Expenditures:DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

Revenues:The department does not anticipate revenues as a result of this administrative regulation.

Cost Savings:The department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

DMS does not expect additional expenditures, revenues, or cost savings for local entities as a result of this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Enrolled providers providing Michelle P. waiver services.

(a) Estimate the following for the first year:

Expenditures:DMS does not anticipate additional expenditures for regulated entities.

Revenues:Participating providers will benefit from increased reimbursement.

Cost Savings:The department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact:

The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion:

This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

42 C.F.R. 441.305(b).

(2) State compliance standards.

KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate.

Federal approval is for a limited number of waiver slots.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

The amendment will not impose stricter than federal requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The amendment will not impose stricter than federal requirements.