

## **CABINET FOR HEALTH AND FAMILY SERVICES**

### **Department for Medicaid Services**

#### **Division of Quality and Population Health**

##### **(New Administrative Regulation)**

#### **907 KAR 16:005. Definitions for 1915(i) Recovery, Independence, Support & Engagement (RISE) Initiative.**

RELATES TO: KRS 205.520, 210.005, 28 C.F.R. Part 35, 24 C.F.R. 578.3

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

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 any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for terms utilized within 907 KAR Chapter 16.

##### **Section 1. Definitions.**

- (1) "ACT" means American College Test.
- (2) "Allied health care professional" or "AHCP" means an individual who provides support in a residential setting, including a:
  - (a) Certified nursing assistant;
  - (b) Medication aide;
  - (c) Licensed practical nurse; or
  - (d) Registered nurse.
- (3) "Americans with Disabilities Act" or "ADA" as defined in 28 C.F.R. Part 35.
- (4) "Assessment" means the process that authorizes DBHDID to determine applicant service needs that can be met safely in a community-based setting and determine if the participant is eligible for 1915(i) RISE Initiative services.
- (5) "Assistive technology" or "AT" means any item, piece of equipment, software program, or product system that is used to increase, maintain, or improve the independence and functional capabilities of persons with disabilities in education, employment, recreation, and daily living activities. AT is intended to augment strengths and provide an alternative mode of performing tasks. AT is designed to enhance all aspects of a participant's life and can also be used to ensure the health, welfare, and safety of the participant.
- (6) "At risk of homelessness" is as defined by 24 C.F.R. § 578.3.
- (7) "Behavioral health condition" means serious mental illness (SMI) as consistent with KRS 210.005 or a co-occurring serious mental illness and substance use disorder (SUD).
- (8) "Behavioral health professional" means:
  - (a) An advanced practice registered nurse (APRN);
  - (b) A licensed clinical social worker (LCSW);
  - (c) A licensed marriage and family therapist (LMFT);
  - (d) A licensed professional clinical counselor (LPCC);
  - (e) A licensed psychological practitioner;
  - (f) A licensed psychologist;
  - (g) A licensed professional art therapist;
  - (h) A physician;
  - (i) A psychiatrist; or
  - (j) A licensed professional clinical counselor (LPCC).
- (9) "Case management" means services furnished to assist participants in gaining access to needed medical, social, educational, and other recovery support services that do not

conflict or are not duplicative of case management services that a participant already receives within the Medicaid program.

(10) "Case manager" means a qualified professional who:

- (a) Meets the requirements established in 907 KAR 16:010;
- (b) Assists a 1915(i) RISE Initiative participant in any aspect of participant services established pursuant to this chapter; and
- (c) Who manages the overall development and monitoring of a participant's PCSP.

(11) "Certification" or "recertification" means the authorization received by a Medicaid-enrolled provider who:

- (a) Has been determined to meet the requirements of the Centers for Medicare and Medicaid Services (CMS) approved 1915(i) state plan application and 907 KAR 16:010; and
- (b) Is approved by the department to provide one (1) or more services to 1915(i) RISE Initiative participants.

(12) "Certification period" means a period of time that a 1915(i) RISE Initiative provider has been certified or approved by DBHDID and can be reimbursed for 1915(i) RISE Initiative home and community-based services.

(13) "Community mental health center" or "CMHC" means a facility that meets the community mental health center requirements in 902 KAR 20:091.

(14) "Competitive integrated employment" or "CIE" means work that is performed on a full-time or part-time basis, including self-employment:

(a) For which a participant:

1. Is compensated at a rate that:

- a. Is not less than the highest rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate specified in the applicable minimum wage law; and
- b. Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or
- c. In the case of a participant who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

2. Is eligible for the level of benefits provided to other employees;

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(15) "Corrective action plan" means a document submitted by a 1915(i) RISE Initiative provider to the department that:

- (a) States the system changes, processes, or other actions that the provider is required to take to prevent a future occurrence of a founded violation stated in a citation or findings report;
- (b) States the timeframe in which the provider shall successfully implement or perform a system change, process, or other action required by the corrective action plan; and
- (c) Is not valid or effective until approved by the department.

- (16) "Critical incident or event" means an incident that is serious in nature and poses an immediate risk to the health, safety, or welfare of a participant.
- (17) "DBHDID" means the Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities.
- (18) "Department" means the Kentucky Department for Medicaid Services or its designee.
- (19) "Early and Periodic Screening, Diagnostic and Treatment" or "EPSDT" means a service authorized pursuant to 907 KAR 11:034 or 11:035.
- (20) "Exceptional supports" means authorization for services beyond the service definition limit.
- (21) "Exceptions process" means:
- (a) A service requested by a participant and the participant's team; and
  - (b) That due to an extraordinary circumstance related to a participant's physical health, psychiatric issue, or behavioral health issue is necessary to:
    1. Be provided in excess of the benefit limit for the service for a specified amount of time; and
    2. Meet the assessed needs of the participant.
- (22) "FFP" means federal financial participation.
- (23) "HCBS" means home and community-based services.
- (24) "Homeless" is defined by 24 C.F.R. § 578.3.
- (25) "HUD" means the federal Department of Housing and Urban Development.
- (26) "Human services related experience" means professional experience that may include:
- (a) Experience as a case manager in a related human services field;
  - (b) Certified nursing assistant experience;
  - (c) Certified medical assistant experience;
  - (d) Certified home health aide experience;
  - (e) Personal care assistant experience;
  - (f) Paid professional experience with aging or disabled populations or programs as a case manager, a rehabilitation specialist or health specialist, or a social services coordinator;
  - (g) Assessment and care planning experience with clients;
  - (h) Experience in working directly with persons with serious mental illness or substance use disorder; or
  - (i) Work providing assistance to individuals and groups with issues such as economically disadvantaged, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, and cultural.
- (27) "Incident" means any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes a:
- (a) Minor injury;
  - (b) Medication error without a serious outcome; or
  - (c) Behavior or situation that is not a critical incident.
- (28) "Independent living" means a participant in their own private housing unit or in a housing unit the participant shares with others, including a single-family home, duplex, or apartment building, in a community setting of the participant's choosing.
- (29) "Individual Placement and Support – Supported Employment" or "IPS-SE" means an evidence-based practice designed to assist individuals with serious mental illness (SMI) or co-occurring serious mental illness and substance use disorder to obtain and maintain employment in competitive integrated employment (CIE) using the supports of their behavioral health treatment team, an employment specialist, and benefits counselor. The Practice Principles of IPS-SE are as follows:

- (a) Focus on Competitive Integrated Employment: Agencies providing IPS services are committed to competitive employment as an attainable goal for people with behavioral health conditions seeking employment. Mainstream education and specialized training may enhance career paths.
  - (b) Eligibility Based on Client Choice: People are not excluded based on readiness, diagnoses, symptoms, substance use history, psychiatric hospitalizations, homelessness, level of disability, or legal system involvement.
  - (c) Integration of Rehabilitation and Mental Health Services: IPS programs are closely integrated with behavioral health treatment teams.
  - (d) Attention to Worker Preferences: Services are based on each person's preferences and choices, rather than providers' judgments.
  - (e) Personalized Benefits Counseling: Employment specialists help people obtain personalized, understandable, and accurate information about their Social Security, Medicaid, and other government entitlements.
  - (f) Rapid Job Search: IPS programs use a rapid job search approach to help job seekers obtain jobs directly, rather than providing lengthy pre-employment assessment, training, and counseling. If further education is part of their plan, IPS specialists assist in these activities as needed.
  - (g) Systematic Job Development: Employment specialists systematically visit employers, who are selected based on job seeker preferences, to learn about their business needs and hiring preferences.
  - (h) Time-Unlimited and Individualized Support: Job supports are individualized and continue for as long as each worker wants and needs the support.
- (30) "InterRAI Community Mental Health" or "InterRAI CMH" functional assessment instrument means the most recent version of the standardized assessment system developed by InterRAI and intended for use by clinicians in community mental health settings.
- (31) "Job-seeking skills training" or "JSST" means instruction that assists a participant in obtaining employment. Examples of JSST include:
- (a) Writing and development of a resume;
  - (b) How to use a resume;
  - (c) Completing applications;
  - (d) Networking;
  - (e) Interviewing;
  - (f) Job searching;
  - (g) Follow-up techniques following a contact, interview, or application; and
  - (h) Work habits.
- (32) "KRS" means Kentucky Revised Statutes.
- (33) "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:
- (a) A parent, whether biological, step, adoptive, or foster, who provides care to the parent's minor child;
  - (b) A legal guardian who is a court appointed person who has the authority to make decisions for the participant; or
  - (c) A spouse of a participant.
- (34) "Level of care determination" means a determination by the department that an individual meets the level of care criteria for 1915(i) RISE Initiative services established pursuant to Title 907 KAR.
- (35) "Medicaid Partner Portal Application" or "MPPA" means the Web-based Kentucky Medicaid portal for the department.
- (36) "Medication management" means a service that is intended to support program participants' adherence to and implementation of medication regimens.

(37) "Moratorium" means the department prohibition against a 1915(i) RISE Initiative provider providing services to a new 1915(i) RISE Initiative participant.

(38) "MWMA" means Medicaid Waiver Management Application, the Web-based Kentucky Medicaid portal.

(39) "OIG" means the Kentucky Office of Inspector General.

(40) "Permanent supportive housing" or "PSH" means principles that include the following:

(a) Choice. This concept means that participants should have self-determination in all aspects of their lives, including the planning and delivery of services, and housing and living support arrangements. Participants should be free to choose housing from the same living environments available to the general public.

(b) Safety. This concept is that participants should have the opportunity to live in housing that is decent and safe, and in neighborhoods free from problems of drugs and crime. A secure environment includes:

1. The development and implementation of clear administrative procedures for rent collection;
2. Building maintenance;
3. Monitoring visitors;
4. Enforcement of house rules; and
5. Opportunities for tenants to provide input on the safety and comfort of their living environment.

(c) Affordable. This concept is that participants should have the opportunity to live in housing wherein no more than thirty percent of the participant's income pays for a rent or mortgage and utilities.

(d) Integrated. This concept is that participants are entitled to housing options that are integrated into neighborhoods and are typical of the housing in the neighborhood.

(e) Consumer and Family Involvement. This concept is that participants and their family members should play a role in the development of new housing and support opportunities and in promoting the availability of housing alternatives for people with disabilities.

(f) Permanent. This concept is that participants should be provided with needed support in obtaining housing where the participant leases, owns, or otherwise controls the housing. In addition, decisions regarding housing tenure should be separate from decisions about needed supports and services.

(g) Accessible. This concept is that participants should have access to housing with needed physical modifications or other reasonable accommodations to support them in daily living. Participants should receive necessary assistance in requesting and accessing such housing and supports.

(h) Flexible and Individualized Services and Supports. This concept is that participants should have support services available to them regardless of where they choose to live. Services and supports should be person-centered and should enable people to live in their own homes. Supports should include community supports (for example, congregations or schools) and natural supports (for example, family, friends, and neighbors).

(41) "Person-centered service plan" or "PCSP" means a written individualized plan of 1915(i) RISE Initiative services developed in accordance with the participant's wants, assessed needs, and preferences that may include a transition plan to more intense or less intense level of services.

(42) "Planned respite for caregivers" or "respite" means a service that provides temporary relief from caregiving to the primary caregiver of a participant during times when the participant's primary caregiver would normally provide care.

(43) "Related fields of study" means:

- (a) Social work;
  - (b) Psychology;
  - (c) Rehabilitation;
  - (d) Nursing;
  - (e) Counseling;
  - (f) Education;
  - (g) Gerontology;
  - (h) Human services; and
  - (i) Sociology.
- (44) "RISE" means the Kentucky Recovery, Independence, Support, and Engagement Initiative.
- (45) "Serious mental illness" or "SMI" means:
- (a) An individual 18 years or over, who has: one (1) or more mental health diagnoses specifically listed in the following sections of the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders:
    - 1. Schizophrenia spectrum and other psychotic disorders;
    - 2. Bipolar and related disorders;
    - 3. Depressive disorders; or
    - 4. Trauma and stressor related disorders;
  - (b) Clear evidence of functional impairment in two or more of the following:
    - 1. Societal or role functioning;
    - 2. Interpersonal functioning;
    - 3. Daily living and personal care functioning;
    - 4. Physical functioning; or
    - 5. Cognitive or intellectual functioning; and
  - (c) The participant has experienced one (1) or more of these conditions of duration:
    - 1. Clinically significant symptoms of mental illness have persisted in the participant for a continuous period of at least 2 (two) years;
    - 2. The participant has been hospitalized for mental illness more than once in the past 2 (two) years; or
    - 3. There is a history of one or more episodes with marked disability and the illness is expected to continue for a two-year period of time.
- (46) "SOAR" means Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI) Outreach, Access, and Recovery.
- (47) "SPA" means state plan amendment.
- (48) "Substance use disorder" or "SUD" means individuals with a diagnosis designated in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders.
- (49) "TABE" means the Test of Adult Basic Education.
- (50) "Tenancy supports" means services that include both pre-tenancy supports and tenancy-sustaining supports.

*LISA D. LEE, Commissioner*

*ERIC C. FRIEDLANDER, Secretary*

APPROVED BY AGENCY: January 27, 2025

FILED WITH LRC: January 29, 2025 at 10:40 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 21, 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 April 14, 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 April 30, 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](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:**Krista Quarles or Jonathan Scott

**(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 16. Chapter 16 contains Medicaid administrative regulations regarding services provided to specific populations via 1915(i) state plan amendments.

**(b) The necessity of this administrative regulation:**

This administrative regulation is necessary to establish the 1915(i) RISE Initiative definitions.

**(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 16.

**(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 16.

**(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:**

This is a new administrative regulation.

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

This is a new administrative regulation.

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

This is a new administrative regulation.

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

This is a new administrative regulation.

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

Medicaid providers participating in the 1915(i) RISE Initiative. DMS estimates up to 5,000 participants may access 1915(i) RISE Initiative services.

**(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 or recipients 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):**



DMS does not anticipate additional costs as a result of this administrative regulation.

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

Recipients and providers will benefit due to the additional clarity provided by definitions in this administrative regulation.

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

**(a) Initially:**

The department anticipates no additional costs, beyond those detailed in HB 6, in implementing this administrative regulation.

**(b) On a continuing basis:**

The department anticipates no additional costs, beyond those detailed in HB 6, in implementing this administrative regulation.

**(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 administrative regulation.

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

The administrative regulation 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 205.520, 194A.030(2), 194A.050(1), 205.520(3).

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

The Cabinet for Health and Family Services, Department for Medicaid Services, is the promulgating agency, the Department for Behavioral Health, Developmental and Intellectual Disabilities is administering the 1915(i) RISE Initiative.

**(a) Estimate the following for the first year:**

**Expenditures:**No additional expenditures beyond those allocated to the department pursuant to 2024 House Bill 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 a change to expenditures, revenues, or cost savings in subsequent years.

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

DMS does not expect that local entities will be impacted by this regulation.

**(a) Estimate the following for the first year:**

**Expenditures:**HB 6 from 2024 funds this program with \$99 million in total expenditures estimated for the first year.

**Revenues:**n/a. The department does not anticipate additional revenues.

**Cost Savings:**n/a. The department does not anticipate cost savings.

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

As provider capacity and services increase in subsequent years, utilization and thus expenditures may increase over time.

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

N/A

**(a) Estimate the following for the first year:**

**Expenditures:**n/a The department does not anticipate additional expenditures for regulated entities.

**Revenues:**n/a The department does not anticipate additional revenues for regulated entities.

**Cost Savings:**The department does not anticipate cost savings for the providers who are billing.

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

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

**(5) Provide a narrative to explain the:**

**(a) Fiscal impact of this administrative regulation:**

HB 6 from 2024 funds this program with \$99 million total funding for state fiscal year 2026. The program is anticipated to have a fiscal impact of \$169 million total funding for state fiscal year 2027.

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

Estimated utilization of the services based on Medicaid Management Information System (MMIS) claims data were multiplied by anticipated fee schedule rates.

**(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:**

The policies contained in the administrative regulation allow for providers to request additional reimbursement and provide new services to a specific.

## **FEDERAL MANDATE ANALYSIS COMPARISON**

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

There is no federal mandate to have a definitions administrative regulation in a state administrative regulation chapter.

**(2) State compliance standards.**

KRS Chapter 13A establishes standards for definitions.

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

There is no federal mandate to have a definitions administrative regulation in a state administrative regulation chapter.

**(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.