

907 KAR 1:835. Michelle P. waiver services and reimbursement.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

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 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 coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions.

- (1) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).
- (2) "ADHC" means adult day health care.
- (3) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.
- (4) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who does not require twenty-four (24) hour care in an institutional setting.
- (5) "Advanced practice registered nurse" or "APRN" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.
- (6) "Assessment team" means a team which:
 - (a) Conducts assessment or reassessment services; and
 - (b) Consists of:
 1. Two (2) registered nurses; or
 2. One (1) registered nurse and one (1) of the following:
 - a. A social worker;
 - b. A certified psychologist with autonomous functioning;
 - c. A licensed psychological practitioner;
 - d. A licensed marriage and family therapist; or
 - e. A licensed professional clinical counselor.
- (7) "Behavior support specialist" means an individual who has:
 - (a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and
 - (b) At least one (1) year of experience in behavioral programming.
- (8) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 6 of this administrative regulation and participant-directed services identified in Section 7 of this administrative regulation provided pursuant to a participant's approved person-centered service plan.
- (9) "Budget allowance" is defined by KRS 205.5605(1).
- (10) "Certified psychologist" means an individual who is a certified psychologist in accordance with KRS 319.056.
- (11) "Covered services and supports" is defined by KRS 205.5605(3).
- (12) "DCBS" means the Department for Community Based Services.
- (13) "Department" means the Department for Medicaid Services or its designee.
- (14) "Developmental disability" means a severe, chronic disability that:
 - (a) Is attributable to:
 1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an intellectual disability;
 - (b) Is manifested prior to the individual's 22nd birthday;
 - (c) Is likely to continue indefinitely; and
 - (d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:
 1. Self-care;
 2. Understanding and use of language;
 3. Learning;
 4. Mobility;
 5. Self-direction; or
 6. Capacity for independent living.
- (15) "Direct care staff" means an individual hired by a Michelle P. waiver provider to provide services to the participant and who:
- (a)
 1.
 - a. Is eighteen (18) years of age or older; and
 - b. Has a high school diploma or GED; or
 2.
 - a. Is twenty-one (21) years of age or older; and
 - b. Is able to communicate with a participant in a manner that the participant or participant's legal representative or family member can understand;
 - (b) Has a valid Social Security number or valid work permit if not a U.S. citizen;
 - (c) Can understand and carry out simple instructions;
 - (d) Has the ability to keep simple records; and
 - (e) Is managed by the provider's supervisory staff.
- (16) "Electronic signature" is defined by KRS 369.102(8).
- (17) "Federal financial participation" is defined in 42 C.F.R. 400.203.
- (18) "Home health agency" means an agency that is:
- (a) Licensed in accordance with 902 KAR 20:081; and
 - (b) Medicare and Medicaid certified.
- (19) "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.
- (20) "Intellectual disability" means an individual has:
- (a) Significantly sub-average intellectual functioning;
 - (b) An intelligence quotient of seventy (70) or below;
 - (c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
 1. Communication;
 2. Self-care;
 3. Home living;
 4. Social or interpersonal skills;
 5. Use of community resources;
 6. Self-direction;
 7. Functional academic skills;
 8. Work;
 9. Leisure; or
 10. Health and safety; and
 - (d) Had an onset prior to eighteen (18) years of age.

- (21) "Intellectual disability professional" means an individual who:
- (a) Has at least one (1) year of experience working with individuals with an intellectual or developmental disability;
 - (b) Meets the personnel and training requirements established in Section 2 of this administrative regulation; and
 - (c)
 - 1. Is a doctor of medicine or osteopathy;
 - 2. Is a registered nurse; or
 - 3. Holds a bachelor's degree from an accredited institution in a human services field.
- (22) "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.
- (23) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
- (24) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).
- (25) "Licensed practical nurse" or "LPN" means a person who:
- (a) Meets the definition of KRS 314.011(9); and
 - (b) Works under the supervision of a registered nurse.
- (26) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).
- (27) "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.
- (28) "Licensed psychological practitioner" means an individual who:
- (a) Meets the requirements established in KRS 319.053; or
 - (b) Is a certified psychologist with autonomous functioning.
- (29) "Licensed psychologist" means an individual who:
- (a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and
 - (b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.
- (30) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <http://chfs.ky.gov/dms/mwma.htm>.
- (31) "Normal babysitting" means general care provided to a child which includes custody, control, and supervision.
- (32) "Occupational therapist" is defined by KRS 319A.010(3).
- (33) "Occupational therapy assistant" is defined by KRS 319A.010(4).
- (34) "Participant" means an individual who:
- (a) Is a recipient as defined by KRS 205.8451(9);
 - (b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and
 - (c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.
- (35) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based waiver services programs that allows participants to receive non-medical services in which the individual:
- (a) Assists with the design of the program;
 - (b) Chooses the providers of services; and
 - (c) Directs the delivery of services to meet his or her needs.
- (36) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.
- (37) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 8 of this administrative regulation.
- (38) "Physical therapist" is defined by KRS 327.010(2).

- (39) "Physical therapist assistant" means a skilled health care worker who:
- (a) Is certified by the Kentucky Board of Physical Therapy; and
 - (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.
- (40) "Physician assistant" or "PA" is defined by KRS 311.840(3).
- (41) "Plan of treatment" means a care plan used by an ADHC center.
- (42) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.
- (43) "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).
- (44) "Registered nurse" or "RN" means a person who:
- (a) Meets the definition established in KRS 314.011(5); and
 - (b) Has at least one (1) year of experience as a licensed practical nurse or a registered nurse.
- (45) "Representative" is defined by KRS 205.5605(6).
- (46) "Sex crime" is defined by KRS 17.165(1).
- (47) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.
- (48) "Speech-language pathologist" is defined by KRS 334A.020(3).
- (49) "State plan" is defined by 42 C.F.R. 400.203.
- (50) "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct care staff and who:
- (a)
 - 1.
 - a. Is eighteen (18) years of age or older; and
 - b. Has a high school diploma or GED; or
 - 2. Is twenty-one (21) years of age or older;
 - (b) Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;
 - (c) Is able to adequately communicate with the participants, staff, and family members;
 - (d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and
 - (e) Has the ability to perform required record keeping.
- (51) "Support broker" means an individual chosen by a participant from an agency designated by the department to:
- (a) Provide training, technical assistance, and support to the participant; and
 - (b) Assist the participant in any other aspects of PDS.
- (52) "Support spending plan" means a plan for a participant that identifies the:
- (a) PDS requested;
 - (b) Employee name;
 - (c) Hourly wage;
 - (d) Hours per month;
 - (e) Monthly pay;
 - (f) Taxes;
 - (g) Budget allowance; and
 - (h) Twelve (12) month budget.
- (53) "Violent crime" is defined by KRS 17.165(3).

Section 2. Non-PDS Provider Participation Requirements.

- (1) In order to provide Michelle P. waiver services, excluding participant-directed services, a provider shall be:
- (a) Licensed in accordance with:
 - 1. 902 KAR 20:066 if an adult day health care provider;

2. 902 KAR 20:078 if a group home;
3. 902 KAR 20:081 if a home health agency; or
4. 902 KAR 20:091 if a community mental health center; or
- (b) Certified by the department in accordance with 907 KAR 12:010 if the provider's type is not listed in paragraph (a) of this subsection.
- (2) A Michelle P. waiver provider shall:
 - (a) Comply with:
 1. 907 KAR 1:671;
 2. 907 KAR 1:672;
 3. 907 KAR 1:673;
 4. This administrative regulation;
 5. The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164;
 6. 42 U.S.C. 1320d to 1320d-8; and
 7. The provider participation requirements for SCL providers established in 907 KAR 12:010, Section 3;
 - (b) Not enroll a participant for whom the provider is unequipped or unable to provide Michelle P. waiver services; and
 - (c) Be permitted to accept or not accept a participant.
- (3) In order to provide a Michelle P. waiver service in accordance with Section 4 of this administrative regulation, a Michelle P. waiver service provider:
 - (a) Shall, for a potential employee or volunteer, obtain the results of a Caregiver Misconduct Registry check as described in 922 KAR 5:120 or an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; and
 - (b) May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

Section 3. Maintenance of Records.

- (1) A Michelle P. waiver provider shall maintain:
 - (a) A clinical record in the MWMA for each participant that shall contain the following:
 1. Pertinent medical, nursing, and social history;
 2. A comprehensive assessment entered on form MAP 351, Medicaid Waiver Assessment and signed by the:
 - a. Assessment team; and
 - b. Department;
 3. A person-centered service plan completed in accordance with Section 8 of this administrative regulation;
 4. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the participant or his or her legal representative at the time of application or reapplication and each recertification thereafter;
 5. The name of the case manager;
 6. Documentation of all level of care determinations;
 7. All documentation related to prior authorizations, including requests, approvals, and denials;
 8. Documentation of each contact with, or on behalf of, a participant;
 9. Documentation that the participant receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;
 10. Documentation that the participant or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:
 - a. The date the service was provided;
 - b. The duration of the service;
 - c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;
 - d. Itemization of each service delivered;
 - e. The participant's arrival and departure time, excluding travel time, if the service was provided outside the participant's home;
 - f. Progress notes, which shall include documentation of changes, responses, and treatments utilized to meet the participant's needs; and
 - g. The signature of the service provider; and
- (b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:
 1. At least six (6) years from the date that a covered service is provided; or
 2. For a minor, three (3) years after the participant reaches the age of majority under state law.
- (2) Upon request, a Michelle P. waiver provider shall make information regarding service and financial records available to the:
 - (a) Department;
 - (b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;
 - (c) United States Department for Health and Human Services or its designee;
 - (d) United States Government Accountability Office or its designee;
 - (e) Kentucky Office of the Auditor of Public Accounts or its designee; or
 - (f) Kentucky Office of the Attorney General or its designee.

Section 4. Participant Eligibility Determinations and Redeterminations.

- (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible participant who:
 - (a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and
 - (b) Would, without waiver services, be admitted to an ICF-IID or a nursing facility.
- (2) To apply for participation in the program, an individual or individual's representative shall:
 - (a) Apply for 1915(c) home and community based waiver services via the MWMA; and
 - (b) Complete and upload into the MWMA a MAP – 115 Application Intake – Participant Authorization.
- (3) The department shall perform a Michelle P. waiver service level of care determination for each participant at least once every twelve (12) months or more often if necessary.
- (4) A Michelle P. waiver service shall not be provided to an individual who:
 - (a) Does not require a service other than:
 1. An environmental and minor home adaptation;
 2. Case management; or
 3. An environmental and minor home adaptation and case management;
 - (b) Is an inpatient of:
 1. A hospital;
 2. A nursing facility; or
 3. An ICF-IID;
 - (c) Is a resident of a licensed personal care home; or
 - (d) Is receiving services from another 1915(c) home and community based waiver services program.

(5) A Michelle P. waiver provider shall inform a participant or the participant's legal representative of the choice to receive:

- (a) Michelle P. waiver services; or
- (b) Institutional services.

(6) An eligible participant or the participant's legal representative shall select a participating Michelle P. waiver provider from which the participant wishes to receive Michelle P. waiver services.

(7) A Michelle P. waiver provider shall notify the department in writing electronically or in print of a participant's:

- (a) Termination from the Michelle P. waiver program;
- (b) Admission to an ICF-IID or nursing facility for less than sixty (60) consecutive days;
- (c) Return to the Michelle P. waiver program from an ICF-IID or nursing facility within sixty (60) consecutive days;
- (d) Admission to a hospital; or
- (e) Transfer to another waiver program within the department.

(8) Involuntary termination of a service to a participant by a Michelle P. waiver provider shall require:

- (a) Simultaneous notice in writing electronically or in print to the participant or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

- 1. A statement of the intended action;
- 2. The basis for the intended action;
- 3. The authority by which the action is taken; and
- 4. The participant's right to appeal the intended action through the provider's appeal or grievance process; and

- (b) The case manager or support broker in conjunction with the provider to:

- 1. Provide the participant with the name, address, and telephone number of each current provider in the state;
- 2. Provide assistance to the participant in making contact with another provider;
- 3. Arrange transportation for a requested visit to a provider site;
- 4. Provide a copy of pertinent information to the participant or legal representative;
- 5. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;
- 6. Continue to provide supports until alternative services are secured; and
- 7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria.

(1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

- (a) Requires physical or environmental management or rehabilitation and:

- 1. Has a developmental disability or significantly sub-average intellectual functioning;
- 2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:
 - a. Learning fundamental living skills;
 - b. Obtaining educational experiences which will be useful in self-supporting activities; or
 - c. Increasing awareness of his or her environment; or
- 3. Has a primary psychiatric diagnosis if:
 - a. The individual possesses care needs listed in subparagraph 1 or 2 of this paragraph;

- b. The individual's mental care needs are adequately handled in an ICF-IID; and
 - c. The individual does not require psychiatric inpatient treatment; or
- (b) Has a developmental disability and meets the:
 - 1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or
 - 2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).
- (2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.
- (3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Covered Services.

- (1) A Michelle P. waiver service shall:
 - (a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the participant;
 - (b) Be provided pursuant to a person-centered service plan or, for a PDS, pursuant to a person-centered service plan and support spending plan;
 - (c) Except for a PDS, not be provided by a member of the participant's family. A PDS may be provided by a participant's family member; and
 - (d) Be accessed within sixty (60) days of the date of prior authorization.
- (2) To request prior authorization, a provider shall submit to the department a:
 - (a) Completed MAP 10, Waiver Services Physician's Recommendation that has been signed and dated by:
 - 1. A physician;
 - 2. An advanced practice registered nurse;
 - 3. A physician assistant; or
 - 4. An intellectual disability professional; and
 - (b) Person-centered service plan and MAP 351, Medicaid Waiver Assessment.
- (3) Covered Michelle P. waiver services shall include:
 - (a) A comprehensive assessment, which shall:
 - 1. Be completed by the department;
 - 2. Identify a participant's needs and the services the participant or the participant's family cannot manage or arrange for on the participant's behalf;
 - 3. Evaluate a participant's physical health, mental health, social supports, and environment;
 - 4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, APRN, or intellectual disability professional;
 - 5. Be conducted by an assessment team; and
 - 6. Include at least one (1) face-to-face home visit by a member of the assessment team with the participant and, if appropriate, the participant's family;
 - (b) A reassessment service, which shall:
 - 1. Be completed by the department;
 - 2. Determine the continuing need for Michelle P. waiver services and, if appropriate, PDS;
 - 3. Be performed at least every twelve (12) months;
 - 4. Be conducted using the same procedures used in an assessment service; and
 - 5. Not be retroactive;

(c) Case management, which shall meet the requirements established in Section 9 of this administrative regulation, and which shall:

1. Consist of coordinating the delivery of direct and indirect services to a participant;
2. Be provided by a case manager who shall:
 - a. Arrange for a service but not provide a service directly;
 - b. Contact the participant monthly through a face-to-face visit at the participant's home, in the ADHC center, or the adult day training provider's location; and
 - c. Assure that service delivery is in accordance with a participant's person-centered service plan;
3. Not include a group conference;
4. Include documentation with a detailed monthly summary note in the MWMA, which includes:
 - a. The month, day, and year for the time period each note covers;
 - b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan;
 - c. The signature, date of signature, and title of the individual preparing the note; and
 - d. Documentation of at least one (1) face-to-face meeting between the case manager and participant, family member, or legal representative;
5. Include requiring a participant or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver services or institutional services; and
6. Not be provided to a participant by an agency if the agency provides any other Michelle P. waiver service to the participant;

(d) A homemaker service, which shall consist of general household activities and shall:

1. Be provided by direct care staff;
2. Be provided to a participant:
 - a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and
 - b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and
3. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers; and
 - b. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service, which shall:

1. Be age appropriate;
2. Consist of assisting a participant with eating, bathing, dressing, personal hygiene, or other activities of daily living;
3. Be provided by direct care staff;
4. Be provided to a participant:
 - a. Who does not need highly skilled or technical care;
 - b. For whom services are essential to the participant's health and welfare and not for the participant's family; and
 - c. Who needs assistance with age-appropriate activities of daily living; and
5. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. The signature, date of signature, and title of the individual preparing the note; and
 - c. The beginning and ending time of service;

(f) An attendant care service, which shall consist of hands-on care that is:

1. Provided by direct care staff to a participant who:
 - a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and
 - b. Has a family member or other primary caretaker who is employed or attending school and is not able to provide care during working hours;
 2. Not of a general housekeeping nature;
 3. Not provided to a participant who is receiving any of the following Michelle P. waiver services:
 - a. Personal care;
 - b. Homemaker;
 - c. ADHC;
 - d. Adult day training;
 - e. Community living supports; or
 - f. Supported employment; and
 4. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. The signature, date of signature, and title of the individual preparing the note; and
 - c. Beginning and ending time of service;
- (g) A respite care service, which shall be short term care based on the absence or need for relief of the primary caretaker and:
1. Be provided by direct care staff who provide services at a level that appropriately and safely meets the medical needs of the participant;
 2. Be provided to a participant who has care needs beyond normal babysitting;
 3. Be used no less than every six (6) months; and
 4. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. The signature, date of signature, and title of the individual preparing the note; and
 - c. The beginning and ending time of service;
- (h) An environmental and minor home adaptation service, which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a participant and which shall:
1. Meet all applicable safety and local building codes;
 2. Relate strictly to the participant's disability and needs;
 3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant;
 4. Be submitted on a MAP 95 Request for Equipment Form that is uploaded into the MWMA for prior authorization; and
 5. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers; and
 - b. The signature, date of signature, and title of the individual preparing the note;
- (i) Occupational therapy, which shall be:
1. A physician ordered evaluation of a participant's level of functioning by applying diagnostic and prognostic tests;
 2. Physician-ordered services in a specified amount and duration to guide a participant in the use of therapeutic, creative, and self-care activities to assist the participant in obtaining the highest possible level of functioning;
 3. Training of other Michelle P. waiver providers on improving the level of functioning;
 4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
 6. Documented with a detailed staff note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - c. The signature, date of signature, and title of the individual preparing the note;
- (j) Physical therapy, which shall:
1. Be a physician-ordered evaluation of a participant by applying muscle, joint, and functional ability tests;
 2. Be physician-ordered treatment in a specified amount and duration to assist a participant in obtaining the highest possible level of functioning;
 3. Include training of other Michelle P. waiver providers on improving the level of functioning;
 4. Be exclusive of maintenance or the prevention of regression;
 5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and
 6. Be documented with a detailed monthly summary note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. Progression or lack of progression toward outcomes identified in the person-centered service plan; and
 - c. The signature, date of signature, and title of the individual preparing the note;
- (k) Speech language pathology services, which shall:
1. Be a physician-ordered evaluation of a participant with a speech or language disorder;
 2. Be a physician-ordered habilitative service in a specified amount and duration to assist a participant with a speech and language disability in obtaining the highest possible level of functioning;
 3. Include training of other Michelle P. waiver providers on improving the level of functioning;
 4. Be provided by a speech-language pathologist; and
 5. Be documented with a detailed monthly summary note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - c. The signature, date of signature, and title of the individual preparing the note;
- (l) An adult day training service, which shall:
1. Support the participant in daily, meaningful routines in the community;
 2. Stress training in:
 - a. The activities of daily living;
 - b. Self-advocacy;
 - c. Adaptive and social skills; and
 - d. Vocational skills;
 3. Be provided in a community setting that may:
 - a. Be a fixed location; or
 - b. Occur in public venues;
 4. Not be diversional in nature;
 5. If provided on site:
 - a. Include facility-based services provided on a regularly-scheduled basis;

- b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or
 - c. Prepare the participant for transition from school to work or adult support services;
- 6. If provided off site:
 - a. Include services provided in a variety of community settings;
 - b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
 - c. Be designed to result in increased ability to access community resources without paid supports;
 - d. Provide the opportunity for the participant to be involved with other members of the general population; and
 - e. Be provided as:
 - (i) An enclave or group approach to training in which participants work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;
 - (ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or
 - (iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the participant or participants;
- 7. Ensure that any participant performing productive work that benefits the organization is paid commensurate with compensation to members of the general work force doing similar work;
- 8. Require that an adult day training service provider conduct, at least annually, an orientation informing the participant of supported employment and other competitive opportunities in the community;
- 9. Be provided at a time mutually agreed to by the participant and Michelle P. waiver provider;
- 10.
 - a. Be provided to participants of age twenty-two (22) years or older; or
 - b. Be provided to participants of age sixteen (16) to twenty-one (21) years as a transition process from school to work or adult support services; and
- 11. Be documented in the MWMA with:
 - a. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - (iii) The signature, date of signature, and title of the individual preparing the note; and
 - b. A time and attendance record, which shall include:
 - (i) The date of service;
 - (ii) The beginning and ending time of the service;
 - (iii) The location of the service; and
 - (iv) The signature, date of signature, and title of the individual providing the service;
- (m) A supported employment service, which shall:
 - 1. Be intensive, ongoing support for a participant to maintain paid employment in an environment in which an individual without a disability is employed;
 - 2. Include attending to a participant's personal care needs;
 - 3. Be provided in a variety of settings;
 - 4. Be provided on a one-to-one basis;

5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's file;
6. Exclude work performed directly for the supported employment provider;
7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;
8. Be documented in the MWMA by:
 - a. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - (iii) The signature, date of signature, and title of the individual preparing the note; and
 - b. A time and attendance record, which shall include:
 - (i) The date of service;
 - (ii) The beginning and ending time of the service;
 - (iii) The location of the service; and
 - (iv) The signature, date of signature, and title of the individual providing the service;
- (n) A behavioral support service, which shall:
 1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
 2. Be provided to assist the participant to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
 3. Include a functional assessment of the participant's behavior, which shall include:
 - a. An analysis of the potential communicative intent of the behavior;
 - b. The history of reinforcement for the behavior;
 - c. Critical variables that preceded the behavior;
 - d. Effects of different situations on the behavior; and
 - e. A hypothesis regarding the motivation, purpose, and factors that maintain the behavior;
 4. Include the development of a behavioral support plan, which shall:
 - a. Be developed by the behavior support specialist;
 - b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
 - c. Be revised as necessary;
 - d. Define the techniques and procedures used;
 - e. Be designed to equip the participant to communicate his or her needs and to participate in age-appropriate activities;
 - f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
 - g. Reflect the use of positive approaches; and
 - h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure that denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
 5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;
 6. Include the monitoring of a participant's progress, which shall be accomplished by:
 - a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

- b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;
- 7. Provide for the design, implementation, and evaluation of systematic environmental modifications;
- 8. Be provided by a behavior support specialist; and
- 9. Be documented in the MWMA by a detailed staff note, which shall include:
 - a. The date of service;
 - b. The beginning and ending time; and
 - c. The signature, date of signature, and title of the behavior support specialist;
- (o) An ADHC service, which shall:
 - 1. Be provided to a participant who is at least twenty-one (21) years of age;
 - 2. Include the following basic services and necessities provided to participants during the posted hours of operation:
 - a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
 - b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
 - c. Snacks;
 - d. Supervision by an RN;
 - e. Age and diagnosis appropriate daily activities; and
 - f. Routine services that meet the daily personal and health care needs of a participant, including:
 - (i) Monitoring of vital signs;
 - (ii) Assistance with activities of daily living; and
 - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant;
 - 3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;
 - 4. Include respite care services pursuant to paragraph (g) of this subsection;
 - 5. Be provided to a participant by the health team in an ADHC center, which may include:
 - a. A physician;
 - b. A physician assistant;
 - c. An APRN;
 - d. An RN;
 - e. An LPN;
 - f. An activities director;
 - g. A physical therapist;
 - h. A physical therapist assistant;
 - i. An occupational therapist;
 - j. An occupational therapy assistant;
 - k. A speech-language pathologist;
 - l. A social worker;
 - m. A nutritionist;
 - n. A health aide;
 - o. An LPCC;
 - p. An LMFT;
 - q. A certified psychologist with autonomous functioning; or
 - r. A licensed psychological practitioner; and
 - 6. Be provided pursuant to a plan of treatment that shall:

- a. Be developed and signed by each member of the plan of treatment team, which shall include the participant or a legal representative of the participant;
- b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and
- c. Be developed annually from information on the MAP 351, Medicaid Waiver Assessment and revised as needed; and
- (p) Community living supports, which shall:
 - 1. Be provided to facilitate independence and promote integration into the community for a participant residing in his or her own home or in his or her family's home;
 - 2. Be supports and assistance that shall be related to chosen outcomes, not be diversional in nature, and may include:
 - a. Routine household tasks and maintenance;
 - b. Activities of daily living;
 - c. Personal hygiene;
 - d. Shopping;
 - e. Money management;
 - f. Medication management;
 - g. Socialization;
 - h. Relationship building;
 - i. Leisure choices;
 - j. Participation in community activities;
 - k. Therapeutic goals; or
 - l. Nonmedical care not requiring nurse or physician intervention;
 - 3. Not replace other work or day activities;
 - 4. Be provided on a one-on-one basis;
 - 5. Not be provided at an adult day training or children's day habilitation site;
 - 6. Be documented in the MWMA by:
 - a. A time and attendance record, which shall include:
 - (i) The date of the service;
 - (ii) The beginning and ending time of the service; and
 - (iii) The signature, date of signature, and title of the individual providing the service; and
 - b. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - (iii) The signature, date of signature, and title of the individual preparing the summary note; and
 - 7. Be limited to sixteen (16) hours per day alone or in combination with adult day training and supported employment.

Section 7. Participant-Directed Services.

- (1) Covered services and supports provided to a participant receiving PDS shall be nonmedical and include:
 - (a) A home and community support service, which shall:
 - 1. Be available only as participant-directed services;
 - 2. Be provided in the participant's home or in the community;
 - 3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS Michelle P. waiver services; and
5. Include:
 - a. Assistance, support, or training in activities including meal preparation, laundry, or routine household care or maintenance;
 - b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;
 - c. Reminding, observing, or monitoring of medications;
 - d. Nonmedical care that does not require a nurse or physician intervention;
 - e. Respite; or
 - f. Socialization, relationship building, leisure choice, or participation in generic community activities;
- (b) Goods and services, which shall:
 1. Be individualized;
 2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant;
 3. Not include experimental goods or services; and
 4. Not include chemical or physical restraints;
- (c) A community day support service, which shall:
 1. Be available only as participant-directed services;
 2. Be provided in a community setting;
 3. Be tailored to the participant's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant for work or community activities, socialization, leisure, or retirement activities;
 4. Be based upon therapeutic goals and not be diversional in nature; and
 5. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS Michelle P. waiver services; or
- (d) Financial management, which shall:
 1. Include managing, directing, or dispersing a participant's funds identified in the participant's approved PDS budget;
 2. Include payroll processing associated with the individuals hired by a participant or participant's representative;
 3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant;
 4. Be performed by an entity:
 - a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
 - b. With at least two (2) years of experience working with individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation;
 5. Include preparing fiscal accounting and expenditure reports for:
 - a. A participant or participant's representative; and
 - b. The department.
- (2) To be covered, a PDS shall be specified in a person-centered service plan.
- (3) Reimbursement for a PDS shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-PDS Michelle P. waiver setting except that respite may be provided in excess of the cap established in Section 14(2) of this administrative regulation if:
 - (a) Necessary per the participant's person-centered service plan; and
 - (b) Approved by the department in accordance with subsection (13) of this section.
- (4) A participant, including a married participant, shall choose providers and a participant's choice shall be reflected or documented in the person-centered service plan.

(5)

(a) A participant may designate a representative to act on the participant's behalf.

(b) The PDS representative shall:

1. Be twenty-one (21) years of age or older;

2. Not be monetarily compensated for acting as the PDS representative or providing a PDS; and

3. Be appointed by the participant on a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS).

(6) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS) and submitting it to the support broker.

(7) The department shall immediately terminate a participant from PDS if:

(a) Imminent danger to the participant's health, safety, or welfare exists;

(b) The participant fails to pay patient liability;

(c) The participant's person-centered service plan indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the participant's safety and welfare due to being left alone without a caregiver present; or

(d) The participant, caregiver, family, or guardian threatens or intimidates a support broker or other PDS staff.

(8) The department may terminate a participant from PDS if it determines that the participant's PDS provider has not adhered to the person-centered service plan.

(9) Except for a termination required by subsection (7) of this section, prior to a participant's termination from PDS, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the participant in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete, and submit to the department, a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS) terminating the participant from PDS if the participant fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional Michelle P. waiver services.

(10) Upon an involuntary termination of PDS, the department shall:

(a) Notify a participant in writing of its decision to terminate the participant's PDS participation; and

(b) Inform the participant of the right to appeal the department's decision in accordance with Section 16 of this administrative regulation.

(11) A PDS provider shall:

(a) Be selected by the participant;

(b) Submit a completed Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d)

1. Be a citizen of the United States with a valid Social Security number; or

2. Possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the participant, participant's representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the participant;

- (h) Submit to a criminal background check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to being a PDS provider;
 - (i) Submit to a check of the:
 - 1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;
 - 2. Caregiver Misconduct Registry maintained in accordance with 922 KAR 5:120 and not be found on the registry; and
 - 3. Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;
 - (j) Not have pled guilty or been convicted of committing a sex crime or violent crime;
 - (k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant;
 - (l) Be approved by the department;
 - (m) Maintain and submit timesheets documenting hours worked; and
 - (n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant.
- (12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.
- (13)
- (a) The department shall establish a twelve (12) month budget for a participant based on the participant's person-centered service plan.
 - (b) A participant's twelve (12) month budget shall not exceed \$40,000 unless:
 - 1. The participant's support broker requests a budget adjustment to a level higher than \$40,000; and
 - 2. The department approves the adjustment.
 - (c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:
 - 1. If the proposed services are necessary to prevent imminent institutionalization;
 - 2. The cost effectiveness of the proposed services;
 - 3. Protection of the participant's health, safety, and welfare; and
 - 4. If a significant change has occurred in the participant's:
 - a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
 - b. Natural support system; or
 - c. Environmental living arrangement, resulting in the participant's relocation.
 - (d) A participant's twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the participant's person-centered service plan and approved by the department.
- (14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a PDS is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-PDS) waiver services.
- (15) A support broker shall:
- (a) Provide needed assistance to a participant with any aspect of PDS or blended services;
 - (b) Be available to a participant twenty-four (24) hours per day, seven (7) days per week;
 - (c) Comply with all applicable federal and state laws and requirements;
 - (d) Continually monitor a participant's health, safety, and welfare; and

(e) Complete or revise a person-centered service plan in accordance with Section 8 of this administrative regulation.

(16)

(a) A support broker or case manager may conduct an assessment or reassessment for a PDS participant.

(b) A PDS assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

(17) Services provided by a support broker shall meet the conflict free requirements established for case management in Section 9(4)(f) and 9(5) of this administrative regulation.

Section 8. Person-centered Service Plan Requirements.

(1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered team.

(2) A participant's person-centered service plan shall:

(a) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:

a. Is based on the participant's:

(i) Assessed clinical and support needs;

(ii) Strengths;

(iii) Preferences; and

(iv) Ideas;

b. Encourages and supports the participant's:

- (i) Rehabilitative needs;
 - (ii) Habilitative needs; and
 - (iii) Long term satisfaction;
 - c. Is based on reasonable costs given the participant's support needs;
 - d. Includes:
 - (i) The participant's goals;
 - (ii) The participant's desired outcomes; and
 - (iii) Matters important to the participant;
 - e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;
 - f. Includes:
 - (i) Information necessary to support the participant during times of crisis; and
 - (ii) Risk factors and measures in place to prevent crises from occurring;
 - g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;
 - h. Records the alternative home and community-based settings that were considered by the participant;
 - i. Reflects that the setting in which the participant resides was chosen by the participant;
 - j. Is understandable to the participant and to the individuals who are important in supporting the participant;
 - k. Identifies the individual or entity responsible for monitoring the person-centered service plan;
 - l. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;
 - m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;
 - n. Includes those services that the individual elects to self-direct; and
 - o. Prevents the provision of unnecessary or inappropriate services and supports; and
- (c) Include in all settings the ability for the participant to:
- 1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience;
 - 2.
 - a. Choose when and what to eat;
 - b. Have access to food at any time;
 - c. Choose with whom to eat or whether to eat alone; and
 - d. Choose appropriating clothing according to the:
 - (i) Participant's preference;
 - (ii) Weather; and
 - (iii) Activities to be performed.
- (3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.
- (4)
- (a) A participant's person-centered service plan shall be:
 - 1. Entered into the MWMA by the participant's case manager; and
 - 2. Updated in the MWMA by the participant's case manager.
 - (b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

Section 9. Case Management Requirements.

(1) A case manager shall:

(a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

1. A qualified professional in the area of intellectual disabilities who:
 - a. Has at least one (1) year of experience working directly with individuals with an intellectual disability or a developmental disability;
 - b. Meets the federal educational requirements for a qualified intellectual disability professional established in 42 C.F.R. 483.430; and
 - c. Provides documentation of education and experience;
2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a development disability;
3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
4. A licensed clinical social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or
8. A licensed psychological practitioner or certified psychologist with autonomous functioning who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

(b) Be a registered nurse;

(c) Be a licensed practical nurse;

(d) Be a licensed clinical social worker;

(e) Be a licensed marriage and family therapist;

(f) Be a licensed professional clinical counselor;

(g) Be a licensed psychologist; or

(h) Be a licensed psychological practitioner.

(2) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c)

1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and
2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:
 - a. Need for knowledge of the case management process;
 - b. Personal rights; and
 - c. Risks and responsibilities as well as awareness of available services; and
2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management, which shall address:

1. Advocating for standards that promote outcomes of quality;
2. Ensuring that no harm is done;
3. Respecting the rights of others to make their own decisions;
4. Treating others fairly; and
5. Being faithful and following through on promises and commitments;

(f)

1. Lead the person-centered service planning team; and
2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)

1. Include the participant's participation or legal representative's participation in the case management process; and
2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and
2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;
2. A participant's person-centered team and provide leadership to the team and follow through on commitments made; and
3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Document services provided to a participant by entering the following into the MWMA:

1. A monthly department approved person-centered monitoring tool; and
2. A monthly entry, which shall include:
 - a. The month and year for the time period the note covers;
 - b. An analysis of progress toward the participant's outcome or outcomes;
 - c. Identification of barriers to achievement of outcomes;
 - d. A projected plan to achieve the next step in achievement of outcomes;
 - e. The signature and title of the case manager completing the note; and
 - f. The date the note was generated;

(n) Accurately reflect in the MWMA if a participant is:

1. Terminated from the Michelle P. waiver program;
2. Admitted to an intermediate care facility for individuals with an intellectual disability;
3. Admitted to a hospital;
4. Admitted to a skilled nursing facility;

5. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
 6. Relocated to a different address; and
- (o) Provide information about participant-directed services to the participant or the participant's guardian:
1. At the time the initial person-centered service plan is developed;
 2. At least annually thereafter; and
 3. Upon inquiry from the participant or participant's guardian.
- (3) If a participant:
- (a) Voluntarily terminates participation in the Michelle P. waiver program in order to be admitted to a hospital, to a nursing facility, or to an intermediate care facility for individuals with an intellectual disability, the participant's case manager shall enter the request into the MWMA; or
 - (b) Is transferred to another 1915(c) home and community based waiver services program, the case manager shall enter the transfer request into the MWMA.
- (4) Case management shall:
- (a) Consist of coordinating the delivery of direct and indirect services to a participant;
 - (b) Be provided by a case manager who shall:
 1. Arrange for a service but not provide a service directly;
 2. Contact the participant monthly through a face-to-face visit at the participant's home, in the ADHC center, or at the adult day training provider's location;
 3. Assure that service delivery is in accordance with a participant's person-centered service plan; and
 4. Meet the requirements of this section;
 - (c) Not include a group conference;
 - (d) Include documenting:
 1. The following regarding notes:
 - a. The signature of the individual preparing the note;
 - b. The date of the signature; and
 - c. The title of the individual preparing the note; and
 2. At least one (1) face-to-face meeting between the case manager and participant, family member, or legal representative;
 - (e) Include requiring a participant or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; and
 - (f) Not be provided to a participant by an agency if the agency provides any other Michelle P. waiver service to the participant.
- (5)
- (a) Case management for any participant who begins receiving Michelle P. waiver services after the effective date of this administrative regulation shall be conflict free except as allowed in paragraph (b) of this subsection.
 - (b)
 1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified Michelle P. waiver provider within thirty (30) miles of the participant's residence.
 2. An exemption to the conflict free case management requirement shall be granted if:

- a. A participant requests the exemption;
 - b. The participant's case manager provides documentation of evidence to the department that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;
 - c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and
 - d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA.
3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall:
- a. Document conflict of interest protections, separating case management and service provision functions within the provider entity; and
 - b. Demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.
4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.
- (c) A participant who receives Michelle P. waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.
- (d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:
- 1. Case manager; or
 - 2. Provider of non-case management Michelle P. waiver services.
- (6) Case management shall involve:
- (a) A constant recognition of what is and is not working regarding a participant; and
 - (b) Changing what is not working.

Section 10. Annual Expenditure Limit Per Individual.

- (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.
- (2) The limit referenced in subsection (1) of this section shall:
 - (a) Be an overall limit applied to all services whether PDS, Michelle P. waiver services not provided as PDS, or a combination of PDS and Michelle P. waiver services; and
 - (b) Equal \$63,000 per year.

Section 11. Incident Reporting Process.

- (1)
 - (a) There shall be two (2) classes of incidents.
 - (b) The following shall be the two (2) classes of incidents:
 - 1. An incident; or
 - 2. A critical incident.
- (2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
 - (a) A minor injury;
 - (b) A medication error without a serious outcome; or
 - (c) A behavior or situation that is not a critical incident.
- (3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
 - (a) Can reasonably be expected to result in harm to a participant; and
 - (b) Shall include:

1. Abuse, neglect, or exploitation;
2. A serious medication error;
3. Death;
4. A homicidal or suicidal ideation;
5. A missing person; or
6. Other action or event that the provider determines may result in harm to the participant.

(4)

- (a) If an incident occurs, the Michelle P. waiver provider shall:
 1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and
 2. Be immediately assessed for potential abuse, neglect, or exploitation.
- (b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
 1. The incident shall immediately be considered a critical incident;
 2. The critical incident procedures established in subsection (5) of this section shall be followed; and
 3. The Michelle P. waiver provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

(5)

- (a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.
- (b) If the critical incident:
 1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA; or
 2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA within eight (8) hours of discovery.
- (c) The Michelle P. waiver provider shall:
 1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and
 2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:
 - a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
 - b. Details of the critical incident; and
 - c. Relevant participant information including:
 - (i) A listing of recent medical concerns;
 - (ii) An analysis of causal factors; and
 - (iii) Recommendations for preventing future occurrences.

(6)

- (a) Following a death of a participant receiving Michelle P. waiver services from a Michelle P. waiver provider, the Michelle P. waiver provider shall enter mortality data documentation into the MWMA within fourteen (14) days of the death.
- (b) Mortality data documentation shall include:
 1. The participant's person-centered service plan at the time of death;
 2. Any current assessment forms regarding the participant;
 3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription, if applicable;
 4. Progress notes regarding the participant from all service elements for the past thirty (30) days, including case management notes;

5. The results of the participant's most recent physical exam, if available;
 6. All incident reports, if any exist, regarding the participant for the past six (6) months;
 7. The most recent psychological evaluation of the participant, if applicable and available;
 8. A full life history and any updates;
 9. Emergency medical services notes regarding the participant if available;
 10. The police report if available;
 11. A copy of:
 - a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable; and
 - b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
 12. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months, if available.
- (7) A Michelle P. waiver provider shall document all medication error details on a medication error log retained on file at the Michelle P. waiver provider site.

Section 12. Michelle P. Waiver Program Waiting List.

- (1)
 - (a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:
 1. In accordance with subsection (2) of this section; and
 2. Maintained by the department.
 - (b) Each slot for the Michelle P. Waiver Program shall be contingent upon:
 1. Biennium budget funding;
 2. Federal financial participation; and
 3. Centers for Medicare and Medicaid Services approval.
- (2) For an individual to be placed on the Michelle P. Waiver Program waiting list, the individual or individual's representative shall:
 - (a) Apply for 1915(c) home and community based waiver services via the MWMA; and
 - (b) Complete and upload to the MWMA a MAP – 115 Application Intake – Participant Authorization.
- (3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that each application is received and validated by the department.
- (4) The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:
 - (a) Applicant; or
 - (b) Applicant's legal representative.
- (5) At least annually, the department shall contact each individual, or individual's legal representative, on the Michelle P. Waiver Program waiting list to:
 - (a) Verify the accuracy of the individual's information; and
 - (b) Verify whether the individual wishes to continue to pursue enrollment in the Michelle P. Waiver Program.
- (6) The department shall remove an individual from the Michelle P. Waiver Program waiting list if:
 - (a) The individual is deceased;
 - (b) The department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program

and the individual or individual's legal representative:

1. Declines the potential funding for enrollment in the program; and
 2. Does not request to remain on the Michelle P. Waiver Program waiting list; or
- (c) Pursuant to subsection (5) of this section, the individual elects to not continue to pursue enrollment in the Michelle P. Waiver Program.
- (7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:
- (a) Lose his or her current position on the waiting list; and
 - (b) Be moved to the bottom of the waiting list.
- (8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:
- (a) The individual or the individual's legal representative; and
 - (b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.
- (9) The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.
- (10)
- (a) An individual who is placed on the Michelle P. Waiver Program waiting list shall be informed about and told how to apply for Medicaid state plan services for which the individual might qualify.
 - (b) An individual who is under twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall also be informed about Early and Periodic Screening, Diagnostic, and Treatment services.

Section 13. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 14. Reimbursement.

- (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:
- (a) Homemaker;
 - (b) Personal care;
 - (c) Attendant care;
 - (d) Supported employment;
 - (e) Adult day health care;
 - (f) Adult day training;
 - (g) Community living supports;
 - (h) Physical therapy;
 - (i) Occupational therapy;
 - (j) Speech therapy; and
 - (k) Behavior supports.
- (2) Respite services shall not exceed \$4,000 per member, per calendar year.
- (3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.
- (4)
- (a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.
 - (b) The unit amounts, fixed upper payment rate limits, and other limits established in the following table shall apply:

Service	Fixed Upper Payment Rate Limit	Unit of Service
Case Management	\$50.00	15 minutes
Respite	\$4,000 per calendar year	15 minutes
Homemaker	\$6.50	15 minutes
Personal Care	\$7.50	15 minutes
Attendant Care	\$2.90	15 minutes
Supported Employment	\$5.54	15 minutes
Adult Day Health Care	\$2.75	15 minutes
Adult Day Training	\$2.75	15 minutes
Community Living Supports	\$5.54	15 minutes
Physical Therapy	\$22.17	15 minutes
Occupational Therapy	\$22.17	15 minutes
Speech Therapy	\$22.17	15 minutes
Behavior Supports	\$33.25	15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year	
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)	15 minutes
Support Broker	\$265.00	One (1) month

Section 15. Federal Financial Participation and Approval. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage and reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section 16. Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a participant shall be in accordance with 907 KAR 1:563.

Section 17. Federal Approval and Federal Financial Participation. The department's coverage of and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage and reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage and reimbursement.

Section 18. Incorporation by Reference.

- (1) The following material is incorporated by reference:

- (a) "MAP – 115 Application Intake – Participant Authorization", May 2015;
- (b) "MAP – 116 Service Plan – Participant Authorization", May 2015;
- (c) "MAP – 531 Conflict-Free Case Management Exemption", October 2015;
- (d) "MAP 95 Request for Equipment Form", June 2007;
- (e) "MAP - 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;
- (f) "MAP 351, Medicaid Waiver Assessment", July 2015;
- (g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS)", June 2015;
- (h) "MAP 10, Waiver Services Physician's Recommendation", June 2015; and
- (i) "Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract", June 2015.

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

- (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

- (b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

(35 Ky.R. 688; Am. 1493; 1804; 1974; eff. 2-6-2009; TAm 7-16-2013; 40 Ky.R. 2899; 41 Ky.R. 516; 796; eff. 10-31-2014; 42 Ky.R. 972, 1811, 2747; eff. 6-3-2016; Cert. eff. 5-9-2023.)