907 KAR 15:020. Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment.

RELATES TO: KRS 205.520, 369.101 - 369.120, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290 ee-3, 1320d-2 - 1320d-8, 1396a(a)(10)(B), 1396a(a)(23), 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164

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 a 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 coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier I behavioral health services organizations.

Section 1. General Coverage Requirements.

(1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)

(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)

(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 902 KAR 20:430.

Section 2. Provider Participation.

(1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records in accordance with Section 6 of this administrative regulation.

(2) A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and

(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.

(3) A BHSO I shall:

(a) Not receive reimbursement for services provided for outpatient or residential substance use disorder treatment, except as permitted pursuant to Section 3 of this administrative regulation if the primary diagnosis is mental health;

(b) Provide services in accordance with its licensure, 902 KAR 20:430, and Section 3 of this administrative regulation for mental health treatment; and

(c) Except as provided by subsection (4) of this section, possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization.

(4) The department shall grant a one (1) time extension to a BHSO I that requests a one (1) time extension to complete the accreditation process, if the request is submitted at least ninety (90) days prior to expiration of provider enrollment.

Section 3. Covered Services.

(1) The following providers shall not be eligible to provide services under this administrative regulation for a BHSO I:

(a) A licensed clinical alcohol and drug counselor (LCADC);

(b) A licensed clinical alcohol and drug counselor associate (LCADCA);

(c) A certified alcohol and drug counselor (CADC); or

(d) A substance use disorder peer support specialist.

(2) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder; or

(b) Co-occurring disorders, if the:

1. Substance use disorder diagnosis is secondary to a primary mental health diagnosis; and

2. Services are provided by an independently licensed practitioner who could independently practice and provide treatment for a co-occurring disorder. The following qualifying practitioners may provide co-occurring disorder treatment within a BHSO I:

a. A physician;

b. A psychiatrist;
c. An advanced practice registered nurse;
d. A physician assistant;
e. A licensed psychologist;
f. A licensed psychological practitioner;
g. A certified psychologist with autonomous functioning;
h. A licensed clinical social worker;
i. A licensed professional clinical counselor; or
j. A licensed marriage and family therapist.

(3) The services established in this subsection shall be covered under this administrative regulation in accordance with the requirements established in this section.

(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
2. Not establish the presence or specific type of disorder;
3. Establish the need for an in-depth assessment;
4. Be face-to-face or via telehealth, as appropriate pursuant to 907 KAR 3:170; and
5. Be provided by:
   a. An approved behavioral health practitioner; or
   b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
   a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
   b. Determine the individual's readiness for change;
   c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
   d. Engage the individual in developing an appropriate treatment relationship;
2. Establish or rule out the existence of a clinical disorder or service need;
3. Include working with the individual to develop a plan of care;
4. Not include psychological or psychiatric evaluations or assessments;
5. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
6. Be provided by:
   a. An approved behavioral health practitioner; or
   b. An approved behavioral health practitioner under supervision.

(c)

1. Psychological testing shall include:
   a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
   b. Interpretation and a written report of testing results.
2. Psychological testing shall be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170.
3. Psychological testing shall be provided by:
   a. A licensed psychologist;
   b. A certified psychologist with autonomous functioning;
   c. A licensed psychological practitioner;
   d. A certified psychologist under supervision; or
   e. A licensed psychological associate under supervision.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or
b. Another individual;
2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
3. Shall be provided:
a. As an immediate relief to the presenting problem or threat; and
b. In a one (1) on one (1) encounter between the provider and the recipient, which is delivered either face-to-face or as a comparable service provided via telehealth as appropriate pursuant to 907 KAR 3:170;
4. Shall be followed by a referral to non-crisis services if applicable;
5. May include:
a. Further service prevention planning including lethal means reduction for suicide risk; or
b. Verbal de-escalation, risk assessment, or cognitive therapy; and
6. Shall be provided by:
a. An approved behavioral health practitioner; or
b. An approved behavioral health practitioner under supervision.

(e) Mobile crisis services shall:
1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
2. Be provided for a duration of less than twenty-four (24) hours;
3. Not be an overnight service;
4. Be provided via face-to-face contact by a multi-disciplinary team based intervention in a home or community setting that ensures access to mental health services and supports to:
a. Reduce symptoms or harm; or
b. Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;
5. Involve all services and supports necessary to provide:
a. Integrated crisis prevention;
b. Assessment and disposition;
c. Intervention;
d. Continuity of care recommendations; and
e. Follow-up services;
6. Be provided face-to-face in a home or community setting;
7. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and
8. Be provided by:
a. An approved behavioral health practitioner;
b. An approved behavioral health practitioner under supervision; or
c. A peer support specialist who:
(i) Is under the supervision of an approved behavioral health practitioner; and
(ii) Provides support services under this paragraph.

(f)
1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:
a. A mental health disorder; and
b. A high risk of out-of-home placement due to a behavioral health issue.
2. Day treatment shall:
a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled school breaks;

(iii) In coordination with the recipient's individualized education program or Section 504 plan if the recipient has an individualized education program or Section 504 plan;

(iv) Under the supervision of an approved behavioral health practitioner or an approved behavioral health practitioner under supervision;

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(vi) Face-to-face.

3. To provide day treatment services, a behavioral health services organization shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of mental health disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program or Section 504 plan.

5.

a. Day treatment shall be provided by:

(i) An approved behavioral health practitioner; or

(ii) An approved behavioral health practitioner under supervision.

b. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(g)

1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder to a recipient by sharing a similar mental health disorder in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder to a parent or family member of a child sharing a similar mental health disorder in order to bring about a desired social or personal change; or

(iii) An individual, who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional,

social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at a time.

(h)

1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a mental health disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week for adults;

d. Be provided at least six (6) hours per week for adolescents;

e. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan; and

f. Be provided face-to-face.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to the recipient's best possible functional level from a mental health disorder;

2. Consist of:

a. A one (1) on one (1) encounter between the provider and recipient, which is delivered either face-to-face or provided via telehealth as appropriate pursuant to 907 KAR 3:170; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning;

4. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy per recipient, unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(j)

1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to the recipient's best possible functional level from a mental health disorder;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:
(i) Of nonrelated individuals except for multi-family group therapy; and
(ii) Not to exceed twelve (12) individuals in size;
e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;
f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
h. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy, per recipient unless additional time is medically necessary.

2. The group shall have a:
a. Deliberate focus; and
b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:
a. An approved behavioral health practitioner; or
b. An approved behavioral health practitioner under supervision.

(k)

1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention or occur via telehealth as appropriate pursuant to 907 KAR 3:170, and shall be provided:
a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and
b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:
a. Be provided to promote the:
(i) Health and wellbeing of the individual; or
(ii) Restoration of a recipient to the recipient's best possible functional level from a mental health disorder; and
b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:
a. An approved behavioral health practitioner; or
b. An approved behavioral health practitioner under supervision.

(l)

1. Collateral outpatient therapy shall:
a. Consist of a face-to-face behavioral health consultation or occur via telehealth as appropriate pursuant to 907 KAR 3:170:
(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and
(ii) That is provided in accordance with the recipient's plan of care; and
b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(m)

1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a mental health disorder;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level;

c. Be performed using a person-centered planning process; and

d. Be provided face-to-face.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(n) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use; and

3. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(o)

1. Assertive community treatment shall:

a. Be an evidence-based psychiatric rehabilitation practice that provides a comprehensive approach to service delivery for individuals with a serious mental illness;

b. Include:

(i) Assessment;

(ii) Treatment planning;

(iii) Case management;

(iv) Psychiatric services;

(v) Individual outpatient therapy;

(vi) Family outpatient therapy;
(vii) Group outpatient therapy;
(viii) Mobile crisis services;
(ix) Crisis intervention;
(x) Mental health consultation; or
(xi) Family support and basic living skills; and

c. Be provided face-to-face.

2.

a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:

(i) Reduce conflict; and
(ii) Increase the recipient's autonomy and independent functioning.

c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, a behavioral health services organization shall:

a. Employ at least one (1) team of multidisciplinary professionals:
(i) Led by an approved behavioral health services practitioner; and
(ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services practitioner, or a case manager;

b. Have adequate staffing to ensure that a team's caseload size shall not exceed ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:
(i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;
(ii) Coordinate the provision of services among team members;
(iii) Provide the full range of assertive community treatment services as stated in this paragraph; and
(iv) Document and maintain individual case records; and

d. Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.

4. Assertive community treatment shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

5.

a. A peer support specialist under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

b. A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(p)

1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care;

c. Consist of using a variety of psychiatric rehabilitation techniques to:

(i) Improve daily living skills;
(ii) Improve self-monitoring of symptoms and side effects;
(iii) Improve emotional regulation skills;
(iv) Improve crisis coping skills; and
(v) Develop and enhance interpersonal skills; and

d. Be provided face-to-face.

2. To provide comprehensive community support services, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

3. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

4. A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(q)

1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a serious mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability;

b. Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level; and

c. Provided face-to-face.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Provide face-to-face, on-site psychiatric rehabilitation and supports;

b. Be delivered using a variety of psychiatric rehabilitation techniques;

c. Focus on:

(i) Improving daily living skills;
(ii) Self-monitoring of symptoms and side effects;
(iii) Emotional regulation skills;
(iv) Crisis coping skill; and
(v) Interpersonal skills;

d. Be delivered individually or in a group; and

e. Include:

(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;
(ii) Coordination of services the individual may be receiving; and
(iii) Referral to other necessary service supports as needed.

4. Therapeutic rehabilitation staffing shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support for Medicaid recipients.

5. Therapeutic rehabilitation program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

6. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(r)

1. Partial hospitalization services shall be:
   a. Short-term with an average of four (4) to six (6) weeks;
   b. Less than twenty-four (24)-hours each day; and
   c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder.
2. Partial hospitalization may be provided to an adult or a minor.
3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.
4. A partial hospitalization program shall consist of:
   a. Individual outpatient therapy;
   b. Group outpatient therapy;
   c. Family outpatient therapy; or
   d. Medication management.
5. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.
6. An outpatient behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.
7. Partial hospitalization shall be:
   a. Provided for at least four (4) hours per day;
   b. Focused on one (1) primary presenting problem; and
   c. Provided face-to-face.
8. A partial hospitalization program operated by a behavioral health services organization shall:
   a. Include the following personnel for the purpose of providing medical care:
      (i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and
      (ii) A board-certified or board-eligible psychiatrist available for consultation; and
   b. Have the capacity to:
      (i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;
      (ii) Employ required practitioners and coordinate service provision among rendering practitioners; and
      (iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.
9. Partial hospitalization services shall be provided by:
   a. An approved behavioral health practitioner; or
   b. An approved behavioral health practitioner under supervision.

(s)

1. Applied behavior analysis services shall produce socially significant improvement in human behavior via the:
   a. Design, implementation, and evaluation of environmental modifications;
   b. Use of behavioral stimuli and consequences; or

c. Use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

2. Applied behavior analysis shall be based on scientific research and the direct observation and measurement of behavior and environment, which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to assist recipients in:

a. Developing new behaviors;

b. Increasing or decreasing existing behaviors; and

c. Eliciting behaviors under specific environmental conditions.

3. Applied behavior analysis services may include principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including applications of those principles, methods, and procedures to:

a. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;

b. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals that interact with a recipient;

c. Design, implement, evaluate, and modify treatment programs to change the behavior of a group or groups that interact with a recipient; or

d. Consult with individuals and organizations.

4.

a. Applied behavior analysis services shall be provided by:

(i) A licensed behavior analyst;

(ii) A licensed assistant behavior analyst;

(iii) An approved behavioral health practitioner with documented training in applied behavior analysis; or

(iv) An approved behavioral health practitioner under supervision with documented training in applied behavior analysis.

b. A registered behavior technician under the supervision of an appropriate practitioner pursuant to clause a. of this subparagraph may provide support services under this paragraph.

(4)

(a) Laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a BHSO I if:

1. The BHSO I has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the BHSO I.

(b) Laboratory services may be administered, as appropriate, by:

1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision.

Section 4. Additional Limits and Non-covered Services or Activities.

(1)

(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening; or

4. An assessment.

(2) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:
(a) An assessment;
(b) Case management;
(c) Individual outpatient therapy;
(d) Group outpatient therapy;
(e) Peer support services; or
(f) Mobile crisis services.
(3) The department shall not reimburse for both a screening provided pursuant to this administrative regulation and a screening, brief intervention and referral to treatment (SBIRT) provided to a recipient on the same date of service.
(4) The following services or activities shall not be covered under this administrative regulation:
(a) A service provided to:
1. A resident of:
a. A nursing facility; or
b. An intermediate care facility for individuals with an intellectual disability;
2. An inmate of a federal, local, or state:
a. Jail;
b. Detention center; or
c. Prison; or
3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;
(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;
(c) A consultation or educational service provided to a recipient or to others;
(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in 907 KAR 15:005, Section 1(21). Contact prohibited under subparagraph 1. of this paragraph may be permissible if it is conducted in the course of a telehealth service permitted pursuant to 907 KAR 3:170 or this administrative regulation, as applicable;
(e) Travel time;
(f) A field trip;
(g) A recreational activity;
(h) A social activity; or
(i) A physical exercise activity group.
(5)
(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3(3)(l)1. of this administrative regulation.
(b) A third party contract shall not be covered under this administrative regulation.
(6) A billing supervisor arrangement between a billing supervisor and an approved behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service.
(1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security.

(1) A behavioral health services organization shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:
   a. Name;
   b. Social Security number;
   c. Date of intake;
   d. Home (legal) address;
   e. Health insurance or Medicaid information;
   f. Referral source and address of referral source;
   g. Primary care physician and address;
   h. The reason the individual is seeking help including the presenting problem and diagnosis;
   i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:
      (i) Where the individual is receiving treatment for the physical health diagnosis; and
      (ii) The physical health provider; and
   j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:
      (i) This administrative regulation;
      (ii) The behavioral health services organization's licensure board;
      (iii) State law; or
      (iv) Federal law;
2. Documentation of the:
   a. Screening;
   b. Assessment if an assessment was performed; and
   c. Disposition if a disposition was performed;
3. A complete history including mental status and previous treatment;
4. An identification sheet;
5. A consent for treatment sheet that is accurately signed and dated; and
6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;
2. Furnished to the:
   a. Cabinet for Health and Family Services upon request; or
   b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;
3. Made available for inspection and copying by:
   a. Cabinet for Health and Family Services' personnel; or
   b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;
4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)

(a) A behavioral health services organization's service note regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Indicate if the service was provided face-to-face or via telehealth; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)

1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)

1. Notes recorded by an approved behavioral health practitioner under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved behavioral health practitioner under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)

1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)

(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)

(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)

(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.

a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.

a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.

a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.

a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R Part 2.

(12)

(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)

(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)

(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
   a. The department; or
   b. Federal government.

(c)

1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:
   a. Staff notes detailing a service that was rendered;
   b. The professional who rendered a service; and
   c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.
2. Failure to provide information required by subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance.

(1) A behavioral health services organization shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)

(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)

(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)

1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

a. Behavioral health services organization shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the behavioral health services organization regarding the service.

(4)

(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)

1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures.

(1) 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.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 12. Appeals.

(1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

(41 Ky.R. 690; 1388; 1648; eff. 2-6-2015; 46 Ky.R. 751, 1551, 1889; eff. 1-3-2020.)