

1 AN ACT relating to the medical treatment of high acuity youth.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 200 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Behavioral assessment" means an evaluation of a child by a clinical*
7 *professional, which may occur in person, remotely, or through the review of*
8 *clinical records;*

9 *(b) "Clinical professional" means a licensed clinician employed by, or*
10 *associated with, an inpatient psychiatric hospital or pediatric teaching*
11 *hospital, who is qualified to make a clinical determination whether a child*
12 *meets criteria for admission to an inpatient psychiatric hospital or pediatric*
13 *teaching hospital for inpatient psychiatric care;*

14 *(c) "Department" means the Department for Behavioral Health,*
15 *Developmental and Intellectual Disabilities;*

16 *(d) "High acuity youth" means a child who has been determined by a clinical*
17 *professional, following a behavioral assessment, to need an environment*
18 *and specialized treatment capable of addressing manifest aggression,*
19 *violence toward persons, or property destruction;*

20 *(e) "Inpatient psychiatric hospital" means a hospital, other than a state mental*
21 *hospital, that is licensed pursuant to KRS Chapter 216B to provide inpatient*
22 *psychiatric services; and*

23 *(f) "Pediatric teaching hospital" has the same meaning as in KRS 205.565.*

24 *(2) A child who is charged with a public offense or subject to a court order to receive*
25 *inpatient psychiatric treatment pursuant to the Kentucky Unified Juvenile Code*
26 *shall, prior to being admitted to an inpatient psychiatric hospital or pediatric*
27 *teaching hospital, undergo a behavioral assessment by a clinical professional to*

1 determine whether the child qualifies as a high acuity youth.

2 (3) (a) If a clinical professional determines that the child qualifies as a high acuity
3 youth following a behavioral assessment, the clinical professional shall
4 contact the:

5 1. Designated representative of the department or other designated
6 representative of the cabinet; and

7 2. Designated representative of the Department of Juvenile Justice;
8 to discuss the immediate treatment plan for the child.

9 (b) The clinical professional shall prepare an affidavit, with any documents in
10 support of the affidavit, for submission to the department, the Department
11 of Juvenile Justice, and the court. The affidavit shall include:

12 1. A summary of the clinical evidence that the clinical professional relied
13 upon for the determination that the child qualifies as a high acuity
14 youth;

15 2. A recommendation of the appropriate location for any recommended
16 treatment services for the high acuity youth and the basis for the
17 recommendation based upon the child's needs and the capabilities of
18 the inpatient psychiatric hospital or pediatric teaching hospital, or
19 whether treatment on an outpatient basis may be provided at a
20 detention facility for a child in the custody of the Department of
21 Juvenile Justice or at a location specified by the department if the
22 child is in the custody of the cabinet; and

23 3. Contact information from the inpatient psychiatric hospital or
24 pediatric teaching hospital for one (1) or more clinical professionals
25 who can provide the types of services for the high acuity youth at a
26 detention facility or location designated by the department if it is
27 determined in the best interests of the child that the child should

1 receive psychiatric services other than inpatient treatment services.

2 (4) (a) If the representative of the department and the representative of the
3 Department of Juvenile Justice agree with the recommendations of the
4 clinical professional, a conference affidavit establishing an initial treatment
5 plan shall be submitted to the court on a form provided by the
6 Administrative Office of the Courts within twenty-four (24) hours of the
7 delivery of the initial affidavit under subsection (3) of this section.

8 (b) If the representative of the department and the representative of the
9 Department of Juvenile Justice do not agree to the treatment
10 recommendations of the clinical professional, either party or both parties
11 shall submit an affidavit of dissent to the court on a form provided by the
12 Administrative Office of the Courts that states the clinical basis for the
13 objection, and may include a recommendation for an alternate plan, facility,
14 or assessment. The dissenting affidavit shall be signed by a physician who
15 can speak directly to the clinical basis for submitting the dissenting
16 affidavit.

17 (5) Following submission of a conference affidavit or an affidavit of dissent, the
18 court shall enter an order regarding the course of treatment or may schedule a
19 hearing to determine a treatment plan for the high acuity youth.

20 (6) Notwithstanding any other law to the contrary, the court shall not order a high
21 acuity youth for inpatient treatment within an inpatient psychiatric hospital or
22 pediatric teaching hospital without agreement of the hospital, the department,
23 and the Department of Juvenile Justice unless the court determines by clear and
24 convincing evidence that the inpatient psychiatric hospital or pediatric teaching
25 hospital has the resources and capabilities to treat the high acuity youth in a
26 manner that does not pose a danger to the high acuity youth or the hospital's
27 patients and staff. This subsection shall not be construed to require an inpatient

1 psychiatric hospital or pediatric teaching hospital to admit a child if doing so
2 would be in violation of federal law.

3 (7) (a) If the treatment plan approved or ordered by the court involves the
4 admission of a high acuity youth to an inpatient psychiatric hospital or
5 pediatric teaching hospital, then the provision of inpatient services by the
6 inpatient psychiatric hospital or pediatric teaching hospital shall be
7 reimbursed by the Department of Medicaid Services at no less than two
8 hundred percent (200%) of the then current inpatient psychiatric hospital's
9 or pediatric teaching hospital's Medicaid inpatient rate to account for the
10 acuity and intensity of health care items and services necessary for
11 treatment of high acuity youth, the provisions of KRS 202A.271
12 notwithstanding.

13 (b) For any admission under this subsection, the inpatient psychiatric hospital
14 or pediatric teaching hospital shall provide:

- 15 1. An updated treatment plan in addition to the initial treatment plan, if
16 needed, within ten (10) days from the filing of the initial affidavit; and
- 17 2. Status reports to the department or the Department of Juvenile Justice
18 as applicable, upon request or as ordered by the court.

19 (c) Any dispute that arises between the inpatient psychiatric hospital or
20 pediatric teaching hospital, the department, and the Department of Juvenile
21 Justice shall be resolved in the manner provided in subsections (3), (4), and
22 (5) of this section, and any party may request court review at any time
23 during the period of treatment.

24 (8) (a) If a high acuity youth is admitted to an inpatient psychiatric hospital or
25 pediatric teaching hospital for treatment pursuant to a court order issued
26 under this section, and the high acuity youth commits an act of violence or
27 incites violence against any of the hospital's patients, staff, or visitors, the

1 inpatient psychiatric hospital or pediatric teaching hospital may file an
2 affidavit with the department or other designated representative of the
3 cabinet, or the Department of Juvenile Justice, as applicable, and with the
4 court, and the youth shall be:

5 1. Discharged from the hospital; and

6 2. Immediately returned by the department or the Department of
7 Juvenile Justice, as applicable, to the youth's last place of custody or
8 residence unless another location is ordered by the court.

9 (b) This subsection shall not preclude any person from filing a complaint in
10 reference to the youth pursuant to KRS 610.020.

11 (9) If the treatment plan approved or ordered by the court involves the provision of
12 outpatient psychiatric services to the high acuity youth at the location of a
13 detention facility, then the department or the Department of Juvenile Justice may
14 contract with an inpatient psychiatric hospital or pediatric teaching hospital to
15 provide the outpatient psychiatric services. The inpatient psychiatric hospital or
16 pediatric teaching hospital shall be reimbursed by the Department for Medicaid
17 Services for such outpatient psychiatric services at no less than one hundred fifty
18 percent (150%) of the then current inpatient psychiatric hospital's or pediatric
19 teaching hospital's Medicaid reimbursement rate as if such services had been
20 performed in an inpatient setting, the provisions of KRS 202A.271
21 notwithstanding.

22 (10) Each inpatient psychiatric hospital or pediatric teaching hospital that accepts any
23 high acuity youth under this section, the cabinet, the department, the Department
24 of Juvenile Justice, and the Court of Justice shall adopt and provide a protocol
25 for twenty-four (24) hour access to comply with the requirements of this section.

26 (11) When a high acuity youth has received residential treatment and the treatment
27 has improved the youth's condition to a status that the need for continued

1 treatment at that facility is no longer medically indicated as determined by the
2 treating physician:

3 (a) If the youth has a need for the continuum of care on an inpatient basis in
4 an inpatient psychiatric hospital, pediatric teaching hospital, or other
5 inpatient facility equipped to treat a high acuity youth, the Department for
6 Juvenile Justice, the department, and a representative of the inpatient
7 psychiatric hospital, pediatric teaching hospital, or other inpatient facility to
8 which the youth may be transferred shall proceed in accordance with
9 subsections (3), (4), and (5) of this section;

10 (b) Any additional medical care that the youth may need as part of a continuum
11 of care that requires a transfer to another facility for treatment shall also
12 proceed in accordance with subsections (3), (4), and (5) of this section; and

13 (c) As part of the continuum of care, the same representatives from the
14 department and the Department of Juvenile Justice who have evaluated and
15 provided treatment and recommendations for the youth shall, to the extent
16 possible, continue to review the medical treatment of the youth to provide
17 stability of care with the goal of improving the life and health of the youth.

18 (12) In the event a child is delivered to an inpatient psychiatric hospital or pediatric
19 teaching hospital for a behavioral assessment without referral by the department,
20 the cabinet, or the Department of Juvenile Justice, the clinical professional may
21 present the affidavit referenced in subsection (3) of this section to a law
22 enforcement officer, a court-designated worker, or a detention alternative
23 coordinator who shall then return the high acuity youth to the custody of the
24 custodial agency until such time as a court issues further orders regarding the
25 appropriate treatment for the high acuity youth. The inpatient psychiatric
26 hospital or pediatric teaching hospital shall then proceed according to
27 subsections (3), (4), and (5) of this section.