910 KAR 3:020. Behavioral services for individuals with brain injuries.

RELATES TO: KRS Chapter 13B, Chapter 45A, 189A.010(1)(a)- (d), 211.470(3)
STATUTORY AUTHORITY: KRS 189A.050(3)(d)2, 194A.050(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.050(3)(d)2 requires the cabinet to promulgate an administrative regulation to provide direct services to individuals with brain injuries including long-term supportive services and training and consultation to professionals working with individuals with brain injuries. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes procedures for the provision of behavioral services to individuals with brain injuries.

Section 1. Definitions.
(1) "Behavioral services" means:
(a) Services that effectively manage severe behavioral issues which occur as the result of a brain injury; and
(b) Rehabilitative services for the brain injury.
(2) "Behavioral specialist" means a professional who has the skills and qualifications, as specified in Section 5(3)(b) of this administrative regulation, to:
(a) Manage severe behavioral issues which occur as the result of a brain injury; and
(b) Provide rehabilitative services for the brain injury.
(3) "Brain injury" is defined by KRS 211.470(3).
(4) "Case manager" means a professional described in Section 5(3) of this administrative regulation who manages the overall development and monitoring of a recipient's plan of care.
(5) "Crisis intervention" means a short-term intensive service of a least restrictive nature to aid an individual to regain a sense of control over an immediate situation.
(6) "Crisis stabilization unit" means a unit operated to provide short-term intensive treatment.
(7) "Department" means the Department for Aging and Independent Living.
(8) "Discharge plan" means a plan that is developed to aid a recipient in exiting from one (1) provider to another or into the community.
(9) "Emergency" means a situation in which an applicant is living in conditions that present a substantial risk of death or eminent and serious physical harm to the applicant or others.
(10) "Provider" means an individual, business agency, or facility providing brain injury services.
(11) "Recipient" means an applicant approved for services.
(12) "Residential" means a placement that assists an applicant or recipient who is unable to be managed or treated through crisis stabilization in the community.
(13) "Review team" means a team composed of three (3) program cabinet staff with professional or personal experience with brain injury or other cognitive disabilities who reviews and approves or denies an application for services.
(14) "Targeted case management" means a set of activities which assist an applicant or recipient in accessing needed medical, social, education, and other supportive services.
(15) "Transitional services" means transitioning a recipient from one (1) setting to another such as for receipt of:
(a) Crisis intervention services;
(b) Residential services;
(c) Community based provider services; or

(d) In-home environment services.

(16) "Wrap around" means a service or item, specified in Section 5(7)(b) of this administrative regulation, that enhances a recipient's ability to live in the community.

Section 2. Eligibility.

(1) An applicant for services shall be eligible to receive a benefit under this program if:

(a) The applicant has a diagnosed brain injury;

(b) The applicant is a legal resident of Kentucky;

(c) This program is the payor of last resort; and

(d) The applicant meets the requirements for crisis intervention or residential services in accordance with subsections (2) and (3) of this section.

(2) An applicant for crisis intervention services shall:

(a) Meet the requirements of subsection (1) of this subsection and be non-Medicaid eligible; or

(b) Be Medicaid eligible receiving services under one (1) of the Medicaid ABI Waivers and in an emergency status.

(3) An applicant for residential services shall:

(a) Meet the requirements of subsection (1) of this subsection;

(b) Be non-Medicaid eligible;

(c) Have been charged with an offense listed in KRS 439.3401(1); and

(d) Be in an emergency status.

(4) An applicant or applicant's guardian or legal representative shall:

(a) Document that the applicant has no other funding source for services contained in this administrative regulation; and

(b) Provide the department with medical documentation of the applicant's brain injury including a completed DAIL-BI-020, Physician's Recommendation form signed by the applicant's physician confirming diagnosis of brain injury.

(5) The following conditions shall not be included to receive services under this administrative regulation:

(a) Strokes treatable in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementia;

(d) Depression and psychiatric disorders; and

(e) Mental retardation or birth defect related disorders.

Section 3. Application Process.

(1) A referral for services may be made by, or on behalf of, an eligible person by contacting the department by:

(a) Telephone; or

(b) In writing such as by:

1. Facsimile;
2. Email; or
3. U.S. mail.

(2) Upon an applicant's request for services, the department shall provide the applicant with an application packet containing the following forms:

(a) DAIL-BI-010, Application for Behavioral Services; and

(b) DAIL-BI-020, Physician's Recommendation.

(3) The applicant or applicant's guardian or legal representative shall provide the department with:

(a) The completed forms specified in subsection (2) of this section;

(b) Documentation specified in Section 2(4)(a) of this administrative regulation; and

(c) Other medical documentation for processing the request for services as specified in Section 2(4)(b) of this administrative regulation.

(4) The department shall:

(a) Submit the completed forms and documentation to the review team who shall determine the applicant's eligibility for services; and

(b) Notify the applicant in writing of approval or denial for services.

(5) An applicant who wishes to appeal the denial of services may make a request in accordance with Section 10 of this administrative regulation.

Section 4. Review Team.

(1) At least two (2) members of the review team shall not be supervised by the department's Long Term Care Branch.

(2) A review team shall:

(a) Assess the applicant's eligibility for services;

(b) Identify the applicant's need for crisis intervention or residential services;

(c) Identify potential resources to meet the applicant's need for services;

(d) Determine that this program is the payor of last resort; and

(e) Meet monthly at a minimum, or more often as needed for an emergency.

(3) The review team may approve the following behavioral services for a recipient:

(a) Crisis intervention services that shall:

1. Include:

a. Training and consultation;

b. Wrap around services;

c. Targeted case management;

d. Crisis stabilization unit; or

e. Environmental modification; and

2. Be approved for no more than three (3) months, unless an exception to this timeframe is approved by the department based on individualized stabilization as documented by a provider's service plan, progress notes, or additional supporting documentation; or

(b) Residential services that shall include:

1. Wrap around services;

2. Targeted case management, if applicable; or

3. Transitional services in which a recipient:

a. Returns to the recipient's previous setting, upon stabilization; and

b. May be provided additional wrap around services to assist with transitioning back to the previous setting, if funding is available.

(4)

(a) Except for an emergency as specified in Section 8(10) of this administrative regulation, an application shall be considered in the order in which it is received by the department.

(b) To be considered at the monthly review team meeting, an application shall be received by the department no later than three (3) business days prior to the review team meeting.

(5) The review team may make a recommendation to the applicant and the department about other available resources or means to meet the applicant's needs for services and supports.

(6) A final determination from the review team shall be submitted to the department in writing not to exceed three (3) business days from the date of determination and shall contain:

(a) An approval or denial for services; and

(b) An explanation of the review team's decision and recommendations for other resources to meet the applicant's needs, if services were denied.

(7) If an applicant is determined ineligible for services, the applicant may submit to the department additional medical records or medical documentation to support the diagnosis of the injury.

(8) The department shall submit, at the next review team meeting, the additional medical information for reconsideration of the eligibility determination.

Section 5. Covered Services.

(1) Covered services shall be prior-authorized by the review team and provided in accordance with a plan of care.

(2) A crisis stabilization unit setting shall include the following crisis intervention services:

(a) Reestablishing problem-solving abilities;

(b) Staff as specified in subsection (5)(b) of this section;

(c) Identifying current priority needs;

(d) Assessing functioning and coping skills; and

(e) Providing stabilization, wrap around, and transitional services.

(3) Targeted case management shall include the following:

(a) Ensuring twenty-four (24) hour availability of services;

(b)

1. Assessment;
2. Advocacy;
3. Reassessment and follow-up;
4. Establishment and maintenance of a recipient's record; and
5. Crisis assistance planning;

(c) Weekly contact with a provider and recipient to ensure the recipient's health, welfare, and safety needs are met;

(d)

1. Initiation;
2. Coordination and implementation of services;
3. Monitoring of the delivery of services and the effectiveness of a plan of care; and
4. Monitoring a recipient's eligibility;

(e) Assistance with development of an individualized plan of care and updates as necessary based on changes in the recipient's medical condition, transition, and supports;

(f) A plan for transitional services which shall be developed within seven (7) calendar days of receiving services and updated as changes occur; and

(g) A case manager who has one (1) or more year's experience working in the brain injury field and is one (1) of the following:

1. A registered nurse;
2. A licensed practical nurse; or
3. An individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:
   a. Psychology;
   b. Sociology;
   c. Social work; or
   d. Rehabilitation counseling.

(4) Training and consultation services:

(a) Shall include:

1. Training that includes:

a. Resolving personal issues or interpersonal problems resulting from the recipient's brain injury;
b. Substance abuse or chemical dependency treatment;
c. Building and maintaining healthy relationships;
d. Social skills or the skills to cope with and adjust to the brain injury;
e. Knowledge and awareness of the effect of a brain injury;
f. Interpretation or explanation of medical examinations and procedures;
g. Treatment regimens;
h. Use of equipment; and
i. How to assist the recipient; and

2. Counseling and consultation services to:
a. Professionals;
b. Families; or
c. Providers working with individuals with a brain injury; and

(b) Shall be provided by a behavioral specialist who:

1. Is:
a. A psychologist;
b. A psychologist with autonomous functioning;
c. A licensed psychological associate;
d. A psychiatrist;
e. A licensed social worker;
f. A clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;
g. An advanced registered nurse practitioner (ARNP);
h. A board certified behavior analyst;
i. A certified alcohol and drug counselor;
j. A licensed marriage and family therapist; or
k. A licensed professional clinical counselor; and

2. Has at least one (1) year of behavior specialist experience.

(5) Residential services shall:

(a) Include such services as:

1. Physical therapy;
2. Occupational therapy;
3. Speech therapy;
4. Cognitive and behavioral therapy; or
5. Neuropsychological consultation and medical management; and

(b) Be provided by a licensed facility or certified Medicaid provider who shall:

1. Have access to a:
a. Neuropsychologist;
b. Nurse and physician for medical management; and
c. Direct care staff member who shall:
(i) Be twenty-one (21) years of age or older;
(ii) Have a high school diploma or GED;
(iii) Have a valid driver's license;
(iv) Have a minimum of one (1) year of experience in providing a service to an individual with a disability; and
(v) Complete a brain injury training program approved by the department prior to service provision that includes the mission, goals, organization, and policy of the facility or provider; documentation of all training including the type of training provided, name and title of the trainer, length of the training, date of completion, and signature of the trainee verifying completion; and six (6) hours annually of continuing education in brain injury;

2. Prior to an employee's date of hire, obtain results of:
a. A criminal record check from the Administrative Office of the Courts or the equivalent out-of-state agency, if the individual resided or worked outside Kentucky during the year prior to employment;
b. A nurse aide abuse registry check as described in 906 KAR 1:100; and
c. Within thirty (30) days of the date of hire, a central registry check as described in 922 KAR 1:470;
3. Annually, for twenty-five (25) percent of employees randomly selected, obtain:
a. The results of a criminal record check from the Kentucky Administrative Office of the Courts; or
b. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year;
4. Evaluate and document the performance of each employee upon completion of the agency's designated probationary period, and at a minimum, annually thereafter;
5. Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct service staff at the service site in order to ensure that high quality services are provided to the recipient;
6. Not permit an employee to transport a recipient, if the employee has a conviction of driving under the influence (DUI) during the past year; and
7. Not employ an individual to perform direct care or a supervisory function, if the individual:
a. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;
b. Has a conviction of abuse or sale of illegal drugs during the past five (5) years;
c. Has a conviction of abuse, neglect, or exploitation;
d. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or
e. Is listed on the nurse aide abuse registry.

(6) The individuals providing case management services, behavior specialist services, and residential services shall document a monthly detailed staff note which shall:
(a) Include:
1. Date of the service;
2. The beginning and ending time;
3. The signature, date of signature, and title of the individual providing the service;
4. Information regarding the recipient's health, safety, and welfare;
5. Services provided and progress toward outcomes identified in the approved plan of care; and
6. Daily notes; and
(b) Be provided to the department with a report on the recipient's progress:
1. By the tenth of each month following admission; and
2. By the tenth of the month following the month of discharge.

(7) Wrap around services shall:
(a) Be facilitated by targeted case management; and
(b) Include:
1. A service such as:
a. Personal care;
b. Companion care;
c. Transportation; or
d. Environmental modification; or
2. Durable medical equipment.

(8) The following services shall not be covered:
(a) Institutionalization;

(b) Hospitalization; and
(c) Medications not otherwise attainable through other resources.

Section 6. Provider Participation. A participating provider shall:
(1) Have a contractual agreement with the Commonwealth of Kentucky;
(2) Have policy and procedures including prohibition of physical and chemical resources reviewed and approved by the department;
(3) Be responsible for incident reporting requirements established in Section 7 of this administrative regulation;
(4) Be responsible for the involuntary termination requirements of Section 9(4) of this administrative regulation; and
(5) Submit an invoice for payment to the department due by the 15th of the month following the month of service.

Section 7. Incident Reporting Process.
(1) An incident report:
(a) Shall be documented on a DAIL-BI-030, Incident Report; and
(b) Shall be submitted by the provider to the individuals or departments indicated and by the timeframes specified in subsection (2) of this section.
(2) There shall be three (3) classes of incidents as follows:
(a) A Class I incident which shall:
1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider;
3. Be reported to a case manager within twenty-four (24) hours;
4. Be reported to the recipient's guardian or legal representative as directed by the guardian or legal representative; and
5. Be retained on file at the provider and case management agency;
(b) A Class II incident which shall:
1.
a. Be serious in nature;
b. Include a medication error; or
c. Involve the use of a physical or chemical restraint;
2. Require an investigation which shall be initiated by the provider within four (4) hours of discovery and shall involve the case manager;
3. Require a complete written report of the incident investigation submitted to the department within forty eight (48) hours of discovery; and
4. Be reported within four (4) hours of discovery to:
a. The recipient's guardian or legal representative; and
b. The department:
(i) Via email, facsimile transmission, or the department's business phone if the incident occurs Monday through Friday by 1:30 p.m.; or
(ii) Via email, or cellular number provided by the department if the incident occurs Monday through Friday after 1:30 p.m. or on a holiday or weekend; and
(c) A Class III incident which shall:
1.
a. Be grave in nature;
b. Involve suspected abuse, neglect, or exploitation;
c. Involve a medication error which requires a medical intervention; or
d. Be a death;
2. Be immediately investigated by the provider, and the investigation shall involve the case manager;
3. Require a complete written report of the incident investigation submitted to the department within forty eight (48) hours of discovery; and

4. Be reported to the:

a. Department for Community Based Services, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

b. Recipient's guardian or legal representative within four (4) hours of discovery; and

c. Department within four (4) hours of discovery:

(i) Via email, facsimile transmission, or the department's business phone if the incident occurs Monday through Friday by 1:30 p.m.; or

(ii) Via email, or cellular number provided by the department if the incident occurs Monday through Friday after 1:30 p.m. or on a holiday or weekend.

(3) In addition to the report specified in subsection (2)(c)3 of this section, the following documentation that was in existence at the time of a death shall be submitted to the department:

(a) A current plan of care;

(b) A current list of prescribed medications including PRN medications;

(c) A current crisis plan;

(d) The provider's medication administration review for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Documentation of Class I or II incidents;

(g) A coroner's report; and

(h) If performed, an autopsy report.

Section 8. Waiting List for Residential Services. The department shall establish and maintain a waiting list for residential services. The waiting list shall be implemented as follows:

(1) In order to be placed on the waiting list, the individual shall submit to the department the documentation specified in Sections 2(4) and 3(2) of this administrative regulation.

(2) The order of placement on the waiting list shall be determined chronologically by date of receipt of the completed application packet specified in Section 3(2) of this administrative regulation.

(3) In determining chronological status, the original date of receipt of the completed application packet shall:

(a) Be Maintained; and

(b) Not be changed.

(4) A written notification of the date and placement on the waiting list shall be mailed to the applicant or the applicant's guardian or legal representative.

(5) Maintenance of the waiting list shall occur as follows:

(a) The department shall update the waiting list monthly; and

(b) If an individual is removed from the waiting list, written notification shall be mailed by the department to the individual or the individual's guardian or legal representative.

(6) An individual shall be removed from the waiting list if:

(a) The department is unable to locate the individual or the individual's guardian or legal representative;

(b) The individual is deceased; or

(c) The individual or individual's guardian or legal representative refuses the offer of placement for services.

(7) The removal of an individual from the waiting list shall not prevent the submittal of a new application at a later date.

(8) Available funding shall be allocated to an individual having emergency status prior to allocating funding to individuals having nonemergency status.

Section 9. Termination of Services.

(1) A recipient may have services terminated if:

(a) The recipient no longer actively participates in the services within a plan of care;

(b) Services can no longer be safely provided to the recipient; or

(c) The recipient no longer meets the eligibility requirements of Section 2 of this administrative regulation.

(2) If a recipient has services terminated, the provider shall implement a discharge plan in accordance with the requirements of subsection (4) of this section.

(3) Voluntary termination and loss of behavioral services shall be initiated if a recipient or the recipient's guardian or legal representative submits a written notice of intent to discontinue services to the provider and to the department.

(4) Involuntary termination of a recipient by a provider shall require:

(a) Simultaneous notice to the department, the recipient, the recipient's guardian or legal representative, and the case manager at least sixty (60) 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 recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) The targeted case manager in conjunction with the recipient and provider to:

1. Provide assistance to ensure a safe and effective service transition; and

2. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured; and

(c) The targeted case manager to gather necessary documentation for transition.

Section 10. Appeal Procedures for Denial of a Request for Services.

(1) An applicant who wishes to appeal a denial of services shall notify the department in writing, within thirty (30) days of receipt of notification of the denial.

(2) The department shall:

(a) Acknowledge receipt of a written appeal, in writing, within five (5) working days after receipt of the appeal;

(b) Direct the appeal request to the Division of Administrative Hearings Branch, Office of Communications Review to conduct a hearing pursuant to KRS Chapter 13B; and

(c)

1. Render a final decision in accordance with KRS 13B.120 by the Secretary of the Cabinet for Health and Family Services; and

2. The final order shall make clear reference to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DAIL-BI-010, Application for Behavioral Services", edition 3/09;

(b) "DAIL-BI-020, Physician's Recommendation", edition 3/09;

(c) "DAIL-BI-030, Incident Report", edition 3/09; and

(d) "DAIL-BI-040, Plan of Care", edition 3/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.910 KAR 3:020.

(35 Ky.R. 1988; 2120; 2298; eff. 5-1-2009; TAm eff. 5-14-2009; Crt eff. 8-10-2018; Cert eff. 10-8-2024.)