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REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Aging and Independent Living

3 Division of Quality Living

4 (Amendment)

5 910 KAR 3:030. Traumatic brain injury trust fund operations program.

6 RELATES TO: KRS 13B, 42.320(2)(d), 45A.075, 45A.080, 189A.050(3)(d)1,  
7 205.900(3), 211.470-211.478, 314.011

8 STATUTORY AUTHORITY: KRS 211.474(1), EO 2009-541

9 NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-541 transferred the  
10 functions and funds of KRS 189A.050(3)(d)1 to the Department for Aging and  
11 Independent Living. KRS 211.474(1) requires the Traumatic Brain Injury Trust  
12 Fund Board of Directors to promulgate administrative regulations necessary to  
13 carry out the provisions of KRS 211.470 through 211.478. This administrative  
14 regulation establishes the Traumatic Brain Injury Trust Fund Operations  
15 Program.

16 Section 1. Definitions.

17 (1) "Applicant" means a person:

18 (a) Who applies for the program, including a legally responsible individual on  
19 behalf of an applicant;

1 (b) Who participates in the development of, and agrees to, a service plan for  
2 the use of the program; and

3 (c) For whom a completed service plan is submitted to the program.

4 (2) "Benefit" means financial assistance provided to a recipient to cover the  
5 cost of services approved by the service plan review committee.

6 (3) "Benefit management program" or "program" means the entity  
7 recommended by the board that provides case management services and  
8 facilitates distribution of trust fund monies.

9 (4) "Board" is defined by KRS 211.470(1).

10 (5) "Cabinet" is defined by KRS 211.470(2).

11 (6) "Case management" means a process, coordinated by a case manager,  
12 for linking a recipient to appropriate, comprehensive, and timely home or  
13 community based services as identified in the service plan by:

14 (a) Planning;

15 (b) Referring;

16 (c) Monitoring; and

17 (d) Advocating.

18 (7) "Case manager" means the individual employee responsible for:

19 (a) Coordinating services and supports from all agencies involved in providing  
20 services required by the service plan;

21 (b) Ensuring all service providers have a working knowledge of the service  
22 plan; and

23 (c) Ensuring services are delivered as required.

1           (8) [~~Community residential services~~] means ~~retraining and rehabilitation of a~~  
2 ~~recipient in a nonemergency situation in a community setting.~~

3           ~~(9)~~ "Companion services" means nonmedical supervision and socialization  
4 services for the purpose of:

5           (a) Preventing the need for institutionalization; and

6           (b) Assisting a recipient in maintaining community placement based upon an  
7 approved service plan.

8           (9) ~~(10)~~ "Conflict free" means a scenario in which an agency, including any  
9 subsidiary, partnership, not-for-profit, or other business entity under the control of  
10 the agency, is providing case management to an individual without providing any  
11 other waiver service.

12           (10) ~~(11)~~ "Department" means the Department for Aging and Independent  
13 Living (DAIL).

14           (11) ~~(12)~~ "Educational or experiential equivalent" means:

15           (a) Two (2) semesters totaling at least twenty-four (24) hours of course work;  
16 and

17           (b) At least 400 documented hours of experience assisting brain injured or  
18 other disabled individuals through:

- 19           1. Practicum placement;
- 20           2. Clinicals; or
- 21           3. Volunteerism.

22           (12) ~~(13)~~ "Environmental modification" means a physical adaptation to a  
23 recipient's home:

1 (a) For the purpose of helping a recipient function with greater independence  
2 in the recipient's own home; or

3 (b) Which is necessary to accommodate medical equipment and supplies  
4 required for the recipient's welfare.

5 (13) ~~[(14)]~~ "Fund" or "trust fund" is defined by KRS 211.470(4).

6 (14) ~~[(15)]~~ "Good cause" means a circumstance beyond the control of a  
7 recipient that affects the recipient's ability to access an approved benefit,  
8 including:

9 (a) Illness or hospitalization of the individual that is expected to last thirty (30)  
10 days;

11 (b) Death or incapacitation of the primary caregiver; or

12 (c) Unavailability of a service provider that is expected to last thirty (30) days.

13 (15) ~~[(16)]~~ "Immediate family" is defined by KRS 205.8451(3).

14 (16) ~~[(17)]~~ "Integrated environment" means other individuals in a  
15 nonresidential setting integrated with those individuals who have a brain injury  
16 and in which both are being served to improve community living skills.

17 (17) ~~[(18)]~~ "KYTBI data system" means the internet based data system used to  
18 monitor, track, and maintain recipient information, annual and lifetime allocations,  
19 and case work performed on behalf of a recipient.

20 (18) ~~[(19)]~~ "Legally responsible individual" means an individual who has a duty  
21 under state law to care for another person and includes:

22 (a) A biological, adoptive, or foster parent of a minor child who provides care  
23 to the child;

1 (b) The legal guardian who is responsible for the care of the recipient; or

2 (c) A spouse of a recipient.

3 (19) [~~(20)~~] "Medical records" means records signed by a physician  
4 documenting an applicant's or recipient's traumatic brain injury including:

5 (a) Hospital records; or

6 (b) Diagnostic imaging reports as related to KRS 211.470(3).

7 (20) [~~(21)~~] "Natural supports" means a non-paid person, or community  
8 resource who can provide, or has historically provided assistance to the  
9 consumer or, due to the familial relationship, would be expected to provide  
10 assistance when capable.

11 (21) [~~(22)~~] "Noncrisis behavior programming" means an individually-  
12 designated nonemergency service plan intended to increase a recipient's  
13 adaptive social behavior that is provided by a behavioral therapist or clinical  
14 psychologist.

15 (22) [~~(23)~~] "Occupational therapist" is defined by KRS 319A.010(3).

16 (23) [~~(24)~~] "Occupational therapy" means the therapeutic use of self-care,  
17 work, and leisure activities to enhance independent functioning or skill  
18 development.

19 (24) [~~(25)~~] "Personal care assistance services" is defined by KRS 205.900(3).

20 (25) [~~(26)~~] "Physical therapist" is defined by KRS 327.010(2).

21 (26) [~~(27)~~] "Physical therapy" is defined by KRS 327.010(1).

22 (27) [~~(28)~~] "Prevocational service" means a service designed to develop a  
23 prerequisite skill necessary to prepare a recipient for paid or unpaid employment

1 provided beyond other external program resources and provided by an  
2 occupational therapist or rehabilitation counselor.

3 (28) ~~[(29)]~~ "Psychological and mental health services" means services  
4 provided by a mental health professional licensed by the state which are:

5 (a) Designed to help a recipient to resolve personal issues or interpersonal  
6 problems resulting from a traumatic brain injury; or

7 (b) Provided to a recipient's direct caregiver to preserve the stability of a  
8 recipient's community living situation, as part of an approved service plan.

9 (29) ~~[(30)]~~ "Recipient" means an eligible applicant who receives a benefit as  
10 defined by Section 1(2) of this administrative regulation.

11 (30) ~~[(34)]~~ "Respite care" means a skilled or unskilled service provided to a  
12 recipient on a short-term basis if there is an absence or need for relief of a  
13 recipient's caregiver.

14 (31) ~~[(32)]~~ "Service plan" means a document that itemizes the goals, services,  
15 equipment, or items which are subject to review by the service plan review  
16 committee.

17 (32) ~~[(33)]~~ "Service plan review committee" or "SPRC" means a committee  
18 composed of persons with traumatic brain injuries or their legally responsible  
19 individual ~~[family members]~~ and professionals in the field of brain injury as  
20 outlined in Section 4(5)(b).

21 (33) ~~[(34)]~~ "Specialized medical equipment and supplies" means items which  
22 are of direct medical or therapeutic benefit to a recipient and assist the recipient  
23 to maintain community placement.

1           (34) [~~(35)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

2           (35) [~~(36)~~] "Speech and language therapy" means an intervention designed to  
3 maximize a recipient's language, pragmatic, articulation, swallowing, and  
4 cognitive skills.

5           (36) [~~(37)~~] "Structured day program services" means a service:

6           (a) Provided by a certified or licensed entity; and

7           (b) Performed in a nonresidential setting which is designed to develop and  
8 improve a recipient's skills through activities and skill trainings in areas of:

9           1. Personal well being;

10           2. Social and community living; and

11           3. Independent living management.

12           (37) [~~(38)~~] "Supported employment services" means supervision and training  
13 of a recipient in a work site at which persons without disabilities are employed  
14 and for a recipient who:

15           (a) Is unlikely to obtain competitive employment at or above minimum wage; or

16           (b) Needs ongoing support to perform competitive employment.

17           (38) [~~(39)~~] "Traumatic brain injury" is defined in KRS 211.470(3).

18           (39) [~~(40)~~] "Wrap-around service" means a service, equipment, or item, not  
19 excluded by KRS 211.474(2)(e), which will enhance a recipient's ability to live in  
20 the community, consistent with the recipient's overall service plan.

21           Section 2. Board Operating Procedures.

22           (1) (a) A board member shall adhere to the bylaws of the board and the  
23 confidentiality requirements as specified in KRS 211.474(3).

1 (b) If a member fails to act in accordance with the bylaws, the chair of the  
2 board shall recommend to the governor the dismissal of that member.

3 (2) A board member shall not:

4 (a) Influence, discuss, deliberate, or vote on a decision if the member has a  
5 conflict of interest that is:

6 1. Personal;

7 2. Professional; or

8 3. Financial; or

9 (b) Directly assist another individual, regardless of where the person resides,  
10 to apply for benefits from the fund, except a board member:

11 1. May refer another individual but not directly assist another individual to  
12 apply for benefits from the fund; and

13 2. Shall not refer himself or an eligible family member or receive benefits from  
14 the fund at the same time as being a member of the board.

15 (3) The board shall review a quarterly report of the program's activities in  
16 accordance with Section 4(8) of this administrative regulation.

17 (4) The board shall direct the department to:

18 (a) Issue a request for proposal for the benefit management program in  
19 accordance with KRS 45A.080; or

20 (b) Operate the program within the department.

21 Section 3. Department Duties.

22 (1) The department may issue a request for proposal:

23 (a) If directed by the board; and



1 (b) In accordance with KRS 45A.080.

2 (2) The department may rescind all or part of an awarded benefit if the  
3 recipient does not utilize all or part of the benefit within a twelve (12) month plan  
4 period.

5 Section 4. Duties of the Program. The program shall:

6 (1) Maintain [~~Establish~~] a toll free telephone number for the purpose of  
7 enabling individuals with a traumatic brain injury to apply for benefits from the  
8 fund;

9 (2) Engage in public information activities for the purpose of informing  
10 individuals with a traumatic brain injury about the availability of case  
11 management services and benefits from the fund and other sources;

12 (3) Review an applicant's documentation of the applicant's diagnosed brain  
13 injury and Kentucky residency to determine eligibility as specified in Section 5 of  
14 this administrative regulation;

15 (4) Assign a case manager within two (2) business days of the determination;

16 (5) Establish a SPRC [~~Special plan review committee~~]:

17 (a) For the purpose of reviewing proposed service plans for approval or denial;

18 (b) Which shall:

19 1. Include a minimum of one (1) person with a traumatic brain injury or the  
20 legally responsible individual [~~guardian or advocate~~] of a person with a traumatic  
21 brain injury;

22 2. Include a minimum of one (1) professional with expertise in the field of  
23 traumatic brain injury; and

1           3. Not have two (2) individuals from the same agency or family serve  
2 consecutive terms; and

3           (c) In which a member shall be limited to serve twelve (12) consecutive  
4 months but may be reappointed to the SPRC twelve (12) months after the date of  
5 the expiration of the member's most recent term of service on the committee;

6           (6) Accept a request for benefits from the fund;

7           (7) Distribute benefits to a recipient based upon an approved service plan;

8           (8) Submit a list of approved or denied service plans in a quarterly report to the  
9 department;

10          (9) Provide conflict free case management services:

11          (a) To applicants and recipients statewide, including the provision of  
12 assistance in accessing a needed support or service, regardless of funding  
13 source; and

14          (b) By a case manager who:

15           1. Possesses a bachelor's degree in a health or human services profession  
16 from an accredited college or university with:

17           a. One (1) year experience in health or human services; or

18           b. The educational or experiential equivalent in the field of brain injury or  
19 physical disabilities;

20           2. Is a currently licensed RN as defined by KRS 314.011(5) who has at least  
21 two (2) years of experience as a professional nurse in the field of brain injury or  
22 physical disabilities;

23           3. Is a currently licensed LPN as defined by KRS 314.011(9) who has:

1 a. At least three (3) years of experience in the field of brain injury or physical  
2 disabilities; and

3 b. An RN to consult and collaborate with regarding changes to the service  
4 plan; or

5 4. Has a master's degree from an accredited college or university;

6 (10) Be certified by the DAIL beginning July 1, 2015; and

7 (11) Be supervised by a case management supervisor who shall have four (4)  
8 years or more experience as a case manager.

9 Section 5. Eligibility.

10 (1) An applicant shall be eligible for a benefit from the fund:

11 (a) In accordance with:

12 1. KRS 211.470(3); and

13 2. KRS 211.472(2)(a) and (c); and

14 (b) If the applicant is a legal resident of Kentucky.

15 (2) A resident of an institution or hospital shall not be eligible for benefits from  
16 the fund:

17 (a) Unless the resident is anticipated to be within two (2) weeks of discharge  
18 and the benefits facilitate a discharge to the community; and

19 (b) If funding is available.

20 (3) An applicant shall provide medical records of the applicant's traumatic  
21 brain injury to the program.

22 (4) An applicant shall document that the applicant has no other public or  
23 private payor source, other than the trust fund, which covers the type of service

1 the applicant is requesting.

2 Section 6. Procedures for Obtaining a Benefit From the Fund.

3 (1) (a) A benefit for assistance from the fund shall be directly related to an  
4 applicant's brain injury or care of the applicant.

5 (b) A referral for benefits may be made by, or on behalf of, an eligible person  
6 by contacting the program in the following manner:

7 1. Telephone;

8 2. In person;

9 3. In writing;

10 4. Facsimile;

11 5. Email; or

12 6. Online.

13 (2) Upon receipt of referral, the program shall notify the applicant or referral  
14 source of the documentation needed to determine eligibility as specified in  
15 Section 5 of this administrative regulation.

16 Section 7. Benefits Available from the Fund.

17 (1) An applicant may apply for one (1) or more benefits from the fund as  
18 follows:

19 (a) Noncrisis behavior programming;

20 (b) Case management;

21 (c) Personal care assistance services [~~Community residential services~~], which  
22 shall include at least the following:

23 1. Dressing;

- 1           2. Oral hygiene;
- 2           3. Hair care;
- 3           4. Grooming;
- 4           5. Bathing;
- 5           6. Housekeeping;
- 6           7. Laundry;
- 7           8. Meal preparation;
- 8           9. Shopping; or
- 9           10. [~~Room and board; and~~
- 10          11.] Twenty-four (24) hour supervision of a recipient;
- 11          (d) Companion services;
- 12          (e) Environmental modification to the recipient's residence if:
  - 13           1. a. The recipient is listed on the deed or recorded land contract and a copy
  - 14           is provided to the case manager;
  - 15           b. The recipient is a minor residing in a home owned by his parent; or
  - 16           c. The recipient is an adult residing in a home owned by his legal guardian and
  - 17           provides
    - 18           (i) Written documentation, by the owner, approving the modification;
    - 19           (ii) A copy of the legal documents verifying parental status or guardianship;
    - 20           (iii) A copy of the deed documenting the owner who has provided the written
    - 21           approval for modification; and

1 (iv) Written documentation that the dwelling is safe and free of structural defect;  
2 d. A letter from the landlord, if under a lease agreement, approving an  
3 environmental modification; or [and]

4 2. The recipient or owner provides:

5 a. At least two (2) estimates of cost and scope of modification; or at least one  
6 (1) estimate of cost and scope of modification approved by the Department  
7 branch manager;

8 b. A copy of the chosen contractor's license and liability insurance policy or a  
9 signed release of liability that no contractor is available within thirty (30) miles of  
10 the recipient's residence; and

11 c. Documentation from a health care professional that the requested  
12 modification is necessary;

13 (f) Occupational therapy provided by an occupational therapist;

14 (g) Physical therapy provided by a physical therapist;

15 (h) Prevocational service, which shall include at least the following:

16 1. Assisting a recipient to understand the meaning, value, and demands of  
17 work;

18 2. Assisting a recipient to learn or reestablish skills, attitudes, and behaviors  
19 necessary for employment; or

20 3. Assisting the individual to improve functional capacities;

21 (i) Psychological and mental health services, which may include the following:

22 1. Training to improve interpersonal skills;

23 2. Social skills;

- 1           3. Problem-solving skills;
- 2           4. Training to remediate a cognitive problem resulting from the traumatic brain
- 3 injury;
- 4           5. Treatment for a substance abuse problem related to the traumatic brain
- 5 injury;
- 6           6. Psychological assessment; and
- 7           7. Neuropsychological evaluation;
- 8           (j) Respite care in:
- 9           1. The recipient's own home;
- 10          2. Another personal residence; or
- 11          3. Another setting, if approved by the program;
- 12          (k) Specialized medical equipment and supplies with written documentation of
- 13 need from a:
- 14          1. Physician;
- 15          2. Licensed health care provider; or
- 16          3. Licensed therapist;
- 17          (l) Speech and language therapy provided by a speech-language pathologist
- 18 which may include the following:
- 19          1. Articulation therapy;
- 20          2. The design of and instruction in the use of augmentative communication
- 21 strategies or devices;
- 22          3. Cognitive retraining strategies; or
- 23          4. Swallowing therapy;

- 1 (m) Structured day program services, which shall include at least the following:
- 2 1. Direct supervision of the recipient;
- 3 2. Specific training to allow a recipient to improve functioning and to
- 4 reintegrate into the community;
- 5 3. Social skills training;
- 6 4. Sensory skill development;
- 7 5. Motor skill development;
- 8 6. Teaching of concepts and skills necessary for the increased independence
- 9 of the recipient; and
- 10 7. Other services to increase:
- 11 a. Adaptive behavioral responses; and
- 12 b. Community reintegration;
- 13 (n) Supported employment services; or
- 14 (o) Wrap-around services, which may include the following:
- 15 1. Assistance in transporting a recipient, such as to and from:
- 16 a. A medical appointment;
- 17 b. A therapy appointment;
- 18 c. A counseling appointment; or
- 19 d. Other destinations in the community as specified in the recipient's service
- 20 plan;
- 21 2. Dental services by a licensed professional;
- 22 3. Vision services by an optometrist, ophthalmologist, or optician;
- 23 4. Hearing services by a licensed audiologist;



1           5. Modification to the recipient's vehicle for accessibility if the:

2           a. Recipient, or legally responsible individual is listed on the vehicle title and a  
3 copy is provided to the case manager; or

4           b. Owner provides written documentation:

5           (i) Approving the vehicle modification;

6           (ii) That the vehicle is for the use of the recipient;

7           (iii) That the vehicle is safe and mechanically sound; and

8           (iv) That the vehicle is insured.

9           (2) Program funds shall not be expended to pay for:

10          (a) Attorney fees or other legal fees;

11          (b) Court costs or fines assessed as a result of a conviction for a criminal  
12 offense;

13          (c) The cost of incarceration;

14          (d) Other court ordered monetary judgments;

15          (e) Insurance premiums, copays, or deductibles;

16          (f) The purchase or leasing of vehicles;

17          (g) The purchase or renting of homes;

18          (h) Home owner association fees;

19          (i) Vacations;

20          (j) Recreational activities;

21          (k) Food, including groceries or eating out;

22          (l) Utilities;

23          (m) Immediate family; [Ø]

1 (n) Natural supports; or

2 (o) modifications to rental properties over \$2,500.

3 Section 8. Case Management Services.

4 (1) Following the program's determination of eligibility, the assigned case  
5 manager shall contact a recipient no later than three (3) business days and  
6 complete the following responsibilities:

7 (a) Conduct an independent assessment;

8 (b) Identify the recipient's needs for service and supports;

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

11 (d) Assist the applicant in obtaining needed services and supports regardless  
12 of funding source;

13 (e) Determine that the fund is the payor of last resort;

14 (f) Coordinate, arrange, and document identified service needs of the  
15 recipient;

16 (g) Develop an individualized service plan that shall:

17 1. Relate to assessed needs;

18 2. Identify a source of service utilized in this administrative regulation; and

19 3. Be signed by the recipient or recipient's representative and case manager,  
20 with a copy provided to the recipient;

21 (h) Assist in the identification of local resources for individuals with traumatic  
22 brain injury;

23 (i) Document all virtual and in person face-to-face contacts with the recipient in

1 the KYTBI data system including time in and out, if applicable;

2 (j) Maintain caseload as assigned:

3 1. Upon available funding, at a minimum one (1):

4 a. In person face [Face]-to-face contact at least every six (6) months [ether  
5 month];

6 b. In person face [Face]-to-face at place of residence at least annually; and

7 c. Phone contact, or virtual face-to-face during any month an in person [a]  
8 face-to-face contact does not occur; and

9 2. Document in the KYTBI data system each contact made with the recipient  
10 including the face-to-face visit's time in and out and mileage, if applicable; and

11 (k) Complete a proposed service plan which shall specify:

12 1. The name, address, and telephone number of the applicant;

13 2. The TBI Trust Fund identification number;

14 3. A clinical summary of the recipient's traumatic brain injury;

15 4. An explanation of needed services and supports;

16 5. The requested benefit from the fund;

17 6. Documentation of the recipient's lack of a payor source for the requested  
18 service including:

19 a. An explanation of circumstances leading to the need to request funding;

20 and

21 b. Attempts to find other funding such as:

22 (i) An agency denial or documentation of a noncovered service by insurance  
23 or other entity;

1 (ii) Department for Medicaid Services denial; or

2 (iii) Denial from other community programs;

3 7. The signature of the applicant, or the applicant's legal representative,  
4 indicating agreement with the terms of the service plan; and

5 8. The mechanism for distribution of benefits from the fund.

6 (2) The case manager shall submit the proposed service plan in the KYTBI  
7 data system upon completion of all supporting documents.

8 (3) The program designee shall verify completion of the service plan and place  
9 the case on the SPRC list in chronological order of receipt.

10 Section 9. Service Plan Review Committee (SPRC) Duties.

11 (1) The SPRC [~~service plan review committee~~] shall:

12 (a) Verify the trust fund is payor of last resort of the submitted service plan  
13 specified in Section 8(1)(h) of this administrative regulation, based upon  
14 supplemental documents outlined in Section 5(3) and (4) of this administrative  
15 regulation and is not a duplication of services;

16 (b) Verify eligibility of an applicant or recipient's service plan in accordance  
17 with Section 5 of this administrative regulation;

18 (c) Consider a service plan in the chronological order in which the completed  
19 service plan is received;

20 (d) Review the service plan to determine if the benefit requested from the fund  
21 meets the requirements of KRS 211.474(2)(d);

22 (e) Approve or deny an applicant or recipient's service plan;

23 (f) Approve reimbursement for the delivery of services according to a

1 recipient's approved service plan; and

2 (g) Notify the program of an approved or denied service plan.

3 (2) The SPRC may:

4 (a) Approve the proposed service plan, for a period not to exceed twelve (12)  
5 months;

6 (b) Amend the proposed service plan; or

7 (c) Deny the proposed service plan and may provide recommendations to the  
8 applicant and the applicant's assigned case manager about other available  
9 resources or means to meet the applicant's need for services and supports.

10 (3) If the applicant disagrees with the decision made by the SPRC, the  
11 applicant may appeal the decision in accordance with Section 15 of this  
12 administrative regulation.

13 (4) The SPRC shall not approve the distribution of a benefit to a recipient in  
14 excess of \$15,000 within any twelve (12) month period and \$60,000 per lifetime  
15 pursuant to KRS 211.474(2)(c).

16 (5) The SPRC shall not approve the distribution of benefits to an applicant:

17 (a) Who does not meet the eligibility requirements established in Section 5 of  
18 this administrative regulation;

19 (b) If the requested benefits are intended for a purpose other than the direct  
20 health, safety, and welfare of the applicant;

21 (c) If the applicant fails to demonstrate a good faith effort that no other payor  
22 source is available to obtain the requested benefit;

23 (d) If other resources are available to the applicant to substantially meet a

1 reasonable need for which the benefit is requested, including trusts, settlements,  
2 or restitution; or

3 (e) If the benefit requested is for the purpose of reimbursing the recipient for  
4 expenses incurred prior to approval of a service plan by the SPRC [~~service plan~~  
5 ~~review committee~~].

6 (6) A service plan shall be signed by the director of the program or the  
7 director's designee, and the applicant or the applicant's legally responsible  
8 individual.

9 Section 10. Approved Service Plan.

10 (1) A recipient shall receive notification of an approved benefit based upon the  
11 following types of services:

- 12 (a) Individual;
- 13 (b) Purchased goods; or
- 14 (c) Contractors.

15 (2) A recipient with an approved service plan may change a service provider  
16 within an approved service category if there is no increased cost of the service.

17 (3) A recipient may make a permitted change by informing the case manager  
18 by:

- 19 (a) Telephone;
- 20 (b) Email;
- 21 (c) Facsimile; or
- 22 (d) In writing.

23 (4) The case manager may approve a service provider change in a service

1 plan made without review by the SPRC [~~service plan review committee~~].

2 (5) Involuntary termination and loss of approved benefits may [~~shall~~] be  
3 initiated if an individual fails to access the approved benefits as outlined in the  
4 service plan within ninety(90) calendar days of notification of approval of the  
5 service plan without good cause shown.

6 (a) The recipient or his designee shall have the burden of providing  
7 documentation of good cause as to the reason services cannot be accessed  
8 within ninety (90) calendar days, including:

- 9 1. A statement signed by the recipient or legal representative;
- 10 2. A copy of letters to providers;
- 11 3. A copy of letters from providers; and
- 12 4. A copy of documentation from physicians or other health care professionals.

13 (b) Upon receipt of documentation of good cause, the program shall grant one  
14 (1) sixty (60) day extension in writing.

15 Section 11. Service Provider Requirements.

16 (1) A service provider may be:

17 (a) An employee of the recipient who shall provide:

18 1. A completed I-9 and a copy of two (2) documents from the list of approved  
19 documents;

20 2. A completed W-9;

21 3. A signed service agreement;

22 4. A criminal background check as required by law;

23 5. Verification of abuse, neglect, and fraud training; and

1           6. Completed timesheets submitted bi-weekly by noon on Monday or the  
2 following work day if Monday is a state recognized holiday;

3           (b) A licensed or certified agency that shall provide a:

4           1. Copy of the agency's license or certification;

5           2. Signed service agreement; and

6           3. Completed W-9; or

7           (c) A licensed and insured contractor who shall provide:

8           1. A copy of the business license;

9           2. A copy of the liability insurance;

10          3. A completed W-9;

11          4. A signed service agreement;

12          5. Pictures before work begins; and

13          6. Pictures of the completed work.

14          (2) Upon notification of an approved service plan, the service provider shall:

15          (a) Accept the reimbursement approved in Section 9(1)(f) of this administrative  
16 regulation as payment in full;

17          (b) Not require additional payment from a recipient;

18          (c) Submit an invoice for payment to the program entity within forty-five (45)  
19 days from date of service; and

20          (d) Not attempt to recoup from the SPRC [~~service plan review committee~~]  
21 beyond an approved reimbursement without prior written agreement by the  
22 recipient or legal representative.

23          (3) A request for payment submitted after forty-five (45) days of the date of



1 service delivery shall not be:

2 (a) Reimbursed by the Benefit Management Program; or

3 (b) Billed to the board or recipient.

4 Section 12. Procedures for Distribution of Benefits from the Fund.

5 (1) The program shall distribute the fund to a service provider, contractor, or  
6 retailer for services rendered.

7 (2) The payment terms shall be specified in the service agreement.

8 (3) The service provider or recipient shall provide to the program  
9 documentation of the delivery of a service or benefit to a recipient according to  
10 the terms of the service agreement.

11 (4) A service shall be reimbursed or paid if it is delivered in accordance with a  
12 recipient's approved service agreement.

13 (5) An expenditure not included in an approved service agreement shall not be  
14 paid by the provider, board, or cabinet.

15 (6) The cost of providing case management services to an applicant or  
16 recipient shall be exempt from the benefit limits established in Section 9(4) of this  
17 administrative regulation.

18 Section 13. Procedures for Placement on a Waiting List.

19 (1) The program may establish a waiting list for benefits from the fund if it  
20 determines that no further funding is available.

21 (2) The waiting list shall be implemented as follows:

22 (a) An applicant or recipient shall be placed on the waiting list upon receipt,  
23 completion, and verification of a service plan by a program designee.

1 (b) The order of placement on the waiting list shall be determined  
2 chronologically by date and time of verification.

3 (c) A recipient shall be notified by his case manager of verification of  
4 placement on the waiting list.

5 (3) The applicant shall be removed from the waiting list if:

6 (a) The applicant secures requested benefit through another resource;

7 (b) The applicant refuses a benefit in an approved service plan, unless the  
8 individual has made a permitted change in accordance with Section 10(2)  
9 through (4) of this administrative regulation; or

10 (c) The applicant is deceased.

11 (4) The removal from the waiting list shall not prevent the submission of a new  
12 application at a later date for the applicant.

13 (5) If the applicant is removed from the waiting list, the program shall notify the  
14 applicant, or his legal representative, in writing within ten (10) business days from  
15 the removal.

16 Section 14. Discharge Criteria.

17 (1) A recipient shall be discharged from the Brain Injury Trust Fund Program if:

18 (a) The recipient reaches the maximum \$60,000 lifetime benefit, except if the  
19 board waives the expenditure in accordance with KRS 211.474(2)(c);

20 (b) The recipient is noncompliant with program requirements;

21 (c) The recipient chooses to be terminated from participation in the program;

22 (d) The recipient, caregiver, family, or guardian threatens or intimidates a case  
23 manager or other program staff;

1 (e) Services accessed are referred and provided by another agency for  
2 continued service, if applicable;

3 (f) There is a substantiation of fraud related to the program involving:

4 1. The recipient; or

5 2. Both the recipient and the service provider;

6 (g) The recipient is no longer eligible pursuant to KRS 211.470(3)(a) through  
7 (f); or

8 (h) The recipient is deceased.

9 (2) A recipient may be discharged from the Brain Injury Trust Fund Program if:

10 (a) A service plan is completed for an approved timeframe and no other  
11 service is needed;

12 (b) A requested service plan is denied;

13 (c) Contact cannot be made with the recipient by the program within three (3)  
14 months of last case management contact; or

15 (d) No case management services have been provided within a six (6) month  
16 period.

17 (3) Recipients may reapply to the program without submittal of medical  
18 records except in accordance with subsection (1)(a) of this section.

19 (4) All discharges shall be appealable in accordance with Section 15, except in  
20 accordance with subsection (1)(a) or (f) of this section.

21 Section 15. Procedures for Appealing the Denial of an Application for Benefits  
22 from the Fund.

23 (1) If an applicant is determined to be ineligible for benefits from the fund

1 because medical records do not provide documentation of a traumatic brain  
2 injury, the applicant may submit:

3 (a) Medical documentation to support the diagnosis of the injury; or

4 (b) Additional medical opinions about the disability.

5 (2) (a) The program shall notify the applicant in writing if the SPRC [~~service~~  
6 ~~plan review committee~~] does not approve a requested benefit.

7 (b) Notification shall be made within five (5) business days of the committee's  
8 decision.

9 (3) The program or the board shall not be liable for the cost of:

10 (a) A medical opinion obtained by an applicant; or

11 (b) An appeal.

12 (4) An applicant who wishes to appeal the denial of eligibility or benefits shall  
13 notify the program, in writing, within thirty (30) days of notification of the denial.

14 (5) Upon receipt of a written appeal, the program shall encumber funds if  
15 applicable and available in the amount requested until final resolution of the  
16 appeal.

17 (6) The program shall acknowledge receipt of a written appeal to the applicant,  
18 in writing, within three (3) business days of receipt.

19 (7) The program shall provide an opportunity for an informal dispute resolution  
20 for an applicant or his representative:

21 (a) To appear before the program director or designee and the benefits  
22 management program administrator to present facts or concerns about the  
23 denial; and

1 (b) Within ten (10) business days of receipt of written appeal.

2 (8) The program shall inform an applicant, in writing, of the decision resulting  
3 from the informal dispute resolution within ten (10) business days of the review.

4 (9) An applicant dissatisfied with the result of the informal dispute resolution  
5 may request an administrative hearing:

6 (a) Within thirty (30) calendar days of the decision; and

7 (b) By submitting a written request for appeal to the Office of the Ombudsman  
8 and Administrative Review, Quality Advancement Branch, 275 E. Main St, 2 E-O  
9 Frankfort, KY 40621;

10 (c) The administrative hearing shall be conducted in accordance with KRS  
11 Chapter 13B

12 ~~[appeal to the Division of Administrative Hearings of the Office of~~  
13 ~~Communications and Administrative Review. The appeal shall be:~~

14 ~~(a) In writing;~~

15 ~~(b) Made within thirty calendar (30) days of receipt of the decision by the~~  
16 ~~program; and~~

17 ~~(c) Submitted to the Department for Aging and Independent Living, 275 East~~  
18 ~~Main Street, Frankfort, Kentucky 40621.~~

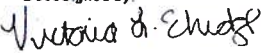
19 ~~(10) The department shall request the Division of Administrative Hearings of~~  
20 ~~the Office of Communications and Administrative Review to conduct a hearing~~  
21 ~~pursuant to KRS Chapter 13B].~~

910 KAR 3:030

REVIEWED:

4/28/2023


\_\_\_\_\_  
Date

DocuSigned by:  
  
\_\_\_\_\_  
650A1458D00043A  
Victoria Elridge, Commissioner  
Department for Aging and Independent Living

APPROVED:

4/28/2023

\_\_\_\_\_  
Date

DocuSigned by:  
  
\_\_\_\_\_  
650A1458D00043A  
Carrie Banahan, Deputy Secretary  
Cabinet for Health and Family Services

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:**

A public hearing on this administrative regulation shall, if requested, be held on July 24, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 17, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 910 KAR 3:030  
Agency Contact: Phyllis Sosa  
Phone Number: (502) 564 – 5305  
Email: phyllis.sosa@ky.gov

Contact Person: Krista Quarles  
Phone Number: (502) 564-6746  
Email: CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation sets out the requirements for the Traumatic Brain Injury Trust Fund (TBITF) program. This administrative regulation provides for the operations of the TBITF Board operations, duties of the program, eligibility requirements to receive services, benefits, and services available through the program, service provider requirements, waiting list, discharge criteria, and provides for an informal dispute resolution process and an appeal process.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to carry out the requirements of the traumatic brain injury trust fund program pursuant to KRS 211.470 through 211.478 by establishing the TBITF program service requirements. This administrative regulation sets out the eligibility for services and responsibilities of the participants, program and service providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of KRS 211.470 through 211.478 by establishing the Traumatic Brain Injury Trust Fund program and the requirements for eligibility and service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation assists in the effective administration of the statutes by establishing the minimum requirements for eligibility and service provision. This amendment updates terminology, documentation requirements, and that services provided through the TBITF are not duplicative of services received through other programs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates terminology, changes establish to maintain a toll free number, updates the benefits available from the program and the required visits provided by the case manager. Changes the involuntary termination and loss of approved benefits from shall to may be initiated under certain circumstances, requires copies of the documents required to be presented to complete the I-9 be maintained, specifies when time sheet are due, and updates the appeal rights to include an informal dispute resolution and address to submit a request for an appeal.



(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the terminology and benefits of the TBITF program and to specify the appeals process and where to submit an appeal.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for benefits and services to individuals with a Traumatic Brain Injury as authorized by KRS 211.470 through 211.478. The amendment establishes additional clarification on documents required and the provision of case management.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation provides more clarity on needed documentation and service provisions. The TBITF program provides needed services to individuals with a traumatic brain injury, to assist them to remain in their own home for as long as possible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect up to 250 individuals who are receiving paid services through the Trust Fund and up to 760 individuals who are awaiting referral documentation to be approved to the Trust Fund. This amended regulation will not affect businesses or organizations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with this administrative regulation, this action should not have any effect on regulated entities other than the Trust Fund itself and those individuals being served by the Trust Fund.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation as amended has no cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals served through the TBITF will obtain needed services and supports to live as independently as possible in the community.

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

(a) Initially: There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional costs to the Department for Aging and Independent Living of this amended administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the

implementation and enforcement of the TBITF program is the restricted TBITF account.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation as amended does not increase fees or funding necessary to operate the TBITF program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation as amended does not establish a fee. This administrative regulation does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

## FISCAL NOTE

Administrative Regulation: 910 KAR 3:030

Agency Contact: Phyllis Sosa

Phone Number: (502) 564 – 5305

Email: Phyllis.sosa@ky.gov

Contact Person: Krista Quarles

Phone Number: (502) 564-6746

Email: CHFSregs@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does impact the Cabinet for Health and Family Services, Department for Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.470 through 211.478.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(c) How much will it cost to administer this program for the first year? There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to

be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no cost savings with the implementation of this amended administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings with the implementation of this amended administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? There are no additional costs with the implementation of this amended administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There are no additional costs with the implementation of this amended administrative regulation in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

There is no major economic impact with this amended administrative regulation. There is no change to the income or expenditures for the implementation of this amendment.