907 KAR 7:020. 1915(c) Home and community based services waiting list and waiting list placement appeal processes.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 431 Subpart E, 441 Subpart G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, 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 policies governing 1915(c) waiver waiting lists, and governs the circumstances under which an appeal will be granted if emergency status is not granted for a waiting list for the Supports for Community Living waiver.

Section 1. Definitions.

(1) "1915(c) waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services.

(3) "Emergency category of need" means an order of waiting list placement, including the placement described in 907 KAR 12:010, Section 12(3)(b), for the Supports for Community Living (SCL) waiver.

(4) "Good cause" means a circumstance that:

(a) Is beyond the control of an individual and affects the individual's ability to access funding or services; and

(b) Includes:

1. An illness or hospitalization of the individual that is expected to last sixty (60) days or less;

2. The required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed, but is expected to be completed in two (2) weeks or less; or

3. The individual or his or her guardian has made diligent contact with a potential provider to secure placement or access services, but has not been accepted within the sixty (60) day time period.

(5) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal administered by the department, located at: https://chfs.ky.gov/agencies/dms/Pages/mwma.aspx.

(6) "Slot" means an allocation of funding available for placing an individual in a 1915(c) waiver program.

Section 2. Waiting Lists.

(1) Notwithstanding other provisions established in KAR Title 907, the provisions of this section and Section 3 of this administrative regulation shall control in relation to the department's policy relating to 1915(c) waiting lists and appeals relating to waiting list placement.

(2) As appropriate, each 1915(c) waiver program shall maintain a statewide waiting list.

(3) If an applicant for a 1915(c) waiver program meets that waiver's criteria for waiting list placement and there are no available slots at the time, the applicant shall be placed on the waiting list for that waiver.

(4) The department shall send a written notification of placement on the waiting list to the applicant, the applicant's legal guardian, or authorized representative.

(5) At least annually, the department shall contact each individual, the individual's legal guardian, or authorized representative, on any 1915(c) waiver waiting list program to verify:

(a) The accuracy of the individual's information; and

(b) Whether the individual wishes to continue to pursue enrollment in the applicable waiver program.

(6) The department shall remove an individual from a waiting list if:

(a) The individual is deceased;

(b) A review of documentation reveals that the individual does not have a diagnosis that qualifies for the applicable 1915(c) waiver;

(c) The individual has relocated to a primary residence outside of the Commonwealth of Kentucky; or

(d) The department notifies the individual, the individual's legal guardian, or authorized representative of potential funding approved to enroll the individual in the applicable waiver program and the individual, individual's legal guardian, or authorized representative:

1. Within sixty (60) calendar days of the potential funding notice, declines the potential funding for enrollment in the program:

a. Expressly;

b. By not completing the enrollment process, or

c. By not asking for a good cause extension to complete the enrollment process within sixty (60) calendar days of the potential funding notice date; and

2. Does not request to remain on the waiting list.

(7) After being notified by the department of potential funding approved to enroll the individual in the waiver program, the individual shall maintain his or her current position on the waiting list if the individual and, if applicable, the individual's legal guardian or authorized representative:

(a) Declines the potential funding; and

(b) Requests to remain on the waiver waiting list.

(8) If the department denies a request for emergency category of need, the department shall send written notice of the denial, including a notice of appeal rights, in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

(a) The individual and, if applicable, the individual's legal guardian or authorized representative; and

(b) The individual's case manager, waiver case manager, or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(9) The removal of an individual from a 1915(c) waiting list shall not preclude the individual from applying for participation with any 1915(c) waivers in the future.

(10) If the department removes an individual from a 1915(c) waiver program waiting list, the department shall send written notice of the removal, including a notice of appeal rights in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

(a) The individual, and, if applicable, the individual's legal guardian or authorized representative; and

(b) The individual's waiver case manager or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(11)

(a) If requested the department shall grant an appeal regarding an application of this administrative regulation.

(b) All appeals shall, as appropriate, be in accordance with 907 KAR 1:563.

(12) The hearing shall be conducted in accordance with 907 KAR 1:563.

Section 3. Waiting List Emergency Category Within the Supports for Community Living Waiver. An individual shall be placed on the waiting list for the Supports for Community Living waiver in the order of receipt of application in the MWMA. An individual on a waiting list shall be categorized as established in this section.

(1)

(a) Notwithstanding the emergency criteria established in 907 KAR 12:010, Section 12(3)(b), an individual's category of need shall be in the emergency category if the supporting documentation requirements and request for emergency category of need in the 1915(c) waiver program submitted to the department, indicate that an immediate service is needed due to any of the following, if all other applicable and appropriate service options have been exhausted or determined as inappropriate:

1. Abuse, neglect, or exploitation of the individual as substantiated by the Department of Community Based Services;

2. The death of the individual's primary caregiver and lack of an alternative primary caregiver;

3. The lack of appropriate living arrangement placement due to:

a. Loss of housing;

b. Loss of funding sources including 1915(c) waiver funding sources; or

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's inability to provide all care needed due to the primary caregiver's:

a. Physical health status; or

b. Mental health status;

5. Imminent or threat of imminent institutionalization if 1915(c) home and community based waiver program services are not provided; or

6. Present institutionalization and the applicant is not opposed to community placement in the most integrated setting appropriate to the applicant's needs; and

(b) The individual:

1. Does not have a combination of care needs beyond the capability of the supports for community living waiver program; or

2. Does not pose a serious potential danger to the health, safety, and welfare of the individual, other participants, or staff.

(2) An individual on the waiting list who does not meet the requirements for the emergency category of need pursuant to subsection (1) of this section shall be placed in the future planning or urgent category of the Supports for Community Living waiting list, in accordance with 907 KAR 12:010.

(3) Priority on a waiting list shall first be given to those on the emergency category, then to others on the waiting list. However, within each category, the order shall remain the same, based on when the recipient applied for Supports for Community Living waiver services.

Section 4. Federal Approval and Federal Financial Participation. The department's coverage of any services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

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

(47 Ky.R. 1859, 2602; eff. 6-16-2021.)