



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amendment)

5 907 KAR 3:170. Telehealth service coverage and reimbursement.

6 RELATES TO: KRS 194A.060, [~~194A.125~~], 205.510 (16)~~(15)~~, (17), 205.559, 205.5591,
7 205.560, 304.38-240, 422.317, 434.840-434.860, 42 C.F.R. 400.203, 415.174, 415.184, 431.300-
8 431.307, 440.50, Part 455, 45 C.F.R. 164.530, 42 U.S.C. 1395m

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559~~(2)~~,
10 205.5591~~(7)~~, 205.560

11 NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2),
12 the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibil-
13 ity to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administra-
14 tive regulation, to comply with any requirement that may be imposed or opportunity presented
15 by federal law to qualify for federal Medicaid funds. KRS 205.559 establishes the requirements
16 regarding Medicaid reimbursement of telehealth providers, and KRS 205.5591 re-
17 quires~~[205.559(2) and (7) require]~~ the cabinet to promulgate an administrative regulation relating
18 to telehealth services and reimbursement. This administrative regulation establishes the Depart-
19 ment for Medicaid Services' coverage and reimbursement policies relating to telehealth services
20 in accordance with KRS 205.559 and 205.5591.

21 Section 1. Definitions. (1) "Asynchronous telehealth" means a store and forward telehealth

1 service that is electronically mediated.

2 (2) "Department" means the Department for Medicaid Services or its designated agent.

3 (3) ~~["Face-to-face" means:~~

4 ~~—(a) In person; and~~

5 ~~—(b) Not via telehealth.~~

6 ~~—(4)] "Federal financial participation" is defined by 42 C.F.R. 400.203.~~

7 (4) "In-person" means a healthcare encounter occurring:

8 (a) Via direct contact and interaction between the individual and healthcare provider;

9 (b) At the same location; and

10 (c) Not via telehealth.

11 (5) "Medical necessity" or "medically necessary" means a covered benefit is determined to be
12 needed in accordance with 907 KAR 3:130 or pursuant to the process established by KRS
13 304.38-240.

14 (6) "Place of service" means anywhere the patient is located at the time a telehealth service is
15 provided, and includes telehealth services provided to a patient located at the patient's home or
16 office, or a clinic, school, or workplace.

17 (7) "Remote patient monitoring" means a digital technology that collects medical and health
18 data from an individual in one (1) location and electronically and securely transmits that data to a
19 telehealth care provider in a different location.

20 (8) "Synchronous telehealth" means a telehealth service that simulates an in-person~~[a face-to-~~
21 ~~face]~~ encounter via real-time interactive audio and video technology between a telehealth care
22 provider and a Medicaid recipient.

23 (9)~~(8)~~ "Telehealth" is defined by KRS 205.510~~(16)~~~~(15)~~.

(10)[(9)] "Telehealth care provider" means a Medicaid provider who is:

(a) 1. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

2.[(b)] Currently participating as a Medicaid provider in accordance with 907 KAR 1:671;

3.[(c)] Operating within the scope of the provider's professional licensure; and

4.[(d)] Operating within the provider's scope of practice; or[-]

(b) A community mental health center (CMHC) that is participating in the Medicaid program in compliance with 907 KAR 1:044, 907 KAR 1:045, or 907 KAR 1:047.

(11)[(10)] "Telehealth service" means any service that is provided by telehealth and is one (1) of the following:

(a) Event;

(b) Encounter;

(c) Consultation, including a telehealth consultation as defined by KRS 205.510(17)[(16)];

(d) Visit;

(e) Store and forward transfer, as limited by Section 6[4] of this administrative regulation;

(f) Remote patient monitoring[~~, as limited by Section 4 of this administrative regulation~~];

(g) Referral; or

(h) Treatment.

Section 2. Recipient Right to Receive Care In-Person or Via Synchronous Telehealth. (1) Any recipient, upon being offered the option of an asynchronous or audio-only telehealth visit, shall have the opportunity or option to request to be accommodated by that provider in an in-person encounter or synchronous telehealth encounter.

(2)(a) A telehealth care provider that has received a request for an in-person encounter or synchronous telehealth encounter shall provide an alternative in-person or synchronous telehealth

encounter for the recipient within:

1. A reasonable time;

2. The existing availability constraints of the provider's schedule; and

3. No more than three (3) weeks of the recipient's request, unless the recipient's condition or described symptoms suggest a need for an earlier synchronous or in-person encounter.

(b)1. A provider's failure to accommodate a recipient with a synchronous telehealth or in-person encounter shall be reported to the Office of the Ombudsman and Administrative Review of the Cabinet for Health and Family Services, or its successor organization by a:

a. Recipient;

b. Recipient's guardian or representative;

c. Another provider; or

d. Managed care organization.

2. The Office of the Ombudsman and Administrative Review shall investigate as appropriate and forward reports of a failure to accommodate to the department.

(c) If a provider fails to accommodate any recipient or combination of recipients ten (10) or more times within a calendar year, the department may:

1. Issue a corrective action plan to ensure that recipients are receiving appropriate and timely care.

2. Suspend the provider from providing asynchronous telehealth services to Medicaid recipients.

(d) The requirement to accommodate established in this subsection shall not apply to a provider who is participating in the encounter only to diagnose or evaluate an image or data file.

Section 3. General Policies. (1)(a) The telehealth policies established in this administrative

regulation shall supersede any in-person requirement established within KAR Title 907.

(b) The requirement established in paragraph (a) of this subsection shall not supersede an in-person requirement established pursuant to:

1. State or federal law, including via the state plan or a waiver;

2. A standard set by a professional criteria, such as the American Society of Addiction Medicine's (ASAM) Criteria, if applicable;

3. A licensing body; or

4. A billing code requirement established pursuant to a department utilized procedure code.

(2) Subject to any relevant restrictions in this administrative regulation, a telehealth service shall be reimbursable if it is:

(a) Appropriate and safe to be delivered via the telecommunication technology used. For the purposes of this section, whether a service is appropriate shall include any requirements and descriptions relating to a department utilized procedure code;

(b) Not prohibited by the licensing board of the telehealth care provider delivering or supervising the service; and

(c) Provided by a telehealth care provider.

(3) Unless prohibited by the relevant licensing board of the telehealth care provider, a telehealth care provider may establish a new patient and conduct an initial visit with the new patient via the use of synchronous telehealth.

(4)(a) Except as provided in paragraph (b) of this subsection, the coverage policies established in this administrative regulation shall apply to:

1. Medicaid services for individuals not enrolled in a managed care organization; and

2. A managed care organization's coverage of Medicaid services for individuals enrolled in

the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services.

(b) A managed care organization shall reimburse the same amount for a telehealth service as the department reimburses unless a different payment rate is negotiated in accordance with Section 4[3](1)(a)[2-] of this administrative regulation.

~~(5)~~[(2)] A telehealth service shall not be reimbursed by the department if:

(a) It is not medically necessary;

(b) The equivalent service is not covered by the department if provided in an in-person~~[a face-to-face]~~ setting; or

(c) The telehealth care provider of the telehealth service is:

1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;

3. Not in good standing with the Medicaid program;

4. Currently listed on the Kentucky DMS Provider Terminated and Excluded Provider List, which is available at <https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/terminated.aspx>; ~~[or]~~

5. Currently listed on the United States Department of Health and Human Services, Office of Inspector General List of Excluded Individuals and Entities, which is available at <https://oig.hhs.gov/exclusions/>;

6. Not otherwise prohibited from participating in the Medicaid program in accordance with 42 C.F.R. 455; or

7. Not physically located within the United States or a United States territory at the time of service.

~~(6)~~[(3)](a) A telehealth service shall be subject to utilization review for:

1. Medical necessity;
2. Compliance with this administrative regulation; and
3. Compliance with applicable state and federal law.

(b) The department shall not reimburse for a telehealth service if the department determines that a telehealth service is not:

1. Medically necessary;
2. Compliant with this administrative regulation;
3. Applicable to this administrative regulation; or
4. Compliant with applicable state or federal law.

(c) The department shall recover the paid amount of a~~recoup the~~ reimbursement for a previously reimbursed telehealth service if the department determines that a telehealth service was not:

1. Medically necessary;
2. Compliant with this administrative regulation;
3. Applicable to this administrative regulation; or
4. Compliant with applicable state or federal law.

(7)(a) If a telehealth service is delivered as an audio-only encounter and a telephonic code exists for the same or similar service, the department shall reimburse at the lower reimbursement rate between the two (2) types of services.

(b) An attempted and scheduled telehealth service that is completed telephonically due to provider or recipient technological failure shall be reimbursed at the reimbursement rate of the telehealth encounter.

(8)[(4)] A telehealth service shall have the same referral requirements as an in-person~~a face-~~

1 ~~to-face~~] service.

2 (9)[(5)] Within forty-eight (48) hours of the reconciliation of the record of the telehealth ser-
3 vice, a provider shall document within the patient's medical record that a service was provided
4 via telehealth, and follow all documentation requirements established by Section 5 of this admin-
5 istrative regulation.

6 (10) Pursuant to 907 KAR 1:671 and 1:672, the department shall require a telehealth care
7 provider to meet all relevant licensure and accreditation requirements that would be required for
8 that provider to provide care to a recipient in an in-person setting.

9 Section 4[3]. Telehealth Reimbursement. (1)(a)[4.] The department shall reimburse an eligible
10 telehealth care provider for a telehealth service in an amount that is at least 100 percent of the
11 amount paid for a comparable in-person service.

12 (b)[2:] A managed care organization and provider may establish a different rate for telehealth
13 reimbursement via contract as allowed pursuant to KRS 205.5591(2)(a)1.~~[(5)].~~

14 ~~[(b) A telehealth service reimbursed pursuant to this section shall be subject to cost sharing~~
15 ~~pursuant to 907 KAR 1:604.]~~

16 (2) A provider shall appropriately denote telehealth services by place of service or other
17 means as designated by the department or as required in a managed care organization's contract
18 with the provider or member.

19 (3)(a) Pursuant to KRS 205.559(2)(a)1., the department shall reimburse an originating site fee
20 for a qualifying Medicare-participating telehealth care provider if the Medicaid beneficiary
21 served was physically located at a rural health clinic, federally qualified health center, or federal-
22 ly qualified health center look-alike when the telehealth service was performed.

23 (b) The payment for an originating site facility fee shall be consistent with the amounts estab-

lished in 42 U.S.C. 1395m(m)(2)(B)(i).

Section 5. Telehealth Provided by an Out-of-State Telehealth Care Provider. (1) The department shall evaluate and monitor the healthcare quality and outcomes for recipients who are receiving healthcare services from out-of-state telehealth care providers.

(2) The department shall implement any in-state or out-of-state participation restrictions established by a state licensing board for the impacted provider type.

(3) In order to improve healthcare quality and outcomes for recipients, the department may:

(a) Require a telehealth care provider who is located out-of-state to practice under an agreement with a provider with a physical presence within Kentucky.

(b) Prohibit certain services, recipients, or providers from conducting telehealth services if those services are provided by a telehealth care provider located out-of-state.

Section 6[4]. Asynchronous Telehealth. (1) An asynchronous telehealth service or store and forward transfer shall be limited to those telehealth services that have an evidence base establishing the service's safety and efficacy.

(2) A store and forward service shall be permissible if the primary purpose of the asynchronous interaction involves high quality digital data transfer, such as digital image transfers. An asynchronous telehealth service within the following specialties or instances of care that meets the criteria established in this section shall be reimbursable as a store and forward telehealth service:

(a) Radiology;

(b) Cardiology;

(c) Oncology;

(d) Obstetrics and gynecology;

(e) Ophthalmology and optometry, including a retinal exam;

(f) Dentistry;

(g) Nephrology;

(h) Infectious disease;

(i) Dermatology;

(j) Orthopedics;

(k) Wound care consultation;

(l) A store and forward telehealth service in which a clear digital image is integral and necessary to make a diagnosis or continue a course of treatment;

(m) A speech language pathology service that involves the analysis of a digital image, video, or sound file, such as for a speech language pathology diagnosis or consultation; or

(n) Any code or group of services included as an allowed asynchronous telehealth service pursuant to subsection (4) of this section.

(3) Unless otherwise prohibited by this section, an asynchronous telehealth service shall be reimbursable if that service supports an upcoming synchronous telehealth or in-person~~face-to-face~~ visit to a provider that is providing one (1) of the specialties or instances of care listed in subsection (2) of this section.

(4)(a) The department shall evaluate available asynchronous telehealth services quarterly, and may clarify that certain asynchronous telehealth services meet the requirements of this section to be included as permissible asynchronous telehealth, as appropriate and as funds are available, if those asynchronous telehealth services have an evidence base establishing the service's:

1. Safety; and

2. Efficacy.

(b) Any asynchronous service that is determined by the department to meet the criteria established pursuant to this subsection shall be available on the department's Web site.

(5) Except as allowed pursuant to subsection (4) of this section or otherwise within the Medicaid program, a provider shall not receive additional reimbursement for an asynchronous telehealth service if the service is an included or integral part of the billed office visit code or service code.

(6)~~(a)~~ Pursuant to Section 7 of this administrative regulation, remote patient monitoring shall ~~not~~ be an eligible telehealth service within the fee-for-service and managed care Medicaid programs.

(7) Each asynchronous telehealth service shall involve timely actual input and responses from the provider, and shall not be solely the result of reviewing an artificial intelligence messaging generated interaction with a recipient~~program unless that service is:~~

- ~~1. Expanded pursuant to subsection (4) of this section;~~
- ~~2. Otherwise included as a part of a department approved value based payment arrangement;~~
- ~~or~~
- ~~3. Otherwise included as a value added service or payment arrangement.~~

~~(b) A managed care organization may reimburse for remote patient monitoring as a telehealth service if expanded pursuant to subsection (4) of this section or provided as a:~~

- ~~1. Value based payment arrangement; or~~
- ~~2. Value added service or payment arrangement].~~

Section 7[5]. Remote Patient Monitoring. (1) Conditions for which remote patient monitoring shall be covered include:

(a) Pregnancy;

1 (b) Diabetes;

2 (c) Heart disease;

3 (d) Cancer;

4 (e) Chronic obstructive pulmonary disease;

5 (f) Hypertension;

6 (g) Congestive heart failure;

7 (h) Mental illness or serious emotional disturbance;

8 (i) Myocardial infarction;

9 (j) Stroke; or

10 (k) Any condition that the department determines would be appropriate and effective for re-
11 mote patient monitoring.

12 (2) Except for a recipient participating due to a pregnancy, a recipient receiving remote pa-
13 tient monitoring services shall have two (2) or more of the following risk factors:

14 (a) Two (2) or more inpatient hospital stays during the prior twelve (12) month period;

15 (b) Two (2) or more emergency department admissions during the prior twelve (12) month
16 period;

17 (c) An inpatient hospital stay and a separate emergency department visit during the prior
18 twelve (12) month period;

19 (d) A documented history of poor adherence to ordered medication regimens;

20 (e) A documented history of falls in the prior six (6) month period;

21 (f) Limited or absent informal support systems;

22 (g) Living alone or being home alone for extended periods of time;

23 (h) A documented history of care access challenges; or

1 (i) A documented history of consistently missed appointments with health care providers.

2 (3) A recipient may participate in a remote patient monitoring program as the result of a preg-
3 nancy if the provider documents that the recipient has a condition that would be improved by a
4 remote patient monitoring service.

5 (4) Remote patient monitoring shall be ordered by:

6 (a) A physician;

7 (b) An advanced practice registered nurse; or

8 (c) A physician's assistant.

9 (5) Providers who may provide remote patient monitoring services include:

10 (a) A home health agency;

11 (b) A hospital;

12 (c) A federally qualified health center;

13 (d) A rural health center;

14 (e) A primary care center;

15 (f) A physician;

16 (g) An advanced practice registered nurse;

17 (h) A physician's assistant.

18 (6) A recipient participating in a remote patient monitoring service shall:

19 (a) Have the capability to utilize any monitoring tools involved with the ordered remote pa-
20 tient monitoring service. For the purposes of this paragraph, capability shall include the regular
21 presence of an individual in the home who can utilize the involved monitoring tools; and

22 (b) Have the internet or cellular internet connection necessary to host any needed remote pa-
23 tient monitoring equipment in the home.

1 (7) The department may restrict the remote patient monitoring benefit by excluding:

2 (a) Remote patient monitoring equipment;

3 (b) Upgrades to remote patient monitoring equipment; or

4 (c) An internet connection necessary to transmit the results of the services.

5 Section 8. Telephonic Services. Telephonic code reimbursement shall be:

6 (1) An alternative option for telehealth care providers to deliver audio-only telecommunica-
7 tions services, and shall not supersede reimbursement for an audio-only telehealth service as es-
8 tablished pursuant to KRS 205.559 or 205.5591;

9 (2) For a service that has an evidence base establishing the service's safety and efficacy;

10 (3) Subject to any relevant licensure board restrictions of the telehealth care provider;

11 (4) Subject to any synchronous telehealth limits of this administrative regulation or other state
12 or federal law; and

13 (5) For a service that is listed on the most recent version of the Physician Fee Schedule.

14 Section 9. Department Maintained List. (1) In order to assist with the effective and appropri-
15 ate delivery of services, the department may establish and maintain an informational listing of
16 procedure codes that are:

17 (a) Not allowed to be provided via telehealth due to conflicts with the requirements estab-
18 lished within state or federal law, or this administrative regulation; or

19 (b) Subject to additional restrictions related to telehealth, such as a requirement that any tele-
20 health associated with a procedure be conducted via a connection that has both video and audio
21 of the recipient and provider.

22 (2) Any informational listing shall be available on the department's Web site.

23 Section 10. Medical Records. (1) A medical record of a telehealth service shall be maintained

1 in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

2 (2) A health care provider shall have the capability of generating a hard copy of a medical
3 record of a telehealth service.

4 Section 11[6]. Federal Financial Participation. A policy established in this administrative reg-
5 ulation shall be null and void if the Centers for Medicare and Medicaid Services:

6 (1) Denies federal financial participation for the policy; or

7 (2) Disapproves the policy.

8 Section 12[7]. Appeal Rights. (1) An appeal of a department determination regarding a Medi-
9 caid beneficiary shall be in accordance with 907 KAR 1:563.

10 (2) An appeal of a department determination regarding Medicaid eligibility of an individual
11 shall be in accordance with 907 KAR 1:560.

12 (3) A provider may appeal a department-written determination as to the application of this
13 administrative regulation in accordance with 907 KAR 1:671.

14 (4) An appeal of a managed care organization's determination regarding a Medicaid benefi-
15 ciary shall be in accordance with 907 KAR 17:010.

907 KAR 3:170

REVIEWED:

9/30/2021

Date

DocuSigned by:

Lisa Lee

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Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

10/11/2021

Date

DocuSigned by:

Eric Friedlander

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Eric C. Friedlander, 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 December 21, 2021, 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 December 14, 2021, 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 December 31, 2021. 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 #: 907 KAR 3:170

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov;
and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to telehealth. The coverage policies in this administrative regulation apply to a managed care organization's (MCO's) coverage of Medicaid services for individuals enrolled in the MCO for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. An MCO is only required to reimburse according to this administrative regulation depending on the rates negotiated with providers.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS telehealth policies.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing DMS telehealth policies.

(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: The administrative regulation is amended to incorporate new definitions for "remote patient monitoring" and "in-person". The regulation is also amended to establish a recipient rights' clause to allow recipients' the option to receive services in-person or via synchronous telehealth. A process is established that can result in a suspension from providing asynchronous telehealth services when a recipient is not accommodated after requesting in-person or synchronous telehealth. Telehealth policy is clarified to state that services are subject to in-person requirements established by state or federal law, a standard set by a professional criteria, a licensing body, or a billing code requirement. The department's general policy is that telehealth services are reimbursable if they are appropriate and safe to be delivered via the technology used and not prohibited by the provider's licensing board. In addition, a new patient may be established and an initial visit may be conducted via the use of synchronous telehealth. The administrative regulation also establishes telephonic service requirements. This is specifically in relation to existing telephonic codes and establishing a policy to reimburse at the lower reimbursement rate between an audio-only encounter and the telephonic code when a discrepancy in reimbursement rates exists. The administrative regulation also expands instances under which a provider may be restricted from providing telehealth services, including if the provider is subject to

sanctions under 42 C.F.R. Part 455 or if the provider is physically located outside of the United States at the time of service. Finally, the administrative regulation requires providers to meet the same licensure and accreditation requirements that would be required for the provider to see the same recipient within an in-person setting. The administrative regulation is also amended to allow the department to recover the paid amount of an inappropriately paid telehealth encounter. The administrative regulation also establishes reimbursement for an originating site fee for rural health clinics, federally qualified health centers, and federally qualified health center look-alikes. The administrative regulation also addresses telehealth provided by out-of-state providers by requiring evaluation and monitoring of outcomes for recipients who are receiving healthcare services from out-of-state providers, requiring DMS to implement any participation restrictions established by state licensing boards, and establishing restrictions and limitations for out-of-state providers if there are concerns about healthcare quality and outcomes. Asynchronous telehealth services are expanded to include remote patient monitoring, and the regulation is further clarified to require that asynchronous telehealth services involve timely actual input and responses from the provider. Remote patient monitoring (RPM) is further expanded to include specific conditions, including conditions determined by the department to be appropriate and effective, require specific risk factors for RPM eligibility, and allow for RPM to be ordered by a physician, advanced practice registered nurse (APRN), or physician's assistant. In addition, recipients are required to meet certain requirements to use RPM, and certain hardware and upgrades are potentially excluded from the RPM benefit. The administrative regulation further establishes requirements relating to telephonic services. Finally, the administrative regulation is amended to allow the department to post an informational listing of codes that are not allowed or that are subject to additional restrictions such as a requirement that services be conducted via both audio and visual connection for all participants.

- (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with changes required by 2021's HB 140, Ky. Acts Ch. 67, and to further incorporate best practices learned by the large shift to telehealth that occurred during the COVID-19 public health emergency.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing changes required by 2021's HB 140, Ky. Acts Ch. 67, and further instituting efficiencies and best practices that have been highlighted during the COVID-19 public health emergency.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by implementing changes to 2021's HB 140's (Ky. Acts Ch. 67) amendments to KRS Chapter 205. In addition, this amendment will further implement efficiencies and best practices that have been highlighted during the COVID-19 public health emergency.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, MCOs, any enrolled and credentialed provider who could provide appropriate telehealth services, and Medicaid members who may access telehealth services. Over the course of the COVID-19 public health emergency, the number of providers offering telehealth and the number of Medicaid members accessing telehealth services has greatly increased.

There are currently over 1.4 million Kentuckians participating in the Medicaid program and 46,000 providers enrolled in the Medicaid program.

- (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: To be reimbursed for a telehealth service, a provider will have to comply with the policies and requirements established in this administrative regulation. Participation is optional, not mandatory.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities regulated by the administrative regulation as participation is optional.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth services in compliance with this administrative regulation will be reimbursed for services rendered.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: The department anticipates that it will incur no additional expenses in the implementation of these amendments in the first year of operation.
 - (b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing these amendments 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (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: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied as telehealth service standards are applied equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 3:170

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov;
and Krista Quarles, (502) 564-6746, 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? The Department for Medicaid Services (DMS) will be impacted by the amendment.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.030(2), 194A.125, 205.520(3), 205.559, 205.5591
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? The amendment is not expected to generate revenue for state or local government.
 - (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? The amendment is not expected to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering these amendments in the first year.
 - (d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering these amendments in 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:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 907 KAR 3:170

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1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.300-431.307, 440.50.
2. State compliance standards. KRS 205.559, 205.5591, and 205.560 require DMS to expand telehealth services and policies to ensure proper use and security and promote access to health care.
3. Minimum or uniform standards contained in the federal mandate. The federal requirements in 42 C.F.R. 431.300-431.307 establish requirements relating to the safeguarding of electronic health information. 42 C.F.R. 440.50 allow for the provision of telehealth by providers within the Medicaid program.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.