

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amended After Comments)

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)~~.

1 (10)[(9)] "Telehealth care provider" means a Medicaid provider who is:

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

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

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

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

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

8 (11)[(10)] "Telehealth service" means any service that is provided by telehealth and is one (1)  
 9 of the following:

10 (a) Event;

11 (b) Encounter;

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

13 (d) Visit;

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

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

16 (g) Referral; or

17 (h) Treatment.

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

22 (2)(a) A telehealth care provider that has received a request for an in-person encounter or syn-  
 23 chronous 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.

(e) A request for an in-person or synchronous encounter shall be recorded within the re-

1 patient's medical record.

2 Section 3. General Policies. (1)(a) The telehealth policies established in this administrative  
3 regulation shall supersede any in-person requirement established within KAR Title 907.

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

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

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

9 3. A licensing body; or

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

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

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

16 (b) Not prohibited by the licensing board of the telehealth care provider delivering or super-  
17 vising the service; and

18 (c) Provided by a telehealth care provider.

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

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

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

2 2. A managed care organization's coverage of Medicaid services for individuals enrolled in  
3 the managed care organization for the purpose of receiving Medicaid or Kentucky Children's  
4 Health Insurance Program services.

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

8 ~~(5)[(2)]~~ A telehealth service shall not be reimbursed by the department if:

9 (a) It is not medically necessary;

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

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

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

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

15 3. Not in good standing with the Medicaid program;

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

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

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

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



1 service.

2 (6)[(3)](a) A telehealth service shall be subject to utilization review for:

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

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

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

12 (c) The department shall recover the paid amount of a~~recoup the~~ reimbursement for a previ-  
13 ously reimbursed telehealth service if the department determines that a telehealth service was  
14 not:

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

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

22 (b) An attempted and scheduled telehealth service that is completed telephonically due to pro-  
23 vider or recipient technological failure shall be reimbursed at the reimbursement rate of the tele-

1 health encounter.

2 ~~(8)[(4)]~~ A telehealth service shall have the same referral requirements as an in-person~~[a face-~~  
3 ~~to-face]~~ service.

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

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

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

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

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

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

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



1 ly qualified health center look-alike when the telehealth service was performed.

2 (b) The payment for an originating site facility fee shall be consistent with the amounts estab-  
3 lished in 42 U.S.C. 1395m(m)(2)(B)(i).

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

7 (2) The department shall implement any in-state or out-of-state participation restrictions es-  
8 tablished by a state licensing board for the impacted provider [type].

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

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

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

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

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

22 (a) Radiology;

23 (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 1. Safety; and

2 2. Efficacy.

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

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

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

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

15 ~~—1. Expanded pursuant to subsection (4) of this section;~~

16 ~~—2. Otherwise included as a part of a department approved value based payment arrangement;~~

17 ~~or~~

18 ~~—3. Otherwise included as a value added service or payment arrangement.~~

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

21 ~~—1. Value based payment arrangement; or~~

22 ~~—2. Value added service or payment arrangement].~~

23 Section 7[5]. Remote Patient Monitoring. (1) Conditions for which remote patient monitoring



1 shall be covered include:

2 (a) Pregnancy;

3 (b) Diabetes;

4 (c) Heart disease;

5 (d) Cancer;

6 (e) Chronic obstructive pulmonary disease;

7 (f) Hypertension;

8 (g) Congestive heart failure;

9 (h) Mental illness or serious emotional disturbance;

10 (i) Myocardial infarction;

11 (j) Stroke; or

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

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

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

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

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

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

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

23 (f) Limited or absent informal support systems;

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

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

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

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

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

8 (a) A physician;

9 (b) An advanced practice registered nurse; [or]

10 (c) A physician's assistant; or

11 (d) When operating within their scope of practice and licensure, the following behavior-  
12 al health practitioners:

13 1. A psychiatrist;

14 2. A licensed psychologist;

15 3. A licensed psychological practitioner;

16 4. A certified psychologist with autonomous functioning;

17 5. A licensed clinical social worker;

18 6. A licensed marriage and family therapist;

19 7. A licensed professional art therapist;

20 8. A licensed clinical alcohol and drug counselor; or

21 9. A licensed behavior analyst.

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

23 (a) A home health agency;

1 (b) A hospital;

2 (c) A federally qualified health center;

3 (d) A rural health center;

4 (e) A primary care center;

5 (f) A physician;

6 (g) An advanced practice registered nurse;

7 (h) A physician's assistant;

8 (i) A behavioral health multi-specialty group participating in the Medicaid program  
9 pursuant to 907 KAR 15:010;

10 (j) A behavioral health services organization participating in the Medicaid program  
11 pursuant to 907 KAR 15:020 or 907 KAR 15:022;

12 (k) A residential crisis stabilization unit participating in the Medicaid program pursuant  
13 to 907 KAR 15:070;

14 (l) A chemical dependency treatment center participating in the Medicaid program pur-  
15 suant to 907 KAR 15:080;

16 (m) A community mental health center that is participating in the Medicaid program in  
17 compliance with 907 KAR 1:044, 907 KAR 1:045, or 907 KAR 1:047; or

18 (n) A certified community behavioral health clinic that is participating in the Medicaid  
19 program.

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

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



1 (b) Have the internet or cellular internet connection necessary to accommodate~~host~~ any  
2 needed remote patient monitoring equipment in the home.

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

4 (a) Remote patient monitoring equipment;

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

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

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

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

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

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

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

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

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

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

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

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

2     Section 10. Medical Records. (1) A medical record of a telehealth service shall be maintained  
3     in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

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

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

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

9     (2) Disapproves the policy.

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

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

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

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

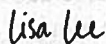
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REVIEWED:

2/10/2022

Date

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Lisa D. Lee, Commissioner  
Department for Medicaid Services

APPROVED:

2/10/2022

Date

DocuSigned by:



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Eric C. Friedlander, Secretary  
Cabinet for Health and Family Services



## 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.

The Amended After Comments version of this administrative regulation requires providers who are requested to accommodate a recipient on an in-person or synchronous telehealth basis to note this in the recipient's medical record. The version also expands the providers and facilities that can order and provide remote patient monitoring to better include mental and behavioral health professionals and facilities. Finally, additional technical clarifications are made.

- (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,



tion, 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 1.6 million Kentuckians participating in the Medicaid program and 59,000 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

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

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.



STATEMENT OF CONSIDERATION RELATING TO  
907 KAR 3:170.

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations

Amended After Comments

I. A public hearing on 907 KAR 3:170 was not requested, and therefore, not held. However, written comments were received during the public comment period.

II. The following individuals submitted comments during the public comment period:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Rebecca Randall, Senior Director of Operations	WellCare Health Plans of Kentucky
Claudia Duck Tucker, Senior Vice President, Government Affairs and Public Policy	Teladoc Health
Kathy Adams, Director of Public Policy	Children's Alliance
Brett A. Oliver, M.D., Chief Medical Information Officer	Baptist Health
Rebecca Moran, Esq., Market Development Advisor	Humana Healthy Horizons
Bart Baldwin, Lobbyist/Consultant	Bart Baldwin Consulting

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 3:010

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Lisa Lee, Commissioner	Department for Medicaid Services, Commissioner's Office
Veronica Judy-Cecil, Senior Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Leslie Hoffman, Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Lee Guice, Director	Department for Medicaid Services, Division of Policy and Operations

Angela Parker, Director	Department for Medicaid Services, Division of Program Quality and Outcomes
Jonathan Scott, Regulatory and Legislative Advisor	Department for Medicaid Services, Commissioner's Office

#### IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Validity of Remote Patient Monitoring (RPM).

(a) Comment: Rebecca Randall, Sr. Director, Operations, WellCare Health Plans of Kentucky, submitted comments requesting that DMS include additional criteria in order for payment to be made for remote patient monitoring. This will accommodate health claim forms not having criteria when payment is submitted. Suggested language is provided.

(b) Response: The department is not prepared to implement additional criteria to allow payment for RPM. It is possible that additional criteria could be found to violate the amendments to KRS 205.559 and 205.5591 from HB 140. As a result, the department would prefer to require that any justification of RPM be documented within the patient's medical record. In the alternative, some RPM services could be subject to prior authorization as otherwise permitted by the department. The department will not be amending the administrative regulation in response to the comment.

(2) Subject: Publishing of restrictions online.

(a) Comment: Rebecca Randall, Sr. Director, Operations, WellCare Health Plans of Kentucky, submitted comments requesting that any RPM exclusions, any prohibitions on asynchronous services for out-of-state providers established pursuant to Section 7 of the regulation, and the names of any out-of-state providers who are required to operate under an agreement with an in-state provider be published online.

(a) Comment: Rebecca Randall, Sr. Director, Operations, WellCare Health Plans of Kentucky and Rebecca Moran, Esq., Market Development Advisor, Humana Healthy Horizons submitted comments requesting that DMS publish online any of the names of providers who are suspended from performing asynchronous telehealth.

(b) Response: The department will evaluate all options in how to best inform the public and healthcare payers when individual providers are excluded or otherwise restricted in performing telehealth services. Instead of a public posting, the department may act to inform the provider and healthcare payers via other reliable and secure methods. The department will not be amending the administrative regulation in response to the comment.

(3) Subject: Recording of request to not receive asynchronous or synchronous telehealth services.

(a) Comment: Rebecca Randall, Sr. Director, Operations, WellCare Health Plans of Kentucky, submitted comments requesting that DMS require providers to record a patient's request to not receive asynchronous telehealth services within the medical record.

(b) Response: The department agrees with this comment and will include a new requirement within Section 2 that the patient's request be recorded within the medical record.



(4) Subject: In-state and out-of-state telehealth restrictions.

(a) Comment: Rebecca Randall, Sr. Director, Operations, WellCare Health Plans of Kentucky, Claudia Duck Tucker, Senior Vice President, Teladoc Health, and Kathy Adams, Director of Public Policy, Children's Alliance, submitted comments highlighting the difficulty of implementing in state and out-of-state licensure restrictions. In addition, some of the comments also were concerned about DMS implementing out-of-state licensure board requirements on all Kentucky providers.

(b) Response: DMS is not a licensing body, and as currently constructed, Kentucky's telehealth law requires DMS to follow licensing board requirements and restrictions in implementing a telehealth benefit. Therefore, if a licensing board establishes a valid prohibition or restriction on telehealth, DMS is required to comply. DMS is not obligated to make the decisions of licensing boards available to Medicaid providers and the general public. State licensing boards are government agencies subject to KRS Chapter 13A and other laws. If these licensing boards establish requirements about telehealth, they should pursue these policies via new administrative regulations and other provider communications. Therefore, DMS anticipates that providers and the public will be informed to a similar extent as DMS' own official actions. Similarly, an out-of-state provider providing services within Kentucky is expected to comply with all relevant law, regardless of whether that law is established by a Kentucky licensing board or the licensing board within the state from which the telehealth service is provided. DMS will not apply an out-of-state telehealth requirement on providers who are not regulated by that board. For example, an Ohio telehealth policy that impacts providers located in Ohio would not be applied to all Kentucky providers. However, a telehealth policy that impacted the ability of any providers located in that state to provide telehealth would be implemented for those Ohio providers as it becomes known to DMS. The department will not be amending the administrative regulation in response to the comments.

(5) Subject: Incorporation of Certified Community Behavioral Health Clinics (CCBHCs) into originating site fees.

(a) Comment: Rebecca Moran, Esq., Market Development Advisor, Humana Healthy Horizons, submitted comments inquiring as to if and how the CCBHCs will be reimbursed for originating site fees.

(b) Response: House Bill 140 only required originating site fees for rural health clinics, federally qualified health centers, or federally qualified health center look-alikes. As a result, DMS is complying with HB 140 in establishing originating site fees for those facilities. As currently constituted, the CCBHCs are associated with Community Mental Health Centers. DMS had not been intending to allow these facilities to be eligible for originating site fees at this time. The department will not be amending the administrative regulation in response to the comment.

(6) Subject: Restriction of originating site fees.

(a) Comment: Bart Baldwin, Lobbyist/Consultant, Bart Baldwin Consulting, submitted comments concerning telephonic services and audio-only telehealth.

(b) Response: HB 140, which updated Kentucky's telehealth statutes only refers to originating site fees for RHCs, FQHCs, and FQHC look-alikes. DMS' interpretation was that this was primarily for facilities paid via a prospective payment system rate. Originating site fees have not been a feature of telehealth within Kentucky's Medicaid program. The expansion of the tele-



health program required within 2018's SB 112 linked the delivery of telehealth to the location of the recipient. Within this framework, an originating site fee is generally not needed, and then, needed only by specific primary care facilities. A large expansion of telehealth services occurred following the implementation of SB 112 in 2019. This expansion was accomplished without the added expense to the department of additional originating site fees. Again, as contained in HB 140, originating site fees appear to be narrowly expanded to RHCs, FQHCs, and FQHC look-alikes. DMS is therefore implementing originating site fees consistent with that legislation. The department will not be amending the administrative regulation in response to the comment.

(7) Subject: Inclusion of paraprofessionals as "telehealth care providers".

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, submitted comments requesting that the definition for telehealth care provider be expanded to include paraprofessionals such as targeted case managers, community support associates, and peer support specialists as individuals who can deliver Medicaid covered services.

(b) Response: The department does not interpret the definition – or any other provision of this administrative regulation – as prohibiting paraprofessionals from providing telehealth services if otherwise appropriate. However, under the current regulatory structure, paraprofessionals are expected to be under the supervision of a licensed and enrolled Medicaid provider. These paraprofessionals could not typically provide in-person healthcare services within their own facility if they were not also connected to a licensed and enrolled Medicaid provider. Similarly, when providing telehealth services, paraprofessionals need to be connected to an enrolled and licensed provider in order to provide telehealth services. The department will not be amending the administrative regulation in response to the comment.

(8) Subject: Restrictions on telephonic services and synchronous telehealth services.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, submitted comments asking for clarification regarding why telephonic services are subject to any limits on synchronous telehealth and asking if this means that telephonic services are required to use "both audio and video technology".

(b) Response: The phrasing in Section 8(4) addresses those circumstances where even a synchronous telehealth service would not be appropriate. This is in contemplation of those services that must be provided in-person pursuant to Section 3 of the administrative regulation. In those circumstances, a telephonic service would also not be appropriate, and the service should be provided in-person. Telephonic services are not subject to any requirement that they be audiovisual. The department will not be amending the administrative regulation in response to the comment.

(9) Subject: Technical amendments to the administrative regulation for clarity.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, submitted comments requesting that "or" be added in several places in the administrative regulation.

(b) Response: The department is required to comply with KRS Chapter 13A's technical drafting requirements. The department will review and consult with Legislative Research Commission staff prior to the administrative regulation appearing before a committee. The administrative regulation will not be amended in response to the comment.

(10) Subject: Telephonic services and audio-only telehealth.

(a) Comment: Bart Baldwin, Lobbyist/Consultant, Bart Baldwin Consulting, submitted com-

ments concerning telephonic services and audio-only telehealth. The comments point out that “inequitable rates for telehealth and audio-only services are counterproductive to implementing an effective telehealth policy for the Commonwealth of Kentucky”. The comments further argue for pay parity and highlight concerns about the establishment of alternative payment rates for audio-only encounters.

(b) Response: The department acknowledges the amendments to KRS 205.559 made by HB 140. Audio-telehealth is being fully integrated into the Medicaid system as required by that bill. Telephonic services are being initially introduced into the Medicaid program via this amendment and were not required by HB 140. Section 8(1) of the administrative regulation establishes that telephonic services do not supersede reimbursement for an audio-only telehealth service. DMS is not supplanting audio-only telehealth with this provision. However, it is important to introduce telephonic services as well. From DMS’ perspective these services are different, and the availability of and reimbursement for telephonic services has greatly grown over the previous two years. In fact, the commenter’s points about documentation and certification requirements are significant. Currently, telephonic services only exist for a handful of codes and a few providers. It is the department’s intent to allow for the specific telephonic codes to be available to Medicaid members and providers without any requirement to justify that no other options were available. The department believes that simply utilizing telephonic codes – where they are appropriate – is an important option for some providers and patients. The department will not be amending the administrative regulation in response to the comment.

(11) Subject: Remote Patient Monitoring and behavioral health providers.

(a) Comment: Bart Baldwin, Lobbyist/Consultant, Bart Baldwin Consulting, and Kathy Adams, Director of Public Policy, Children’s Alliance, submitted comments concerning the involvement of behavioral and mental health providers for the service of RPM. The comments point out that mental health providers and behavior health providers are not listed as providers who can order or who can perform RPM services.

(b) Response: The lists utilize the term “include”, and within KRS Chapter 13A this means “including but not limited to”. However, mental health practitioners and facilities should be clearly acknowledged within this administrative regulation. The department will therefore include mental and behavioral health practitioners operating within their scope of practice and licensure as an ordering entity for RPM services. In addition, mental and behavioral health practitioners and facilities will be included as entities that can perform RPM services. The department will amend the administrative regulation.

(12) Subject: Expansion of remote patient monitoring to a broader group of individuals.

(a) Comment: Claudia Duck Tucker, Senior Vice President, Teladoc Health, submitted comments requesting that the term “telehealth care provider” be deleted in favor of the term “care team”. The rationale is that a broad set of health professionals may manage an RPM program.

(b) Response: The Medicaid program is constructed in such a way that the accountability and expertise of a licensed provider is essential to the delivery of services. Regardless of the roles that are performed by the broad set of professionals who could render telehealth services, DMS continues to emphasize the needed involvement – even if only for billing supervision -of a professional who is able to comply with this administrative regulation’s definition of a “telehealth care provider”. The administrative regulation will not be amended in response to the comment.

(13) Subject: Require Kentucky licensure to qualify as being in-state for purposes of the adminis-



trative regulation.

(a) Comment: Claudia Duck Tucker, Senior Vice President, Teladoc Health, submitted comments requesting that providers who are licensed in Kentucky but who are located out-of-state be considered in-state providers due to having licensure in the state.

(b) Response: Kentucky state licensure is a necessary prerequisite in order to be able to enroll in Kentucky Medicaid as a provider. Regardless of the location of the provider, therefore, Kentucky licensure is generally required to bill Kentucky Medicaid. Kentucky Medicaid is committed to implementing telehealth as a benefit as broadly as possible, and in complying with Kentucky's telehealth laws. For both SB 112 and HB 140, the department has gone beyond the requirements of these bills in establishing a broad telehealth benefit. In developing this requirement, DMS is focused on establishing reasonable protections for our members. The current provisions are not about designing a way to exclude currently participating providers. However, it is important to ensure that the department and our managed care partners have sufficient systems in place to achieve meaningful care coordination and outcomes. The department will not be amending the administrative regulation in response to the comment.

(14) Subject: Direct ordering of RPM by health plans or managed care organizations.

(a) Comment: Claudia Duck Tucker, Senior Vice President, Teladoc Health, requested that health plans or managed care organizations be allowed to offer remote patient monitoring solutions directly to plan members.

(b) Response: The language addition requested would add authority for health plans or MCOs to order RPM for plan members. While DMS would encourage MCOs to experiment with offering RPM solutions directly to plan members, any RPM services would need to be ordered by a licensed telehealth care provider such as a physician, APRN, PA, or certain mental health professionals for mental health services. DMS anticipates that health plans and MCOs will be aware of these requirements and will utilize their own ordering professionals in directly ordering any RPM services. The department will not be amending the administrative regulation in response to the comment.

(15) Subject: Expansion of providers who may provide remote patient monitoring.

(a) Comment: Claudia Duck Tucker, Senior Vice President, Teladoc Health, requested that registered dietitians, registered nutritionists, certified diabetes care and education specialists, or certified health coaches be allowed to provide remote patient monitoring services.

(b) Response: These providers and provider types are not enrolled in Medicaid, and therefore would not be able to request reimbursement for providing RPM services. A provider providing telehealth may utilize these providers, and they may work directly with recipients as RPM services or other telehealth services are utilized. However, the ultimate responsibility for billing and the care of the patient must involve an enrolled Medicaid provider. Furthermore, KRS Chapter 13A prohibits the use of the term "including but not limited to". When this term is meant within an administrative regulation the department is required to say "include". The word "include" was used here and signifies that the department is willing to acknowledge and utilize other enrolled providers in administering this benefit. The department is committed to utilizing this service effectively for our members. As a result, the department will continue evaluating additional providers to provide this service. The department will not be amending this administrative regulation in response to the comment.

(16) Subject: Utilization of devices that are cellular-enabled.



(a) Comment: Claudia Duck Tucker, Senior Vice President, Teladoc Health, submitted comments requesting that the department modify the regulation to allow for cellular enabled devices that can facilitate real-time data transfer to satisfy the connectivity requirement of the regulation.

(b) Response: The department considers cellular-enabled devices as already meeting the cellular internet connectivity requirement of the administrative regulation. Cellular enabled devices can already be utilized to provide RPM services without a requirement for any other equipment within the recipient's home. The current language utilizes the term "host" when it may be more appropriate to use a term with less meaning within the information technology space. As a result, the department is going to change the term "host" to "accommodate" to further clarify and emphasize that cellular enabled devices are currently acceptable for use within the RPM benefit.

(17) Subject: Include a definition and service description for remote therapeutic monitoring (RTM).

(a) Comment: Brett A. Oliver, M.D., Chief Medical Information Officer, Baptist Health, submitted comments requesting that remote therapeutic monitoring (RTM) be defined and introduced into the Medicaid program and this administrative regulation as a covered service.

(b) Response: The department is continuing to research RTM and may introduce it via the asynchronous telehealth acknowledgment system established in Section 4(4)(a) of the administrative regulation. The department will not be amending the administrative regulation in response to the comment.

(18) Subject: Modify forty-eight (48) hour documentation requirement.

(a) Comment: Brett A. Oliver, M.D., Chief Medical Information Officer, Baptist Health, submitted comments requesting that DMS require documentation requirements consistent with in-person services in Section 3(9) of the administrative regulation.

(b) Response: The department instituted the current requirement following comments by the Kentucky Hospital Association and another provider during the 2019 Amended After Comments version of this administrative regulation. The language currently in the administrative regulation allows for a longer documentation time than many in-person visits. Furthermore, this provision of the administrative regulation is designed to acknowledge the enhanced complexity in compiling records for telehealth encounters. The department will not be amending the administrative regulation in response to the comment.

(19) Subject: Define and implement E-Visits.

(a) Comment: Brett A. Oliver, M.D., Chief Medical Information Officer, Baptist Health submitted comments requesting that DMS implement the service of an E-Visit. This is a service with a "dynamic questionnaire" that is acted upon asynchronously by a telehealth care provider.

(b) Response: As described, this type of encounter appears to already meet the requirements of Section 6 of the administrative regulation. The department will continue to evaluate this service and may issue further guidance in accordance with Section 6 of the administrative regulation. The department will not be amending the administrative regulation in response to the comment.

(20) Subject: Require DMS to publish a listing of services that are not allowed to be provided via telehealth.

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, submitted comments requesting that the department be mandated to establish a listing of codes that are not per-

missible for telehealth or that are subject to audio-visual requirements.

(b) Response: The department is committing to implement a listing; however, the department is using the term “may” here to emphasize that this is not a comprehensive listing. The department will further discuss and engage with the LRC Administrative Regulations Compiler about the appropriate wording in this part of the regulation. Scenarios like this where DMS is not actively regulating but instead researching external requirements are problematic because any listing may not be complete and may be subject to additional interpretations by other payers or healthcare experts. As a result, DMS is concerned about our ability to establish a comprehensive list. The department will not be amending the administrative regulation in response to the comment.

## V. SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 3:170. This administrative regulation is being amended after comments. DMS is amending the administrative regulations as follows:

Page 4  
Section 2  
Line 22

After line 22, insert the following:

(e) A request for an in-person or synchronous encounter shall be recorded within the recipient's medical record.

Page 13  
Section 7(4)(c)  
Line 7

After “registered nurse,” delete “or”.

Page 13  
Section 7(4)(c)  
Line 8

After “assistant”, insert “; or”.

Page 13  
Section 7(4)(c)  
Line 8

After line 8, insert the following:

(d) When operating within their scope of practice and licensure, the following behavioral health practitioners:

1. A psychiatrist;
2. A licensed psychologist;
3. A licensed psychological practitioner;
4. A certified psychologist with autonomous functioning;



- 5. A licensed clinical social worker;
- 6. A licensed marriage and family therapist;
- 7. A licensed professional art therapist;
- 8. A licensed clinical alcohol and drug counselor; or
- 9. A licensed behavior analyst.

Page 13

Section 7(5)(h)

After paragraph (h) insert the following:

- (i) A behavioral health multi-specialty group participating in the Medicaid program pursuant to 907 KAR 15:010;
- (j) A behavioral health services organization participating in the Medicaid program pursuant to 907 KAR 15:020 or 907 KAR 15:022;
- (k) A residential crisis stabilization unit participating in the Medicaid program pursuant to 907 KAR 15:070;
- (l) A chemical dependency treatment center participating in the Medicaid program pursuant to 907 KAR 15:080;
- (m) A community mental health center that is participating in the Medicaid program in compliance with 907 KAR 1:044, 907 KAR 1:045, or 907 KAR 1:047; or
- (n) A certified community behavioral health clinic that is participating in the Medicaid program.

Page 13

Section 7(6)(b)

Line 22

After "connection necessary to" insert accommodate

Delete "host".