

CHAPTER 68

(HB 188)

AN ACT relating to telehealth.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

→Section 1. KRS 211.336 is amended to read as follows:

If a state agency authorized or required to promulgate administrative regulations relating to telehealth chooses to promulgate an administrative regulation relating to telehealth, the state agency:

- (1) Shall:
 - (a) Use terminology consistent with the glossary of telehealth terminology established by the cabinet pursuant to KRS 211.334; and
 - (b) Comply with the minimum requirements established by the cabinet pursuant to KRS 211.334;
- (2) Shall not:
 - (a) Require a provider to be physically present with the recipient, unless the ~~[state agency or]~~ provider determines that it is medically necessary to perform those services in person;
 - (b) Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if a service were provided in person;
 - (c) Require a provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;
 - (d) Require demonstration that it is necessary to provide services to a patient through telehealth;
 - (e) Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services;
 - (f) Prohibit the delivery of telehealth services to a person located in Kentucky by a provider who is a participant in a recognized interstate compact and delivers telehealth services to a person in Kentucky under the standards and provisions of that interstate compact;
 - (g) Prohibit an insurer or managed care organization from utilizing audits for medical coding accuracy in the review of telehealth services specific to audio-only encounters;~~[-or]~~
 - (h) Require a provider to be part of a telehealth network;~~[-and]~~
 - (i) ***Prohibit the delivery of telehealth services to a person who is a permanent resident of Kentucky who is temporarily located outside of Kentucky by a provider who is credentialed by a Kentucky professional licensure board;***
 - (j) ***Prohibit the delivery of telehealth services to a person who is not a permanent resident of Kentucky who is temporarily located in Kentucky by a provider who is credentialed by a professional licensure board in the person's state of permanent residence; or***
 - (k) ***Require a health care provider to be physically located in the state that he or she is credentialed in by a professional licensure board in order to provide telehealth services to a person who is a permanent resident of the same state. Nothing in this paragraph shall be construed to imply that the Kentucky Medicaid program would be responsible for reimbursement for any services provided in Kentucky by a provider not credentialed by the Kentucky Medicaid program; and***
- (3) May promulgate administrative regulations, which shall be no more restrictive than administrative regulations for providers who deliver healthcare services in person, to establish additional requirements relating to telehealth, including requirements:
 - (a) For the proper use and security of telehealth;
 - (b) To address emergency situations, including but not limited to suicidal ideations or plans; threats to self or others; evidence of dependency, neglect, or abuse; or other life-threatening conditions;

- (c) To prevent waste, fraud, and abuse of telehealth services, both in general and specific to the provision of telehealth services delivered via audio-only encounters; or
- (d) That a telehealth provider be licensed in Kentucky, or as allowed under the standards and provisions of a recognized interstate compact, in order to receive reimbursement for telehealth services.

➔SECTION 2. A NEW SECTION OF KRS 211.332 TO 211.338 IS CREATED TO READ AS FOLLOWS:

- (1) *Within thirty (30) days of the effective date of this Act, the Cabinet for Health and Family Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to add a definition of "temporarily located" to the glossary of telehealth terminology required under KRS 211.334. The definition shall establish the parameters of being temporarily located inside or outside of Kentucky for the purpose of delivering telehealth services to a person under paragraphs (i) and (j) of subsection (2) of Section 1 of this Act.*
- (2) *In order to comply with the deadline for the promulgation of administrative regulations required under subsection (1) of this section, the cabinet may promulgate emergency administrative regulations in accordance with KRS 13A.190.*

➔Section 3. KRS 205.5591 is amended to read as follows:

- (1) *For purposes of this section, "equivalent" has the same meaning as in Section 4 of this Act.*
- (2) The cabinet shall provide oversight, guidance, and direction to Medicaid providers delivering care using telehealth.
- (3)~~(2)~~ The Department for Medicaid Services shall:
 - (a) Within thirty (30) days after June 29, 2021:
 - 1. Promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for telehealth coverage and reimbursement rates, which shall be equivalent to coverage requirements and reimbursement rates for the same service provided in person unless the telehealth provider and the department or a managed care organization contractually agree to a lower reimbursement rate for telehealth services; and
 - 2. Create, establish, or designate the claim forms, records required, and authorization procedures to be followed in conjunction with this section and KRS 205.559;
 - (b) Require that specialty care be rendered by a health care provider who is recognized and actively participating in the Medicaid program;
 - (c) Require that any required prior authorization requesting a referral or consultation for specialty care be processed by the patient's primary care provider and that any specialist coordinate care with the patient's primary care provider; and
 - (d) Require a telehealth provider to be licensed in Kentucky, or as allowed under the standards and provisions of a recognized interstate compact, in order to receive reimbursement for telehealth services.
- (4)~~(3)~~ In accordance with KRS 211.336, the Department for Medicaid Services and any managed care organization with whom the department contracts for the delivery of Medicaid services shall not:
 - (a) Require a Medicaid provider to be physically present with a Medicaid recipient, unless the provider determines that it is medically necessary to perform those services in person;
 - (b) Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if a service were provided in person;
 - (c) Require a Medicaid provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;
 - (d) Require demonstration that it is necessary to provide services to a Medicaid recipient through telehealth;
 - (e) Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services; or
 - (f) Require a Medicaid provider to be part of a telehealth network.

~~(5)~~~~(4)~~ Nothing in this section shall be construed to require the Medicaid program or a Medicaid managed care organization to:

- (a) Provide coverage for telehealth services that are not medically necessary; or
- (b) Reimburse any fees charged by a telehealth facility for transmission of a telehealth encounter.

~~(6)~~~~(5)~~ The cabinet, in implementing KRS 211.334 and 211.336, shall maintain telehealth policies and guidelines to providing care that ensure that Medicaid-eligible citizens will have safe, adequate, and efficient medical care, and that prevent waste, fraud, and abuse of the Medicaid program.

~~(7)~~~~(6)~~ In order to comply with the deadline for the promulgation of administrative regulations established in subsection ~~(3)~~~~(2)~~ of this section, the Department for Medicaid Services may promulgate emergency administrative regulations in accordance with KRS 13A.190.

➔Section 4. KRS 304.17A-138 is amended to read as follows:

(1) As used in this section:

(a) ***"Equivalent" means reimbursement in an amount equal to what reimbursement would have been had the service been furnished in person by that provider at the provider's place of service;***

(b) "Federally qualified health center" means the same as in 42 U.S.C. sec. 1396d;

~~(c)~~~~(b)~~ "Federally qualified health center look-alike" means an organization that meets all of the eligibility requirements of a federally qualified health center but does not receive federal grants issued pursuant to 42 U.S.C. sec. 254b;

~~(d)~~~~(e)~~ "Originating site" means the site at which a Medicaid beneficiary is physically located at the time a telehealth service or telehealth consultation is provided;

~~(e)~~~~(d)~~ "Provider" means the same as in KRS 304.17A-005 and also includes behavioral health professionals licensed under KRS Chapters 309, 319, and 335;

~~(f)~~~~(e)~~ "Telehealth" has the same meaning as in KRS 211.332; and

~~(g)~~~~(f)~~ "Rural health clinic" means the same as in 42 U.S.C. sec. 1395x.

(2) (a) A health benefit plan, issued or renewed on or after January 1, 2022, shall reimburse for covered services provided to an insured person through telehealth, including telehealth services provided by a home health agency licensed under KRS Chapter 216. Telehealth coverage and reimbursement shall, except as provided in paragraph (b) of this subsection, be equivalent to the coverage for the same service provided in person unless the telehealth provider and the health benefit plan contractually agree to a lower reimbursement rate for telehealth services.

(b) Rural health clinics, federally qualified health centers, and federally qualified health center look-alikes shall be reimbursed as an originating site in an amount equal to that which is permitted under 42 U.S.C. sec. 1395m for Medicare-participating providers, if the insured was physically located at the rural health clinic, federally qualified health center, or federally qualified health center look-alike at the time of service or consultation delivery and the provider of the telehealth service or telehealth consultation is not employed by the rural health clinic, federally qualified health center, or federally qualified health center look-alike.

(3) In accordance with KRS 211.336, a health benefit plan, issued or renewed on or after January 1, 2022:

(a) Shall not:

1. Require a provider to be physically present with a patient or client, unless the provider determines that it is necessary to perform those services in person;
2. Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if a service were provided in person;
3. Require demonstration that it is necessary to provide services to a patient or client through telehealth;
4. Require a provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;

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5. Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services; or
 6. Require a provider to be part of a telehealth network;
- (b) Shall:
1. Require that telehealth services reimbursed under this section meet all clinical, technology, and medical coding guidelines for recipient safety and appropriate delivery of services established by the Department of Insurance or the provider's professional licensure board;
 2. Require a telehealth provider to be licensed in Kentucky, or as allowed under the standards and provisions of a recognized interstate compact, in order to receive reimbursement for telehealth services; and
 3. Reimburse a rural health clinic, federally qualified health clinic, or federally qualified health center look-alike for covered telehealth services provided by a provider employed by the rural health clinic, federally qualified health clinic, or federally qualified health center look-alike, regardless of whether the provider was physically located on the premises of the rural health clinic, federally qualified health clinic, or federally qualified health clinic look-alike when the telehealth service was provided; and
- (c) May utilize audits for medical coding accuracy in the review of telehealth services specific to audio-only encounters.
- (4) Benefits for a service provided through telehealth required by this section may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the health benefit plan for the same service provided in person.
 - (5) Nothing in this section shall be construed to require a health benefit plan to:
 - (a) Provide coverage for telehealth services that are not medically necessary; or
 - (b) Reimburse any fees charged by a telehealth facility for transmission of a telehealth encounter.
 - (6) Providers and home health agencies are strongly encouraged to use audio-only encounters as a mode of delivering telehealth services when no other approved mode of delivering telehealth services is available.
 - (7) The department shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained in conjunction with this section.

Signed by Governor March 31, 2022.