



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Health Data and Analytics

3 Division of Telehealth Services

4 900 KAR 12:005E. Telehealth Terminology and Requirements.

5 (Emergency Amended After Comments)

6 RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2)-(5), 304.17A-005(23),

7 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b),

8 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

9 STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.336(3)

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require  
11 the secretary of the Cabinet for Health and Family Services to promulgate  
12 administrative regulations necessary under applicable state laws to establish a  
13 telehealth terminology glossary to provide standard definitions for all health care  
14 providers who deliver health care services via telehealth, all state agencies authorized  
15 or required to promulgate administrative regulations relating to telehealth, and all  
16 payors; establish minimum requirements for the proper use and security of telehealth  
17 including requirements for confidentiality and data integrity, privacy, and security,  
18 informed consent, privileging and credentialing, reimbursement, and technology; and  
19 establish minimum requirements to prevent waste, fraud, and abuse related to  
20 telehealth.

21 Section 1. Definitions. (1) "Department" means Department for Medicaid Services.

1 (2) "Division" means Division of Telehealth Services.

2 (3) **"Health care provider" is defined by 304.17A-005(23), unless the provider or**  
3 **service is otherwise regulated by KRS 205.8451(7).**

4 ~~(4)~~~~(3)~~ "Health care service" is defined by KRS 211.332(2).

5 ~~(5)~~~~(4)~~ "Professional licensure board" is defined by KRS 211.332(3).

6 ~~(6)~~~~(5)~~ "State agency authorized or required to promulgate administrative  
7 regulations relating to telehealth" is defined by KRS 211.332(4).

8 ~~(7)~~~~(6)~~ "Telehealth" or "digital health" is defined by KRS 211.332(5).

9 Section 2. Compliance. (1) Health care providers performing a telehealth or digital  
10 health service shall:

11 (a) Maintain confidentiality of patient medical information in accordance with KRS  
12 311.5975;

13 (b) Maintain patient privacy and security in accordance with the federal Health  
14 Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to  
15 1320d-9, unless waived by the applicable federal authority;

16 (c) Obtain patient informed consent in accordance with KRS 311.5975 and KRS  
17 304.40-320;

18 (d) Secure credentialing if required by a third party or insurer or other payor;

19 (e) **Establish guidelines to contact, refer, and obtain treatment for a patient**  
20 **who needs emergent or higher level-of-care services provided by a hospital or**  
21 **other facility** ~~[Obtain privileges by hospitals or facilities to admit and treat~~  
22 ~~patients];~~

23 (f)1. Utilize the appropriate current procedural terminology (CPT) or health care

1 common procedure coding (HCPCS) code and place of service (POS) code "02" to  
2 secure reimbursement for a professional telehealth service; or

3 2. Utilize appropriate telehealth service code, if a CPT or HCPCS code is not  
4 available or not used for that service, according to customary practices for that health  
5 care profession, including the use of any telehealth modifiers or alternate codes;

6 (g) Utilize non-public facing technology products that are HIPAA compliant;

7 (h) As appropriate for the service, provider, and recipient, utilize the following  
8 modalities of communication delivered over a secure communications connection that  
9 complies with the federal Health Insurance Portability and Accountability Act of 1996  
10 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

11 1. Live or real-time audio and video synchronous telehealth technology;

12 2. Asynchronous store-and-forward telehealth technology;

13 3. Remote patient monitoring using wireless devices, wearable sensors, or  
14 implanted health monitors;

15 4. Audio-only telecommunications systems; or

16 5. Clinical text chat technology when:

17 a. Utilized within a secure, HIPAA compliant application or electronic health record  
18 system; and

19 b. Meeting:

20 (i) The scope of the provider's professional licensure; and

21 (ii) The scope of practice of the provider; and

22 (i) Comply with the following federal laws to prevent waste, fraud, and abuse relating  
23 to telehealth:

- 1 1. False Claims Act, 31 U.S.C. § 3729-3733;
- 2 2. Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and
- 3 3. Physician Self-Referral, Section 1877 of the Social Security Act (42 U.S.C. §
- 4 1395nn).

5 Section 3. Incorporation by Reference.

6 (1) "Telehealth Terminology Glossary", July 2021, is incorporated by reference.

7 (2) This material may be inspected, copied, or obtained, subject to applicable  
8 copyright law, at the Division of Telehealth Services, 275 East Main Street 4WE,  
9 Frankfort, KY 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at  
10 <https://telehealth.ky.gov>.

900 KAR 12:005E

REVIEWED:

10/13/2021

\_\_\_\_\_  
Date

DocuSigned by:

*Andrew Bledsoe*

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Andrew Bledsoe, Deputy Executive Director  
Office of Health Data and Analytics

APPROVED:

10/14/2021

\_\_\_\_\_  
Date

DocuSigned by:

*Eric Friedlander*

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

REGULATORY IMPACT ANALYSIS  
AND TIERING STATEMENT

Administrative Regulation: 900 KAR 12:005E

Agency Contacts: Kim Minter, [Kim.Minter@ky.gov](mailto:Kim.Minter@ky.gov); or Krista Quarles, (502) 564-6746, [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a telehealth terminology glossary and establishes requirements to prevent waste, fraud, and abuse.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a telehealth glossary to be utilized by state agencies when promulgating telehealth administrative regulations, and by health care providers and payors to understand telehealth in the delivery of health care services, and establishes requirements to prevent waste, fraud, and abuse in KRS 211.334 and 211.336 and required by HB 140, Ky. Acts Ch. 67, from the 2021 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes. The administrative regulation conforms to the content of the authorizing statutes by establishing a telehealth glossary and requirements for use.

(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 a telehealth glossary and requirements. KRS 211.334(1) authorizes the cabinet, in consultation with the Division of Telehealth Services within the Office of Health Data and Analytics, to provide guidance and direction to providers delivering health care services using telehealth or digital health; and to promote access to health care services provided via telehealth or digital health.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This increase will impact those payors, providers, members, and recipients who are regulated by state government. In the early part of the pandemic, telehealth utilization increased and was about 78 times higher than previous levels. Over the course of the COVID-19 pandemic, telehealth

usage appears to have stabilized at levels that are about 38 times higher than pre-pandemic telehealth utilization. The Cabinet for Health and Family Services anticipates that increased telehealth utilization will be an ongoing feature of the healthcare system.

This administrative regulation is being further amended in response to comment to add a definition for health care provider, and clarify the responsibility of health care providers providing telehealth in addressing how to secure higher level of care services – including emergent services – for patients.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: All health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors should utilize the glossary for consistency when referencing telehealth terminology.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): No cost is imposed on the entities regulated by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Telehealth Terminology Glossary will assist providers, consumers, patients, and stakeholders in understanding telehealth within the health care system as well as standardizing telehealth language across all state agencies who promulgate telehealth legislation.

(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 this administrative regulation in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

(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: No increase in fees or funding is anticipated with implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased 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 requirements are applied equally to all affected.



## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 900 KAR 12:005E  
Agency Contact: Krista Quarles, Policy Specialist  
Phone Number: 502-564-6746  
Email: [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov)

1. Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn
2. State compliance standards. Meeting federal standards by complying with privacy, security, waste, fraud, and abuse requirements.
3. Minimum or uniform standards contained in the federal mandate. Meeting federal standards by complying with privacy, security, waste, fraud and abuse requirements.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?  
No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 900 KAR 12:005E

Agency Contacts: Kim Minter, [Kim.Minter@ky.gov](mailto:Kim.Minter@ky.gov) or Krista Quarles, (502) 564-6746, [CHFSregs@ky.gov](mailto: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) and all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.105, 205.510, 205.559, 205.5591, 211.332(2)-(5), 211.334(1)(d), 211.336(3), 304.17A-005(23), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering this administrative regulation 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 this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
DEPARTMENT FOR COMMUNITY BASED SERVICES

900 KAR 12:005E

Telehealth Terminology and Requirements.  
Summary of Material Incorporated by Reference

The "Telehealth Terminology Glossary", dated July 2021, will be utilized by state agencies when promulgating telehealth administrative regulations, and by health care providers and payors to understand telehealth in the delivery of health care services. This is a newly incorporated form. This form has 5 pages.

STATEMENT OF CONSIDERATION RELATING TO 900 KAR 12:005E  
Cabinet for Health and Family Services  
Office of Health Data and Analytics  
Emergency Amended After Comments

(1) The public hearing on 900 KAR 12:005E, scheduled for September 27, 2021, at 9:00 a.m., was canceled. However, written comments were received during the public comment period.

(2) The following people submitted written comments:

<u>NAME AND TITLE</u>	<u>AGENCY/ORGANIZATION/ENTITY/OTHER</u>
Kathy Adams, Director	Children's Alliance

(3) The following people from the promulgating administrative body responded to the written comments:

<u>NAME AND TITLE</u>
Donna Veno, Director, Division of Telehealth
Kim Minter, Staff Assistant, Office of Health Data and Analytics

## Summary of Comments and Responses

### (1) Subject Matter: Definition

(a) Comment: Ms. Kathy Adams, Director, Children's Alliance, states, "Section 2(1) uses the term "health care provider", however this term is not defined. This term is also used within the definition of "telehealth" as provided in KRS 211.332(5) and the term is also not defined within this statute. We would ask that a definition of "health care provider" be added in Section 1 of this administrative regulation to include paraprofessionals (i.e. targeted case managers; community support associates; peer support specialists) that are allowed to provide Medicaid billable and reimbursable behavioral health care or substance use disorder (SUD) services when provided under the supervision of a billing supervisor. Requirements for behavioral health/SUD paraprofessionals can be found in 908 KAR 2:220 Adult peer support specialist; 230 Kentucky family peer support specialist; 240 Kentucky youth peer support specialist; 250 Community support associate; eligibility criteria and training; 260 Targeted case manager: eligibility and training."

(a) Response: The cabinet will include a definition for "health care provider" in response to the comment. However, the cabinet continues to expect that behavioral health paraprofessionals will practice under a licensed billing provider, which is consistent with current practice.

### (2) Subject Matter: Behavioral health privileges

(b) Comment: Ms. Kathy Adams, Director, Children's Alliance, states, "Section 2(1)(e) requires health care providers performing a telehealth or digital health service to "(e) obtain privileges by hospitals or facilities to admit and treat patients". While this may be a standard requirement for physicians, it seems inappropriate and overly cumbersome to require a Behavioral Health Services Organization (BHSO), a Behavioral Health Multi-Specialty Group (BH-MSG), a Community Mental Health Center (CMHC) or independently licensed behavioral health providers to obtain admit and treat privileges with hospitals or facilities. We are not aware of any hospital that will allow outside behavioral health providers, other than physicians (i.e., psychiatrist; psychologist) to provide treatment within a hospital setting. We would ask that this requirement be removed for behavioral health and substance use disorder health care providers, which would include BHSOs, BH-MSGs, CMHCs and those independently licensed."

(c) Response: The administrative regulation will be amended as a result of this comment. While the cabinet agrees that an admitting and treatment agreement with a local hospital could be difficult to obtain for certain providers, the ability to provide consistent and timely care for patients remains important. As a result, the

department will amend the regulation to require providers to establish guidelines to provide for referral to higher levels of care, including emergent care, when needed.

Summary of Statement of Consideration and  
Action Taken by Promulgating Administrative Body

(1) Summary of Statement of Consideration:

This Statement of Consideration addresses written comments submitted by Kathy Adams, Children's Alliance. Comments relate to the term "health care provider".

(2) Action taken by promulgating administrative body:

The administrative regulation is being amended in response to the written comments received. The administrative regulation is amended as follows:

RELATES TO

Page 1

Line 6

After "211.332(2)-(5),", insert "304.17A-005 (23),".

Page 2

Section 1(3)

Line 2

After "(3)", insert the following:

"Health care provider" is defined by 304.17A-005(23), unless the provider or service is otherwise regulated by KRS 205.8451(7).

Please renumber the sequential subsections accordingly.

Page 2

Section 2(e)

Line 17

After "(e)", insert the following:

Establish guidelines to contact, refer, and obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility

Delete "Obtain privileges by hospitals or facilities to admit and treat patients"