CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Telehealth Services
(Amended at ARRS Committee)

900 KAR 12:005. Telehealth terminology and requirements.

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2) - (5), 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. 1320d to 1320d-9, 42 U.S.C. 1395nn

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for 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; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth. This administrative regulation establishes a telehealth terminology glossary.

Section 1. Definitions.

(1) "Department" means Department for Medicaid Services.

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

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

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

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

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

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

Section 2. Compliance. Health care providers performing a telehealth or digital health service shall:

(1) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;

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

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

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

(5) 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;

(6)

(a) Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code "02" to secure reimbursement for a professional telehealth service; or

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

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

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

(a) Live or real-time audio and video synchronous telehealth technology;

(b) Asynchronous store-and-forward telehealth technology;

(c) Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;

(d) Audio-only telecommunications systems; or

(e) Clinical text chat technology if:

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

2. Meeting:

a. The scope of the provider's professional licensure; and

b. The scope of practice of the provider; and

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

(a) False Claims Act, 31 U.S.C. § 3729-3733;

(b) Anti-Kickback Statute, 42 U.S.C. 1320a-7b(b); and

(c) Physician Self-Referral, Section 1877 of the Social Security Act (42 U.SC. 1395nn).

Section 3. Incorporation by Reference.

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

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

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CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.