

BOARDS AND COMMISSIONS
Board of Optometric Examiners
(Amendment)

201 KAR 5:055. Telehealth.

RELATES TO: KRS 320.300, 320.390

STATUTORY AUTHORITY: KRS 320.390(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.390(2) requires the Board of Optometric Examiners to promulgate administrative regulations to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions.

- (1) "Doctor of Optometry" means an individual licensed by the Kentucky Board of Optometric Examiners to engage in the practice of optometry.
- (2) "Patient" means the person receiving services or items from a doctor of optometry.
- (3) "Practice of optometry" is defined by KRS 320.210(2).
- (4) "Telehealth" is defined by KRS 320.390(3) and KRS 211.332.

Section 2. Communication and Informed Consent Requirements.

- (1) All telehealth services by a doctor of optometry shall be conducted:
 - (a) By a doctor of optometry to a patient or to another health care provider at a different location; and,
 - (b) Over secure telecommunication technologies, including but not limited to synchronous and asynchronous technology, remote patient monitoring technology, and audio-only encounters.
- (2) Prior to the delivery of telehealth services, a doctor of optometry must obtain the informed consent of the patient or obtain the consent by another appropriate person with authority to make the health care treatment decision for the patient.
 - (a) For purposes of this section, informed consent by a patient can be provided in writing, verbally acknowledged, or electronically submitted.
 - (b) The informed consent must include an acknowledgment of the risks and limitations of telehealth services.

Section 3. Jurisdictional Considerations.

- (1) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may provide telehealth services in the practice of optometry:
 - (a) To a person who is a permanent resident of Kentucky while the person is located in Kentucky;
 - (b) To a person who is a permanent resident of Kentucky while the person is temporarily located outside of Kentucky; or
 - (c) To a person who is not a permanent resident of Kentucky while the person is temporarily located in Kentucky.
- (2) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may provide telehealth services when the doctor of optometry is not physically located in Kentucky to a permanent resident of Kentucky.
- (3) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may establish a doctor-patient relationship using telehealth and digital technologies.

Section 4. Representation of Services and Code of Conduct.

- (1) A doctor of optometry shall not engage in false, misleading, or deceptive advertising.

- (2) An advertisement for telehealth services must comply with 201 KAR 5:002, Section 2.
- (3) Evaluation, treatment, and consultation recommendations by a doctor of optometry via telehealth shall be held to the same standards of appropriate practice as those in traditional in-person clinical settings and established in 201 KAR 5:002, Section 3.
- (4) A doctor of optometry providing optometry services via telehealth shall:
 - (a) Verify the identity of the patient before telehealth services are performed;
 - (b) Collect and review a patient's medical history;
 - (c) Provide any applicable accommodations required by the Federal Americans with Disabilities Act, 42 U.S.C. secs. 12101 et seq., as amended;
 - (d) Maintain patient privacy and security in accordance with applicable state and federal law;
 - (e) Gather and transmit protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as amended;
 - (f) Document and maintain a record of the patient's presenting problem or purpose for the telehealth service, including the diagnosis or treatment and include which services were provided by telehealth;
 - (g) Perform telehealth services with a recognized Current Procedural Terminology Code maintained by the American Medical Association, if applicable;
 - (h) Secure all required credentialing for reimbursement of telehealth services; and
 - (i) Obtain privileges if required by hospitals or facilities to admit and treat patients.
- (5) An optometrist providing telehealth services shall not split fees in accordance with KRS 320.300(3);
- (6) Prescriptions for controlled substances shall not be made via telehealth by a doctor of optometry.
- (7) A contact lens or visual aid glasses prescription issued through telehealth must include the requirements established in the Kentucky Consumer Protection Eye Care Act, KRS 367.680-690 et seq.

Section 5. Utilization of Telehealth in Provision of Continuing Education. Credit for telehealth educational presentations shall be granted in accordance with 201 KAR 5:030.

WILLIAM REYNOLDS, President

APPROVED BY AGENCY: March 15, 2023

FILED WITH LRC: March 15, 2023 at 11:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2023 at 3:00 p.m. at the Kentucky board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on May 18, 2023, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on May 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christi LeMay, Executive Director, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504; phone (859) 246-2744; fax (859) 246-2746; email christi.LeMay@ky.gov.