

## **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) "Contact lens prescription" is defined by KRS 367.680(3).
- (2) "Eye examination" means an examination that meets the requirements for a complete eye examination established in 201 KAR 5:040, Section 7(1).
- (3) "Face to face" means in person and not via telehealth.
- (4) "Licensed health care professional" means an optometrist licensed pursuant to KRS Chapter 320, or a physician or osteopath licensed under KRS 311.550(12).
- (5) "Optometrist" means an individual licensed by the Kentucky Board of Optometric Examiners to engage in the practice of optometry.
- (6) "Patient" means the person receiving services or items from an optometrist or a physician.
- (7) "Physician" is defined by KRS 311.550(12).
- (8) "Practice of optometry" is defined by KRS 320.210(2).
- (9) "Prescription" means an order for a pharmaceutical agent, or any other therapy within the scope of practice of an optometrist or a physician.
- (10) "Prescription for eyewear" means a written prescription for visual aid glasses or a contact lens prescription after a complete eye examination is performed by an optometrist or physician.
- (11) "Telehealth" is defined by KRS 320.390(3).
- (12) "Telehealth provider" means an optometrist licensed pursuant to KRS Chapter 320 who performs a telehealth consultation.
- (13) "Telepractice" means the practice of optometry that is provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.
- (14) "Visual aid glasses" is defined by KRS 320.210(4).

### **Section 2. Patient Identity, Communication and Informed Consent Requirements.**

- (1) An optometrist-patient relationship shall not commence via telehealth.
- (2) An initial, in-person meeting for the optometrist and patient who will prospectively utilize telehealth shall occur in order to evaluate whether the potential or current patient is a candidate to receive services via telehealth.
- (3) An optometrist who uses telehealth to deliver vision or eye care services shall at the initial, face-to-face meeting with the patient:
  - (a) Verify the identity of the patient;
  - (b) Establish a medical history and permanent record for the patient;
  - (c) Obtain alternative means of contacting the patient other than electronically such as by the use of a telephone number or mailing address;
  - (d) Provide to the patient alternative means of contacting the optometrist other than electronically such as by the use of a telephone number or mailing address;
  - (e) Provide contact methods of alternative communication the optometrist shall use for emergency purposes such as an emergency on call telephone number;
  - (f) Document if the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the optometrist; and

(g) Inform the patient in writing and document acknowledgement of the risk and limitations of:

1. The use of technology in the use of telepractice;
2. The potential breach of confidentiality of information or inadvertent access of protected health information due to technology in telepractice;
3. The potential disruption of technology in the use of telepractice;
4. When and how the optometrist will respond to routine electronic messages;
5. The circumstances in which the optometrist will use alternative communications for emergency purposes;
6. Others who may have access to patient communications with the optometrist;
7. How communications shall be directed to a specific optometrist;
8. How the optometrist stores electronic communications from the patient; and
9. Whether the optometrist may elect to discontinue the provision of services through telehealth.

Section 3. Jurisdictional Considerations. A licensed health care professional providing eye and vision services via telehealth shall be licensed by the Kentucky Board of Optometric Examiners or the Kentucky Board of Medical Licensure if services are provided:

- (1) To a person physically located in Kentucky; or
- (2) By a person who is physically located in Kentucky.

Section 4. Representation of Services and Code of Conduct.

- (1) A telehealth provider shall not engage in false, misleading, or deceptive advertising. A person shall not advertise an eye examination unless the requirements of 201 KAR 5:040, Section 7(1) are met. A person shall not purport to write a prescription for eyewear solely by using an autorefractor or other automated testing device.
- (2) Treatment and consultation recommendations made in an online setting, including a prescription or a prescription for eyewear via electronic means, shall be held to the same standards of appropriate practice as those in traditional practice, face-to-face settings. Treatment, including issuing a prescription for eyewear based solely on an online autorefraction, shall not constitute an acceptable practice or standard of care.
- (3) Prescriptions for controlled substances shall not be made via telehealth.
- (4) A telehealth provider shall:
  - (a) Not split fees in accordance with KRS 320.300(3);
  - (b) Shall maintain a medical record of a service or item provided to a patient via telepractice;
  - (c) Document the patient's presenting problem, purpose, or diagnosis and include which services were provided by telepractice;
  - (d) Use secure communications with each patient including encrypted text messages, via email or secure Web site and not use personal identifying information in non-secure communications; and
  - (e) Dispense visual aids only in accordance with KRS 320.300(1).

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, Section 2. Educational hours obtained through telehealth shall be considered as part of the credit hours granted in accordance with 201 KAR 5:030, Section 6(1).

Section 6. This administrative regulation shall not be construed as giving jurisdiction over physicians licensed under KRS Chapter 311 to the Kentucky Board of Optometric Examiners.

(41 Ky.R. 672; 1040; 1308; eff. 11-19-2014; Certified to be amended, filing deadline 4-5-2023.)