

Description and information about Administrative Regulations filed for February 15 filing deadline:

This administrative regulation was filed on February 15, 2022:

1. 907 KAR 3:170. Telehealth service coverage and reimbursement.

A. This Amended After Comments version of the administrative regulation was filed on February 15, 2022. (The ordinary administrative regulation was filed with the Legislative Research Commission on October 15, 2021.)

B. Summary of Administrative Regulation (Amended After Comments summary below):

907 KAR 3:170. Telehealth service coverage and reimbursement. The administrative regulation is amended to incorporate new definitions for “remote patient monitoring” and “in-person”. The regulation is also amended to establish a recipient rights’ clause to allow recipients’ the option to receive services in-person or via synchronous telehealth. Telehealth policy is clarified to state that services are subject to in-person requirements established by state or federal law, a standard set by a professional criteria, a licensing body, or a billing code requirement. The department’s general policy is that telehealth services are reimbursable if they are appropriate and safe to be delivered via the technology used and not prohibited by the provider’s licensing board. In addition, a new patient may be established and an initial visit may be conducted via the use of synchronous telehealth. The administrative regulation also establishes telephonic service requirements. This is specifically in relation to existing telephonic codes and establishing a policy to reimburse at the lower reimbursement rate between an audio-only encounter and the telephonic code when a discrepancy in reimbursement rates exists. The administrative regulation also establishes reimbursement for an originating site fee for rural health clinics, federally qualified health centers, and federally qualified health center look-alikes. The administrative regulation also addresses telehealth provided by out-of-state providers by requiring evaluation and monitoring of outcomes for recipients who are receiving healthcare services from out-of-state providers, requiring DMS to implement any participation restrictions established by state licensing boards, and establishing restrictions and limitations for out-of-state providers if there are concerns about healthcare quality and outcomes. Asynchronous telehealth services are expanded to include remote patient monitoring, and the regulation is further clarified to require that asynchronous telehealth services involve timely actual input and responses from the provider. Remote patient monitoring is further expanded to include specific conditions, including conditions determined by the department to be appropriate and effective, require specific risk factors for RPM eligibility, and allow for RPM to be ordered by a physician, APRN, or physician’s assistant. In addition, recipients are required to meet certain requirements to use RPM, and certain hardware and upgrades are excluded from the RPM benefit. The administrative regulation further establishes requirements relating to telephonic services. Finally, the administrative regulation is amended to allow the department to post an informational listing of codes that are not allowed or that are subject to additional restrictions.

Amended After Comments Version: The Amended After Comments version of this administrative regulation requires providers who are requested to accommodate a recipient on an

in-person or synchronous telehealth basis to note this in the recipient's medical record. The version also expands the providers and facilities that can order and provide remote patient monitoring to better include mental and behavioral health professionals and facilities. Finally, additional technical clarifications are made.

C. The administrative regulation may be accessed at the LRC website here:

<https://apps.legislature.ky.gov/law/kar/TITLE907.HTM>

D. Information about public hearing and public comment period for this administrative regulation. This regulation was updated following a public comment period. This administrative regulation will receive public hearings at the Administrative Regulations Review Subcommittee (ARRS) and the appropriate Legislative Research Commission committee of jurisdiction. The ARRS agenda can be accessed here: <https://apps.legislature.ky.gov/CommitteeDocuments/3/> .