

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Commissioner's Office

4 (Amended After Comments)

5 907 KAR 3:170. Telehealth consultation coverage and reimbursement.

6 RELATES TO: KRS 12, 205.510(15), 194A.060, 194A.125, 205.559, 205.560,  
7 422.317, 434.840-434.860, 42 C.F.R. 415.174, 415.184, 431.300-431.307, 440.50

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2),  
9 (7), 205.560

10 NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS  
11 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Ser-  
12 vices, has responsibility to administer the Medicaid Program. KRS 205.520(3) authoriz-  
13 es the cabinet, by administrative regulation, to comply with any requirement that may be  
14 imposed or opportunity presented by federal law to qualify for federal Medicaid funds  
15 ~~[for the provision of medical assistance to Kentucky's indigent citizenry]~~. KRS 205.559  
16 establishes the requirements regarding Medicaid reimbursement of telehealth providers  
17 and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regula-  
18 tion relating to telehealth consultations and reimbursement. This administrative regula-  
19 tion establishes the Department for Medicaid Services' coverage and reimbursement  
20 policies~~[provisions]~~ relating to telehealth consultations in accordance with KRS 205.559.  
21 The coverage policies in this administrative regulation shall also apply to a managed

1 care organization's coverage of Medicaid services for individuals enrolled in the man-  
2 aged care organization for the purpose of receiving Medicaid or Kentucky Children's  
3 Health Insurance Program services. A managed care organization shall not be required  
4 to reimburse the same amount for a telehealth consultation as the department reim-  
5 burses, but shall be authorized to reimburse as the department reimburses if **the man-**  
6 **aged care organization**[it] chooses to do so.

7 Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN"[practi  
8 tioner" or "ARNP"] is defined by KRS 314.011(7).

9 (2) "Certified nutritionist" is defined by KRS 310.005(12).

10 (3) "Chiropractor" is defined by KRS 312.015(3).

11 (4) "Community mental health center" or "CMHC" means a facility that provides a  
12 comprehensive range of mental health services to Medicaid recipients of a designated  
13 area in accordance with KRS 210.370 to 210.485.

14 (5) ~~["Dentist" is defined by KRS 313.010(10).]~~ "CPT code" means a code used for  
15 reporting procedures and services performed by physicians or other licensed medical  
16 professionals which is published annually by the American Medical Association in Cur-  
17 rent Procedural Terminology.]

18 ~~[(6)]~~ "Department" means the Department for Medicaid Services or its designated  
19 agent.

20 ~~(6)~~~~(7)~~ "Diabetes self-management training consultation~~[education]~~" means the  
21 ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes  
22 self-care.

23 ~~(7)~~~~(8)~~ "Direct physician contact" means that the billing physician is physically pre-

1 sent with and evaluates, examines, treats, or diagnoses the recipient.

2 ~~(8)[(9)]~~[(8) "Dietitian" is defined by KRS 310.005(3).

3 ~~(9)~~ "Encounter" means one (1) visit by a recipient to a telehealth spoke site where  
4 the recipient receives a telehealth consultation in real time, during the visit, from a pro-  
5 vider at a telehealth hub site.

6 ~~(9)[(10)]~~ "Face-to-face" means:

7 (a) In person; and

8 (b) Not via telehealth.

9 ~~(10)[(11)]~~[(10)] "Federal financial participation" is defined in 42 C.F.R. 400.203.

10 ~~(11)[(12)]~~[(11)] "GT modifier" means a modifier that identifies a telehealth consulta-  
11 tion which is approved by the healthcare common procedure coding system (HCPCS).

12 ~~[(12) "Health care common procedure coding system" or "HCPCS" means a set of~~  
13 ~~health care procedure codes based on the American Medical Association's Current Pro-~~  
14 ~~cedural Terminology (CPT).]~~

15 ~~(12)[(13)]~~ "Health care provider" means a:

16 (a) Currently enrolled Medicaid provider in accordance with 907 KAR 1:672; and

17 (b) Currently participating Medicaid provider in accordance with 907 KAR 1:671.

18 ~~(13)~~; and

19 ~~(c)~~ 1. Licensed physician;

20 2. Licensed advanced practice registered nurse;

21 3. Physician assistant working under a supervising physician;

22 4. Licensed dentist;

23 5. Licensed oral surgeon;

1 **6. A psychologist:**

2 **a. With a license in accordance with KRS 319.010(5); and**

3 **b. With a doctorate degree in psychology;**

4 **7. Licensed clinical social worker;**

5 **8. Chiropractor;**

6 **9. Licensed optometrist; or**

7 **10. Community mental health center.**[[Medicaid-enrolled provider, in accordance  
8 with 907 KAR 1:671 and 907 KAR 1:672, who is a:

9 (a) Licensed physician;

10 (b) Licensed advanced registered nurse practitioner;

11 (c) Certified physician assistant working under physician supervision;

12 (d) Licensed dentist or oral surgeon;

13 (e) Community mental health center;

14 (f) Psychologist with a license in accordance with KRS 319.010(5);

15 (g) Licensed clinical social worker;

16 (h) Chiropractor; or

17 (i) Licensed optometrist.]

18 **[(14)]** "Hub site" means a telehealth site:

19 (a) Where the telehealth provider performs telehealth; and

20 (b) That is considered the place of service.

21 **(14)[(15)]** ["KenPAC" means the Kentucky Patient Access and Care System.

22 (16) "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary care  
23 case manager in the Kentucky Patient Access and Care System.

1       ~~(17)~~] "Legally-authorized representative" means a Medicaid recipient's parent or  
2 guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

3       ~~(15)~~~~(16)~~~~(18)~~] "Licensed clinical social worker" means an individual meeting the li-  
4 censure requirements established in KRS 335.100.

5       ~~(16)~~~~(17)~~~~(19)~~] "Licensed dietitian" is defined by KRS 310.005(11).

6       ~~(17)~~~~(18)~~~~(20)~~] "Licensed marriage and family therapist" is defined by KRS  
7 335.300(2).

8       ~~(18)~~~~(19)~~~~(21)~~] "Licensed professional clinical counselor" is defined by KRS  
9 335.500(3).

10       ~~(19)~~~~(20)~~~~(22)~~] "Medical necessity" or "medically necessary" means a covered bene-  
11 fit is determined to be needed in accordance with 907 KAR 3:130.

12       ~~(20)~~~~(21)~~] "National Provider Identifier" or "NPI" means a standard unique health iden-  
13 tifier for health care providers which:

14       (a) Is required by 42 CFR 455.440; and

15       (b) Meets the requirements of 45 CFR 162.406.

16       ~~(21)~~~~(22)~~~~(23)~~] "Occupational therapist" is defined by KRS 319A.010(3).

17       ~~(22)~~~~(23)~~~~(24)~~] "Optometrist" means an individual licensed to engage in the practice  
18 of optometry in accordance with KRS 320.210(2).

19       ~~(23)~~~~(24)~~~~(25)~~] "Physical therapist" is defined by KRS 327.010(2).

20       ~~(24)~~~~(25)~~~~(24)~~] "Physician" is defined by KRS 311.550(12).

21       ~~(25)~~~~(26)~~~~(27)~~] "Physician assistant" is defined by KRS 311.840(3).

22       ~~(28)~~ "Psychiatric medical resident" means an individual who:

23       ~~(a) Possesses a special faculty license in accordance with KRS 311.550(29);~~

1 ~~(b) Meets the qualification for licensure requirements established in KRS 311.571(1)~~  
2 ~~or (2); and~~

3 ~~(c) Is a resident as defined by 42 C.F.R. 415.152.~~

4 ~~(29) "Psychiatric registered nurse" means a registered nurse who:~~

5 ~~(a) Has a master of science in nursing with a specialty in psychiatric or mental health~~  
6 ~~nursing;~~

7 ~~(b) Has a bachelor of science in nursing and at least one (1) year of experience in a~~  
8 ~~mental health setting;~~

9 ~~(c) Is a graduate of a three (3) year educational program and has at least two (2)~~  
10 ~~years of experience in a mental health setting;~~

11 ~~(d) Has an associate degree in nursing and at least three (3) years of experience in a~~  
12 ~~mental health setting; or~~

13 ~~(e) Has any level of education with American Nursing Association (ANA) certification~~  
14 ~~as a psychiatric or mental health nurse.~~

15 **(26)**~~[(27)]~~~~[(30)]~~ "Psychologist" is defined by KRS 319.010(8).

16 **(27)**~~[(28)]~~~~[(31)]~~ "Registered nurse" is defined by KRS 314.011(5).

17 **(28)**~~[(29)]~~~~[(32)]~~ "Speech-language pathologist" is defined by KRS 334A.020(3).

18 **(29)**~~[(30)]~~~~[(33)]~~ "Spoke site" means a telehealth site where the recipient receiving the  
19 telehealth consultation is located.

20 **(30)**~~[(31)]~~~~[(34)]~~ "Telehealth consultation" is defined by KRS 205.510(15),

21 **(31)**~~[(32)]~~~~[(35)]~~ "Telehealth provider" means a:

22 (a) Currently enrolled Medicaid provider in accordance with 907 KAR 1:672;

23 (b) Currently participating Medicaid provider in accordance with 907 KAR 1:671; and

1 (c) Medicaid provider performing a telehealth consultation at a hub site.

2 ~~(32)(33)~~ Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907  
3 KAR 1:672, performing a telehealth consultation at a hub site.

4 ~~(36)~~ "Telehealth site" means a hub site or spoke site that has been approved as part  
5 of a telehealth network established in accordance with KRS 194A.125.

6 ~~(33)(34)~~ ~~(37)~~ "Telepresenter" means an individual operating telehealth equipment  
7 at a spoke site to enable a recipient to receive a telehealth consultation.

8 ~~(34)(35)~~ ~~(38)~~ "Transmission cost" means the cost of the telephone line and related  
9 costs incurred during the time of the transmission of a telehealth consultation.

10 ~~(35)(36)~~ ~~(39)~~ "Two (2) way interactive video" means a type of advanced telecom-  
11 munications technology that permits a real time telehealth consultation to take place be-  
12 tween a recipient and a telepresenter at the spoke site and a telehealth provider at the  
13 hub site.

14 Section 2. General Policies. (1) A telehealth consultation shall not be reimbursed by  
15 the department if:

16 (a) It is not medically necessary;

17 (b) The equivalent service is not covered by the department if provided in a face-to-  
18 face setting;

19 (c) It requires a face-to-face contact with a recipient in accordance with 42 CFR  
20 447.371;

21 (d) The provider of the telehealth consultation is:

22 1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

23 2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;

1 3. Not in good standing with the Medicaid program;

2 4. Currently listed on the Kentucky DMS List of Excluded Providers; or

3 5. Currently listed on the United States Department of Health and Human Services,  
4 Office of Inspector General List of Excluded Individuals and Entities; or

5 (e) It is provided by a practitioner or provider not recognized or authorized by the de-  
6 partment to provide the telehealth consultation or equivalent service in a face-to-face  
7 setting.

8 (2)(a) A telehealth provider shall:

9 1. [(a)] Be an approved member of the Kentucky Telehealth Network; and

10 2. [(b)] Comply with the standards and protocols established by the Kentucky Tele-  
11 health Board.

12 (b) To be an approved member of the Kentucky Telehealth Network, a provider  
13 shall:

14 1. Send a written request to the Kentucky Telehealth Board requesting mem-  
15 bership in the Kentucky Telehealth Network; and

16 2. Be approved by the Kentucky Telehealth Board as a member of the Kentucky  
17 Telehealth Network.

18 (3)(a) A telehealth consultation referenced in Section 3 or 4 of this administrative  
19 regulation shall be provided to the same extent and with the same coverage policies  
20 and restrictions that apply to the equivalent service if provided in a face-to-face setting.

21 (b) If a telehealth coverage policy or restriction is not stated in this administrative reg-  
22 ulation but is stated in another administrative regulation within Title 907 of the Kentucky  
23 Administrative Regulations, the coverage policy or restriction stated elsewhere within Ti-

1 tle 907 of the Kentucky Administrative Regulations shall apply.

2 (4)(a) A telehealth consultation shall be subject to utilization review for:

3 1.[(a)] Medical necessity;

4 2.[(b)] Compliance with this administrative regulation; and

5 3.[(e)]-Compliance with applicable state or federal law.

6 **(b) If the department determines that a Telehealth consultation is not medically**  
7 **necessary, is not compliant with this administrative regulation, or is not compli-**  
8 **ant with applicable state or federal law, the department shall not reimburse for the**  
9 **Telehealth consultation.**

10 **(c) If the department determines that a Telehealth consultation that it has al-**  
11 **ready reimbursed for was not medically necessary, was not compliant with this**  
12 **administrative regulation, or was not compliant with applicable state or federal**  
13 **law, the department shall recoup the reimbursement for the Telehealth consulta-**  
14 **tion from the provider.**

15 (5) A telehealth consultation shall require:

16 (a) The use of two (2) way interactive video;

17 (b) A referral by a health care provider; and

18 (c) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to:

19 1. 42 CFR 431.54; and

20 2. 907 KAR 1:677.

21 Section 3. Telehealth Consultation Coverage in a Setting That is Not a Community  
22 Mental Health Center. (1) The policies in this section of this administrative regulation  
23 shall apply to a telehealth consultation provided in a setting that is not a community

1 mental health center.

2 (2) The following telehealth consultations shall be covered by the department as fol-  
3 lows:

4 (a) A physical health evaluation and management consultation provided by:

5 1. A physician;

6 2. An advanced practice registered nurse;

7 3. An optometrist; or

8 4. A chiropractor;

9 (b) A mental health evaluation and management service provided by:

10 1. A psychiatrist;

11 2. A physician in accordance with the limit established in 907 KAR 3:005;

12 3. An APRN in accordance with the limit established in 907 KAR 1:102;

13 4. A psychologist:

14 a. With a license in accordance with KRS 319.010(5);

15 b. With a doctorate degree in psychology;

16 c. Who is directly employed by a psychiatrist; and

17 d. If:

18 (i) The psychiatrist by whom the psychologist is directly employed also interacts with  
19 the recipient during the encounter; and

20 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
21 psychologist is directly employed;

22 5. A licensed professional clinical counselor:

23 a. Who is directly employed by a psychiatrist; and

- 1     b. If:
- 2     (i) The psychiatrist by whom the licensed professional clinical counselor is directly  
3 employed also interacts with the recipient during the encounter; and
- 4     (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
5 licensed professional clinical counselor is directly employed;
- 6     6. A licensed clinical social worker:
- 7     a. Who is directly employed by a psychiatrist; and
- 8     b. If:
- 9     (i) The psychiatrist by whom the licensed clinical social worker is directly employed  
10 also interacts with the recipient during the encounter; and
- 11     (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
12 licensed clinical social worker is directly employed; or
- 13     7. A licensed marriage and family therapist:
- 14     a. Who is directly employed by a psychiatrist; and
- 15     b. If:
- 16     (i) The psychiatrist by whom the licensed marriage and family therapist is directly  
17 employed also interacts with the recipient during the encounter; and
- 18     (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
19 licensed marriage and family therapist is directly employed;
- 20     (c) Individual or group psychotherapy provided by:
- 21     1. A psychiatrist;
- 22     2. A physician in accordance with the limit established in 907 KAR 3:005;
- 23     3. An APRN in accordance with the limit established in 907 KAR 1:102;

1 4. A psychologist:

2 a. With a license in accordance with KRS 319.010(5);

3 b. With a doctorate degree in psychology;

4 c. Who is directly employed by a psychiatrist; and

5 d. If:

6 (i) The psychiatrist by whom the psychologist is directly employed also interacts with  
7 the recipient or recipients during the encounter; and

8 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
9 psychologist is directly employed;

10 5. A licensed professional clinical counselor:

11 a. Who is directly employed by a psychiatrist; and

12 b. If:

13 (i) The psychiatrist by whom the licensed professional clinical counselor is directly  
14 employed also interacts with the recipient or recipients during the encounter; and

15 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
16 licensed professional clinical counselor is directly employed;

17 6. A licensed clinical social worker:

18 a. Who is directly employed by a psychiatrist; and

19 b. If:

20 (i) The psychiatrist by whom the licensed clinical social worker is directly employed  
21 also interacts with the recipient or recipients during the encounter; and

22 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
23 licensed clinical social worker is directly employed; or

1 7. A licensed marriage and family therapist:  
2 a. Who is directly employed by a psychiatrist; and  
3 b. If:  
4 (i) The psychiatrist by whom the licensed marriage and family therapist is directly  
5 employed also interacts with the recipient or recipients during the encounter; and  
6 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
7 licensed **marriage and family therapist**[~~dietitian~~] is directly employed;  
8 (d) Pharmacologic management provided by:  
9 1. A physician in accordance with the limit established in 907 KAR 3:005;  
10 2. An APRN in accordance with the limit established in 907 KAR 1:102; or  
11 3. A psychiatrist;  
12 (e) A psychiatric, psychological, or mental health diagnostic interview examination  
13 provided by:  
14 1. A psychiatrist;  
15 2. A physician in accordance with the limit established in 907 KAR 3:005;  
16 3. An APRN in accordance with the limit established in 907 KAR 1:102;  
17 4. A psychologist:  
18 a. With a license in accordance with KRS 319.010(5);  
19 b. With a doctorate degree in psychology;  
20 c. Who is directly employed by a psychiatrist; and  
21 d. If:  
22 (i) The psychiatrist by whom the psychologist is directly employed also interacts with  
23 the recipient during the encounter; and

1 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
2 psychologist is directly employed;

3 5. A licensed professional clinical counselor:

4 a. Who is directly employed by a psychiatrist; and

5 b. If:

6 (i) The psychiatrist by whom the licensed professional clinical counselor is directly  
7 employed also interacts with the recipient during the encounter; and

8 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
9 licensed professional clinical counselor is directly employed;

10 6. A licensed clinical social worker:

11 a. Who is directly employed by a psychiatrist; and

12 b. If:

13 (i) The psychiatrist by whom the licensed clinical social worker is directly employed  
14 also interacts with the recipient during the encounter; and

15 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
16 licensed clinical social worker is directly employed; or

17 7. A licensed marriage and family therapist:

18 a. Who is directly employed by a psychiatrist; and

19 b. If:

20 (i) The psychiatrist by whom the licensed marriage and family therapist is directly  
21 employed also interacts with the recipient during the encounter; and

22 (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the  
23 licensed **marriage and family therapist**[**dietitian**] is directly employed;

1 (f) Individual medical nutrition therapy consultation services provided by a:

2 1. Licensed dietitian:

3 a. Who is directly employed by a physician, federally qualified health care center, ru-  
4 ral health clinic, primary care center, **a hospital's outpatient department**, or the De-  
5 partment for Public Health ; and

6 b. If the telehealth consultation is billed under the:

7 (i) NPI of the physician, federally qualified health care center, rural health clinic, **hos-**  
8 **pital's outpatient department**, or primary care center by whom the licensed dietitian is  
9 directly employed; or

10 (ii) Department for Public Health if the licensed dietitian works for the Department for  
11 Public Health;

12 2. Certified nutritionist:

13 a. Who is directly employed by a physician, federally qualified health care center, ru-  
14 ral health clinic, primary care center, **a hospital's outpatient department**, or the De-  
15 partment for Public Health ; and

16 b. If the telehealth consultation is billed under the:

17 (i) NPI of the physician, federally qualified health care center, rural health clinic, **hos-**  
18 **pital's outpatient department**, or primary care center by whom the licensed dietitian is  
19 directly employed; or

20 (ii) Department for Public Health if the certified nutritionist works for the Department  
21 for Public Health;

22 (g) Individual diabetes self management training consultation if:

23 1. Ordered by a:

- 1     a. Physician;
- 2     b. APRN directly employed by a physician;
- 3     c. Physician assistant directly employed by a physician;
- 4     2. Provided by a:
- 5     a. Physician;
- 6     b. APRN directly employed by a physician;
- 7     c. Physician assistant directly employed by a physician;
- 8     d. Registered nurse directly employed by a physician;
- 9     e. Licensed dietitian directly employed by a physician, federally qualified health care
- 10  center, rural health clinic, primary care center, **a hospital's outpatient department, or**
- 11  the Department for Public Health; and
- 12     3. The telehealth consultation is billed under the:
- 13     a. NPI of the physician, federally qualified health care center, rural health clinic, **hos-**
- 14  **pital's outpatient department,** or primary care center by whom the licensed dietitian is
- 15  directly employed; or
- 16     b. Department for Public Health if the certified nutritionist works for the Department
- 17  for Public Health;
- 18     (h) An occupational therapy evaluation or treatment provided by an occupational
- 19  therapist who is directly employed by a physician:
- 20     1. If direct physician contact occurs during the evaluation;
- 21     2. If the telehealth consultation is billed under the physician's NPI; and
- 22     3. In accordance with the limits established in 907 KAR 3:005;
- 23     (i) An occupational therapy evaluation or treatment provided by an occupational ther-

1 apist who is directly employed by **or is an agent of a nursing facility**[~~a hospital's~~  
2 **outpatient department**]:

3 1. If the telehealth consultation is billed under the **nursing facility's**[~~hospital's out-~~  
4 **patient department's**] NPI; and

5 2. In accordance with the limits established in **907 KAR 1:065**[~~907 KAR 10:014~~];

6 (j) An occupational therapy evaluation or treatment provided by an occupational ther-  
7 apist who is directly employed by **or is an agent of** a home health agency:

8 1. If the telehealth consultation is billed under the home health agency's NPI; and

9 2. In accordance with the limits established in 907 KAR 1:030;

10 (k) A physical therapy evaluation or treatment provided by a physical therapist who is  
11 directly employed by a physician:

12 1. If direct physician contact occurs during the evaluation;

13 2. If the telehealth consultation is billed under the physician's NPI; and

14 3. In accordance with the limits established in 907 KAR 3:005;

15 (l) A physical therapy evaluation or treatment provided by a physical therapist who is  
16 directly employed by **or is an agent of** a hospital's outpatient department:

17 1. If the telehealth consultation is billed under the hospital's outpatient department's  
18 NPI; and

19 2. In accordance with the limits established in 907 KAR 10:014;

20 (m) A physical therapy evaluation or treatment provided by a physical therapist who  
21 is directly employed by **or is an agent of** a home health agency:

22 1. If the telehealth consultation is billed under the home health agency's NPI; and

23 2. In accordance with the limits established in 907 KAR 1:030;

1 (n) A physical therapy evaluation or treatment provided by a physical therapist  
2 who is directly employed by or is an agent of a nursing facility:

3 1. If the Telehealth consultation is billed under the nursing facility's NPI; and

4 2. In accordance with the limits established in 907 KAR 1:065;

5 (o) A speech therapy evaluation or treatment provided by a speech-language  
6 pathologist who is directly employed by a physician:

7 1. If direct physician contact occurs during the evaluation or treatment;

8 2. If the telehealth consultation is billed under the physician's NPI; and

9 3. In accordance with the limits established in 907 KAR 3:005;

10 (p)(e) A speech therapy evaluation or treatment provided by a speech-language  
11 pathologist who is directly employed by or is an agent of a hospital's outpatient de-  
12 partment:

13 1. If the telehealth consultation is billed under the hospital's outpatient department's  
14 NPI; and

15 2. In accordance with the limits established in 907 KAR 10:014;

16 (q)(p) A speech therapy evaluation or treatment provided by a speech-language  
17 pathologist who is directly employed by or is an agent of a home health agency:

18 1. If the telehealth consultation is billed under the home health agency's NPI; and

19 2. In accordance with the limits established in 907 KAR 1:030;

20 (r) A speech therapy evaluation or treatment provided by a speech-language  
21 pathologist who is directly employed by or is an agent of a nursing facility:

22 1. If the telehealth consultation is billed under the nursing facility's NPI; and

23 2. In accordance with the limits established in 907 KAR 1:065;

1 ~~(s)~~~~(e)~~ A neurobehavioral status examination provided by:

2 1. A psychiatrist;

3 2. A physician in accordance with the limit established in 907 KAR 3:005; or

4 3. A psychologist:

5 a. With a license in accordance with KRS 319.010(5);

6 b. With a doctorate degree in psychology; and

7 c. Who is directly employed by a physician or a psychiatrist:

8 (i) In accordance with the limits established in 907 KAR 3:005;

9 (ii) If the physician or psychiatrist by whom the psychologist is directly employed also  
10 interacts with the recipient during the encounter; and

11 (iii) If the telehealth consultation is billed under the NPI of the physician or psychiatrist  
12 by whom the psychologist is directly employed; or

13 ~~(t)~~~~(r)~~ End-stage renal disease monitoring, assessment, and counseling consulta-  
14 tions for home dialysis recipients provided by:

15 1. A physician directly employed by a hospital's outpatient department if the tele-  
16 health consultation is billed under the hospital's outpatient department's NPI; or

17 2. An APRN directly employed by a hospital's outpatient department if the telehealth  
18 consultation is billed under the hospital's outpatient department's NPI.

19 Section 4. Telehealth Consultation Coverage in a Community Mental Health Center.

20 (1) The policies in this section of this administrative regulation shall apply to a tele-  
21 health consultation provided via a community mental health center.

22 (2) The limits, restrictions, exclusions, or policies:

23 (a) Which apply to a service provided face-to-face in a community mental health cen-

1 ter shall apply to a telehealth consultation or service provided via telehealth via a com-  
2 munity mental health center; and

3 (b) Established in 907 KAR 1:044 shall apply to a telehealth consultation or service  
4 provided via:

5 1. Telehealth; and

6 2. A community mental health center.

7 (3) The department shall not reimburse for a telehealth consultation provided via a  
8 community mental health center if:

9 (a) The consultation is not billed under the community mental health center's national  
10 provider identifier; or

11 (b) The person who delivers the telehealth consultation is not:

12 1. Directly employed by the community mental health center; or

13 **2. An agent of a community mental health center.**

14 (4) The following telehealth consultations provided via a community mental health  
15 center shall be covered by the department as follows:

16 (a) A psychiatric diagnostic interview examination provided:

17 1. In accordance with 907 KAR 1:044; and

18 2. By:

19 a. A psychiatrist; or

20 b. An APRN who:

21 (i) Is certified in the practice of psychiatric mental health nursing; and

22 (ii) Meets the requirements established in 201 KAR 20:057;

23 (b) A psychological diagnostic interview examination provided:

- 1 1. In accordance with 907 KAR 1:044; and
- 2 2. By:
- 3 a. A psychiatrist; or
- 4 b. A psychologist:
- 5 (i) With a license in accordance with KRS 319.010(5); and
- 6 (ii) With a doctorate degree in psychology; **[or]**
- 7 (c) Pharmacologic management provided:
- 8 1. In accordance with 907 KAR 1:044; and
- 9 2. By:
- 10 a. A physician;
- 11 b. A psychiatrist; or
- 12 c. An APRN who:
- 13 (i) Is certified in the practice of psychiatric mental health nursing; and
- 14 (ii) Meets the requirements established in 201 KAR 20:057;
- 15 **(d) Group psychotherapy provided:**
- 16 **1. In accordance with 907 KAR 1:044; and**
- 17 **2. By:**
- 18 **a. A psychiatrist;**
- 19 **b. A psychologist:**
- 20 **(i) With a license in accordance with KRS 319.010(5); and**
- 21 **(ii) With a doctorate degree in psychology;**
- 22 **c. A licensed professional clinical counselor;**
- 23 **d. A licensed marriage and family therapist;**

- 1 **e. A licensed clinical social worker;**
- 2 **f. A psychiatric registered nurse; or**
- 3 **g. An APRN who:**
  - 4 **(i) Is certified in the practice of psychiatric mental health nursing; and**
  - 5 **lii) Meets the requirements established in 201 KAR 20:057;**
- 6 **(e) Mental health evaluation and management emergency services provided:**
  - 7 **1. In accordance with 907 KAR 1:044; and**
  - 8 **2. By:**
    - 9 **a. A psychiatrist;**
    - 10 **b. A psychologist:**
      - 11 **(i) With a license in accordance with KRS 319.010(5); and**
      - 12 **(ii) With a doctorate degree in psychology;**
    - 13 **c. A licensed professional clinical counselor;**
    - 14 **d. A licensed marriage and family therapist;**
    - 15 **e. A licensed clinical social worker;**
    - 16 **f. A psychiatric medical resident;**
    - 17 **g. A psychiatric registered nurse; or**
    - 18 **h. An APRN who:**
      - 19 **(i) Is certified in the practice of psychiatric mental health nursing; and**
      - 20 **lii) Meets the requirements established in 201 KAR 20:057; or**
    - 21 **(f) A mental health assessment provided:**
      - 22 **1. In accordance with 907 KAR 1:044; and**
      - 23 **2. By a psychologist:**

1 **a. With a license in accordance with KRS 319.010(5); and**

2 **b. With a doctorate degree in psychology.**

3 ~~Section 5. [Telehealth Coverage For Telehealth Not Provided in a Community Mental~~  
4 ~~Health Center. (1) The department shall reimburse for the following telehealth consulta-~~  
5 ~~tions not provided via a community mental health center in accordance with the follow-~~  
6 ~~ing provisions:~~

7 ~~(a) Wound care with a CPT code of 97601 or 97602 provided by a physician or ad-~~  
8 ~~vanced registered nurse practitioner;~~

9 ~~(b) A service, provided by a physician, chiropractor, optometrist, or ARNP, which has~~  
10 ~~an evaluation and management code of 99201 through 99215;~~

11 ~~(c) A service, provided by a physician, chiropractor, or ARNP, with an evaluation and~~  
12 ~~management code of 99241 through 99255;~~

13 ~~(d) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through~~  
14 ~~90802 if provided by:~~

15 ~~1. A psychiatrist;~~

16 ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~  
17 ~~trist also interacts with the recipient during the encounter;~~

18 ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~  
19 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~  
20 ~~with the recipient during the encounter;~~

21 ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~  
22 ~~psychiatrist also interacts with the recipient during the encounter;~~

23 ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~

1 ~~psychiatrist also interacts with the recipient during the encounter;~~

2 ~~6. A physician; or~~

3 ~~7. An ARNP;~~

4 ~~(e) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if~~  
5 ~~provided by:~~

6 ~~1. A psychiatrist;~~

7 ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~  
8 ~~trist also interacts with the recipient during the encounter;~~

9 ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~  
10 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~  
11 ~~with the recipient during the encounter;~~

12 ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~  
13 ~~psychiatrist also interacts with the recipient during the encounter;~~

14 ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~  
15 ~~psychiatrist also interacts with the recipient during the encounter;~~

16 ~~6. A physician not to exceed four (4) encounters per recipient per year; or~~

17 ~~7. An ARNP not to exceed four (4) encounters per recipient per year;~~

18 ~~(f) Outpatient individual interactive psychotherapy with a CPT code of 90810 through~~  
19 ~~90815 if provided by:~~

20 ~~1. A psychiatrist;~~

21 ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~  
22 ~~trist also interacts with the recipient during the encounter;~~

23 ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~

1 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~  
2 ~~with the recipient during the encounter;~~

3 ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~  
4 ~~psychiatrist also interacts with the recipient during the encounter;~~

5 ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~  
6 ~~psychiatrist also interacts with the recipient during the encounter;~~

7 ~~6. A physician not to exceed four (4) encounters per recipient per year; or~~

8 ~~7. An ARNP not to exceed four (4) encounters per recipient per year;~~

9 ~~(g) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if~~  
10 ~~provided by:~~

11 ~~1. A psychiatrist;~~

12 ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~  
13 ~~trist also interacts with the recipient during the telehealth encounter;~~

14 ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~  
15 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~  
16 ~~with the recipient during the encounter;~~

17 ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~  
18 ~~psychiatrist also interacts with the recipient during the encounter;~~

19 ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~  
20 ~~psychiatrist also interacts with the recipient during the encounter;~~

21 ~~6. A physician not to exceed four (4) encounters per recipient per year; or~~

22 ~~7. An ARNP not to exceed four (4) encounters per recipient per year;~~

23 ~~(h) Inpatient individual interactive psychotherapy with a CPT code of 90823 through~~

1 ~~90829 if provided by:~~

2 ~~1. A psychiatrist;~~

3 ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~  
4 ~~trist also interacts with the recipient during the encounter;~~

5 ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~  
6 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~  
7 ~~with the recipient during the encounter;~~

8 ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~  
9 ~~psychiatrist also interacts with the recipient during the encounter;~~

10 ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~  
11 ~~psychiatrist also interacts with the recipient during the encounter;~~

12 ~~6. A physician not to exceed four (4) encounters per recipient per year; or~~

13 ~~7. An ARNP not to exceed four (4) encounters per recipient per year;~~

14 ~~(i) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:~~

15 ~~1. A psychiatrist;~~

16 ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~  
17 ~~trist also interacts with the recipient during the encounter;~~

18 ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~  
19 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~  
20 ~~with the recipient during the encounter;~~

21 ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~  
22 ~~psychiatrist also interacts with the recipient during the encounter;~~

23 ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~

1 ~~psychiatrist also interacts with the recipient during the encounter;~~

2     ~~6. A physician not to exceed four (4) encounters per recipient per year; or~~

3     ~~7. An ARNP not to exceed four (4) encounters per recipient per year;~~

4     ~~(j) Family therapy with a CPT code of 90847 if provided by:~~

5         ~~1. A psychiatrist;~~

6         ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~

7 ~~trist also interacts with the recipient during the encounter;~~

8         ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~

9 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~

10 ~~with the recipient during the encounter;~~

11         ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~

12 ~~psychiatrist also interacts with the recipient during the encounter;~~

13         ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~

14 ~~psychiatrist also interacts with the recipient during the encounter;~~

15     ~~6. A physician not to exceed four (4) encounters per recipient per year; or~~

16     ~~7. An ARNP not to exceed four (4) encounters per recipient per year;~~

17     ~~(k) Family or group psychotherapy with a CPT code of 90849 through 90857 if pro-~~

18 ~~vided by:~~

19         ~~1. A psychiatrist;~~

20         ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~

21 ~~trist also interacts with the recipient during the encounter;~~

22         ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~

23 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~

- 1 with the recipient during the encounter;
- 2 4. A licensed professional clinical counselor directly employed by a psychiatrist if the  
3 psychiatrist also interacts with the recipient during the encounter;
- 4 5. A licensed marriage and family therapist directly employed by a psychiatrist if the  
5 psychiatrist also interacts with the recipient during the encounter;
- 6 6. A physician not to exceed four (4) encounters per recipient per year; or
- 7 7. An ARNP not to exceed four (4) encounters per recipient per year;
- 8 (l) Psychiatric medication management with a CPT code of 90862 if provided by:
- 9 1. A psychiatrist;
- 10 2. A physician not to exceed four (4) encounters per recipient per year; or
- 11 3. An ARNP not to exceed four (4) encounters per recipient per year;
- 12 (m) Interpretation of data to family or others with a CPT code of 90887 if provided by:
- 13 1. A psychiatrist;
- 14 2. A physician not to exceed four (4) encounters per recipient per year; or
- 15 3. An ARNP not to exceed four (4) encounters per recipient per year;
- 16 (n) A dialysis related service with a CPT code of 90918 through 90925 if provided by  
17 a physician;
- 18 (o) Initial visit with a CPT code of 99304 through 99305 to a new or established pa-  
19 tient in a nursing home if provided by a physician or ARNP;
- 20 (p) Subsequent visit with a CPT code of 99308 through 99310 to a patient in a nurs-  
21 ing home if provided by a physician or ARNP;
- 22 (q) Discharge of a patient from a nursing home with a CPT code of 99315 if provided  
23 by a physician or ARNP;

- 1       ~~(r) Speech therapy evaluation with a CPT code of 92056 if provided by a speech-~~  
2 ~~language pathologist;~~
- 3       ~~(s) Speech therapy treatment with a CPT code of 92057 if provided by a speech-~~  
4 ~~language pathologist;~~
- 5       ~~(t) Occupational therapy with a CPT code of 97003 if provided by an occupational~~  
6 ~~therapist;~~
- 7       ~~(u) Physical therapy with a CPT code of 97001 if provided by a physical therapist;~~
- 8       ~~(v) Individual medical nutrition therapy with an HCPCS code of G0270 or a CPT code~~  
9 ~~of 97802 through 97804 if provided by a licensed dietitian or certified nutritionist;~~
- 10       ~~(w) End stage renal disease services with an HCPCS code of G0308, G0309, G0311,~~  
11 ~~G0314, G0315, G0317, or G0318 if provided by a physician or ARNP;~~
- 12       ~~(x) A neurobehavioral status exam with a CPT code of 96116 if provided by:~~
  - 13       ~~1. A psychiatrist;~~
  - 14       ~~2. A licensed clinical social worker directly employed by a psychiatrist if the psychia-~~  
15 ~~trist also interacts with the recipient during the encounter;~~
  - 16       ~~3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate~~  
17 ~~degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts~~  
18 ~~with the recipient during the encounter;~~
  - 19       ~~4. A licensed professional clinical counselor directly employed by a psychiatrist if the~~  
20 ~~psychiatrist also interacts with the recipient during the encounter;~~
  - 21       ~~5. A licensed marriage and family therapist directly employed by a psychiatrist if the~~  
22 ~~psychiatrist also interacts with the recipient during the encounter;~~
  - 23       ~~6. A physician not to exceed four (4) encounters per recipient per year; or~~

1 ~~7. An ARNP not to exceed four (4) encounters per recipient per year; or~~

2 ~~(y) Patient diabetes self-management education regarding diabetes care planning in-~~  
3 ~~cluding nutrition, exercise, medication, or blood glucose testing equipment:~~

4 ~~1. If ordered by the physician, advanced registered nurse practitioner, or physician~~  
5 ~~assistant who is managing the recipient's diabetic condition;~~

6 ~~2. If provided by a registered nurse or dietician; and~~

7 ~~3. With a corresponding:~~

8 ~~a. HCPCS code of G0108 or G0109; or~~

9 ~~b. CPT code of 97802.~~

10 ~~(2) The department shall not reimburse for a telehealth consultation if the consulta-~~  
11 ~~tion:~~

12 ~~(a) Is not medically necessary; or~~

13 ~~(b) Requires a face-to-face contact with a recipient in accordance with 42 C.F.R.~~  
14 ~~447.371.~~

15 ~~(3) A telehealth consultation shall require:~~

16 ~~(a) The use of two (2) way interactive video;~~

17 ~~(b) A referral by a health care provider;~~

18 ~~(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service~~  
19 ~~requires a KenPAC PCCM referral; and~~

20 ~~(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to~~  
21 ~~42 C.F.R. 431.54 and 907 KAR 1:677.~~

22 ~~Section 3. Coverage of Telehealth Provided by a Community Mental Health Center.~~

23 ~~(1) The department shall reimburse for the following telehealth consultation provided~~

1 ~~via a community mental health center in accordance with the following provisions:~~

2 ~~(a) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through~~

3 ~~90802 if provided by:~~

4 ~~1. A psychiatrist;~~

5 ~~2. A physician;~~

6 ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~

7 ~~4. A licensed marriage and family therapist;~~

8 ~~5. A licensed professional clinical counselor;~~

9 ~~6. A psychiatric medical resident;~~

10 ~~7. A psychiatric registered nurse;~~

11 ~~8. A licensed clinical social worker; or~~

12 ~~9. An advanced registered nurse practitioner;~~

13 ~~(b) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if~~

14 ~~provided by:~~

15 ~~1. A psychiatrist;~~

16 ~~2. A physician;~~

17 ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~

18 ~~4. A licensed marriage and family therapist;~~

19 ~~5. A licensed professional clinical counselor;~~

20 ~~6. A psychiatric medical resident;~~

21 ~~7. A psychiatric registered nurse;~~

22 ~~8. A licensed clinical social worker; or~~

23 ~~9. An advanced registered nurse practitioner;~~

1       ~~(c) Outpatient individual interactive psychotherapy with a CPT code of 90810 through~~  
2 ~~90815 if provided by:~~

3       ~~1. A psychiatrist;~~

4       ~~2. A physician;~~

5       ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~

6       ~~4. A licensed marriage and family therapist;~~

7       ~~5. A licensed professional clinical counselor;~~

8       ~~6. A psychiatric medical resident;~~

9       ~~7. A psychiatric registered nurse;~~

10      ~~8. A licensed clinical social worker; or~~

11      ~~9. An advanced registered nurse practitioner;~~

12      ~~(d) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if~~  
13 ~~provided by:~~

14      ~~1. A psychiatrist;~~

15      ~~2. A physician;~~

16      ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~

17      ~~4. A licensed marriage and family therapist;~~

18      ~~5. A licensed professional clinical counselor;~~

19      ~~6. A psychiatric medical resident;~~

20      ~~7. A psychiatric registered nurse;~~

21      ~~8. A licensed clinical social worker; or~~

22      ~~9. An advanced registered nurse practitioner;~~

23      ~~(e) Inpatient individual interactive psychotherapy with a CPT code of 90823 through~~

1 ~~90829 if provided by:~~

2 ~~1. A psychiatrist;~~

3 ~~2. A physician;~~

4 ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~

5 ~~4. A licensed marriage and family therapist;~~

6 ~~5. A licensed professional clinical counselor;~~

7 ~~6. A psychiatric medical resident;~~

8 ~~7. A psychiatric registered nurse;~~

9 ~~8. A licensed clinical social worker; or~~

10 ~~9. An advanced registered nurse practitioner;~~

11 ~~(f) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:~~

12 ~~1. A psychiatrist;~~

13 ~~2. A physician;~~

14 ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~

15 ~~4. A licensed marriage and family therapist;~~

16 ~~5. A licensed professional clinical counselor;~~

17 ~~6. A psychiatric medical resident;~~

18 ~~7. A psychiatric registered nurse;~~

19 ~~8. A licensed clinical social worker; or~~

20 ~~9. An advanced registered nurse practitioner;~~

21 ~~(g) Family therapy with a CPT code of 90847 if provided by:~~

22 ~~1. A psychiatrist;~~

23 ~~2. A physician;~~

- 1 ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~
- 2 ~~4. A licensed marriage and family therapist;~~
- 3 ~~5. A licensed professional clinical counselor;~~
- 4 ~~6. A psychiatric medical resident;~~
- 5 ~~7. A psychiatric registered nurse;~~
- 6 ~~8. A licensed clinical social worker; or~~
- 7 ~~9. An advanced registered nurse practitioner;~~
- 8 ~~(h) Family or group psychotherapy with a CPT code of 90849 through 90857 if pro-~~
- 9 ~~vided by:~~

- 10 ~~1. A psychiatrist;~~
- 11 ~~2. A physician;~~
- 12 ~~3. A psychologist with a license in accordance with KRS 319.010(5);~~
- 13 ~~4. A licensed marriage and family therapist;~~
- 14 ~~5. A licensed professional clinical counselor;~~
- 15 ~~6. A psychiatric medical resident;~~
- 16 ~~7. A psychiatric registered nurse;~~
- 17 ~~8. A licensed clinical social worker; or~~
- 18 ~~9. An advanced registered nurse practitioner;~~

- 19 ~~(i) Psychiatric medication management with a CPT code of 90862 if provided by:~~
- 20 ~~1. A psychiatrist;~~
- 21 ~~2. A physician;~~
- 22 ~~3. A psychiatric medical resident; or~~
- 23 ~~4. An ARNP;~~

1 ~~(j) Interpretation of data to family or others with a CPT code of 90887 if provided by:~~

2 ~~1. A psychiatrist;~~

3 ~~2. A physician; or~~

4 ~~3. An ARNP; or~~

5 ~~(k) A neurobehavioral status exam with a CPT code of 96116 if provided by:~~

6 ~~1. A psychiatrist; or~~

7 ~~2. A psychologist with a license in accordance with KRS 319.010(5).~~

8 ~~(2) The department shall not reimburse for a telehealth consultation if the consulta-~~  
9 ~~tion:~~

10 ~~(a) Is not medically necessary; or~~

11 ~~(b) Requires a face-to-face contact with a recipient in accordance with 42 C.F.R.~~  
12 ~~447.371.~~

13 ~~(3) A telehealth consultation shall require:~~

14 ~~(a) The use of two (2) way interactive video;~~

15 ~~(b) A referral by a health care provider;~~

16 ~~(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service~~  
17 ~~requires a KenPAC PCCM referral; and~~

18 ~~(d) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to~~  
19 ~~42 C.F.R. 431.54 and 907 KAR 1:677.~~

20 Section 4.] Reimbursement. (1)**(a)** The department shall reimburse a telehealth pro-  
21 vider **who is eligible for reimbursement from the department, is currently enrolled**  
22 **as a provider in accordance with 907 KAR 1:672, and currently participating in the**  
23 **Medicaid program in accordance with 907 KAR 1:671** for a telehealth consultation:

1 **1.[(a)]** Except for a telehealth consultation provided by an APRN[ARNP] or CMHC,  
2 an amount equal to the amount paid for a comparable in-person service in accordance  
3 with 907 KAR 3:010;

4 **2.[(b)]** If a CMHC, in accordance with 907 KAR 1:045; or

5 **3.[(c)]** If provided by an APRN[ARNP], an amount equal to the amount paid for a  
6 comparable in person service in accordance with 907 KAR 1:104.

7 **(b)1. Reimbursement for a Telehealth consultation provided by a practitioner**  
8 **who is employed by a provider or is an agent of a provider shall be a matter be-**  
9 **tween the provider and the practitioner.**

10 **2. The department shall not be liable for reimbursing a practitioner who is em-**  
11 **ployed by a provider or is an agent of a provider.**

12 **(c) A managed care organization shall not be required to reimburse the same**  
13 **amount for a telehealth consultation as the department reimburses, but shall be**  
14 **authorized to reimburse the same amount as the department reimburses if the**  
15 **managed care organization chooses to do so.**

16 (2) A telehealth provider shall bill for a telehealth consultation using the appropriate  
17 ~~[evaluation and management CPT or HCPCS codes as specified in Section 2 or 3 of this~~  
18 ~~administrative regulation along with the corresponding]~~two (2) letter "GT" modifier.

19 (3) The department shall not require the presence of a health care provider request-  
20 ing a telehealth consultation at the time of the telehealth consultation unless it is re-  
21 quested by a telehealth provider at the hub site.

22 (4) The department shall not reimburse for transmission costs.

23 Section 6.[5.] Confidentiality and Data Integrity. (1) A telehealth consultation shall be

1 performed on a secure telecommunications line or utilize a method of encryption ade-  
2 quate to protect the confidentiality and integrity of the telehealth consultation infor-  
3 mation.

4 (2) Both a hub site and a spoke site shall use authentication and identification to en-  
5 sure the confidentiality of a telehealth consultation.

6 (3) A provider of a telehealth consultation shall implement confidentiality protocols  
7 that include:

8 (a) Identifying personnel who have access to a telehealth transmission;

9 (b) Usage of unique passwords or identifiers for each employee or person with ac-  
10 cess to a telehealth transmission; and

11 (c) Preventing unauthorized access to a telehealth transmission.

12 (4) A provider's protocols and guidelines shall be available for inspection by the de-  
13 partment upon request.

14 Section 7.~~[6.]~~ Informed Consent. (1) Before providing a telehealth consultation to a  
15 recipient, a health care provider shall document written informed consent from the recip-  
16 ient and shall ensure that the following written information is provided to the recipient in  
17 a format and manner that the recipient is able to understand:

18 (a) The recipient shall have the option to refuse the telehealth consultation at any  
19 time without affecting the right to future care or treatment and without risking the loss or  
20 withdrawal of a Medicaid benefit to which the recipient is entitled;

21 (b) The recipient shall be informed of alternatives to the telehealth consultation that  
22 are available to the recipient;

23 (c) The recipient shall have access to medical information resulting from the tele-

1 health consultation as provided by law;

2 (d) The dissemination, storage, or retention of an identifiable recipient image or other  
3 information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq.,  
4 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or  
5 regulation or state law establishing individual health care data confidentiality poli-  
6 cies~~[provisions]~~;

7 (e) The recipient shall have the right to be informed of the parties who will be present  
8 at the spoke site and the hub site during the telehealth consultation and shall have the  
9 right to exclude anyone from either site; and

10 (f) The recipient shall have the right to object to the video taping of a telehealth con-  
11 sultation.

12 (2) A copy of the signed informed consent shall be retained in the recipient's medical  
13 record and provided to the recipient or the recipient's legally-authorized representative  
14 upon request.

15 (3) The requirement to obtain informed consent before providing a telehealth consul-  
16 tation shall not apply to an emergency situation if the recipient is unable to provide in-  
17 formed consent and the recipient's legally-authorized representative is unavailable.

18 Section 8~~[7]~~ Medical Records. (1) A request for a telehealth consultation from a  
19 health care provider and the medical necessity for the telehealth consultation shall be  
20 documented in the recipient's medical record.

21 (2) A health care provider shall keep a complete medical record of a telehealth con-  
22 sultation provided to a recipient and follow applicable state and federal statutes and  
23 regulations for medical recordkeeping and confidentiality in accordance with KRS

1 194A.060, 422.317, 434.840 - 434.860, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R.  
2 164.530(j).

3 (3)(a) A medical record of a telehealth consultation shall be maintained in compliance  
4 with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

5 **(b) A health care provider shall have the capability of generating a hard copy of**  
6 **a medical record of a telehealth consultation.**

7 (4) Documentation of a telehealth consultation by the referring health care provider  
8 shall be included in the recipient's medical record and shall include:

9 (a) The diagnosis and treatment plan resulting from the telehealth consultation and a  
10 progress note by the referring health care provider if present at the spoke site during the  
11 telehealth consultation;

12 (b) The location of the hub site and spoke site;

13 (c) A copy of the signed informed consent form; [~~and~~]

14 (d) Documentation supporting the medical necessity of the telehealth consultation;

15 and

16 (e) The referral order and complete information from the referring health care provid-  
17 er who requested the telehealth consultation for the recipient.

18 (5)(a) A telehealth provider's diagnosis and recommendations resulting from a tele-  
19 health consultation shall be documented in the recipient's medical record at the office of  
20 the health care provider who requested the telehealth consultation.

21 (b) **Except as established in paragraph (c) of this subsection,** a telehealth pro-  
22 vider shall send a written report regarding a telehealth consultation within thirty (30)  
23 days of the consultation to the referring health care provider.

1 **(c) If a community mental health center was the referring health care provider**  
2 **and the provider of the Telehealth consultation for a recipient, the requirement in**  
3 **paragraph (b) of this subsection shall not apply.**

4 Section 9.[8.] Federal Financial Participation. A policy established in this administra-  
5 tive regulation shall be null and void if the Centers for Medicare and Medicaid Services:

6 (1) Denies federal financial participation for the policy; or

7 (2) Disapproves the policy~~[provision established in this administrative regulation shall~~  
8 ~~be effective contingent upon the department's receipt of federal financial participation~~  
9 ~~for the respective provision].~~

10 Section 10.[9.] Appeal Rights. (1) An appeal of a department determination regarding  
11 a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

12 (2) An appeal of a department determination regarding Medicaid eligibility of an indi-  
13 vidual shall be in accordance with 907 KAR 1:560.

14 (3) A provider may appeal a department-written determination as to the application of  
15 this administrative regulation in accordance with 907 KAR 1:671. (28 Ky.R. 150; Am.  
16 1430; eff. 12-19-2001; 30 Ky.R. 1861; 2055; eff. 3-18-2004; 32 Ky.R. 1934; 2279; eff. 7-  
17 7-2006; 35 Ky.R. 1923; 2456; 2757; eff. 7-6-2009.)

907 KAR 3:170

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lawrence Kissner, Commissioner  
Department for Medicaid Services

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Audrey Tayse Hanes, Secretary  
Cabinet for Health and Family Services

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:170  
Cabinet for Health and Family Services  
Department for Medicaid Services  
Agency Contact Person: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to telehealth. The coverage policies in this administrative regulation shall apply to a managed care organization's (MCO's) coverage of Medicaid services for individuals enrolled in the MCO for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. An MCO shall not be required to reimburse pursuant to this administrative regulation, but shall be authorized to do so if it chooses.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS telehealth policies.
  - (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 DMS telehealth policies.
  
- (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: The amendment makes the administrative regulation consistent with policies approved by the Centers for Medicare and Medicaid Services (CMS) in order to ensure federal funding for the policies. The amendments include paring the telehealth service categories and clarifying provider and practitioner types authorized to perform telehealth services. The amendment after comments clarifies that Telehealth practitioners in the community mental health center (CMHC) realm may be agents of a CMHC rather than directly employed by the CMHC; clarifies the process of becoming a member of the Kentucky Telehealth Network; clarifies that DMS won't reimburse for (or may recoup reimbursement for) a Telehealth consultation if it is not medically necessary or does not comply with applicable state or federal law; authorizes individual medical nutrition therapy and diabetes self-management Telehealth consultations in hospital outpatient department's; authorizes occupational therapy, physical therapy, and speech therapy Telehealth consultations for nursing facility resident and clarifies that occupational therapists, physical therapists, and speech language pathologists can be agents (in addition to employees) of certain providers; clari-

fies that Telehealth practitioners in community mental health centers may be agents (in addition to employees) of community mental health centers; authorizes group psychotherapy, mental health evaluation and management emergency services, and mental health assessments as Telehealth consultations in community mental health centers; clarifies that managed care organizations are not required to reimburse the same amount as DMS does for Telehealth consultations; clarify that providers must be able to generate a copy of a medical record; and correct a couple of typographical errors.

- (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with policies approved by CMS (for federal funding.) The amendment after comments is necessary to clarify policy; to authorize additional Telehealth consultations which are authorized by the Centers for Medicare and Medicaid Services); and to enhance recipient access to care.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by conforming the administrative regulation's policies to those approved by CMS; thus, ensuring federal funding for the policies. The amendment after comments conforms to the content of the authorizing statutes by clarifying policy and enhancing recipient access to care within the parameters approved by the Centers for Medicare and Medicaid Services.
  - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by conforming the administrative regulation's policies to those approved by CMS; thus, ensuring federal funding for the policies. The amendment after comments conforms to the content of the authorizing statutes by clarifying policy and enhancing recipient access to care within the parameters approved by the Centers for Medicare and Medicaid Services.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are fifty-nine (59) telehealth sites in the Kentucky telehealth network. The provider network is primarily comprised of hospitals/medical centers but also includes health departments and physicians' offices among others.
- (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 question (3) will have to take to comply with this administrative regulation or amendment: To be reimbursed for a telehealth consultation, a provider will have to comply with the policies and requirements established in this administrative regulation. Participation is optional, not mandatory.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities regulated by the administrative regulation as participation is optional.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth consultations in compliance with this administrative regulation will be reimbursed for services rendered.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS anticipates that the amendment will be budget neutral. For information purposes, in state fiscal year (SFY) 2011 (July 1, 2010 through June 30, 2011), DMS paid \$345,221.13 in claims for services provided via telehealth. In SFY 2012 DMS's payment for claims dropped as expected due to the implementation of managed care. In SFY DMS paid \$149,190.18 in claims for services provided via telehealth. For the period spanning November 1, 2011 through June 30, 2012 (DMS implemented managed care on November 1, 2011), DMS's managed care organizations paid \$170,547.65 in claims for services provided via telehealth.
- (b) On a continuing basis: DMS anticipates that the amendment will be budget neutral.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (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: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Limits imposed on given services and providers vary in order to mirror the same limits imposed on providers and services when provided in a face-to-face setting. This is necessary to ensure that telehealth coverage does not exceed what the Medicaid program covers in a face-to-face setting.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 3:170

Contact Person: Stuart Owen (502) 564-4321

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) will be impacted by the amendment.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520, 205.559
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? The amendment is not expected to generate revenue for state or local government.
  - (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? The amendment is not expected to generate revenue for state or local government.
  - (c) How much will it cost to administer this program for the first year? DMS anticipates that the amendment will be budget neutral. For information purposes, in state fiscal year (SFY) 2011 (July 1, 2010 through June 30, 2011), DMS paid \$345,221.13 in claims for services provided via telehealth. In SFY 2012 DMS's payment for claims dropped as expected due to the implementation of managed care. In SFY DMS paid \$149,190.18 in claims for services provided via telehealth. For the period spanning November 1, 2011 through June 30, 2012 (DMS implemented managed care on November 1, 2011), DMS's managed care organizations paid \$170,547.65 in claims for services provided via telehealth.
  - (d) How much will it cost to administer this program for subsequent years? DMS expects that the amendment will be budget neutral.

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: