CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)


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

205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth services[consultations] and reimbursement. This administrative regulation establishes the Department for Medicaid Services’ coverage and reimbursement policies relating to telehealth services[consultations] in accordance with KRS 205.559.

Section 1. Definitions. (1) “Asynchronous telehealth” means a store and forward telehealth
service that is electronically mediated.

(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

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

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

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

(5) "Department" means the Department for Medicaid Services or its designated agent.

(6) "Diabetes self-management training consultation" means the ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes self-care.

(7) "Direct-physician-contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(8) "Encounter" means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a telehealth consultation in real-time, during the visit, from a telehealth provider or telehealth practitioner at a telehealth hub site.

(9) "Face-to-face" means[, except as established in Section 4(4)(g) of this administrative regulation]:

(a) In person; and

(b) Not via telehealth.

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

(11) "GT-modifier" means a modifier that identifies a telehealth consultation which is approved by the healthcare common procedure coding system (HCPCS).

(12) "Health care provider" means a Medicaid provider who is:
(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671.

(13) "Hub site" means a telehealth site;
(a) Where the telehealth provider or telehealth practitioner performs telehealth; and
(b) That is considered the place of service.

(14) "Legally-authorized representative" means a Medicaid recipient’s parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

(15) "Licensed clinical social worker" means an individual meeting the licensure requirements established in KRS 335.100.

(16) "Licensed dietitian" is defined by KRS 310.005(11).

(17) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(18) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(19) "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130 or pursuant to the process established by KRS 304.38-240.

(6)(5) "Place of service" means anywhere the patient is located at the time a telehealth service is provided, and includes telehealth services provided to a patient located at the patient’s home or office, or a clinic, school, or workplace.

(7) "Synchronous telehealth" means a telehealth service that simulates a face-to-face encounter via real-time interactive audio and video technology between a telehealth care provider and a Medicaid recipient.

(8)(6) "Telehealth" is defined by KRS 205.510(15).

(9)(7) "Telehealth care provider" means a Medicaid provider who is:
(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672;
(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671;
(c) Operating within the scope of the provider’s professional licensure; and
(d) Operating within the provider’s scope of practice.

(10) [48] “Telehealth service” means any service that is provided by telehealth and is one (1) of the following:

(a) Event;
(b) Encounter;
(c) Consultation, including a telehealth consultation as defined by KRS 205.510(16);
(d) Visit;
(e) Store and forward transfer, as limited by Section 4 of this administrative regulation [for radiology services only];
(f) Remote patient monitoring, as limited by Section 4 of this administrative regulation;
(g) Referral; or
(h) Treatment.

[(20) “National Provider Identifier” or “NPI” means a standard unique health identifier for health care providers which:

(a) Is required by 42 C.F.R. 455.440; and
(b) Meets the requirements of 45 C.F.R. 162.406.

(21) “Occupational therapist” is defined by KRS 319A.010(3).

(22) “Optometrist” means an individual licensed to engage in the practice of optometry in accordance with KRS 320.210(2).

(23) “Physical therapist” is defined by KRS 327.010(2).]
(24) "Physician" is defined by KRS 311.550(12).
(25) "Physician assistant" is defined by KRS 311.840(3).
(26) "Psychologist" is defined by KRS 319.010(9).
(27) "Registered nurse" is defined by KRS 314.011(5).
(28) "Speech-language pathologist" is defined by KRS 334A.020(3).
(29) "Spoke site" means a telehealth site where the recipient receiving the telehealth consultation is located.
(30) "Telehealth consultation" is defined by KRS 205.510(15).
(31) "Telehealth practitioner" means an individual who is:
(a) Authorized to perform a telehealth consultation in accordance with this administrative regulation;
(b) Employed by or is an agent of a telehealth provider; and
(c) Not the individual or entity who:
1. Bills the department for a telehealth consultation; or
2. Is reimbursed by the department for a telehealth consultation.
(32) "Telehealth provider" means a health-care provider who:
(a) Performs a telehealth consultation at a hub site; or
(b) Is the employer of or entity that contracts with a telehealth practitioner who performs a telehealth consultation:
1. At a hub site; and
2. That is billed under the telehealth provider's national provider identifier.
(33) "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 194A.125.
(34) "Telepresenter" means an individual operating telehealth equipment at a spoke-site to enable a recipient to receive a telehealth consultation.

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

(36) "Two-(2)-way interactive video" means a type of advanced telecommunications technology that permits a real-time telehealth consultation to take place between a recipient and a telepresenter at the spoke-site and a telehealth provider or telehealth practitioner at the hub-site.

Section 2. General Policies. (1)(a) Except as provided in paragraph (b) of this subsection, the coverage policies established in this administrative regulation shall apply to:

1. Medicaid services for individuals not enrolled in a managed care organization; and

2. A managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services.

(b) A managed care organization shall not be required to reimburse the same amount for a telehealth service as the department reimburses unless a different payment rate is negotiated in accordance with Section 3(1)(a)2. of this administrative regulation, but may reimburse the same as the department reimburses if the managed care organization chooses to do so.

(2) A telehealth service shall not be reimbursed by the department if:

(a) It is not medically necessary;

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

or

(c) [It requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371];

(d) The telehealth care provider of the telehealth service is:
1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;
2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;
3. Not in good standing with the Medicaid program;
4. Currently listed on the Kentucky DMS Provider Terminated and Excluded Provider List [of
Excluded Providers], which is available at https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/termi-
nated.aspx[http://chfs.ky.gov/dms/provEnr]; or
5. Currently listed on the United States Department of Health and Human Services, Office of
Inspector General List of Excluded Individuals and Entities, which is available at
https://oig.hhs.gov/exclusions/[±or
(e) It is provided by a telehealth practitioner or telehealth provider not recognized or authorized
by the department to provide the telehealth consultation or equivalent service in a face-to-face
setting].
(3)(a) [A telehealth provider shall:
1. Be an approved member of the Kentucky Telehealth Network; and
2. Comply with the standards and protocols established by the Kentucky Telehealth Board.
(b) To become an approved member of the Kentucky Telehealth Network, a provider shall:
1. Send a written request to the Kentucky Telehealth Board requesting membership in the Ken-
tucky Telehealth Network; and
2. Be approved by the Kentucky Telehealth Board as a member of the Kentucky Telehealth
Network.
(4)(a) A telehealth consultation referenced in Section 3 or 4 of this administrative regulation
shall be provided to the same extent and with the same coverage policies and restrictions that
apply, except as established in Section 4(4)(g) and 4(5) of this administrative regulation to the
equivalent service if provided in a face-to-face setting.

(b) If a telehealth coverage policy or restriction is not stated in this administrative regulation but is stated in another administrative regulation within Title 907 of the Kentucky Administrative Regulations, the coverage policy or restriction stated elsewhere within Title 907 of the Kentucky Administrative Regulations shall apply.

(5)(a) A telehealth service[consultation] shall be subject to utilization review for:

1. Medical necessity;
2. Compliance with this administrative regulation; and
3. Compliance with applicable state and federal law.

(b) The department shall not reimburse for a telehealth service if the department determines that a telehealth service[consultation] is not:

1. [Not] Medically necessary;[is-not]
2. Compliant with this administrative regulation;
3. Applicable to this administrative regulation;[is] or [is-not]
4. Compliant with applicable state or federal law[the department shall not reimburse for the telehealth consultation].

(c) The department shall recoup the reimbursement for a previously reimbursed telehealth service if the department determines that a telehealth service[consultation that it has already reimbursed for] was not:

1. Medically necessary;[was-not]
2. Compliant with this administrative regulation;
3. Applicable to this administrative regulation;[is] or [was not]
4. Compliant with applicable state or federal law[; the department shall recoup the reimbursement for the telehealth consultation from the provider].

(4) A telehealth service shall have the same referral requirements as a face-to-face service.

(5) Within forty-eight (48) hours of the reconciliation of the record of the telehealth service, a provider shall document within the patient’s medical record that a service was provided via telehealth, and follow all documentation requirements established by Section 5[4] of this administrative regulation.

[(6) A telehealth consultation shall require:

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

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

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

1. 42 C.F.R. 431.54; and

2. 907 KAR 1:677.]

Section 3. Telehealth Reimbursement. (1)(a)1. The department shall reimburse an eligible telehealth care provider for a telehealth service in an amount that is at least 100 percent of the amount paid for a comparable in-person service.

2. A managed care organization and provider may establish a different rate for telehealth reimbursement via contract as allowed pursuant to KRS 205.5591(5).

(b) A telehealth service reimbursed pursuant to this section shall be subject to cost-sharing pursuant to 907 KAR 1:604.

(2) A provider shall appropriately denote telehealth services by place of service[; modifiers,] or other means as designated by the department or as required in a managed care organization’s
contract with the provider or member.[Consultation-Coverage in a Setting That is Not a Community Mental Health Center.](1) The policies in this section shall apply to a telehealth consultation provided in a setting that is not a community mental health center.

(2) The following telehealth consultations shall be covered by the department as follows:

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

1. A physician including a physician:

a. With an individual physician practice;

b. Who belongs to a group physician practice; or

c. Who is employed by a federally qualified health center, federally qualified health center look-alike, rural health clinic, or primary care center;

2. An advanced practice registered nurse including an advanced practice registered nurse:

a. With an individual advanced practice registered nurse practice;

b. Who belongs to a group advanced practice registered nurse practice; or

c. Who is employed by a physician, federally qualified health center, federally qualified health center look-alike, rural health clinic, or primary care center;

3. An optometrist; or

4. A chiropractor;

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

1. A psychiatrist;

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

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

4. A psychologist:

a. With a license in accordance with KRS 319.010(6);
b. With a doctorate degree in psychology;
e. Who is directly employed by a psychiatrist; and
d. If:
   (i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and
   (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;

5. A licensed professional clinical counselor:
a. Who is directly employed by a psychiatrist; and
b. If:
   (i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and
   (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker:
a. Who is directly employed by a psychiatrist; and
b. If:
   (i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and
   (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:
a. Who is directly employed by a psychiatrist; and
b. If:

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

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

c. Individual or group psychotherapy provided by:

1. A psychiatrist;

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

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

4. A psychologist:

a. With a license in accordance with KRS 319.010(6);

b. With a doctorate degree in psychology;

c. Who is directly employed by a psychiatrist; and

d. If:

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

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

5. A licensed professional clinical counselor:

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient or recipients during the encounter; and
(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;

6. A licensed clinical social worker:
   a. Who is directly employed by a psychiatrist; and
   b. If:
      (i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient or recipients during the encounter; and
      (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:
   a. Who is directly employed by a psychiatrist; and
   b. If:
      (i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient or recipients during the encounter; and
      (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

(d) Pharmacologic management provided by:
   1. A physician in accordance with the limit established in 907-KAR 3:005;
   2. An APRN in accordance with the limit established in 907-KAR 1:102; or
   3. A psychiatrist;

(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:
   1. A psychiatrist;
2. A physician in accordance with the limit established in 907 KAR 3:005;
3. An APRN in accordance with the limit established in 907 KAR 1:102;
4. A psychologist:
   a. With a license in accordance with KRS 319.010(6);
   b. With a doctorate degree in psychology;
   c. Who is directly employed by a psychiatrist; and
   d. If:
      (i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and
      (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;
5. A licensed professional clinical counselor:
   a. Who is directly employed by a psychiatrist; and
   b. If:
      (i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and
      (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed professional clinical counselor is directly employed;
6. A licensed clinical social worker:
   a. Who is directly employed by a psychiatrist; and
   b. If:
      (i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and
(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or

7. A licensed marriage and family therapist:
   a. Who is directly employed by a psychiatrist; and
   b. If:
      (i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and
      (ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;
   (f) Individual medical nutrition therapy consultation services provided by a:
      1. Licensed dietitian:
         a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital’s outpatient department, or the Department for Public Health; and
         b. If the telehealth consultation is billed under the:
            (i) NPI of the physician, federally qualified health care center, rural health clinic, hospital’s outpatient department, or primary care center by whom the licensed dietitian is directly employed; or
            (ii) Department for Public Health if the licensed dietitian works for the Department for Public Health; or
      2. Certified nutritionist:
         a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital’s outpatient department, or the Department for Public Health;
and

b. If the telehealth consultation is billed under the:

(i) NPI of the physician, federally-qualified health care center, rural health clinic, hospital’s outpatient department, or primary care center by whom the certified nutritionist is directly employed; or

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

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

1. Ordered by a:

a. Physician;

b. APRN directly employed by a physician; or

c. Physician assistant directly employed by a physician;

2. Provided by a:

a. Physician;

b. APRN directly employed by a physician;

c. Physician assistant directly employed by a physician;

d. Registered nurse directly employed by a physician; or

e. Licensed dietitian directly employed by a physician, federally-qualified health care center, rural health clinic, primary care center, a hospital’s outpatient department, or the Department for Public Health; and

3. The telehealth consultation is billed under the:

a. NPI of the physician, federally-qualified health care center, rural health clinic, hospital’s outpatient department, or primary care center by whom the provider is directly employed; or
b. Department for Public Health if the provider works for the Department for Public Health;

(h) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a physician:

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

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

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

(i) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a nursing facility:

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

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

(j) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a home health agency:

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

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

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

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

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

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

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

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

2. In accordance with the limits established in 907 KAR 10:014;
(m) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a home health agency:

1. If the telehealth consultation is billed under the home health agency's NPI; and
2. In accordance with the limits established in 907-KAR 1:030;

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

1. If the telehealth consultation is billed under the nursing facility's NPI; and
2. In accordance with the limits established in 907-KAR 1:065;

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

1. If direct-physician contact occurs during the evaluation or treatment;
2. If the telehealth consultation is billed under the physician's NPI; and
3. In accordance with the limits established in 907-KAR 3:005;

(p) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a hospital's outpatient department:

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and
2. In accordance with the limits established in 907-KAR 10:014;

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

1. If the telehealth consultation is billed under the home health agency's NPI; and
2. In accordance with the limits established in 907-KAR 1:030;

(r) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a nursing facility:
1. If the telehealth consultation is billed under the nursing facility's NPI; and

2. In accordance with the limits established in 907 KAR 3:005; (s) A neurobehavioral status examination provided by:

1. A psychiatrist;

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

3. A psychologist:

   a. With a license in accordance with KRS 319.010(6);

   b. With a doctorate degree in psychology; and

   e. Who is directly employed by a physician or a psychiatrist:

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

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

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

   (t) End-stage renal disease monitoring, assessment, or counseling consultations for a home dialysis recipient provided by:

   1. A physician directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI; or

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

Section 4. Telehealth Consultation Coverage in a Community Mental Health Center. (1) The policies in this section shall apply to a tele-health consultation provided via a community mental health center.
(2) The limits, restrictions, exclusions, or policies:

(a) Which apply to a service provided face-to-face in a community mental health center shall apply to a telehealth consultation or service provided via telehealth via a community mental health center; and

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

1. Telehealth; and

2. A community mental health center.

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

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

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

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

2. An agent of the community mental health center;

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

(a) A psychiatric diagnostic interview examination provided:

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

2. By:

a. A psychiatrist; or

b. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and
(ii) Meets the requirements established in KAR 20: 057;

(b) A psychological-diagnostic interview examination provided:

1. In accordance with KAR 4: 044; and

2. By:

a. A psychiatrist; or

b. A psychologist with a license in accordance with KRS 319.010(6);

c. Pharmacologic management provided:

1. In accordance with KAR 4: 044; and

2. By:

a. A physician;

b. A psychiatrist; or

c. An APRN who:

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

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

d. Group psychotherapy provided:

1. In accordance with KAR 4: 044; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or
g. An APRN who:

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

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

(e) Mental health evaluation or management emergency services provided:

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

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric medical resident;

g. A psychiatric registered nurse; or

h. An APRN who:

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

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

(f) A mental health assessment provided:

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

2. By a psychologist with a license in accordance with KRS 319.010(6); or

(g) Individual psychotherapy provided:

1. In accordance with 907 KAR 1:044 except that "face-to-face" shall include two (2) way interactive video for the purposes of individual psychotherapy provided via a community mental health center; and
2. By:
   a. A psychiatrist;
   b. A psychologist with a license in accordance with KRS 319.010(6);
   c. A licensed professional clinical counselor;
   d. A licensed marriage and family therapist;
   e. A licensed clinical social worker;
   f. A psychiatric registered nurse; or
   g. An APRN who:
      (i) Is certified in the practice of psychiatric mental health nursing; and
      (ii) Meets the requirements established in 201 KAR 20:057.

   (5) If a provision established in 907 KAR 1:044 or the material incorporated by reference into
   907 KAR 1:044 is in contrast with subsection (4)(g)1. of this section, the policy established in
   subsection (4)(g)1. of this section shall supersede the contrary statement.

   Section 5. Reimbursement. (1)(a) The department shall reimburse a telehealth provider who is
   eligible for reimbursement from the department for a telehealth consultation an amount equal to
   the amount paid for a comparable in-person service in accordance with:

   1. 907 KAR 3:010 if the service was provided:
       a. By a physician; and
       b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;

   2. 907 KAR 1:104 if the service was provided:
       a. By an advanced practice registered nurse; and
       b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;

   3. 907 KAR 1:055 if the service was provided and billed through a federally qualified health
center, federally-qualified health center look-alike, rural health clinic, or primary care center;

4. 907 KAR 10:015 if the service was provided and billed through a hospital outpatient depart-

ment;

5. 907 KAR 10:031 if the service was provided and billed through a home health agency; or

6. 907 KAR 10:065 if the service was provided and billed through a nursing facility.

(b)1. Reimbursement for a telehealth consultation provided by a practitioner who is employed

by a provider or is an agent of a provider shall be a matter between the provider and the practitioner.

2. The department shall not be liable for reimbursing a practitioner who is employed by a pro-

vider or is an agent of a provider.

(c) A managed care organization shall not be required to reimburse the same amount for a tele-

health consultation as the department reimburses, but may reimburse the same amount as the de-

partment reimburses if the managed care organization chooses to do so.

(2) A telehealth provider shall bill for a telehealth consultation using the appropriate two-

letter “GT” modifier.

(3) The department shall not require the presence of a health care provider requesting a tele-

health consultation at the time of the telehealth consultation unless it is requested by a telehealth

provider or telehealth practitioner at the hub-site.

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

Section 6. Confidentiality and Data Integrity. (1) A telehealth consultation shall be performed

on a secure telecommunications line or utilize a method of encryption adequate to protect the con-

fidentiality and integrity of the telehealth consultation information.

(2) Both a hub-site and a spoke-site shall use authentication and identification to ensure the

confidentiality of a telehealth consultation.
(3) A telehealth provider or telehealth practitioner of a telehealth consultation shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;
(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and
(c) Preventing unauthorized access to a telehealth transmission;
(4) A telehealth provider's or telehealth practitioner's protocols and guidelines shall be available for inspection by the department upon request.

Section 7. Informed Consent: (1) Before providing a telehealth consultation to a recipient, a telehealth provider or telehealth practitioner shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth consultation at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;
(b) The recipient shall be informed of alternatives to the telehealth consultation that are available to the recipient;
(c) The recipient shall have access to medical information resulting from the telehealth consultation as provided by law;
(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality policies;
(e) The recipient shall have the right to be informed of the parties who will be present at the site and the hub site during the telehealth consultation and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video-taping of a telehealth consultation.

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

(3) The requirement to obtain informed consent before providing a telehealth consultation shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient’s legally authorized representative is unavailable.

Section 4. Asynchronous Telehealth. (1) An asynchronous telehealth service or store and forward transfer shall be limited to those telehealth services that have an evidence base establishing the service’s safety and efficacy.

(2) A store and forward service shall be permissible if the primary purpose of the asynchronous interaction involves high quality digital data transfer, such as digital image transfers. An asynchronous telehealth service within the following specialties or instances of care that meets the criteria established in this section shall be reimbursable as a store and forward telehealth service:

(a) Radiology;

(b) Cardiology;

(c) Oncology;

(d) Obstetrics and gynecology;

(e) Ophthalmology, including a retinal exam;

(f) Dentistry;
(g) Nephrology;

(h) Infectious disease;

(i) Dermatology;

(j) Orthopedics;

(k) Wound care consultation;

(l) A store and forward telehealth service in which a clear digital image is integral and necessary to make a diagnosis or continue a course of treatment;

(m) A speech language pathology service that involves the analysis of a digital image, video, or sound file, such as for a speech language pathology diagnosis or consultation; or

(n) Any code or group of services included as an allowed asynchronous telehealth service pursuant to subsection (4) of this section.

(3) Unless otherwise prohibited by this section, an asynchronous telehealth service shall be reimbursable if that service supports an upcoming synchronous telehealth or face-to-face visit to a provider that is providing one (1) of the specialties or instances of care listed in subsection (2) of this section.

(4)(a) The department shall evaluate available asynchronous telehealth services quarterly, and may expand, as appropriate and as funds are available, asynchronous telehealth services that have an evidence base establishing the service’s:

1. Safety; and

2. Efficacy.

(b) Any asynchronous service expansion pursuant to this subsection shall be available on the department’s Web site.

(5) Except as allowed pursuant to subsection (4) of this section or otherwise within the
Medicaid program, a provider shall not receive additional reimbursement for an asynchronous telehealth service if the service is an included or integral part of the billed office visit code or service code.

(6)(a) Remote patient monitoring shall not be an eligible telehealth service within the fee-for-service Medicaid program unless that service is:

1. Expanded pursuant to subsection (4) of this section;

2. Otherwise included as a part of a department approved value based payment arrangement; or

3. Otherwise included as a value added service or payment arrangement.

(b) A managed care organization may reimburse for remote patient monitoring as a telehealth service if expanded pursuant to subsection (4) of this section or provided as a:

1. Value based payment arrangement; or

2. Value added service or payment arrangement.

Section 5.[8:] Medical Records. (1) [A request for a telehealth consultation from a health care provider and the medical necessity for the telehealth consultation shall be documented in the recipient's medical record.]

(2) A health care provider shall keep a complete medical record of a telehealth consultation provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840—434.860, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. 164.530(j).

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

(2)(b) A health care provider shall have the capability of generating a hard copy of a medical
record of a telehealth service[consultation].

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

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

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

(c) A copy of the document signed by the recipient indicating the recipient’s informed consent to the telehealth consultation;

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

(e) The referral order and complete information from the referring health care provider who requested the telehealth consultation for the recipient.

(5)(a) A telehealth provider's or telehealth practitioner's diagnosis and recommendations resulting from a telehealth consultation shall be documented in the recipient’s medical record at the office of the health care provider who requested the telehealth consultation.

(b) Except as established in paragraph (c) of this subsection, a telehealth provider or telehealth practitioner shall send a written report regarding a telehealth consultation within thirty (30) days of the consultation to the referring health care provider.

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

Section 6[5][9]. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:
(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 7[6][40]. Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

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

(3) A provider may appeal a department-written determination as to the application of this administrative regulation in accordance with 907 KAR 1:671.

(4) An appeal of a managed care organization's determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 17:010.
907 KAR 3:170

APPROVED:

9-12-19
Date

[Signature]

Adam M. Meier, 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 Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov;
and Donna Little, (502) 564-6746, CHFSRegs@ky.gov

(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 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 is only required to reimburse according to this administrative regulation depending on the rates negotiated with providers.
(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. DMS is required to establish telehealth policies and guidelines pursuant to 2018 SB 112.
(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 implementing KRS 205.559 and 205.5591 and establishing DMS telehealth policies.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: DMS is required to establish telehealth policies by KRS 205.559 and 205.5591, this administrative regulation will establish coverage, reimbursement, and specific telehealth policies for telehealth to qualify for Medicaid reimbursement.

(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 amendments to this administrative regulation provide new definitions for “telehealth”, “telehealth service”, “place of service”, and “telehealth care provider”. A new section relates to telehealth reimbursement. The administrative regulation is amended to allow for telehealth reimbursement of at least 100% of the amount paid for a comparable in-person service. The administrative regulation also requires cost-sharing for a telehealth service. Providers are required to appropriately denote telehealth services, and to document them in the patient’s medical record. The administrative regulation also clarifies that referral requirements are the same as for face-to-face (non-telehealth) services. In addition, many of the previous provisions are being deleted. Lastly, changes to comply with the drafting and formatting requirements of KRS Chapter 13A have also been made.

The Amended After Comments version of this administrative regulation includes new definitions for “asynchronous telehealth” and “synchronous telehealth”. In addition, a
new Section 4, titled “Asynchronous telehealth” expands store and forward telehealth services by clarifying and establishing criteria for specific types of care. The new section requires that store and forward services be limited to those services that have an evidence base establishing safety and efficacy, establishes a list of specialties for which asynchronous telehealth is available, establishes a process by which the department will expand available asynchronous telehealth services, and allows for expansion of remote patient monitoring by managed care organizations or as a part of a department approved value based or value added payment arrangement.

(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. In addition, these amendments incorporate changes made by 2018’s SB 112. SB 112 required that sweeping updates to telehealth policies be filed by July 1, 2019.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with KRS 205.559 and conforming the administrative regulation’s policies to those approved by CMS, ensuring federal funding for the policies. In addition, these amendments incorporate changes made by 2018’s SB 112. SB 112 required that sweeping updates to telehealth policies be filed by July 1, 2019.

(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, ensuring federal funding for the policies. In addition, these amendments incorporate changes made by 2018’s SB 112.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, MCOs, any enrolled and credentialed provider who could provide appropriate telehealth services, and Medicaid members who may access telehealth services. The number of providers who will provide telehealth services and the number of Medicaid members who will access telehealth services is not known and cannot be predicted.

(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 service, 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 services 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: The department anticipates that it will incur no additional expenses in the im-
       plementation of this program in the first year of operation.
   (b) On a continuing basis: The department anticipates that it will incur no additional ex-
       penses in implementing this program on a continuing basis.

(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 im-
    plement 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 indi-
    rectly 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) Tiering was not ap-
    plied as telehealth service standards are applied equally to all affected individuals.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 3:170
Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Donna Little, (502) 564-6746, CHFSRegs@ky.gov

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 statute 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(3), and 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 and program 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 and program 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? The department anticipates no additional costs in administering this program in the first year.

   (d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering this program in subsequent years.

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:
FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 907 KAR 3:170
Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; or Donna Little, (502) 564-6746, CHFSRegs@ky.gov.

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.300-431.307, 440.50.

2. State compliance standards. KRS 205.559, 205.5591, and 205.560 require DMS to expand telehealth services and policies to ensure proper use and security and promote access to health care.

3. Minimum or uniform standards contained in the federal mandate. The federal requirements in 42 C.F.R. 431.300-431.307 establish requirements relating to the safeguarding of electronic health information. 42 C.F.R. 440.50 allow for the provision of telehealth by providers within the Medicaid program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.
STATEMENT OF CONSIDERATION RELATING TO
907 KAR 3:170

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations

Amended After Comments

I. A public hearing on 907 KAR 3:170 was held on July 22, 2019, at 9:15 a.m. in the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Additionally, written comments were received during the public comment period.

II. The following people submitted comments during the public hearing or public comment period or attended the public hearing:

<table>
<thead>
<tr>
<th>Name and Title</th>
<th>Agency/Organization/Entity/Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Katie Pulda, Consultant</td>
<td>Center for Telehealth</td>
</tr>
<tr>
<td>Eric Russ, Ph.D., President</td>
<td>Cincinnati Children’s Hospital Medical Center</td>
</tr>
<tr>
<td>Lindy Lady, Manager Medical Business Advocacy</td>
<td>Kentucky Psychological Association</td>
</tr>
<tr>
<td>Deborah Burton, MA, PhDc, Chair</td>
<td>Kentucky Medical Association</td>
</tr>
<tr>
<td>Anna Stewart Whites, J.D.</td>
<td>Kentucky Telehealth Board</td>
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<tr>
<td>Evan C. Reinhardt, Executive Director</td>
<td>Cardinal Hill Rehabilitation Hospital</td>
</tr>
<tr>
<td>Mark D. Birdwhistell, Vice President for Administration and External Affairs</td>
<td>Kentucky Home Care Association</td>
</tr>
<tr>
<td></td>
<td>UK HealthCare</td>
</tr>
</tbody>
</table>
Nancy C. Galvagni, President
Nicole R. Allen, Account Executive
Molly Lewis, Chief Operating Officer
Richard Whitehouse, Executive Director
Edward A. Dobrzykowski, PT, DPT, ATC, MHC
Rebecca Randall, Senior Director, Product Operations

Sherri Craig, VP, Public Policy
Robert Caudill, Professor, Residency Training Director, and Director, Telemedicine and Information Technology Programs
Tim Bickel, Telehealth Director
Brett Oliver, Chief Medical Information Officer
Dr. Jerry Caudill
Erin Schaeffer, Corporate Compliance
Rebecca Matherly, Regional Substance Use Case Manager

Kentucky Hospital Association
Avēsis
Kentucky Primary Care Association, Inc.
Kentucky Dental Association
Provider
WellCare Health Plans of Kentucky
CHI Saint Joseph Health
University of Louisville, School of Medicine
Kentucky Telehealth Network and University of Louisville, School of Medicine
Baptist Health
Avesis
Isaiah House
Pennyroyal Center

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 3:170.

Name and Title
Carol II. Steckel, Commissioner
Stephanie Bates, Deputy Commissioner
Genevieve Brown, Chief of Staff

Agency
Department for Medicaid Services, Commissioner’s Office
Department for Medicaid Services, Commissioner’s Office
Department for Medicaid Services, Commissioner’s Office
IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Letter sent by the department to Medicaid providers.

(a) Comment: Deborah Burton, Outgoing Chair of the Kentucky Telehealth Board, submitted written comments critiquing the administrative regulation. Nearly two-thirds of the telehealth board’s comments consisted of a grammatical critique and coding complaints related to a Medicaid provider letter sent by the department in July.

(b) Response: The Medicaid provider letter sent by the department (DMS) is outside of the regulatory process and is neither referenced nor incorporated by reference into the administrative regulation. DMS will not be amending the administrative regulation in response to the comments, as they are not related to the administrative regulation and do not relate to the KRS Chapter 13A regulatory process.

(2) Subject: Contention that SB 112 did not limit Store and Forward to radiology only.

(a) Comment: Deborah Burton, Outgoing Chair of the Kentucky Telehealth Board, submitted written comments that claimed, in part, that SB 112 from the 2018 session did not limit Store and Forward asynchronous technology to radiology only. Similar comments were also made by Evan C. Reinhardt, Executive Director of the Kentucky Home Care Association; Nancy C. Galvagni, President of the Kentucky Hospital Association; Dr. Robert Caudill, Professor, Residency Training Director, and Director of the Telemedicine and Information Technology Programs, with the University of Louisville School of Medicine; and Tim Bickel, Telehealth Director of the Kentucky Telehealth Network, and with the University of Louisville School of Medicine.

(b) Response: A statement within SB 112 that limited store and forward telehealth to radiology only, could be interpreted to be special legislation. However, the department contends that SB 112 contains authority to limit telehealth that is broader than the definitions of telehealth found in KRS 205.510. The provisions and text of KRS 205.559 and 205.5591 are also significant in understanding the role of asynchronous telehealth within the Medicaid program. Specifically, KRS 205.5591(8) requires the cabinet to “maintain telehealth policies and guidelines to providing care that ensure that Medicaid-eligible citizens will have safe, adequate, and efficient medical care, and that prevent waste, fraud, and abuse of the Medicaid program.”
Furthermore, specific events leading up to the filing of 907 KAR 3:170 also need to be taken into account in analyzing the limitation of telehealth within the currently effective emergency administrative regulation. A telehealth working group, with participation from several members of the Telehealth Board, provided preferred language to be included in the administrative regulation. The definition of “telehealth service”, and the operation of “telehealth service” as requested by this working group were included in the initial filing of the administrative regulation. Upon further analysis, the department realized that the effect of this suggested language would be to allow providers to treat Medicaid recipients differently. The department is concerned that with the language requested by the telehealth advisory group Medicaid recipients would have been treated as second-class citizens who could be diverted at the point of service, managed by layperson staff, and processed with limited, older, audio-only technology, such as a tape recorder. Such an approach would not foster any meaningful adoption of telehealth within the Commonwealth, and would serve to disadvantage our members by subjecting them to potentially unwanted and substandard care. The department remains concerned that the provided language by the telehealth working group would have allowed for waste and abuse to occur within the Medicaid program, and would have negatively impacted our members.

As such, an emergency administrative regulation could not be filed that allowed for this potential abuse and waste to occur. Following the comment process, DMS continues to have programmatic concerns about unfettered asynchronous telehealth, potential abuse, and the safety of our members. However, asynchronous telehealth will be expanded beyond what was allowed in the emergency administrative regulation, and a process for further expansion will be outlined in this statement of consideration and in the amended administrative regulation. The department will not be amending the administrative regulation in response to this comment; however, specific expansions and a process will be outlined in response to later comments.

(3) Subject: Store and forward technology only limited by provider assessment

(a) Comment: Anna Stewart Whites, Attorney, member of the Kentucky Office of Autism’s Advisory Committee, and chair of the American Health Lawyers Association’s Behavioral Health Task Force Rural Subcommittee, submitted comments arguing that the “proposed administrative regulation goes too far in that it improperly abrogates the intent and the clear directive found in the relevant enabling statutes. The statutory language first adopted in SB 211 and continuing in the statutes updated by that law does not prohibit use of asynchronous ‘store and forward’ telehealth where the provider finds such care appropriate.” The comment ends with the contention that the department limited asynchronous telehealth “due to fear that some improper claims may be presented.”

(b) Response: The department strongly disagrees with the contention that the only restriction on asynchronous telehealth within Kentucky law is whether a provider determines asynchronous telehealth to be medically necessary. For example, KRS 205.5591(8) requires DMS to maintain telehealth policies that “prevent waste, fraud, and abuse of the Medicaid program.” This language clearly allows the department to implement any telehealth service in a way that protects the limited public funds comprising the Medicaid program. Furthermore, the department has an overriding
and primary duty to the Commonwealth's Medicaid beneficiaries. Both of these statutory responsibilities guided the department in designing and implementing asynchronous telehealth within each version of this administrative regulation.

In addition, the department would also like to emphasize that the concerns with asynchronous telehealth are not that a few improper claims will be presented, but that some types of asynchronous telehealth would be hazardous to Medicaid recipients. During the administrative regulation promulgation process, the department has become aware of specific hazards to our beneficiaries that would be caused by certain asynchronous telehealth services. The department will not reimburse for asynchronous telehealth where there are serious concerns about the safety of our recipients or that our recipients are not receiving adequate, evidence-based care.

Finally, the department does defer to a provider's assessment that synchronous or asynchronous telehealth is medically necessary in those circumstances where an overriding concern about waste, abuse, fraud, or recipient safety is not the limiting factor. 907 KAR 3:170 as written is a larger telehealth expansion than required by SB 112. However, the department cannot and will not let enthusiasm about an emerging technology cloud our primary duty to our recipients. The department will not be amending this administrative regulation in response to the comment.

(4) Subject: Support for asynchronous telehealth

(a) Comment: Dr. Robert Caudill, Professor, Residency Training Director, and Director of the Telemedicine and Information Technology Programs, with the University of Louisville School of Medicine; and Tim Bickel, Telehealth Director of the Kentucky Telehealth Network, and with the University of Louisville School of Medicine, submitted joint written comments to the department and Senator Alvarado and Representative Moser of the Kentucky legislature. The comment opposes the restriction of store and forward to radiology, and also mentions a behavioral health provider shortage and high quality digital image transfers, and argues that in some cases asynchronous digital image review is "better suited" than "synchronous communication between the telehealth provider and the patient". The letter concludes with: "The potential for integrating behavioral health care into rural primary care settings is also greatly enhanced through use of this medium."

(b) Response: In response to the comments received relating to high quality digital image transfers, and other comments relating to digital data transfers, DMS is defining hybrid telehealth, and including a new Section 4 relating to asynchronous telehealth in order to address these concerns. As discussed in the response to Comment (2) above, the department had serious concerns about implementing store and forward telehealth in an emergency administrative regulation given the comments received and irregularities with the language provided by a telehealth advisory group to the department. Asynchronous telehealth is expanded to multiple different services and providers through this Statement of Consideration and Amended After Comments administrative regulation. The bulk of the asynchronous telehealth expansion can be found in a new Section 4, titled "Asynchronous Telehealth".

However, in the two comment periods for this administrative regulation, DMS has received comments relaying serious concerns about the ways that behavioral health recipients could be negatively impacted by asynchronous behavioral health services. Several prominent behavioral health
advocates, a managed care organization, and a professional service organization wrote and expressed strong concerns about how the use of asynchronous telehealth could negatively impact Medicaid recipients. The interrelationship between, and evidence basis for, the types of asynchronous telehealth services discussed in the comment are unclear. The department will expand asynchronous telehealth services as a part of this Amended After Comments administrative regulation. The department will not be amending the administrative regulation in response to this comment; however, specific expansions and a process will be outlined in response to later comments.

(5) Subject Matter: Enrolled Providers

(a) Comment: Katie Pulda, a consultant at the Center for Telehealth, Cincinnati Children’s Hospital Medical Center, submitted a comment about a 907 KAR 3:170 reference to 907 KAR 1:672 causing telehealth services to be limited to nine provider types. She recommended “broadening the provider type” to include speech language pathologists and to update billing guidelines.

(b) Response: Any Medicaid provider included as a “telehealth care provider” may provide a telehealth service. The definition of “telehealth care provider” in Section 1(9) of this administrative regulation requires enrollment as a Medicaid provider in accordance with 907 KAR 1:672. There are three provider definitions in 907 KAR 1:672: credentialed provider, noncredentialed provider, and provider. The nine provider types referenced by the comment are listed in the definition of “credentialed provider”; however, 907 KAR 1:672 does not limit enrollment to credentialed providers and this administrative regulation does not require that a telehealth care provider be a “credentialed provider”. Additionally, the definition of “provider” in 907 KAR 1:672, Section 1(13), cites to the statutory definition of “provider” established by KRS 205.8451(7), which is required by KRS 13A.222(4)(d). That statutory definition states that a provider is “an individual, company, corporation, association, facility, or institution which is providing or has been approved to provide medical services, goods, or assistance to recipients under the Medical Assistance Program.” Thus, this administrative regulation’s Section 1(9) is correct in defining “telehealth care provider” as a Medicaid provider who is (among other requirements) currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672, which means a provider as defined by KRS 205.8451(7). The administrative regulation will not be amended in response to this comment.

(6) Subject Matter: Place of Service

(a) Comment: Lindy Lady, Manager, Medical Business Advocacy, Kentucky Medical Association, and Molly Lewis, Chief Operating Officer of the Kentucky Primary Care Association, submitted comments, stating that specific modifiers should be used for synchronous telemedicine services, service rendered via asynchronous telecommunications system, and synchronous and asynchronous teledentistry.

(a) Comment: Nicole Allen, Account Executive, Avesis, submitted a comment requesting specific codes for synchronous and asynchronous teledentistry.

(a) Comment: Evan C. Reinhardt, Executive Director of the Kentucky Home Care Association, submitted a comment in favor of continuing to utilize the current Medicare billing codes for tele-health.
(a) Comment: Nancy C. Galvagni, President of the Kentucky Hospital Association, stated that the department should align any billing and coding requirements with national Medicare guidelines and require the same of all managed care organizations.

(b) Response: The department agrees with these comments and is amending Section 3(2) to remove the telehealth modifier requirement from the administrative regulation. This matches the guidance included in a letter dated July 15, 2019 in which the department rescinded the requirement of a modifier. Additionally the department will implement Medicare Place of Service reporting, as appropriate.

(7) Subject Matter: Place of Service and suitable places

(a) Comment: Sherri Craig, MBA, Vice President, Public Policy, CHI Saint Joseph Health, submitted a comment noting that the statutory definition allows for telehealth to be delivered in "suitable places" and that it should be clear that payment is appropriate in these alternative places.

(b) Response: The department understands the definition of place of service to include all suitable places for telehealth services. The second half of the "place of service" definition in Section 1(6) of the administrative regulation is not an exhaustive list, and does not limit the availability of telehealth in all suitable places. Within KRS Chapter 13A, the phrase "includes" means "including but not limited to". As such, the department will be operationalizing and continues to operationalize the availability of telehealth to any suitable place where telehealth is performed. The department will not be amending this administrative regulation in response to the comment.

(8) Subject: Expansion of store and forward to additional health fields, disciplines, or services.

(a) Comment: Anna Stewart Whites, Attorney, member of the Kentucky Office of Autism’s Advisory Committee, and chair of the American Health Lawyers Association’s Behavioral Health Task Force Rural Subcommittee, and Deborah Burton, Outgoing Chair of the Kentucky Telehealth Board, submitted comments indicating that certain health fields should be able to use asynchronous store and forward telehealth.

(a) Comment: Lindy Lady, Manager, Medical Business Advocacy, Kentucky Medical Association; Molly Lewis, Chief Operating Officer of the Kentucky Primary Care Association; and Nancy C. Galvagni, President of the Kentucky Hospital Association, provided examples of health services that could utilize telehealth services, and requested that the limitation of "for radiology services only" be removed.

(a) Comment: Mark D. Birdwhistell, Vice President for Administration and External Affairs, UK Healthcare, submitted comments requesting that the use of store and forward telehealth services also include dermatology, retinal exams, and wound care consultations.

(a) Comment: Richard Whitehouse, Executive Director of the Kentucky Dental Association, submitted comments requesting that "for radiology services" be removed from the definition of store...
and forward telehealth services, and that asynchronous dental services be made available to isolated and vulnerable patients.

(a) Comment: Evan C. Reinhardt, Executive Director of the Kentucky Home Care Association, submitted comments requesting a lifting or modification to “enable utilization by providers providing services in rural areas.”

(a) Comment: Sherri Craig, MBA, Vice President, Public Policy, CHI Saint Joseph Health, submitted a comment requesting that any limitation on asynchronous telehealth be removed from the administrative regulation.

(a) Comment: Brett Oliver, Chief Medical Information Officer, Baptist Health, submitted a comment requesting that asynchronous telehealth include ophthalmology and dermatology and discussed some of the advantages of utilizing asynchronous telehealth in each discipline.

(a) Comment: Eric Russ, Ph.D., President of the Kentucky Psychological Association, submitted a comment in favor of including a clause limiting store and forward practices to specialties and services that have evidence establishing their safety and efficacy, and included comments about certain specialties that have more settled evidence surrounding asynchronous telehealth than certain behavioral health applications.

(b) Response: The department agrees that asynchronous telehealth should be expanded beyond radiology services, to include high quality digital data transfers. A new Section 4 relating to asynchronous telehealth is included and reads as follows:

Asynchronous Telehealth. (1) An asynchronous telehealth service or store and forward transfer shall be limited to those telehealth services that have an evidence base establishing the service’s safety and efficacy.

(2) A store and forward service shall be permissible if the primary purpose of the asynchronous interaction involves high quality digital data transfer, such as digital image transfers. An asynchronous telehealth service within the following specialties or instances of care that meets the criteria established in this section shall be reimbursable as a store and forward telehealth service:

(a) Radiology;
(b) Cardiology;
(c) Oncology;
(d) Obstetrics and gynecology;
(e) Ophthalmology, including a retinal exam;
(f) Dentistry;
(g) Nephrology;
(h) Infectious disease;
(i) Dermatology;
(j) Orthopedics;
(k) Wound care consultation;
(l) A store and forward telehealth service in which a clear digital image is integral and necessary to make a diagnosis or continue a course of treatment;
(m) A speech language pathology service that involves the analysis of a digital image, video, or sound file, such as for a speech language pathology diagnosis or consultation; or

(n) Any code or group of services included as an allowed asynchronous telehealth service pursuant to subsection (4) of this section.

(3) Unless otherwise prohibited by this section, an asynchronous telehealth service shall be reimbursable if that service supports an upcoming synchronous telehealth or face-to-face visit to a provider that is providing one (1) of the specialties or instances of care listed in subsection (2) of this section.

(4)(a) The department shall evaluate available asynchronous telehealth services quarterly, and may expand, as appropriate and as funds are available, asynchronous telehealth services that have an evidence base establishing the service’s:

1. Safety; and
2. Efficacy.

(b) Any asynchronous service expansion pursuant to this subsection shall be available on the department’s Web site.

(5) Except as allowed pursuant to subsection (4) of this section or otherwise within the Medicaid program, a provider shall not receive additional reimbursement for an asynchronous telehealth service if the service is an included or integral part of the billed office visit code or service code.

(6)(a) Remote patient monitoring shall not be an eligible telehealth service within the fee-for-service Medicaid program unless that service is:

1. Expanded pursuant to subsection (4) of this section;
2. Otherwise included as a part of a department approved value based payment arrangement; or
3. Otherwise included as a value added service or payment arrangement.

(b) A managed care organization may reimburse for remote patient monitoring as a telehealth service if expanded pursuant to subsection (4) of this section or provided as a:

1. Value based payment arrangement; or
2. Value added service or payment arrangement.

(9) Subject Matter: Expansion of asynchronous telehealth to non-image transfers.

(a) Comment: Gretchen Farah, a Speech-Language Pathologist at Cardinal Hill Rehabilitation Hospital, submitted a comment requesting that DMS expand the use of store and forward or asynchronous telehealth to “images or data …for viewing or interpretation by a speech-language pathologist. Examples include transmission of voice clips, audioligic testing results, or outcomes of independent client practice”.

(b) Response: The department agrees with this concept, and will expand allowed asynchronous telehealth uses to include the evaluation of a high-quality digital sound file or image. In addition, the following language will be included in Section 4(2)(m) as an allowed asynchronous telehealth service:
A speech language pathology service that involves an analysis of a digital image, video, or sound file, such as for a speech language pathology diagnosis or consultation;

(10) Subject Matter: Forty-Eight (48) Hour Documentation Requirement

(a) Comment: Lindy Lady, Manager, Medical Business Advocacy, Kentucky Medical Association, and Molly Lewis, Chief Operating Officer of the Kentucky Primary Care Association, submitted comments stating that a forty-eight (48) hour documentation requirement is not feasible with our healthcare system and medical necessity requirement, and requested that the forty-eight (48) hour requirement be changed to ten (10) days instead.

(a) Comment: Edward A. Dobrzykowski, PT, DPT, ATC, MHC, submitted a comment requesting that the requirement be changed to seventy-two (72) hours to allow more time for documentation of services provided on Fridays and some holiday weekends.

(b) Response: The department acknowledges the difficulty that a forty-eight (48) hour documentation requirement would have in relation to telehealth due to the potential distances between providers. As such, DMS proposes to allow for the medical record to be reconciled before the 48 hour documentation requirement attaches. DMS anticipates that the longer reconciliation process will allow for services provided late on Fridays to be documented at a time that is later than the upcoming weekend. The administrative regulation will be amended in Section 2(5) to read as follows:

Within forty-eight (48) hours of the reconciliation of the record of the telehealth service.

(11) Subject Matter: Remote Patient Monitoring

(a) Comment: Evan C. Reinhardt, Executive Director of the Kentucky Home Care Association, and Sherri Craig, MBA, Vice President, Public Policy, CHI Saint Joseph Health, submitted comments stating that the department should clarify, within this administrative regulation, that remote patient monitoring may be reimbursed by Medicaid managed care organizations regardless of whether the department reimburses for this service in the fee-for-service setting.

(b) Response: The department agrees with this concept and will provide the following language relating to remote patient monitoring in Section 4(6):

(6)(a) Remote patient monitoring shall not be an eligible telehealth service within the fee-for-service Medicaid program unless that service is:
1. Expanded pursuant to subsection (4) of this section;
2. Otherwise included as a part of a department approved value based payment arrangement; or
3. Otherwise included as a value added service or payment arrangement.
(b) A managed care organization may reimburse for remote patient monitoring as a telehealth service if expanded pursuant to subsection (4) of this section or provided as a:
1. Value based payment arrangement; or

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2. Value added service or payment arrangement.

(12) Subject Matter: Uniform schedule of codes on DMS Web site

(a) Comment: Rebecca Randall, Senior Director of Product Operations at WellCare Health Plans of Kentucky, submitted comments requesting that DMS publish a uniform schedule of reimbursable codes if delivered via telehealth and publish it online.

(b) Response: The department will prepare and publish a schedule of codes that are reimbursable if delivered via telehealth. This schedule of codes, however, will be provided for informational purposes only. In addition, this list will not be available for at least five (5) months, may not be exhaustive, and will be provided to enhance the telehealth delivery capacity of the Medicaid program and not as a limit on the services that can be delivered via telehealth pursuant to this administrative regulation.

(13) Subject Matter: Code Modifiers

(a) Comment: Nicole Allen, Account Executive, Avēsis, submitted a comment requesting that the department implement an alternative method for reporting the POS (point of service) two-letter code modifier in the two-space tooth number field.

(b) Response: The department agrees with these comments and is amending Section 3(2) to remove the telehealth modifier requirement from the administrative regulation. This matches the guidance included in a letter dated July 15, 2019 in which the department rescinded the requirement of a modifier. Additionally the department will implement Medicare Place of Service reporting, as appropriate.

(14) Subject Matter: Reimbursement by MCOs

(a) Comment: Rebecca Randall, Senior Director, Product Operations at WellCare Health Plans of Kentucky, submitted a comment stating that the department should revise Section 2(1) of this administrative regulation for clarity on managed care organization reimbursements for telehealth services and suggested specific language for doing so.

(b) Response: In order to implement this important program, the department prefers to not amend this language at this time. The department understands this to mean that a managed care organization shall reimburse at an amount that is at least 100 percent of the amount paid for a comparable in-person service by the managed care organization unless a different rate is negotiated. The department will not be amending this administrative regulation in response to the comment.

V. SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

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The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 3:170. This administrative regulation is being amended after comments. DMS is amending the administrative regulations as follows:

Page 1
Section 1(1)
Line 20
After “(1)”, insert the following:

“Asynchronous telehealth” means a store and forward telehealth service that is electronically mediated.

(2)

Page 2
Section 1(2)
Line 7
Before “(2)”, insert “(3)”. Delete “(2)”.

Page 2
Section 1(3)
Line 18
Before “(3)”, insert “(4)”. Delete “(3)”.

Page 2
Section 1(4)
Line 19
Before “(4)”, insert “(5)”. Delete “(4)”.

Page 3
Section 1(5)
Line 14
Before “(5)”, insert “(6)”. Delete “(5)”.

Page 3
Section 1(6)
Line 17
Before “(6)”, insert the following:

(7) “Synchronous telehealth” means a telehealth service that simulates a face-to-face encounter via real-time interactive audio and video technology between a telehealth care provider and a Medicaid recipient.

(8) Delete “(6)”.

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Page 3
Section 1(7)
Line 18
Before "(7)", insert "(9)".
Delete "(7)".

Page 3
Section 1(8)
Line 23
Before "(8)", insert "(10)".
Delete "(8)".

Page 4
Section 1(8)(e)
Line 6
After "forward transfer,", insert the following:
   as limited by Section 4 of this administrative regulation
Delete "for radiology services only".

Page 4
Section 1(8)(f)
Line 7
After "monitoring", insert the following:
   as limited by Section 4 of this administrative regulation

Page 8
Section 2(5)
Line 21
After "forty-eight (48) hours of the", insert the following:
   reconciliation of the record of the
Line 23
After "established by Section", insert "5".
Delete "4".

Page 9
Section 3(2)
Line 14
After "service", delete ", modifiers,".

Page 26
Section 4
Line 3
After "Section 4.", insert the following:
Asynchronous Telehealth. (1) An asynchronous telehealth service or store and forward transfer shall be limited to those telehealth services that have an evidence base establishing the service's safety and efficacy.

(2) A store and forward service shall be permissible if the primary purpose of the asynchronous interaction involves high quality digital data transfer, such as digital image transfers. An asynchronous telehealth service within the following specialties or instances of care that meets the criteria established in this section shall be reimbursable as a store and forward telehealth service:

(a) Radiology;
(b) Cardiology;
(c) Oncology;
(d) Obstetrics and gynecology;
(e) Ophthalmology, including a retinal exam;
(f) Dentistry;
(g) Nephrology;
(h) Infectious disease;
(i) Dermatology;
(j) Orthopedics;
(k) Wound care consultation;
(l) A store and forward telehealth service in which a clear digital image is integral and necessary to make a diagnosis or continue a course of treatment;
(m) A speech language pathology service that involves the analysis of a digital image, video, or sound file, such as for a speech language pathology diagnosis or consultation; or

(n) Any code or group of services included as an allowed asynchronous telehealth service pursuant to subsection (4) of this section.

(3) Unless otherwise prohibited by this section, an asynchronous telehealth service shall be reimbursable if that service supports an upcoming synchronous telehealth or face-to-face visit to a provider that is providing one (1) of the specialties or instances of care listed in subsection (2) of this section.

(4)(a) The department shall evaluate available asynchronous telehealth services quarterly, and may expand, as appropriate and as funds are available, asynchronous telehealth services that have an evidence base establishing the service's:

1. Safety; and
2. Efficacy.

(b) Any asynchronous service expansion pursuant to this subsection shall be available on the department's Web site.

(5) Except as allowed pursuant to subsection (4) of this section or otherwise within the Medicaid program, a provider shall not receive additional reimbursement for an asynchronous telehealth service if the service is an included or integral part of the billed office visit code or service code.

(6)(a) Remote patient monitoring shall not be an eligible telehealth service within the fee-for-service Medicaid program unless that service is:

1. Expanded pursuant to subsection (4) of this section;
2. Otherwise included as a part of a department approved value based payment arrangement; or

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3. Otherwise included as a value added service or payment arrangement.
   (b) A managed care organization may reimburse for remote patient monitoring as a telehealth service if expanded pursuant to subsection (4) of this section or provided as a:
   1. Value based payment arrangement; or
   2. Value added service or payment arrangement.

Section 5.

Page 27
Section 5
Line 11
   Before "5", insert "6".
   Delete "5".

Page 27
Section 6
Line 15
   Before "6", insert "7".
   Delete "6".