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Emily B Caudill
REGULATIONS COMPILER

STATEMENT OF EMERGENCY
900 KAR 12:005E

(1) This emergency administrative regulation is necessary to update the glossary of telehealth terminology to include a definition of "temporarily located" as required by Section 2 of HB 188 codified as KRS 211.335(1) in order to provide guidance to licensing boards regarding the delivery of telehealth services to individuals temporarily located outside of their home state.

(2) This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. Section 2 of HB 188 enacted during the 2022 legislative session, codified as KRS 211.335, requires the Cabinet for Health and Family Services to promulgate an administrative regulation to add a definition of "temporarily located" within 30 days of the bill's effective date, which is July 14, 2022. Section 2(2) of the bill states that the cabinet may promulgate emergency administrative regulations in order to comply with the deadline.

(3) This emergency administrative regulation will be replaced by an ordinary administrative regulation to provide guidance to licensing boards regarding the delivery of telehealth services to individuals temporarily located outside of their home state. The companion ordinary administrative regulation is not identical to this emergency administrative regulation.

Andy Beshear, Governor

DocuSigned by:
Eric Friedlander
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Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

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CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Telehealth Services

(Emergency Amendment)

900 KAR 12:005E. Telehealth terminology and requirements.

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2) - (5), 304.17A-005(23), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. 3729-3733, 42 U.S.C. 1320a-7b(b), 42 U.S.C. 1320d to 1320d-9, 42 U.S.C. 1395nn

STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.335, 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for all health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth. This administrative regulation establishes a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

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Section 1. Definitions. (1) [~~"Department" means Department for Medicaid Services.~~ ~~(2)~~]"Division" means Division of Telehealth Services.

(2)[~~(3)~~] "Health care provider" is defined by KRS 304.17A-005(23), unless the provider or service is otherwise regulated by KRS 205.8451(7).

(3)[~~(4)~~] "Health care service" is defined by KRS 211.332(2).

(4)[~~(5)~~] "Professional licensure board" is defined by KRS 211.332(3).

(5)[~~(6)~~] "State agency authorized or required to promulgate administrative regulations relating to telehealth" is defined by KRS 211.332(4).

(6)[~~(7)~~] "Telehealth" or "digital health" is defined by KRS 211.332(5).

Section 2. Compliance. Health care providers performing a telehealth or digital health service shall:

(1) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;

(2) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d through 1320d-9, unless waived by the applicable federal authority;

(3) Obtain patient informed consent in accordance with KRS 311.5975 and 304.40-320;

(4) Secure credentialing if required by a third party or insurer or other payor;

(5)(a) Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code to secure reimbursement for a professional telehealth service; or

(b) Utilize appropriate telehealth service code, if a CPT or HCPCS code is not

available or not used for that service, according to customary practices for that health care profession, including the use of any telehealth modifiers or alternate codes;

(6) Utilize non-public facing technology products that are HIPAA compliant;

(7) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

(a) Live or real-time audio and video synchronous telehealth technology;

(b) Asynchronous store-and-forward telehealth technology;

(c) Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;

(d) Audio-only telecommunications systems; or

(e) Clinical text chat technology if:

1. Utilized within a secure, HIPAA compliant application or electronic health record system; and

2. Meeting:

a. The scope of the provider's professional licensure; and

b. The scope of practice of the provider; and

(8) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:

(a) False Claims Act, 31 U.S.C. § 3729-3733;

(b) Anti-Kickback Statute, 42 U.S.C. 1320a-7b(b); and

(c) Physician Self-Referral, Section 1877 of the Social Security Act (42 U.S.C.

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1395nn).

Section 3. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", August 2022 [~~July 2021~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street [~~4WE~~], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at https://telehealth.ky.gov.

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900 KAR 12:005E

REVIEWED:

7/22/2022

Date

DocuSigned by:
Adam Mather
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Adam Mather, Inspector General
Office of Inspector General

APPROVED:

7/26/2022

Date

DocuSigned by:
Eric Friedlander
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Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on September 26, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this hearing shall notify this agency in writing by September 19, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 900 KAR 12:005E
Agency Contact: Kara Daniel; Stephanie Brammer-Barnes
Phone Number: (502) 564 – 2888
Email: karal.daniel@ky.gov; sbrammerbarnes@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-6746
Email: CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 211.334 – 211.336.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 211.334 – 211.336 by establishing a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth.

(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 a telehealth terminology glossary and minimum requirements for the proper use and security of telehealth as required by KRS 211.334 to 211.336.

(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: This amendment is required by KRS 211.335, a new statute created by the passage of HB 188 during the 2022 session of the Kentucky General Assembly. KRS 211.335(1) directs the cabinet to promulgate administrative regulations to add a definition of "temporarily located" to the glossary of telehealth terminology required by KRS 211.334, in order to clarify when telehealth providers may provide services to patients in other states.

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 211.335.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 211.335 by adding a definition of "temporarily located" to the glossary of telehealth terminology required by KRS 211.334.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by adding a definition of "temporarily located" pursuant to KRS 211.335 in order to clarify when telehealth providers may provide services to patients in other states.

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects telehealth providers. There are approximately 13,000 professionally active physicians and 72,000 active nurses in Kentucky, as well as an unknown number of psychologists, counselors, clinical social workers, and other healthcare providers who may provide telehealth services.

(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: The amendment to this regulation defines telehealth terms but does not create any additional requirements to be met by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this regulation defines telehealth terms but does not create any additional requirements to be met by regulated entities, so there will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this regulation clarifies when telehealth providers may provide services to patients in other states.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation is Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

(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: No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)
Tiering is not applicable as compliance with this administrative regulation applies equally to all telehealth providers and state agencies regulated by it.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 900 KAR 12:005E
Agency Contact: Kara Daniel; Stephanie Brammer-Barnes
Phone Number: (502) 564 – 2888
Email: karal.daniel@ky.gov; sbrammerbarnes@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-6746
Email: 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? This administrative regulation impacts healthcare providers who use telehealth and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.334, 211.335, and 211.336

(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? This amendment will generate no additional 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? This amendment will generate no additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost

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savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This amendment imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This amendment imposes no additional costs on regulated entities during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars ($500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

This amendment will not have a major economic impact on providers who use telehealth.

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FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 900 KAR 12:005E
Agency Contact: Kara Daniel; Stephanie Brammer-Barnes
Phone Number: (502) 564 – 2888
Email: karal.daniel@ky.gov; sbrammerbarnes@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-6746
Email: CHFSregs@ky.gov

1. Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

2. State compliance standards. KRS 211.334 to 211.336

3. Minimum or uniform standards contained in the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF INSPECTOR GENERAL

900 KAR 12:005E. Telehealth terminology and requirements.

The Telehealth Terminology Glossary, August 2022, is incorporated by reference. The Telehealth Terminology Glossary establishes a glossary of telehealth terminology to provide standard definitions for healthcare providers, state agencies, and payors.

Changes to the Telehealth Terminology Glossary include the following:

- Updates the title and edition date of the glossary;
- Adds the regulation number on page 1;
- Adds a definition of "temporarily located"; and
- Updates various definitions for clarity and to correct drafting errors.

The total number of pages incorporated by reference in this administrative regulation is five (5).

RECEIVED