

Legal Updates: Telehealth 2022

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About Me

- Attorney
- Healthcare practice
- Kentucky State Autism Steering Committee
- Kentucky State Telehealth Steering Committee
- American Health Law Association, Behavioral Health

How are new or updated laws created?

- Input from Medicaid
- State agency requests
- Follow national models
- Licensure Board input
- Citizens comments

2022 Session – What were the key telehealth themes?

- Glossary: Let's all use the same terms for the same ideas
- Access and use of telehealth
- Oversight and fraud prevention
- Remote patient monitoring
- Texting as a reimbursable service

Input from the KY Division of Telehealth

- Moved to the OIG from Medicaid
- Working with a variety of different offices
- Input on language for state waivers, grants, pilot projects

National telehealth advancements – CMS/Medicare

- Expansion of telehealth during the COVID health emergency
- CMS has indicated that it will add codes to covered telehealth services
- CMS will continue to allow use of telehealth in RHCs/FQHCs

CMS expansion – RPM

- Reduce hospital re-admissions
- Chronic disease management
- Care in hospital affiliated clinics and care centers

AMA Report on Telehealth Advancements in 2022

- Advances in technology
- Additional use of apps and programs to treat behavioral health
- RPM devices and increased use

“No Surprises Act” impact on telehealth

- Telehealth services need to be included in cost lists/chargemasters
- There should not be differences between costs/parity matters
- Rational basis for cost differences if they occur
- RPM and re-admission prevention should be included on chargemaster

OIG Office of Telehealth

<https://chfs.ky.gov/agencies/ohda/Pages/telehealth.aspx>

website with links to laws, telehealth glossary, education and training, best practices documents

Telehealth Steering Committee and work groups

10 different groups meeting monthly; Steering Committee meets quarterly

Telehealth laws

- KRS 205.510 – Defines terms
- KRS 205.532 – Medicaid reimbursement, including telehealth
- KRS 205.559 – Reimbursement for FQHC, RHC etc. for telehealth
- KRS 205.5591 – Parity in telehealth coverage

Audio only coverage, and now,
TEXTING!

900 KAR 12:005 - Telehealth Terminology and Requirements

Useful guide so that we are all speaking the same language

907 KAR 3:170 – Telehealth Coverage and Reimbursement

- Medical necessity definition
- Place of service – where the PATIENT is
- Definition of provider (scope of licensure, Medicaid credentials)
- Definition of services

907 KAR 1:054 and 907 KAR 1:055

- FQHC and RHC coverage
- Telehealth permitted
- Reimbursement

Kentucky legislative changes in 2022

- HB 44 - Amend KRS 159.035 to require a local school district's attendance policy to include provisions for a student's mental or behavioral health status.
- HB 188 - Amend KRS 211.336 to bar professional licensure boards from prohibiting the delivery of telehealth services to residents of Kentucky who are temporarily located outside of Kentucky by health service providers credentialed in Kentucky
- SB 362 - Amend KRS 222.433 to establish that health care professionals performing examinations may be subject to subpoena for purposes of cross-examination; establish that an order of treatment shall be issued upon a finding of proof beyond a reasonable doubt

Kentucky legislative changes, cont.

- HB 547 - Amend KRS 222.231 to allow licensed narcotic treatment programs to choose which medication treatments they offer patients; require the promulgation of administrative regulations.
- SB 102 - Amend KRS 158.4416 to require local superintendents to report information on school-based mental health services providers in the district to the Kentucky Department of Education; require the department to compile and maintain the information and report annually to the Interim Joint Committee on Education.

Kentucky legislative changes, cont.

- SB 87 – Did not pass. Create a new section of KRS Chapter 205 to require the Department for Medicaid Services to adopt a minimum fee schedule for covered dental services and require that managed care organizations reimburse eligible dental service providers in an amount at least equal to the fee-for-service rate for the same covered service; require the Cabinet for Health and Family Services or the Department for Medicaid Services to request federal authorization for a waiver if necessary.
- HB 127 - Amend KRS 202A.0811 to clarify that the respondent be evaluated by a mental health professional and not examined, specify where and by when a qualified mental health professional's findings shall be certified, and specify when a date for a hearing shall be set; amend KRS 202A.0815 to expand the class of individuals who can have access to assisted outpatient treatment by modifying the criteria requirements for court-ordered assisted outpatient treatment.

Kentucky legislative changes, cont.

- HB 269 - Amend KRS 532.130, 532.135, and 532.140 to add a diagnosis of serious mental illness to the disabilities which prevent execution for persons convicted of capital offenses.
- HB 79 - amend KRS 15.560 and 15.565 to require each in-service training to include a mental health component on PTSD and work-induced stress; amend KRS 15.590 to require the Kentucky Law Enforcement Council to include training and resources for post-traumatic stress disorder and work-induced stress

Kentucky legislative changes, cont.

SB 78 - Amend KRS 309.0834 to require the Kentucky Board of Alcohol and Drug Counselors to promulgate administrative regulations to exempt applicants for certification as clinical supervisors from meeting certain requirements for a limited amount of time if the applicants were licensed and approved on March 24, 2021; permits applicants granted certification to supervise immediately; requires applicants after the limited time period to meet all requirements for certification.

Kentucky Telehealth Clinical Services Checklist

- On KY telehealth website
- Includes documentation requirements, consent forms/guidance
- Reminder to help patient/provider deal with camera, audio
- Consulting providers need to comply with their licensure group requirements/state law

Provider Mental Health – Federal changes

Dr. Lorna Breen Health Care Provider Protection Act (Lorna Breen Act), 2022, found at 42 U.S.C. § 29, et seq., provides guidance for protecting the mental health of providers across the nation. The primary purpose of the new law is to fund, via grants and otherwise, and disseminate nationwide “evidence-based or evidence-informed best practices to help providers, employers, and professional associations educate health care professionals about behavioral health (i.e. mental health and substance use disorders), increase access to care, and reduce stigma sometimes associated with mental illness.”

MLN Matters (CMS) guidance on telehealth from June, 2021

- Expanded codes
- Best practices

HIPAA Compliant software/access

- The HIPAA Security Rule contains the standards that must be applied in order to safeguard and protect electronically created, accessed, processed, or stored PHI (ePHI) when at rest and in transit. The rule applies to anybody or any system that has access to confidential patient data. In this case “access” is interpreted as having the means necessary to read, write, modify, or communicate ePHI, or any personal identifiers that could reveal the identity of an individual.
- Three parts to the HIPAA Security Rule – technical safeguards, physical safeguards and administrative safeguards

Licensure compacts

- KRS 311.6208 Interstate Medical Licensure Compact
- KRS 314.475 Nurse Licensure Compact
- KRS 327.300 Physical Therapy Licensure Compact

NOTE: Must review licensure board regulations and state laws in all states that you are practicing in

Optician services 201 KAR 5:005

- Use of telehealth permitted
- Prevent fee splitting
- HIPAA compliance

Grants, workman's compensation,
CHFS/DCBS programs – all expanding
use of telehealth

Medicare Updates

- Additional codes being added. Review CMS and MAC sites for your particular payor

NOTE: Medicare Advantage Plans may have their own requirements

Place of service

- POS 2 – Not in patient home
- POS 10 – In private residence

Medicare billing instructions for Telehealth claims in Pub. 100-04; Medicare Claims Processing Manual, Chapter 12, Section 190

Fee schedule

MLN Matters – Fee schedule, Jan. 22. New codes and what you can bill after expiration of COVID emergency waiver period.

- Non TH visit w/in 12 months and annually thereafter
- FQ – modifier for audio only

Interstate compacts and impact

- Nursing
- Physicians
- Physician assistants
- Clinical staff

Integrating the changes into practice – Documentation

- Documentation
- Consent
- HIPAA and privacy/security

Integrating the changes into practice – Billing and coding

- New Medicare codes
- Payor requirements for denoting place of service
- Chargemasters and disclosure of charges

Risk management

- Fragmented care
- Lack of information for PCP or specialists
- Transitioning technology vendors
- HIPAA compliance and updated policies and procedures

Integrating the changes into practice – Staffing

- Compacts
- How to handle out of state providers
- Licensure in Kentucky

Payor requirement changes

- Specific MCO contracts
- Commercial/private insurance contracts
- ERISA contracts
- Selfpay/prompt pay

What happens next? Predictions for the future of telehealth

- Continuing technology changes
- Fraud and abuse audits
- Prescribing controlled substances – clarification
- Pilot projects and new ideas

Questions?