

CHAPTER 181**(HB 311)**

AN ACT relating to telehealth.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 205.559 is amended to read as follows:

- (1) The Cabinet for Health and Family Services and any managed care organization with whom the Department for Medicaid Services contracts for the delivery of Medicaid services shall provide Medicaid reimbursement for covered telehealth services and telehealth consultations, if the telehealth service or telehealth consultation:
 - (a) Is provided by a Medicaid-participating practitioner, including those employed by a home health agency licensed pursuant to KRS Chapter 216, to a Medicaid recipient or another Medicaid-participating practitioner at a different physical location; and
 - (b) Meets all clinical, technology, and medical coding guidelines for recipient safety and appropriate delivery of services established by the Department for Medicaid Services or the provider's professional licensure board.
 - (2) (a) For rural health clinics, federally qualified health centers, and federally qualified health center look-alikes, reimbursement for covered telehealth services and telehealth consultations shall:
 1. To the extent permitted under federal law, include an originating site fee in an amount equal to that which is permitted under 42 U.S.C. sec. 1395m for Medicare-participating providers if the Medicaid beneficiary who received the telehealth service or telehealth consultation was physically located at the rural health clinic, federally qualified health center, or federally qualified health center look-alike at the time of service or consultation delivery and the provider of the telehealth service or telehealth consultation is not employed by the rural health clinic, federally qualified health center, or federally qualified health center look-alike; or
 2. If the telehealth service or telehealth consultation provider is employed by the rural health clinic, federally qualified health center, or federally qualified health center look-alike, include a supplemental reimbursement paid by the Department for Medicaid Services in an amount equal to the difference between the actual reimbursement amount paid by a Medicaid managed care organization and the amount that would have been paid if reimbursement had been made directly by the department.
 - (b) A request for reimbursement shall not be denied solely because:
 1. An in-person consultation between a Medicaid-participating practitioner and a patient did not occur; or
 2. A Medicaid-participating provider employed by a rural health clinic, federally qualified health center, or federally qualified health center look-alike was not physically located on the premises of the clinic or health center when the telehealth service or telehealth consultation was provided.
 - (c) Telehealth services and telehealth consultations shall not be reimbursable under this section if they are provided through the use of a facsimile machine, text, chat, or electronic mail unless the Department for Medicaid Services determines that telehealth can be provided via these modalities in ways that enhance recipient health and well-being and meet all clinical and technology guidelines for recipient safety and appropriate delivery of services.
- (3) (a) A health-care facility that receives reimbursement under this section for consultations provided by a Medicaid-participating provider who practices in that facility and a health professional who obtains a consultation under this section shall establish quality-of-care protocols, which may include a requirement for an annual in-person or face-to-face consultation with a patient who receives telehealth services, and patient confidentiality guidelines to ensure that telehealth consultations meet all requirements and patient care standards as required by law.
 - (b) The Department for Medicaid Services and any managed care organization with whom the department contracts for the delivery of Medicaid services shall not deny reimbursement for telehealth services

covered by this section based solely on quality-of-care protocols adopted by a health-care facility pursuant to paragraph (a) of this subsection.

- (4) The cabinet shall not require a telehealth consultation if an in-person consultation with a Medicaid-participating provider is reasonably available where the patient resides, works, or attends school or if the patient prefers an in-person consultation.
- (5) *Notwithstanding any provision of law to the contrary, neither the Department for Medicaid Services nor a Medicaid managed care organization with whom the department has contracted for the delivery of Medicaid services shall require that a health professional, as defined in KRS 205.510, or medical group maintain a physical location or address in this state to be eligible for enrollment as a Medicaid provider if the provider or group exclusively offers services via telehealth as defined in KRS 211.332.*
- (6) The cabinet shall request any waivers of federal laws or regulations that may be necessary to implement this section and KRS 205.5591.
- ~~(7)(6)~~ Medicaid-participating practitioners and home health agencies are strongly encouraged to use audio-only encounters as a mode of delivering telehealth services only when no other approved mode of delivering telehealth services is available.
- ~~(8)(7)~~ As used in this section:
 - (a) "Federally qualified health center" means the same as in 42 U.S.C. sec. 1396d;
 - (b) "Federally qualified health center look-alike" means an organization that meets all of the eligibility requirements of a federally qualified health center but does not receive federal grants issued pursuant to 42 U.S.C. sec. 254b;
 - (c) "Originating site" means the site at which a Medicaid beneficiary is physically located at the time a telehealth service or telehealth consultation is provided; and
 - (d) "Rural health clinic" means the same as in 42 U.S.C. sec. 1395x.

➔Section 2. KRS 222.433 is amended to read as follows:

- (1) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition.
- (2) If, after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be ordered to undergo treatment, then the court shall:
 - (a) Set a date for a hearing within fourteen (14) days to determine if the respondent should be ordered to undergo treatment for a substance use disorder;
 - (b) Notify the respondent, the legal guardian, if any and if known, and the spouse, parents, or nearest relative or friend of the respondent concerning the allegations and contents of the petition and the date and purpose of the hearing; and the name, address, and telephone number of the attorney appointed to represent the respondent; and
 - (c) Cause the respondent to be examined no later than twenty-four (24) hours before the hearing date by two (2) qualified health professionals, at least one (1) of whom is a physician. The qualified health professionals:
 - 1. Shall certify their findings to the court within twenty-four (24) hours of the examinations;~~and~~
 - 2. May be subject to subpoena for cross-examination at the hearing, either in person, by telephone, or by videoconference; *and*
 - 3. *May conduct the examination required by this paragraph via telehealth as defined in KRS 211.332.*
- (3) If, upon completion of the hearing, the court finds by proof beyond a reasonable doubt that the respondent should be ordered to undergo treatment, then the court shall order such treatment for a period not to exceed sixty (60) consecutive days from the date of the court order or a period not to exceed three hundred sixty (360) consecutive days from the date of the court order, whatever was the period of time that was requested in the petition or otherwise agreed to at the hearing. Failure of a respondent to undergo treatment ordered pursuant to this subsection may place the respondent in contempt of court.

- (4) If, at any time after the petition is filed, the court finds that there is no probable cause to continue treatment or if the petitioner withdraws the petition, then the proceedings against the respondent shall be dismissed.

Signed by Governor April 6, 2023.