SUMMARY OF KENTUCKY LAW AND PRACTICE OF TELEHEALTH
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Kentucky Revised Statute 205.510 defines terms used in healthcare coverage. Subsection (15) provides that "Telehealth consultation" means a medical or health consultation, for purposes of patient diagnosis or treatment, that requires the use of advanced telecommunications technology, including, but not limited to:

(a) Compressed digital interactive video, audio, or data transmission;
(b) Clinical data transmission via computer imaging for teleradiology or telepathology; and
(c) Other technology that facilitates access to health care services or medical specialty expertise;

In 2016 a modification was proposed to Kentucky Revised Statute Chapter 216 which would have defined “telehealth” as:

“Tele-health” and “Tele-Communication Services” refers to a mode of delivering health care, counseling and public health services by way of federally compliant information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management and self management of a patients healthcare while the patient or consumer is at an originating site, including but not limited to the patient’s or consumer’s home, and a health care provider at a distant site.

Medicaid was uncomfortable with expansion that would have permitted “direct to patient” services in the patient’s home. Kentucky currently uses a “spoke and hub” model of telehealth delivery, where both sites have to be members of the Kentucky Telehealth Network. The direct to patient language was stricken from the statutory amendments. Many providers are using direct to patient services, but not billing for those.

REIMBURSEMENT CONCERNS

There is specific statutory authority governing provider reimbursement for telehealth. Medicaid coverage is outlined in Kentucky Revised Statute 305.559 – “Medicaid reimbursement for telehealth” which mandates that the provider must be in the telehealth network and must be under contract with the Cabinet as a Medicaid provider.
Kentucky’s Administrative Regulation 907 KAR 3:170 governs parity and coverage for telehealth services. This regulation finds that a billable encounter must be via an approved telehealth site. Section (4(g)(i). Informed consent required from patient in writing. Section 5. This consent must encompass:

- Option to refuse telehealth
- Notified of alternatives
- Access to the information resulting from telehealth session
- HIPAA safe storage for session information
- Informed of who is present at the spoke site
- Right to object to telehealth at any time
- Informed consent retained in patient record

Providers who use a HIPAA compliant software program and maintain signed consent to treat forms are eligible for reimbursement by commercial payors and by Medicaid, under the terms of the law and conditions found in payor contracts.

Difficulties arise when the provider attempts to bill for services using a telehealth code but is providing the services at a location that is not part of the Kentucky Telehealth Network. Payors may refuse to reimburse for those services. Additional difficulties occur where a provider is conducting frequent telemedicine treatment, as opposed to consultation or specialist evaluation of the patient. Payors may hold that the services are not medically necessary or that a lower level of service is being provided than the service the patient would receive in a face-to-face consultation. This may result in burdensome records requests requiring the provider to share historic patient records to support the claim for reimbursement.

In response, some providers, operating under the language of the parity laws, bill for telehealth services as though they were in person treatment, omitting any reference to telehealth. A provider who receives a records request from a payor regarding services billed as in person would need to be able to show appropriate documentation of treatment and evaluation in order to be able to retain any payments made.
CONCERNS ABOUT PRESCRIBING TO THE TELEHEALTH PATIENT

Providers face some concerns when attempting to prescribe medications for patients who are seen via telehealth encounters. The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 governs dispensing of controlled substances by means of the internet. The law specifically exempts practitioners of telemedicine from the Act’s prohibitions under certain conditions. See: Subsection 309(e) (3)(A) of that Act. The Ryan Haight Act expressly provides that a physician who is acting in accordance with applicable state law and is registered with the state as a telehealth provider or is exempt from such registration, may prescribe after seeing a patient via telehealth. See: Section 53(A)(II) and (III). The Act allows that a patient evaluation permitting prescribing wherewer appropriate need not be in-person if the provider employs technology sufficient to accurately diagnose and treat the patient in conformity with the applicable standard of care and the provider is licensed in the state in which the services are being provided. 42 C.F.R. § 482.22(a)(3)(iii)

Other evaluations may also be considered appropriate if the provider is at a distance from the patient, but a licensed health care professional is able to provide various physical findings that the provider needs to complete an adequate assessment. See, e.g, N.C. Gen. Stat. § 90-1.1(5); La. R.S. 37:1276(1)(2), which outlines specific licensing approval to be given by the state medical board to providers practicing telehealth. These include establishing a physician-patient relationship and making a diagnosis based on patient history, mental status, appropriate laboratory and diagnostic testing and patient communications.

Another exception applies if the location where the patient is being treated must be a clinic that is registered with the DEA.

Under the strictest interpretation of the federal law, a valid prescription can be provided where the prescriber is a “covering physician” for the patient’s PCP or referring provider and is unavailable to conduct the evaluation and treatment.

EMPIRICAL EVIDENCE OF THE BENEFITS OF TELEHEALTH

A number of benefits exist to in home/direct to patient care and monitoring. Access to care can be a consideration for rural and low income patients. Telemedicine allows a provider to reach a patient where necessary, immediately, in the location where the patient
currently is. Direct to patient/in home telemedicine also allows providers to monitor patients remotely and assess mental and physical health and conditions promptly. This allows slowly developing conditions or deteriorations in health to be detected and treated before they become serious and require costly hospital admissions. ii, iii In contrast to the concerns expressed by Kentucky Medicaid, such care may result in decreased utilization of expensive services. The Department of Veterans Affairs (VA) has extensively studied the use of in-home telemonitoring to care for veteran patients with chronic conditions. The results showed dramatic decreases in service utilization for chronic conditions. iv.

Readmissions may also be decreased as a result of prompt detection and treatment of changes in condition. A number of studies have demonstrated dramatic reductions in hospital readmissions and emergency room visits. For example, one study in New York saw hospitalizations drop by 55% and emergency visits by 29%. v A program in Indiana used telemonitoring to lower hospital readmissions for patients with CHF and COPD to just 3%—down from the national average of 20%. The greatest success story was a patient with 9 chronic conditions and 11 admissions in the previous year (total cost of $156,000) who stayed out of the hospital during the entire 7-month program. vi.

Reductions in hospital admissions and utilization inevitably lead to lower costs. For example, St. Vincent Health System in Pennsylvania used in-home telemonitoring to reduce readmissions in all 26 of its facilities, netting a 100 percent return on investment in just two months. vii.

While no similar study has yet been undertaken in Kentucky, providers are hoping that as payment for services transitions to a quality of care model, payors will recognize the financial and quality benefits provided by immediate access and frequent monitoring.

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viii Dr. Kristi Henderson, University of Mississippi Medical Center (UMMC) Center for Telehealth, Testimony before the US Senate Committee on Commerce, Science, and Transportation, Apr. 21, 2015.