

## Kentucky's New Telehealth Law Expands Insurance Coverage and Reimbursement

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Wednesday, May 23, 2018

Kentucky health care providers and patients will soon enjoy a revamped, and significantly improved, telehealth commercial insurance coverage law. Kentucky Governor Matt Bevin signed [SB 112](#) into law on April 26, 2018, imposing both telehealth coverage and payment parity requirements for Kentucky Medicaid, Medicaid managed care organizations, and commercial health plans in the Bluegrass State. The law is effective July 1, 2019.

Rob Sprang, Director of [Kentucky TeleCare](#), noted the legislation “will help providers from across the Commonwealth care for patients, no matter where they live” allowing healthcare providers to “leverage telehealth technology to extend vital healthcare services to our most vulnerable citizens, bringing the right care to the right people at the right time in the right place.”

### Patient-Friendly Changes to Kentucky's Insurance Code

The changes to Kentucky's Insurance Code (Title XXV, Chapter 304, Subtitle 17a, Section 138) are even more provider and patient-friendly than some other recent state law changes (e.g., [Iowa](#), [Nebraska](#), New Jersey) because the statute mandates both coverage and payment parity. The key language in the statute states, in pertinent part, as follows:

*“A health benefit plan shall reimburse for covered services provided to an insured person through telehealth as defined in Section 4 of this Act. Telehealth coverage and reimbursement shall be equivalent to the coverage for the same service provided in person unless the telehealth provider and the health benefit plan contractually agree to a lower reimbursement rate for telehealth services.”*

Telehealth payment parity (i.e., that reimbursement rates for a service delivered via telehealth are equal to rates paid for the identical service delivered in-person) is an essential issue for lawmakers to consider when drafting and evaluating a proposed telehealth coverage bill, or when revisiting a previously-enacted coverage law. We have discussed this issue extensively in prior articles, and handled these issues in connection with our legislative work drafting bills to amend state insurance coverage laws.

### Kentucky Commercial Health Plan Requirements

For **Kentucky commercial health plans**, telehealth is defined as “the delivery of healthcare-related services by a health care provider who is licensed in Kentucky to a patient through a face-to-face encounter with access to real-time interactive audio and video technology or store and forward services that are provided via asynchronous technologies as the standard practice of care where images are sent to a specialist for evaluation. The requirement for a face-to-face encounter shall be satisfied with the use of asynchronous telecommunications technologies in which the health care provider has access to the patient's or client's medical history prior to the telehealth encounter.” The definition does not include “the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call.”

Under the new law, a health plan may not:



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- Require a provider to be physically present with a patient unless the provider determines that it is necessary to perform those services in person;
- Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if the service were provided in person;
- Require demonstration that it is necessary to provide services to a patient through telehealth;
- Require a provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;
- Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services; or
- Require a provider to be part of a telehealth network.

## Changes to Kentucky Medicaid and Medicaid Managed Care Laws

For ***Kentucky Medicaid and Medicaid Managed Care***, the bill changes Kentucky Medicaid and Medicaid Managed Care laws (Title XVII, Chapter 205) in a manner that largely mirrors the changes to the Kentucky Insurance Code. Kentucky's Cabinet for Health and Family Services will provide oversight, guidance, and direction to Medicaid providers delivering care using telehealth. These activities include:

- Developing policies and procedures to ensure the proper use and security for telehealth, including but not limited to confidentiality and data integrity, privacy and security, informed consent, privileging and credentialing, reimbursement, and technology;
- Promoting access to health care provided via telehealth;
- Maintaining a list of Medicaid providers who may deliver telehealth services to Medicaid recipients;
- Requiring that specialty care be rendered by a health care provider who is recognized and actively participating in the Medicaid program;
- Requiring that any required prior authorization requesting a referral or consultation for specialty care be processed by the patient's primary care provider and that any specialist coordinate care with the patient's primary care provider; and
- Maintaining 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.

## Additional Changes Worth Noting

Other highlights of the new law include the following:

- **Kentucky Telehealth Network.** The state's prior telehealth coverage law required Kentucky Medicaid and commercial insurers to cover telemedicine-based services only if the services were provided at a site within the state's official telehealth network. The new law no longer requires telehealth services be provided through the state's telehealth network to receive reimbursement.
- **Licensure.** A telehealth provider must be licensed in Kentucky in order to receive reimbursement for telehealth services.
- **Abortion.** The law imposes an additional telemedicine practice standard which expressly prohibits the use of telehealth in the performance of an abortion.

The enactment of Kentucky's telehealth insurance coverage law brings the count to approximately 36 states plus D.C. as having laws requiring insurance plans to cover telehealth services, and approximately nine states with payment parity language. We will continue to monitor Kentucky for any rule changes that affect or improve telemedicine opportunities in the state.

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