

DEPARTMENT OF HEALTH



PROPOSED CHANGES TO REGULATIONS.

Medicaid Coverage & Payment for Services Delivered through Telehealth Modalities.

7 AAC 110. Medicaid Coverage; Professional Services.
7 AAC 135. Medicaid Coverage; Behavioral Health Services.
7 AAC 145. Medicaid Payment Rates.



PUBLIC REVIEW DRAFT.
February 28, 2023.

COMMENT PERIOD ENDS: April 6, 2023.

Please see the public notice for details about how to
comment on these proposed changes.

Notes to reader:

1. Except as discussed in note 2, new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line above the text of each section of the regulations states that a new section, subsection, paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined.*
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”
5. Only the text that is being changed within a section of the current regulations is included in this draft. Refer to the text of that whole section, published in the current Alaska Administrative Code, to determine how a proposed change relates within the context of the whole section and the whole chapter.

Title 7. Health and Social Services.**Chapter 110. Medicaid Coverage; Professional Services.****7 AAC 110.445. Mental health services by a physician.**

7 AAC 110.445(c)(1) is repealed:

(1) repealed ____/____/____;

7 AAC 110.445(c)(12) is amended to read:

(12) interaction between recipient and provider by means of the Internet, except as provided in 7 AAC 110.620 - 7 AAC 110.639 for **telehealth** [TELEMEDICINE] services.

(Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am 4/24/2020, Register 234;

am ____/____/____, Register____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

The heading of 7 AAC 110, Article 18, is changed to read:

Article 18. Telehealth [TELEMEDICINE].

17 AAC 110.620 is repealed and readopted to read:

7 AAC 110.620. Scope of telehealth. Subject to the requirements of 7 AAC 110.620 - 7 AAC 110.639, the department will pay for a service delivered by means of a telehealth modality if the service

(1) would be covered under 7 AAC 105 - 7 AAC 160 if delivered in person; and

(2) is delivered in compliance with

(A) the same requirements of 7 AAC 105 - 7 AAC 160, including prior authorization requirements and service limitations, as if the service were delivered in person; and

(B) the requirements of AS 08.01, AS 08.68, AS 47.07, and 7 AAC 105 - 7 AAC 160, including the telehealth requirements and limitations of 7 AAC 110.620 – 7 AAC 110.639, as applicable to the service, the provider, and the mode of delivery. (Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am ___/___/_____; Register_____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 110.625 is repealed and readopted to read:

7 AAC 110.625. Telehealth modalities. (a) Subject to the requirements of 7 AAC 110.620 - 7 AAC 110.639, the department will pay for a service delivered by means of one of the

following telehealth modalities if the modality and use of the modality meet the requirements of P.L. 104 - 191 (Health Insurance Portability and Accountability Act of 1996 (HIPAA)):

(1) synchronous: live or interactive, through a real-time, interactive

(A) two-way audio-video technology that includes, at a minimum, an operational camera, microphone, speaker or headphones, and capability to view video feed;

(B) two-way audio-only technology that includes an operational microphone and speaker or headphones;

(2) asynchronous: a store-and-forward, through the transfer from one location to another of recorded digital images, video, or sounds to allow a consulting provider to obtain information, analyze it, and report back to the rendering provider.

(b) For patient-initiated online digital service, whether synchronous or asynchronous, the following are not reimbursable:

(1) nonevaluative or nonmanagement services including appointment scheduling and electronic communication of test results;

(2) provider-initiated online digital service;

(3) patient-initiated online digital service within the postoperative period of a completed procedure or within seven days of an in-person visit and related to the illness, injury, or other reason for that visit. (Eff. 2/1/2010, Register 193; am_____/_____/_____,

Register_____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 110.630 is repealed and readopted to read:

7 AAC 110.630. Telehealth provider requirements and conditions for payment.

Subject to the requirements of 7 AAC 110.620 - 7 AAC 110.639, to be eligible for payment under 7 AAC 105 - 7 AAC 160 for providing a service by means of a telehealth modality, a provider must meet the following requirements:

(1) except for providers of the services identified in 7 AAC 110.635(6)(L) - (M), the provider must have an active license to practice under AS 08 or the applicable laws of the jurisdiction in which the provider is located;

(2) the provider must be enrolled under 7 AAC 105.210;

(3) the provider, if licensed under AS 08 and required under 12 AAC 02.600, must be registered under 12 AAC 02.600 (telemedicine business registry);

(4) the service must be delivered within the rendering provider's, and if applicable, consulting provider's scope of licensure or certification;

(5) a claim submitted to the department must include applicable telehealth modifiers and place-of service coding;

(6) if the rendering provider or consulting provider determines, during a telehealth encounter, that a service extends beyond the scope of that provider's license or certification, the provider must discontinue the encounter and refer the recipient to an appropriate provider; the rendering provider or consulting provider may bill only for the portion of the encounter that was within that provider's scope of license or certification and only if the rendered portion of the encounter met all criteria of a separately billable service;

(7) except as otherwise provided in 7 AAC 105 - 7 AAC 160, a recipient must be present during and participate in a telehealth encounter;

(8) the provider must comply with all record keeping requirements set out under 7 AAC 105.230 for all telehealth services rendered;

(9) the rendering provider and consulting provider, when delivering a service by means of a synchronous telehealth modality, must annotate the patient’s clinical record with the method of delivery, the recipient’s location during the delivery of the service, and confirmation that the recipient has consented to a telehealth method of delivery. (Eff. 2/1/2010, Register 193; am _____/_____/_____, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 110.635 is repealed and readopted to read:

7 AAC 110.635. Telehealth exclusions. The department will not pay

(1) for the use of, or any costs associated with the use of, technological equipment and systems associated with the delivery of a service by means of a telehealth modality;

(2) a provider for communication with that provider’s supervising provider or communication with a provider who is acting in a supervisory capacity;

(3) a supervising provider or a provider who is acting in a supervisory capacity for communication with a supervisee or for review of a supervisee’s work;

(4) a provider participating in a telehealth encounter whose sole purpose is to facilitate the telehealth encounter between the recipient and a rendering provider or a consulting provider;

- (5) for a failed or unsuccessful telehealth connection or transmission;
- (6) for the following services when provided by means of a telehealth modality:

- (A) chiropractic services;
- (B) dental services;
- (C) private-duty nursing services;
- (D) pharmacy services;
- (E) durable medical equipment and related services;
- (F) prosthetic and orthotic devices and related services;
- (G) transportation services;
- (H) accommodation services;
- (I) personal care services;
- (J) home health services;
- (K) Community First Choice services;
- (L) home and community-based waiver services, except for
 - (i) care coordination services under 7 AAC 130.240;
 - (ii) day habilitation services under 7 AAC 130.260;
 - (iii) employment services under 7 AAC 130.270; or
 - (iv) intensive active treatment services under 7 AAC 130.275.
- (M) Long term services and supports targeted case management services,

except for case management services provided under 7 AAC 128.010(b)(2). (Eff.

2/1/2010, Register 193; am 9/18/2022, Register 243; am _____/_____/_____,

Register_____)

7 AAC 110.639 is repealed and readopted to read:

7 AAC 110.639. Telehealth definitions. In 7 AAC 110.620 - 7 AAC 110.639,

(1) “consulting provider” means a provider who evaluates a recipient’s healthcare information by means of a telehealth modality based on a referral or request from another provider;

(2) “patient-initiated online digital service” means evaluation, assessment, and management services of an established patient through a secure platform such as an electronic health record portal, secure electronic mail, or digital application;

(3) “provider” includes a rendering provider, a referring provider, and a consulting provider;

(3) “rendering provider” means a provider who evaluates, diagnoses, and treats a recipient and, for purposes of eligibility under 7 AAC 105 - 160 (Medicaid Coverage and Payment)

(A) arranges the services of a consulting provider or refers the recipient to another rendering provider, as necessary, to diagnose or treat the recipient when a recipient requires services or a specialty beyond the treating provider’s scope of license or certification; or

(B) acts as a referring provider;

(5) “telehealth” means the practice of health care delivery, evaluation, diagnosis, consultation, or treatment using the transfer of medical data, audio, visual, or data

communications at two or more locations between a provider and recipient who are physically separated from each other. (Eff. 2/1/2010, Register 193; am _____/_____/_____, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

Chapter 135. Medicaid Coverage; Behavioral Health Services.

7 AAC 135.010. Scope of Medicaid behavioral health services.

7 AAC 135.010(d)(3) is amended to read:

(3) [TELEPHONE] consultation or coordination **by means of a telehealth modality** with another service provider other than case management; (Eff. 10/1/2011, Register 199; am 4/9/2017, Register 222; am 7/1/2018, Register 226; am 4/24/2020, Register 234; am 7/8/2020, Register 235; am 6/30/2021, Register 238; am 8/27/2021, Register 239; am 12/23/2022, Register 244)

Authority: AS 47.05.010 AS 47.07.030

The section heading of 7 AAC 135.030 is changed to read:

7 AAC 135.030. Behavioral health provider [PROVIDER] enrollment and organization.

7 AAC 135.030(d)(4) is amended to read:

(4) services are provided on the premises of the mental health physician clinic or **by means of** [THROUGH] **a telehealth modality** [TELEMEDICINE APPLICATION] under

7 AAC 110.620 - 7 AAC 110.639, unless the service is provided to a person identified as homeless.

(Eff. 10/1/2011, Register 199; am 7/1/2018, Register 226; am 11/10/2019, Register 232; am 4/24/2020, Register 234; am____/____/____, Register_____)

Authority: AS 47.05.010 AS 47.07.030

The introductory language of 7 AAC 135.120(d) is amended to read:

(d) All members of the behavioral health treatment team shall attend meetings of the team in person or by **means of a telehealth modality** [TELEPHONE] and be involved in team decisions unless the clinical record documents that

...

7 AAC 135.120(f) is amended to read:

(f) The directing clinician must review a recipient's plan for treatment **in person or by means of a telehealth modality** [FACE-TO-FACE] with the recipient at least every 90 days to confirm that the identified problems and treatment services are current and relevant, and to identify any need for continuing assessment or treatment services to address new problems identified by the provider or the recipient. If the recipient is 18 years of age or younger, the review must be conducted in accordance with (c) of this section. The directing clinician shall

document in the recipient's clinical record the date that the review was conducted. (Eff.

10/1/2011, Register 199; am 4/24/2020, Register 234; am _____/_____/_____, Register_____)

Authority: AS 47.05.010 AS 47.07.030

The introductory language of 7 AAC 135.150(c) is amended to read:

(c) Family psychotherapy, with or without recipient involvement, may be provided **by means of a telehealth modality** [TELEPHONICALLY] if

...

7 AAC 135.150(c)(2) is amended to read:

(2) the provider documents, in the recipient's treatment note for each session, the reason that family psychotherapy was provided **by means of a telehealth modality** [TELEPHONICALLY]. (Eff. 10/1/2011, Register 199; am _____/_____/_____, Register_____)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 145.270 is repealed and readopted to read:

7 AAC 145.270. Telehealth payment rates. (a) The department will pay in accordance with 7 AAC 145.020 for a service delivered by means of a telehealth modality by a rendering provider or a consulting provider in accordance with 7 AAC 110.620 - 7 AAC 110.639 as set out under 7 AAC 145.020.

(b) The department will pay a rendering provider or a consulting provider in the same manner as payment is made for the same service provided through in-person mode of delivery, not to exceed 100 percent of the rate established under 7 AAC 145.050.

(c) In this section, “telehealth,” “rendering provider,” and “consulting provider” have the meanings given in 7 AAC 110.639. (Eff. 2/1/2010, Register 193; am _____/_____/_____, Register_____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040