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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Triptaa Surve, Department of Health

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: July 13, 2023

RE: Filed Permanent Regulations: Department of Health

Department of Health regulations re: Medicaid coverage and payment for healthcare services provided through telehealth (7 AAC 110.445(c)(1))

Attorney General File:	2023200039
Regulation Filed:	7/13/2023
Effective Date:	9/1/2023
Print:	247, October 2023

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

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Juneau, Alaska 99811
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July 13, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: 2023200039 - Department of Health;
amendment to 7 AAC; Medicaid coverage and
payment for healthcare services provided
through telehealth

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Health against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The Department of Health adopted the regulations after the close of the public comment period. The regulations implement legislation enacted in 2022 (HB 265), establishing a telehealth program. Accordingly, the regulations amend 7 AAC to set out requirements related to coverage and payment through Medicaid for healthcare services provided through telehealth.

Both the March 5, 2023 public notice and the July 6, 2023 adoption order state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Please note that in order for the Department of Health to meet timing requirements necessary to facilitate Medicaid payments and services, a special effective date of September 1, 2023 is requested for the regulations.

To: The Honorable Nancy Dahlstrom
Our file: 2023200039

July 13, 2023
Page 2 of 2

We have made some technical corrections to conform the regulations in accordance with AS 44.62.060. The corrections are incorporated into the attached copy of the regulations.

Sincerely,

TREG R. TAYLOR
ATTORNEY GENERAL

By: Rebecca C. Polizzotto
Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

Digitally signed by
Rebecca C. Polizzotto
Date: 2023.07.13
09:11:30 -08'00'

RCP:bws

CC w/enclosure: Triptaa Surve, Regulations Contact
Department of Health

Alexander Hildebrand, Assistant Attorney General
Department of Law

Brad Sharp, Assistant Attorney General
Department of Law

Steven C. Weaver, Assistant Attorney General
Department of Law

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF HEALTH

The attached 11 pages of regulations, dealing with Medicaid Coverage of and Payment for Services Delivered by means of a Telehealth Modality are adopted and certified to be a correct copy of the regulation changes that the Department of Health adopts under the authority of AS 47.05.010, AS 47.07.030, AS 47.07.040, AS 47.07.069, AS 47.07.070, AS 47.07.073, AS 47.07.074, and AS 47.30.585, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Health paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on September 1, 2023, as provided in AS 44.62.180.

Heidi
Hedberg

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Hedberg
Date: 2023.07.06 11:44:11
-08'00'

Heidi Hedberg, Commissioner
Department of Health

April Simpson for

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on July 13
2023, at 3:17 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 -
44.62.120.

April Simpson
for Lieutenant Governor Nancy Dahlstrom

Effective: September 1, 2023.

Register: 24th October 2023.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

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

(1) repealed 9 / 1 / 2023 ;

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

9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.069
AS 47.07.030

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

Article 18. Telehealth [TELEMEDICINE].

7 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 was 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 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.069
AS 47.07.030

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 allows for oral communication between the provider and the recipient;

(2) asynchronous: a store-and-forward, through the transfer from one location to another, of recorded digital images, data, 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 9/1/2023, Register 247)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.069
AS 47.07.030

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) the provider must have an active license under AS 08 or AS 47, an active certification in the state, or an active license under 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 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.069
AS 47.07.030

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, 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 dispensing 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 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.069

AS 47.07.030

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 when the patient is the originator of the interaction with the provider;

(3) “provider” means a professional, facility, or other type of provider and includes a rendering provider, a referring provider, and a consulting provider;

(4) “rendering provider” means a provider who evaluates, diagnoses, and treats a recipient;

(5) "referring provider" means a rendering provider who refers a recipient to another rendering provider to diagnose or treat the recipient when the recipient requires services or a specialty beyond the scope of the license or certification of the rendering provider making the referral;

(6) “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 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.069
AS 47.07.030

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; am 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.040 **AS 47.07.069**
AS 47.07.030

7 AAC 135.010(d) is amended by adding a new paragraph to read:

(17) a behavioral health clinic service not provided on the premises or by means of a telehealth modality under 7 AAC 110.620 - 7 AAC 110.639, unless the service is provided to a person experiencing homelessness. (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; am 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.069

((Publisher: please change the period that follows 7 AAC 135.010(d)(16) to a semicolon.))

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 **experiencing homelessness** [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 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.069

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 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.030 **AS 47.07.069**

7 AAC 135.150(c) is repealed and readopted to read:

(c) Family psychotherapy, with or without recipient involvement, may be provided by means of a telehealth modality. (Eff. 10/1/2011, Register 199; am 9 / 1 / 2023, Register 247)

Authority: AS 47.05.010 AS 47.07.030 **AS 47.07.069**

7 AAC 135.990 is amended by adding a new paragraph to read:

(35) “experiencing homelessness” means an individual who is in a state of being “homeless,” as defined in 42 U.S.C. 11302(a). (Eff. 10/1/2011, Register 199; am 6/16/2016, Register 218; am 7/1/2018, Register 226; am 11/10/2019, Register 232; am 4/24/2020, Register 234; am 6/30/2021, Register 238; am 9 / 1 / 2023 , Register 247)

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 9 / 1 / 2023 , Register 247)

Authority: AS 47.05.010 AS 47.07.040 AS 47.30.585
AS 47.07.030 AS 47.07.069

7 AAC 145.739(3) is amended to read:

(3) "visit" means the aggregate of **in-person and synchronous telehealth** [FACE-TO-FACE] encounters, occurring on the same calendar day and at a single location, between the health clinic recipient and one or more rural health clinic professionals; for purposes of this paragraph, "aggregate of **in-person and synchronous telehealth** [FACE TO FACE] encounters" does not include

(A) multiple [FACE-TO-FACE] encounters in which, after the first encounter, the recipient suffers an additional illness or injury requiring additional diagnosis or treatment;

(B) **an** [A FACE-TO-FACE] encounter for dental or mental health diagnosis or treatment that occurs on the same calendar day and single location as one or more [FACE-TO-FACE] encounters for medical diagnosis or treatment; or

(C) charity care. (Eff. 2/1/2010, Register 193; am 9 / 1 / 2023,

Register 247)

Authority: AS 47.05.010 AS 47.07.070 AS 47.07.074

AS 47.07.069 AS 47.07.073