

Children's Alliance Concerns/Comments

**based on the Subcommittee Substitute to be heard before ARRS on
December 11, 2023**

Board of Social Work Regulations

201 KAR 23:170. Telehealth and social work practice

	Comment
Page 2 & 3	<p>Section 1(3) – The definition of “electronic social work service” is extremely broad and we ask whether this definition is needed given the definition of “telehealth service” included within Section 1? We are trying to understand the difference between “electronic social work service” and the newly defined “telehealth service.” “Telehealth service” is defined, however it is not used within the regulation.</p> <p>Because of the use of the “and” conjunction in the definition of “electronic social work service” some have an understanding that <u>all</u> of the services in (a) thru (h) must be completed in order to be considered “electronic social work service,” however based on the use of the semicolon, instead of a comma, and based on conversations with Social Work Board representatives it is our understanding that each service in (a) thru (h) could be provided individually to be considered “electronic social work service.” So, if a person is only providing information to the public via electronic means are they providing “electronic social work service”? If yes, would a person without a social work license who provides information to the public via electronic means be practicing an electronic social work service without a license? Would a person without a social work license who arranges payment for a professional service via electronic means be practicing an electronic social work service without a license? I don't believe the intent of the Social Work Board is to regulate individuals providing information to the public or arranging payment for a professional service – however if the interpretation is that some of (a) thru (h) must be completed in order to be considered “electronic social work service” this is a concern and we would ask that “electronic social work service” be removed from this regulation.</p> <p>If the definition of electronic social work service remains in the regulation, we recommend clarifying an electronic social work service is a service provided “<i>by an individual who is licensed or certified per KRS 335.080 – 335.100</i>”. We would further recommend that “(a) provide information to the public” be deleted from the definition of electronic social work, as providing information to the public in general often falls outside the scope of social work. If “(a) provide information to the public” remains in the regulation can more information be included in the regulation for how a licensed social worker can implement Section 2 of the regulation if they are only providing information to the public?</p>
	<p>It appears with the new definition of “telehealth service” the Social Work Board is authorizing <u>clinical</u> social work to be provided via <u>electronic means</u>. Does electronic means include electronic mail, text, chat, facsimile, and artificial intelligence? Do we need to define “electronic</p>

	<p>means” as we have concerns with <u>clinical</u> social work being implemented via some of these methods.</p>
	<p>If the Social Work Board is authorizing clinical social work to be provided via <u>electronic means</u> (which includes electronic mail, text, chat, facsimile, and artificial intelligence) per KRS <u>211.332</u> we would ask that language be included in this regulation that indicates these modalities are only to be used to enhance recipient health and well-being and when all clinical and technology guidelines for recipient safety and appropriate delivery of services.</p> <p>The definition from the telehealth regulation: <u>900 KAR 12:005(6)</u> is - (6) "Telehealth" or "digital health" is defined by <u>KRS 211.332(5)</u>.</p> <p>KRS 211.332 (5) "Telehealth" or "digital health": (a) Means a mode of delivering healthcare services through the use of telecommunication technologies, including but not limited to synchronous and asynchronous technology, remote patient monitoring technology, and audio only encounters, by a health care provider to a patient or to another health care provider at a different location; <i>(b) Shall not include:</i> 1. The delivery of health care services through electronic mail, text, chat, or facsimile <u>unless a state agency authorized or required to promulgate administrative regulations relating to telehealth determines that health care services can be delivered 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</u>; or 2. Basic communication between a health care provider and a patient, including but not limited to appointment scheduling, appointment reminders, voicemails, or any other similar communication intended to facilitate the actual provision of healthcare services either in-person or via telehealth;</p>
Page 2	<p>Section 1(6) – the definition of “teletherapy” indicates that it means the practice of clinical social work as defined by KRS <u>335.020</u> and <u>201 KAR 23:070</u>. The “practice of clinical social work” is not defined in KRS <u>335.020</u>.</p> <p>More importantly, the definition does not include what makes the practice of clinical social work “teletherapy” as there is no reference to providing therapy or clinical social work services via electronic means or the use of telecommunication technologies. So as written any person providing clinical social work is providing teletherapy – even if that person is meeting with the person face to face.</p> <p>We recommend revising the definition of teletherapy to, “Teletherapy” means the practice of clinical social work as described by 201 KAR <u>23:070</u>, when it is delivered via telehealth as defined by KRS <u>211.332 (5)</u>.</p>
Page 3	<p>Section 2 – Some of the requirements in Section 8 would be appropriate to require upon initial contact with a potential client, it appears many</p>

	<p>requirements should not be required to be performed with the client thereafter. For example, Section 2(8), obtaining written, informed consent for telehealth, teletherapy or electronic social work services should not be required each time there is a telehealth, teletherapy or electronic social work services encounter with the client.</p> <p>We would recommend that requirements expected to be performed at each telehealth, teletherapy or electronic social work services encounter be separated from those requirements that only must be performed one time for future encounters to occur via telehealth, teletherapy or electronic social work services.</p> <p>Example: Could (h), (i), and (j) be one-time notifications instead of having the client sign paperwork at each encounter. When talking with the board they indicated these items could be provided each time the client receives the service verbally, however the regulation does not seem to indicate that.</p>
Page 5	<p>Section 3(1) limits a social worker to practicing telehealth, teletherapy or electronic social work services to the "area of competence" in which proficiency has been gained through education, training and experience and requires them to maintain current competency in the practice of telehealth, teletherapy or electronic social work services. We are unsure if (1)(a) & (b) is referring to competency in telehealth or social work. Based on communication with the Board they indicate it is both social work competencies and telehealth competencies. We would recommend this be clarified in the regulation.</p> <p>Is "scope of practice", which is included in (2)(g), the same as or different from an individual's area of competence and clarify the regulation, if appropriate. We recommend deleting Section 3 (1) (a)</p>
Page 6	<p>Section 3(2)(b) – We recommend deleting, "comply with directives of the board" or revising "comply with the directives of the board" for clarity and reference Social Work regulations and statutes.</p>