

## **201 KAR 23:170 Telehealth and social work practice**

The primary necessity for 201 KAR 23.170 arises from the expanded use of technology by licensed social workers and the lack of any regulation from the board

The proposed Kentucky administrative regulation implements KRS 335.158 by establishing consent, confidentiality, fraud/abuse prevention, fee-splitting, and continuing education requirements for social workers' use of telehealth. This regulation protects the public given that no current rules specifically govern technology and telehealth for licensed social work practice in Kentucky. As new modalities like AI chatbots, virtual/augmented reality, and mobile health apps rapidly emerge, there is now a greater risk of client harm without appropriate safeguards and practice standards. Clients could face fraud, privacy violations, incompetent digital communications, consent deficits, substandard care, and unsecured data retention without oversight. The regulation addresses these risks by setting reasonable identity/location verification rules, mandating secure communications and explicit informed consent, avoiding misinformation, governing responsible client identity data, and requiring continued competency in new modalities. Together, these provisions establish an accountability framework for technology-assisted social work that matches prevailing in-person standards, helping prevent abuse and harm, especially when no regulation exists.

Key points in particular:

- Key terminology provides necessary clarity for telehealth and electronic social work services.
- Client identity/location verification combined with alternative contact methods promotes accountability.
- Enumerated informed consent topics and periodic review provides data protection.
- Requiring adherence to in-person care standards avoids subpar digital practices.
- Competency, data integrity/security, and records retention rules avert patient endangerment.
- By permitting technology use but regulating it appropriately through continuing education and other safeguards, these rules allow access while still prioritizing public welfare.
- Additional strengths requiring emphasis include protection against misinformation, supervisory arrangements for those attaining clinical licenses and mandatory continuing education, which will help maintain up-to-date best practices.

Additionally, while some social workers are in healthcare, others practice in non-medical settings like schools, communities, and social service agencies. So telehealth for these practitioners may encompass online education, virtual psychoeducation, digital case management, and electronic record storage rather than mental health diagnosis and treatment. Nonetheless, significant client privacy issues, ethical concerns, and standards-of-care questions still arise for non-healthcare social workers' technology use.

As such, although terminology like "patients" or "treatment" may not always apply, these regulations remain critically important for all licensed social workers in all spheres by instituting accountability around digital practices. Core requirements of security protections, accurate information, consent processes, technology competence, accountable supervision arrangements, and privacy safeguards apply universally.

In summary, the proposed regulation safeguards client safety, privacy, consent, and quality of care, while also ensuring that licensed social workers in Kentucky are competent and compliant with KY law and standards. All licensees will receive training on the regulation by the end of 2024. 201 KAR 23:170 provides comprehensive and necessary regulations for telehealth in licensed social work practice where none currently exists.

The Kentucky Board of Social Work (KBSW) wishes to clarify that while its regulations implement laws, a single phrase from a regulation alone would not be sufficient to initiate legal action for unlicensed practice. Such action depends on violations of statutes. KRS 335.160 authorizes the board to seek legal remedies against unlicensed practice to protect the public. Practicing without a license may involve breaching one or more board regulations. However, board regulations are applicable primarily to licensees, not for unlicensed practitioners, for example, the code of ethical conduct applies to licensees.

Whether a KBSW's regulation is "perfect" poses a double bind that defies a simple affirmative or negative response. KBSW has painstakingly crafted this regulation to comply with existing KY statutes and the needed standards for

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professional social workers. The board seeks to set standards and will continue to do what can be done to protect the public.

Below is a table of concerns sent to the ARRS from Childrens Alliance for the Dec 11, 2023, meeting and contains the response from the Board for the Jan 8, 2024, meeting. Board representatives met with Childrens Alliance representatives on Jan 3, 2023. Some amendments have been made and submitted as the Agency Amendment.

Childrens Alliance concerns	KBSW response
<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. Because of the use of the "and" conjunction in the definition of "electronic social work service" some have an understanding that fill 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</p>	<p>Question - So, if a person is only providing information to the public via electronic means are they providing "electronic social work service"?</p> <p>Answer: Yes, but only If the person is <b>licensed</b> by the KY Board of Social Work. For example, a licensee with a website for online continued education.</p> <p>Question: 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?</p> <p>Answer: No, the regulation applies to <b>licensed</b> social workers.</p> <p>Question: 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?</p> <p>Answer: No, the regulation applies to <b>licensed</b> social workers.</p> <p>Note: The definition of telehealth in KRS 335.158 (10) includes continuing education, which is a professional service. Websites, blogs, podcasts, social media, etc., are sources of information or education provided to the public that must be accurate information. The <b>licensed</b> social worker is accountable for the information given to the public even when that is the only professional service they offer as a <b>licensed</b> professional social worker.</p> <p>This item is consistent with 201 KAR 23:080 Section 7. Advertising. (1) A social worker shall accurately present his services, education, professional credentials, qualifications, and license level to the public. (2) A social worker shall not display a license issued by the board which has expired or has been suspended or revoked. (3) A social worker shall not</p>

regulation.

If the definition of electronic social work service remains in the regulation, we recommend clarifying an electronic social work service is a service provided "by an individual who is licensed or certified per KRS 335.080 - 335.100". 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?

It appears with the new definition of "telehealth service" the Social Work Board is authorizing clinical social work to be provided via electronic means. Does electronic means include electronic mail, text, chat, facsimile, and artificial intelligence? Do we need to define "electronic means" as we have concerns with clinical social work being implemented via some of these methods.

If the Social Work Board is authorizing clinical social work to be provided via electronic means (which includes electronic mail, text, chat, facsimile, and artificial intelligence) per KRS 211.332 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.

KRS 211.332 {S} "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;

**(b) Shall not include:**

1. The delivery of health care services through electronic mail, text, chat, or facsimile unless a state agency authorized or required to

use professional identification, including a business card, office sign, letterhead, telephone directory listing, or electronic listing, if it includes a statement that is false, fraudulent, misleading, or deceptive. A statement shall be deemed false, fraudulent, misleading, or deceptive if it: (a) Contains a material misrepresentation of fact; or (b) Is intended to, or is likely to, create an unjustified expectation by the public or by a client.

Amend Section 1(3)(a)

(a) Provide information to the public **when the activities are a professional service;**

Amend Section 2 to add -

**(5) All licensees shall make reasonable attempts to provide accurate information to the public.**

This statement emphasizes the importance of providing truthful information to the public and the duty to avoid misinformation or withholding vital facts. The term "reasonable attempts" implies that while perfection might not always be achievable, a good faith effort must be made to ensure accuracy.

**(6) All licensees shall make reasonable attempts to protect client identifiers in financial transactions**

This statement focuses on the security and confidentiality of client information in financial transactions. "Client identifiers" refer to any data that can be used to identify a client, such as names, account numbers, Social Security numbers, or other personal information. The phrase "reasonable attempts" indicates that while absolute security might not be possible, significant, and appropriate measures should be taken to protect this information to prevent identity theft.

Section 2 of the regulation is applicable to licensed individuals. Adding "by an individual who is licensed or certified per KRS 335.080 - 335.100" would be redundant.

Question: Does electronic means include electronic mail, text, chat, facsimile, and artificial intelligence?

Answer: Yes, **licensed** social workers (clinical and non-clinical) have been using email, text, chat, and facsimile for a while and some may have begun to use artificial intelligence. The

*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;* 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;

board shares this concern and is genuinely concerned that no regulations currently exist for **licensed** social workers in Kentucky. Some telehealth has moved away from human contact all together, such as online psychoeducation materials and self-administered online therapy treatment programs. Are **licensed** social workers violating the law (KRS 211.332(5)(b)) because no regulation exists that allows them to use email, text, chat, or facsimile? Who enforces KRS 211.334? The KBSW cannot do it.

The definition of telehealth service mirrors the definition found in the Telehealth Glossary. The distinction made between telehealth services and electronic social work services reflects the trends and practices in the social work field. The regulation uses terminology for professional services and is adaptable in telehealth practices within social work. This approach allows licensed social workers to stay responsive to evolving client needs and technological advancements. This approach can avoid frequent amendments, which can be tedious. By allowing for a degree of flexibility, the regulation can remain relevant and effective over time. This regulation also supports the professional growth and adaptability of licensed social workers, who are both clinical and non-clinical. The regulation embraces current and new technological possibilities for the benefit of both practitioners and clients. KBSW shares the concern of ensuring safety and ethical practice to protect the public. Well-being is a high priority for the KBSW and is already addressed in 201 KAR 23:080 Code of ethical conduct - "Section 3 - Responsibility to clients - (1) A social worker shall promote the well-being of a client and, if required by law, the safety and well-being of an individual whose life might be affected by the client's behavior or circumstance."

Not all licensed social workers are healthcare providers or are connected to healthcare as described in KRS 211.332(5)(a). All licensees should be accountable when using technology with clients not just within healthcare.

Amend Section 2(1) "Upon initial contact with a potential client and with the client thereafter, all

	<p>licensees using telehealth to deliver <b><u>telehealth</u></b> services, ....."</p> <p>And in Section (1)(k) "Document in the client's record that a <b><u>telehealth</u></b> service was provided ....."</p>
<p>Section 1(6) - the definition of "teletherapy" indicates that it means the practice of clinical social work as defined by <b><u>KRS 335.020</u></b> and <b><u>201 KAR 23:070</u></b>. The "practice of <b><i>clinical</i></b> social work" is not defined in KRS 335.020.</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 23:070, when it is delivered via telehealth as defined by KRS 211.332 (5).</p>	<p>KRS 335.020 uses the term "psychotherapy." Language is not always easy. "Horsepower" is still used in reference to mechanical engines even when there is no "horse" involved. Psychology has "telepsychology," yet it is difficult to have "tele-psychotherapy," "tele-social work," or "tele-clinical social work." "Telehealth" is itself a broad term that includes "telemedicine." The prefix "tele-" is derived from the Greek word "tēle" which means "far off." It is used in many words to say that something is happening over a distance. The prefix "tele-" has been adapted to many ways in which interactions are being mediated over distance, such as "telephone," and "teleconference." As used in this regulation, "teletherapy" is therapy "far off" and easily understood as not being face-to-face just as "teleconference" does not mean in person.</p> <p>KRS 211.332 Is not part of the direct governing statutes for social work as is KRS 335.158. KRS 335.158 includes continuing education not found in KRS 211.332(5).</p> <p>Amend - "Teletherapy" means the practice of clinical social work as defined by <b><u>KRS 335.020</u></b> and 201 KAR 23:070 <b><u>using telehealth as defined by KRS 335.158.</u></b></p> <p>See page 7</p> <p><sup>1</sup>Electronic social work services</p> <p><sup>2</sup>Technology-Enabled Modalities</p>
<p>Section 2 - Some of the requirements in Section 8 would be appropriate to require upon initial contact with a potential <b><u>client, it appears many</u></b> 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. We would recommend that requirements expected to be performed at each telehealth, teletherapy or</p>	<p>Social workers recognize that consent, whether in-person or by telehealth, is never a one-time event but a continuous process. The regulation supports the ongoing engagement and agreement between a licensee and their clients. Think of the concept of consent as an ongoing conversation, not a one-time agreement, especially not a one-time signature. It evolves with each client interaction, reflecting the dynamic and responsive nature of social work. This approach reflects social work's understanding that all, including telehealth services, must be as diverse and adaptable as the needs of those a licensee may serve. Consent is about being attentive, respectful, and responsive,</p>

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<p>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.          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>	<p>and accepting that technology is not always acceptable or accessible all the time to every client.          The consent requirement in Section 2 is consistent with 201 KAR 23:080 - "Section 4. Informed Consent. (1) A social worker shall obtain informed consent from the client or his legal guardian in writing to provide a social work service." That regulation does not specify a time. A periodic verbal check with a client that consent for services including telehealth is acceptable and that is the intent in both 201 KAR 23:080 and 201 KAR 23:170 regardless of the service being in person and by telehealth.          If an employer's or payer's requirements differ, then the licensee will need to comply accordingly. To go beyond this is considered overly prescriptive and burdensome by the board.</p> <p>Insert the word "<i>periodically</i>" before thereafter</p>
<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) &amp; (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. 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>	<p>The regulation requires licensed social workers to adapt to and learn new methods such as electronic cognitive behavioral therapy delivered online, but only if they have the proper training, education, and experience. However, in a time where virtual assistants, emotional support apps, and other innovative practices are becoming more prevalent, the regulatory approach must not be a limiting factor. Just as a gardener provides room for plants to grow and flourish, this regulation provides an environment for new methods and technologies, allowing social workers to expand their toolkit and capabilities. Text therapy and text crisis intervention are now being used by the National Suicide Prevention Lifeline (988). If a licensee is not competent with text therapy or in a crisis then the licensee must learn to be competent before using texting to their practice. Licensees are expected to maintain and practice within their areas of expertise within social work itself. This means they should only offer services in areas where they have the necessary skills and knowledge. If a licensee does not have skills and knowledge to work with children, then they need to gain the knowledge and skills. Additionally, there is an expectation to be competent in the methods and technologies used in telehealth. This means not only understanding the social work aspect of services but also being proficient in the</p>

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	<p>technological, ethical, and practical aspects of delivering these services electronically.</p> <p>Please note: 201 KAR 23:080 Section 3. Responsibility to Clients. (3) A social worker shall not provide a service outside his scope of practice as established in 201 KAR 23:060.</p>
<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>	<p>The board can never go outside its governing statutes and regulations.</p> <p>Amended: "Comply with <b><u>all administrative regulations</u></b> of the board"</p>

<sup>1</sup>Electronic social work services mean the use of computers (including the Internet, social media, online chat, text, and email) and other electronic means (such as smartphones, landline telephones, and video technology) to (a) provide information to the public, (b) deliver social work services to clients, (c) communicate with clients, (d) manage confidential information and case records, (e) store and access information about clients, and (f) arrange payment for professional services.

Model Regulatory Standards for Technology and Social Work Practice, p 3. Association Social Work Boards (ASWB) 2015. [ASWB-Model-Regulatory-Standards-for-Technology-and-Social-Work-Practice.pdf](#)

<sup>2</sup>Technology-Enabled Modalities - a broad term that encompasses many ways in which technology can be utilized to deliver services or interact with clients. These modalities are continually evolving with advancements in technology. Here are some examples of what can be included under technology-enabled modalities:

1. Telehealth and Teletherapy: Providing counseling, therapy, or medical services remotely using videoconferencing, audio calls, or secure messaging platforms.
2. Virtual Reality (VR) and Augmented Reality (AR): Using VR and AR technologies to create immersive therapeutic experiences, simulations, or training scenarios.
3. Artificial Intelligence (AI): Implementing AI-driven chatbots or virtual assistants for client support, mental health assessments, or automated reminders.
4. Mobile Apps and Mobile Health (mHealth): Developing mobile applications for self-help, monitoring, tracking, and communication with clients.
5. E-Health Records (EHR): Managing client records, treatment plans, and progress notes electronically in a secure and compliant manner.
6. Secure Messaging and Email: Communicating with clients through encrypted messaging platforms or email for appointment scheduling, reminders, or sharing resources.
7. Online Support Groups and Communities: Facilitating peer support and group therapy sessions through online forums, social media groups, or dedicated platforms.
8. Remote Monitoring and Wearable Technology: Utilizing wearable devices to track clients' physical or mental health data and remotely monitor their progress.
9. Online Assessments and Screenings: Conducting assessments, screenings, and surveys electronically to gather client information and identify needs.
10. Gamification: Incorporating gaming elements into therapy or intervention programs to engage and motivate clients.

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11. Electronic Payment and Billing: Managing financial transactions securely through online payment systems and electronic billing platforms.
12. Secure File Sharing: Sharing documents, resources, and educational materials with clients through secure online file-sharing services.
13. Data Analytics and Reporting: Using data analytics tools to track client outcomes, identify trends, and improve service delivery.
14. Social Media Engagement: Using social media platforms to engage with clients, share information, and raise awareness about mental health issues.
15. Remote Supervision and Consultation: Facilitating remote supervision and consultation between professionals to support best practices and adherence to ethical standards.

It's important to note that the specific technology-enabled modalities employed may vary depending on the field of practice (e.g., healthcare, mental health, social work). Licensees should always consider ethical guidelines, privacy and security measures, and the unique needs of their clients when implementing these modalities. Additionally, staying up to date with evolving technologies and their potential applications is crucial in providing effective and responsible social work services.

See - [Telehealth Basics - ATA \(americantelemed.org\)](https://www.americantelemed.org)