

335.158 Duty of treating clinical social worker utilizing telehealth with client -- Requirements for telehealth.

- (1) A social worker who provides or facilitates the use of telehealth shall:
 - (a) Ensure that the informed consent of the client, or another appropriate person with authority to make the health care treatment decision for the client, is obtained before services are provided through telehealth;
 - (b) Ensure that the confidentiality of the client's medical information is maintained as required by this chapter and other applicable state and federal law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology that conform to applicable state and federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended;
 - (c) Ensure that telehealth services are accessible to clients with disabilities in compliance with Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794(d), Title III of the Americans with Disabilities Act, 42 U.S.C. secs. 12181 to 12189, and all other applicable federal and state accessibility requirements;
 - (d) Disclose to the client the potential risks to privacy and confidentiality of information due to the use of technology, including:
 1. The potential risks of disruption in the use of technology;
 2. When and how the social worker utilizes electronic messages;
 3. The circumstances in which the social worker may utilize alternative modes of communication for emergency purposes, including medical, psychiatric, and other emergencies;
 4. The identity of anyone who may have access to client communications with the social worker; and
 5. The identity of the social worker, his or her credentials, and the jurisdiction of licensed practice;
 - (e) Assess the client's current condition and needs to determine the appropriateness of telehealth in meeting those needs and that the client has the necessary knowledge and skill to benefit from telehealth;
 - (f) Adhere to the same or appropriately adapted standards of care as when treatment or services are provided in person;
 - (g) Not engage in fee-splitting with other telehealth providers or entities; and
 - (h) Not engage in false, misleading, or deceptive advertising of telehealth services.
- (2) Each time a social worker provides or facilitates services via telehealth, the social worker shall:
 - (a) Make a reasonable attempt to verify the identity of the client;
 - (b) Make a reasonable attempt to verify and document the physical location of the client at the time services are provided;
 - (c) Obtain from the client alternative means of contacting the client;

- (d) Provide information on how communication can be directed to the social worker;
 - (e) Utilize non-public facing technology products that comply with the Health Insurance Portability and Accountability Act of 1996 standards in 42 U.S.C. secs. 1320d to 1320d-9, except when the client, after being duly informed of the risks in writing or through a documented conversation, has requested to use nonsecure communication methods, and the social worker has documented the client's request and informed consent in the client's record; and
 - (f) Document in the client's record that a service was provided via telehealth, including any technological difficulties experienced during the provision of the service and adherence to all appropriate standards of care.
- (3) When a social worker determines a client is at imminent risk of serious harm during a telehealth encounter, the requirements of subsections (1) and (2) of this section may be waived as necessary for timely and appropriate intervention to protect the client's safety. This exception is limited to a single telehealth encounter or successive contacts within the same crisis lasting no more than twenty-four (24) hours. Use of this telehealth exception and the rationale shall be documented in the client record.
- (4) Any person located within or outside of Kentucky who provides social work via telehealth to a client in Kentucky, and any person located in Kentucky who provides social work via telehealth to a client outside of Kentucky, shall:
 - (a) Hold a temporary permit issued under KRS 335.070;
 - (b) Be licensed under KRS 335.080, 335.090, or 335.100; or
 - (c) Be licensed to provide social work by a member state, as defined in KRS 335.135, in a jurisdiction that has enacted the Social Work Licensure Compact.
- (5) A social worker shall comply with the laws, administrative regulations, and professional standards relating to licensing, telehealth, mandatory reporting, duty to warn, age of consent, and other requirements for the provision of social work services of:
 - (a) The Commonwealth of Kentucky;
 - (b) Any jurisdiction in which the social worker is located; and
 - (c) Any jurisdiction in which a client is located at the time the social worker provides social work via telehealth.
- (6) A person practicing social work who is employed by a federal agency, including but not limited to the United States Department of Veterans Affairs, may provide social work services via telehealth to clients of the federal agency regardless of the person's or client's location, as permitted under federal law for telehealth and within the scope of the person's employment.
- (7) A person practicing social work who is located outside of the United States may provide social work services via telehealth to clients in Kentucky, and a social worker located in Kentucky may provide social work services via telehealth to clients who are located outside of the United States, if the person practicing social

work:

- (a) Complies with Kentucky laws and administrative regulations governing the practice of social work and provision of social work services via telehealth;
- (b) Complies with the laws and professional standards governing the practice of social work and provision of social work services via telehealth of the foreign country in which the social worker or client is located;
- (c) Complies with all United States laws and international agreements that apply to the provision of telehealth services; and
- (d) Ensures the secure and compliant handling of client information in accordance with applicable United States and international data protection standards, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended, and the General Data Protection Regulation, Regulation (EU) 2016/679.

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