

**BOARDS AND COMMISSIONS**  
**Kentucky Board of Dentistry**  
**(New Administrative Regulation)**

**201 KAR 8:590. Teledentistry.**

RELATES TO: KRS 313.021(1)(c)

STATUTORY AUTHORITY: KRS 313.021(1)(c), KRS 313.060(8)(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(c) authorizes the board to exercise all administrative functions of the Commonwealth in the regulation of the profession of dentistry, and to promulgate administrative regulations to carry out the provisions of the chapter. KRS 313.060(8) and (9) require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of Kentucky. This administrative regulation establishes requirements and procedures for the practice of teledentistry.

Section 1. Definition. "Teledentistry" means the use of electronic and digital communications to provide and deliver dentistry and dental hygiene-related information and services.

Section 2. Practice of Teledentistry.

(1) To deliver teledentistry services in Kentucky, one must hold a current, valid dental or dental hygiene license issued by the Board of Dentistry. The practice of dentistry occurs where the patient is located at the time teledentistry services are initiated.

(2) This administrative regulation shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. Licensees delivering teledentistry services shall comply with all rules of professional conduct and state and federal statutes relevant to dentistry and dental hygiene. Teledentistry encounters shall be held to the same standard of care as a traditional in-person patient encounter.

(3) A patient may be treated via teledentistry by:

(a) A Kentucky licensed dentist; or

(b) A Kentucky licensed dental hygienist who is supervised by, and has delegated authority from, a Kentucky licensed dentist.

(c) Any individual may provide any photography and/or digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist for the sole and limited purpose of screening, assessment and/or examination. Anyone providing such photography and/or digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist must follow the same standards required for the recording of such photography and/or digital imaging and are limited by KRS 313.010 (11).

(4) A licensee using teledentistry services in the provision of dental services to a patient shall take appropriate steps to establish the licensee-patient relationship and conduct all appropriate evaluations and history of the patient.

Section 3. Informed Consent. A licensee shall, to the extent possible:

(1) Confirm the identity of the requesting patient,

(2) Verify and authenticate the patient's health history;

(3) Disclose the licensee's identity, applicable credentials, and contact information, including a current phone number.

(4) Obtain an appropriate informed consent from the requesting patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to in-

clude any special informed consents regarding the use of teledentistry services. At a minimum, the informed consent shall inform the patient or legal guardian and document acknowledgment of the risk and limitations of:

- (a) The use of electronic and communications in the provision of care;
- (b) The potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;
- (c) The potential disruption of electronic and digital communication in the use of teledentistry;
- (d) The types of activities permitted using teledentistry services;
- (6) The patient or legal guardian's understanding that it is the role of the licensee to determine whether the condition being diagnosed or treated is appropriate for a teledentistry encounter;
- (7) A requirement for explicit patient or legal guardian consent to forward patient-identifiable information to a third party; and
- (8) The contact information for the Kentucky Board of Dentistry and a description of, or link to, the patient complaint process.

Section 4. Confidentiality. The licensee shall ensure that any electronic and digital communication used in the practice of teledentistry is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all other applicable laws, administrative regulations, and guidance. Confidentiality shall be maintained through appropriate processes, practices and technology, including the disposal of electronic and digital equipment and data.

#### Section 5. Dental Records.

- (1) Any dental record made through teledentistry shall be held to the same record retention standards as a record made through a traditional in-person dental encounter.
- (2) An informed consent obtained in connection with teledentistry services shall be filed in the patient's dental record.
- (3) The patient record established during the use of teledentistry services shall be accessible to both the licensee and the patient or legal guardian, consistent with all established laws and administrative regulations governing patient healthcare records.
- (4) The licensee shall document or record in the file:
  - (a) The patient's presenting problem;
  - (b) The licensee's chief concern;
  - (c) The patient's diagnosis;
  - (d) The patient's treatment plan; and
  - (e) A description of all services provided by teledentistry.

#### Section 6. Prescribing.

- (1) The indication, appropriateness, and safety considerations for each prescription for medication, laboratory services, or dental laboratory services provided through the use of teledentistry services shall be evaluated by the licensee in accordance with applicable law and current standards of care, including those for appropriate documentation. A licensee's use of teledentistry carries the same professional accountability as a prescription issued in connection with an in-person encounter.
- (2) A licensee who prescribes any kind of analgesic or pain medication as part of the provision of teledentistry services shall comply with all applicable KASPER requirements.

Section 7. Representation of Services. A licensee using teledentistry to deliver dental services or who practices teledentistry shall not:

- (1) Directly or indirectly engage in false, misleading, or deceptive advertising of teledentistry services; or
- (2) Allow fee-splitting for the use of teledentistry services.

JEFFREY O. ALLEN, Executive Director

APPROVED BY AGENCY: January 13, 2020

FILED WITH LRC: January 15, 2020 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this Amendment shall be held on Friday, March 27, 2020 at 10:00 a.m. Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed Amendment. Written comments shall be accepted through March 31, 2020. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

**CONTACT PERSON:** Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the use of teledentistry.

(b) The necessity of this administrative regulation: KRS 313.021(1)(c) authorizes the board to exercise all administrative functions of the Commonwealth in the regulation of the profession of dentistry, and to promulgate administrative regulations to carry out the provisions of the chapter. KRS 313.060(8) and (9) require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for the practice of teledentistry in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for teledentistry in compliance with KRS 313.060.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky, as well as those licensed dental hygienists under the authority of a licensed dentist. Patients who receive teledentistry services may also be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it an amendment, including:

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each licensee, if providing teledentistry services, will be required to provide such services in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be accrued as a result of the new administrative regulation, other than set-up costs for teledentistry itself, which may include security measures as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No; this administrative regulation impacts all similarly situated practitioners equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021(1)(c), KRS 313.060(8) and (9)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

Note: If specific dollar amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.