

## **201 KAR 28:235. Telehealth occupational therapy services.**

RELATES TO: KRS 319A.080, 319A.300

STATUTORY AUTHORITY: KRS 319A.070, 319A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.300(2) requires the board to promulgate an administrative regulation to implement telehealth in occupational therapy, including to establish procedures to prevent abuse and fraud through the use of telehealth, prevent fee-splitting through the use of telehealth, and utilize telehealth in the provision of occupational therapy services and in the provision of continuing education. Additionally, KRS 319A.300(1) requires an occupational therapist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation establishes the requirements for telehealth for occupational therapy services.

Section 1. Definitions. (1) "Client" means the person receiving the services of the occupational therapist.

(2) "Telehealth is defined by KRS 319A.300(3).

(3) "Telehealth occupational therapy" means the practice of occupational therapy as defined by KRS 319A.010(2), between the occupational therapist or occupational therapist assistant and the patient that is provided using:

- (a) An electronic communication technology; or
- (b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A credential holder using telehealth to deliver occupational therapy services shall, upon initial contact with the client:

- (1) Make attempts to verify the identity of the client;
- (2) Obtain alternative means of contacting the client other than electronically such as by the use of a telephone number or mailing address;
- (3) Provide to the client alternative means of contacting the credential holder other than electronically such as by the use of a telephone number or mailing address;
- (4) Provide contact methods of alternative communication the credential holder shall use for emergency purposes such as an emergency on call telephone number;
- (5) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth provided by the credential holder;
- (6) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications and;
- (7) Inform the client in writing about:
  - (a) The limitations of using technology in the provision of telehealth occupational therapy services;
  - (b) Potential risks to confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telehealth occupational therapy services;
  - (c) Potential risks of disruption in the use of telehealth occupational therapy services;
  - (d) When and how the credential holder will respond to routine electronic messages;
  - (e) In what circumstances the credential holder will use alternative communications for emergency purposes;
  - (f) Who else may have access to client communications with the credential holder;
  - (g) How communications can be directed to a specific credential holder;
  - (h) How the credential holder stores electronic communications from the client; and
  - (i) How the credential holder may elect to discontinue the provision of services through tele-

health.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

- (1) Limit the practice of telehealth occupational therapy to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in the practice of telehealth occupational therapy through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
- (3) Document the client's presenting problem, purpose, or diagnosis;
- (4) Follow the record-keeping requirements of 201 KAR 28:140; and
- (5) Ensure that confidential communications obtained and stored electronically shall not be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall comply with:

- (1) State law where the credential holder is credentialed and be licensed to practice occupational therapy where the client is domiciled or adhere to standards set forth in 201 KAR 28:030; and
- (2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

Section 5. Representation of Services and Code of Conduct. (1) A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

- (a) Not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telehealth occupational therapy;
  - (b) Comply with 201 KAR 28:140; and
  - (c) Not allow fee-splitting through the use of telehealth occupational therapy services.
- (2) Occupational therapy continuing competence educational processes established in 201 KAR 28:200, Section 3(1), (2), (3), (5), (8), and (11), may occur through telehealth services. (44 Ky.R. 164, 1219; eff. 1-5-2018.)