

**STATEMENT OF EMERGENCY  
201 KAR 32:110E**

Pursuant to 13A.190(1)(a)(1), KRS 39A.180, and 39A.190, this emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. On March 6, 2020, Governor Andy Beshear signed Executive Order 2020-215 declaring State of Emergency regarding COVID-19. On March 18, 2020, Governor Andy Beshear signed executive order 2020-243 requiring all citizens of Kentucky to take all feasible measures to engage in appropriate social distancing. This emergency administrative regulation is being filed to allow marriage and family therapy associates the ability to provide services by telehealth. An ordinary administrative regulation would not immediately allow marriage and family therapy associates the ability to provide services by telehealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

DR. C. SHAWN OAK, Ph.D., LMFT, Board Chair  
ANDY BESHEAR, Governor

**BOARDS AND COMMISSIONS  
Board of Licensure of Marriage and Family Therapists  
(Emergency Amendment)**

**201 KAR 32:110E. Telehealth.**

EFFECTIVE: March 30, 2020

RELATES TO: KRS 335.305, 335.310, 335.320, 335.325, 335.380, 335.399

STATUTORY AUTHORITY: KRS 335.320(9), 335.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(9) requires the Board of Licensure for Marriage and Family Therapists to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399. KRS 335.380 requires the board to promulgate administrative regulations to govern telehealth services in the provision of marriage and family therapy services. This administrative regulation establishes procedures for the use of telehealth by licensees and associates.

Section 1. Definitions.

- (1) "Asynchronous" means a communication that does not occur simultaneously in real time.
- (2) "Electronic communication" means the use of websites, cell phones, email, texting, online social networking, video, or other digital methods and technology used to send and receive messages or post information.
- (3) "Encryption" means a mathematical process that converts text, video, or audio streams into a scrambled, unreadable format when transmitted electronically.
- (4) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub L. No. 104-191, 110 Stat. 1936 (1996).
- (5) "HITECH" means the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. 17901-17953.
- (6) "Social media" means a Web-based communication tool that enables people to interact with each other by both sharing and consuming information.
- (7) "Synchronous" means a communication that occurs simultaneously in real time.
- (8) "Telehealth" is defined by KRS 335.380(3).

## Section 2. Licensure, Standard of Practice, and Competency.

(1) License or permit required. Any licensed marriage and family therapist or marriage and family therapy associate practicing teletherapy in this state shall be licensed by the board or hold a permit issued by the board and comply with all statutes, administrative regulations, and ethics guidelines applicable to the practice of marriage and family therapy.

(2) Standard of appropriate practice. A licensed marriage and family therapist or marriage and family therapy associate providing telehealth services in this state shall be held to the same standards of practice as those applicable for in-person therapy settings.

(3) Competency. A licensed marriage and family therapist or marriage and family therapy associate shall only provide telehealth services in this state in those instances in which the licensed marriage and family therapist or marriage and family therapy associate has successfully completed all requirements set forth in Section 3(1) of this administrative regulation.

(4) Continued competency. A licensed marriage and family therapist or marriage and family therapy associate providing telehealth services in this state shall have an ongoing obligation to assess their technical and clinical competency to render these services by successfully completing all requirements set forth in Section 3(2) of this administrative regulation.

(5) Fee splitting. A licensed marriage and family therapist or marriage and family therapy associate providing telehealth services shall not split fees.

## Section 3. Education and Continuing Education Requirements.

(1) Initial educational requirements. Effective January 1, 2020, a licensed marriage and family therapist or a marriage and family therapy associate providing telehealth services in this state or a licensed marriage and family therapist who is supervising a marriage and family therapy associate providing telehealth services in this state shall have completed fifteen (15) hours of board-approved training in the practice of telehealth as provided in 201 KAR 32:060, Section 2(2), which shall include three (3) hours of ethics in the practice of telehealth. Each approved course shall be live or online. Areas to be covered in the training shall include:

- (a) Appropriateness of teletherapy;
- (b) Teletherapy theory and practice;
- (c) Modes of delivery;
- (d) Legal and ethical issues;
- (e) Handling online emergencies; and
- (f) Best practices and informed consent.

(2) Continuing education requirements. A licensed marriage and family therapist or marriage and family therapy associate who has completed the initial training in the practice of telehealth shall complete at least two (2) credit hours of continuing education approved by the board, in accordance with 201 KAR 32:060, in the practice of telehealth during each subsequent [~~licen-~~sure] renewal period.

(3) Credit hours earned to comply with subsections (1) and (2) above may be applied to continuing education requirements set forth in 201 KAR 32:060.

Section 4. Verification of the Client. Prior to providing telehealth services in this state a licensed marriage and family therapist or marriage and family therapy associate shall require the client to produce a valid photo identification.

## Section 5. Client Assessment.

(1) Initial assessment. Prior to providing telehealth services in this state a licensed marriage and family therapist or marriage and family therapy associate shall conduct an initial assess-

ment of the client to determine if telehealth is an appropriate delivery of treatment considering the professional, intellectual, or emotional needs of the client.

(2) Ongoing assessment. Throughout the duration of providing telehealth services in this state, a licensed marriage and family therapist or marriage and family therapy associate shall engage in a continual assessment of the appropriateness of providing these services to the client.

(3) Telehealth may not be appropriate if the client:

- (a) Recurrently experiences, or is likely to experience, crises or emergencies;
- (b) Is a suicide risk, or likely to become a suicide risk;
- (c) Is violent, or likely to become violent; or
- (d) Otherwise poses a risk to themselves or to others.

Section 6. Informed Consent. (1) Generally. Prior to providing telehealth services in this state, the licensed marriage and family therapist or marriage and family therapy associate providing these services shall obtain the informed consent of the client, which shall include:

(a) Disclosure of specific information regarding the marriage and family therapist's:

- 1. Training and credentials;
- 2. License number;
- 3. Physical location and contact information;
- 4. Social media policy;
- 5. Encryption policy; and
- 6. Collection, documentation, tracking, and storage of client information;

(b) Client confidentiality and the limits to confidentiality in electronic communication;

(c) Information on reporting complaints to the board and other appropriate licensing bodies;

(d) The specific services to be provided;

(e) The risks and benefits of engaging in telehealth in the clinical setting;

(f) The possibility of technology failure and alternate methods of service delivery;

(g) Time zone differences, if any;

(h) Cultural or language differences that may affect the delivery of services;

(i) The possible denial of insurance benefits;

(j) The pertinent legal rights and limitations governing practice across state lines or international boundaries, if applicable; and

(k) Whether delivery of service will be asynchronous or synchronous.

(2) Minors. If the client is a minor, prior to providing telehealth services in this state the licensed marriage and family therapist or marriage and family therapy associate shall, pursuant to Section 4 of this administrative regulation, verify the identity of the parent, guardian, or other person consenting to the minor's treatment and obtain from that person the informed consent required by this section.

Section 7. Emergency Procedures, Coordination of Care and Referrals. Prior to providing telehealth services in this state, the licensed marriage and family therapist or marriage and family therapy associate shall establish with the client:

(1) Acceptable ways to contact the marriage and family therapist in an emergency;

(2) Emergency procedures to include emergency services at the client's location;

(3) Coordination of care with other professionals; and

(4) Conditions under which telehealth services may be terminated and a referral made to in-person care.

Section 8. Compliance with Privacy Laws, Documentation, and Recordkeeping. A licensed marriage and family therapist or marriage and family therapy associate performing telehealth services in this state shall:

- (1) Comply with all privacy laws and regulations relating to the transmission and protection of protected health information, including HIPAA and HITECH; and
- (2) Comply with all state and federal laws and regulations relating to the practice of telehealth, documentation of services delivered, and related recordkeeping.

DR. C. SHAWN OAK, Ph.D., LMFT, Board Chair

APPROVED BY AGENCY: March 30, 2020

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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bryan D. Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth. This administrative regulation establishes procedures and education requirements for licensed marriage and family therapists and marriage and family therapy associates to provide telehealth services to patients in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 335.380(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth, including: (1) preventing abuse and fraud through the use of telehealth services; (2) preventing fee-splitting; and (3) utilizing telehealth in the provision of marriage and family therapy services and in the provision of continuing education. This administrative regulation prevents fraud and abuse in six ways: (1) applying standards for in-person counseling to telehealth; (2) requiring verification of the client; (3) requiring an initial assessment to ensure the client is a proper candidate for telehealth services; (4) making that assessment an ongoing concern; (5) obtaining the informed consent of the client; and (6) establishing procedures for the client in case of an emergency. This administrative regulation prohibits fee splitting in the delivery of services. Finally, the regulation sets forth education and continuing education requirements for telehealth services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS 335.380 by carrying out the legislative mandate for the board to establish a regulation regarding telehealth services.

(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: The amendment will change the existing administrative regulation in two ways: (1) by allowing marriage and family therapy associates to practice telehealth; and (2) prohibiting fee splitting.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow marriage and family therapy associates to practice telehealth. This is especially crucial under the State of Emergency declared in Executive Order 2020-215 on March 6,

2020 and Executive Order 2020-243 signed by Governor Beshear on March 18, 2020 requiring social distancing. The amendment prohibiting fee splitting is necessary because it is required by KRS 335.380(2)(b).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 335.380 which requires the board to promulgate regulations regarding telehealth services. It also conforms to KRS 335.380 which requires a prohibition on fee splitting in the delivering of telehealth services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 335.380 by carrying out the legislative mandate for the board to establish a regulation regarding telehealth services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 728 licensed Marriage and Family Therapists and Marriage and Family Therapy Associates in Kentucky, as well as an unknown number of Marriage and Family Therapists from other jurisdictions seeking to provide telehealth to clients located in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: In order to use telehealth to practice marriage and family therapy in Kentucky, each licensed marriage and family therapist, marriage and family therapy associate, and licensed marriage and family therapist supervising an associate practicing telehealth will be required to complete initial training and continuing education each subsequent year. The licensed therapist and marriage and family therapy associate will also have to verify the client, continuously assess the client as an appropriate recipient of telehealth, obtain consent from the client, establish emergency procedures, and ensure compliance with applicable privacy laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed marriage and family therapist or marriage and family therapy associate. Licensed marriage and family therapist and marriage and family therapy associates continuing education requirements are already in place as part of 201 KAR Chapter 32. The education and continuing education requirements specific to telehealth will count toward those hours licensed marriage and family therapists or marriage and family therapy associates are already required to obtain.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensed marriage and family therapists and marriage and family therapy associates and clients will be permitted to engage in telehealth, increasing access and availability of needed services.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body; a licensed marriage and family therapist or marriage and family therapy associate that provides telehealth will be governed by the same process as a licensed marriage and family therapists or marriage and family therapy associates in an office setting.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body; a licensed marriage and family therapists or a marriage and family therapy associate that provides telehealth will be governed by the same process as a licensed marriage and family therapists or a marriage and family therapy associate in an office setting.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Marriage and Family Therapy Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(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 increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensed marriage and family therapists and marriage and family therapy associates are treated similarly under this administrative regulation.

### 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? The Board of Licensure for Marriage and Family Therapists will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.380

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

(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? This regulation will not generate revenue for state or local government.

(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? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? A licensed marriage and family therapist or a marriage and family therapy associate providing telehealth services will abide by the same process as a licensed marriage and family therapist or a marriage and family therapy associate in an office setting so there will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? A licensed marriage and family therapist or a marriage and family therapy associate providing telehealth services will abide by the same process as a licensed marriage and family therapist or a marriage and family therapy associate in an office setting so there will be no additional cost to administer this program.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None