

201 KAR 33:070. Telehealth and telepractice.

RELATES TO: KRS 310.070, 310.200

STATUTORY AUTHORITY: KRS 310.200(1), (2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 310.200 requires the Board of Licensure and Certification for Dietitians and Nutritionists to adopt administrative regulations to further the objectives stated therein. This administrative regulation establishes procedures necessary 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 dietitian and nutrition services, and in the provision of continuing education.

Section 1. Definitions. (1) "Client" means the person receiving the services of the dietitian or nutritionist.

(2) "Educator" means a presenter speaking to a group of individuals on a topic generally without a focus on the specific needs of any particular individual.

(3) "Licensed healthcare professional" means a medical doctor, registered nurse, practical nurse, nurse practitioner, advanced practice registered nurse, physician's assistant, chiropractor, certified diabetes educator, pharmacist, speech-language pathologist, registered dietitian, certified nutritionist, podiatrist, audiologist, or psychologist licensed in the jurisdiction where he or she is physically located.

(4) "Practitioner" means a licensed dietitian or certified nutritionist.

(5) "Telehealth" is defined by KRS 310.200(3).

(6) "Telepractice" means the practice of dietetics or nutrition as defined by KRS 310.005(2) and provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A licensed health care professional may represent the practitioner at the initial meeting. A practitioner who uses telehealth to deliver dietetics or nutrition services shall, at the initial meeting 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 licensee other than electronically such as by the use of a telephone number or mailing address;

(4) Provide contact methods of alternative communication the practitioner 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 telepractice provided by the licensee; and

(6) Inform the client in writing and document acknowledgement of the risk and limitations of:

(a) The use of technology in the provision of telepractice;

(b) The potential breach of confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telepractice;

(c) The potential disruption of technology in the use of telepractice;

(d) When and how the practitioner will respond to routine electronic messages;

(e) In what circumstances the practitioner will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the practitioner;

(g) How communications shall be directed to a specific licensee;

(h) How the practitioner stores electronic communications from the client; and

- (i) That the practitioner may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A practitioner using telehealth to deliver services or who telepractices shall:

- (1) Limit the telepractice to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in telepractice 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, and include which services were provided by telepractice;
- (4) Use secure communications with each client, including encrypted text messages, via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; and
- (5) Ensure that confidential communications obtained and stored electronically shall not be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A practitioner using telehealth to deliver dietetics or nutrition services shall comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with a disability.

(2) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist pursuant to KRS 310.070 shall be licensed by the board if:

- (a) Services are offered via telehealth; and
- (b) These services are provided or the representation is made to a person when he or she is physically located in Kentucky.

(3) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist pursuant to KRS 310.070 shall be licensed by the board if:

- (a) Services are offered via telehealth; and
- (b) These services are provided or the representation is made from a physical location in Kentucky. This person may be subject to licensure requirements in other states where the services are received by the client.

(4) No provision of this administrative regulation shall restrict the ability of educators to present on topics related to dietetics and nutrition pursuant to KRS 310.070(2)(d).

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices shall not:

- (1) Engage in false, misleading, or deceptive advertising of telepractice; or
- (2) Split fees. (Amd 40 Ky.R. 2228; Am. 2423; eff. 6-6-2014 --Amd 44 Ky.R. 2087; eff. 6-1-2018.)