

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:310. Telehealth and telepsychology.

RELATES TO: KRS 319.140

STATUTORY AUTHORITY: KRS 319.032(2), 319.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires a treating psychologist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

Section 1. Definitions.

(1) "Client" is defined by 201 KAR 26:145, Section 3.

(2) "Telehealth" means delivery of health care-related services, by a provider who is a health care provider licensed in Kentucky, to a ~~client~~~~patient~~ through a face-to-face encounter with access to real-time interactive audio and video technology. Telehealth shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call and shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9.

(3) "Telepsychology" means the "practice of psychology", as defined by KRS 319.010(7), between the credential holder and the client~~psychologist and the patient~~ that is provided using:

(a) Electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(4) "Telehealth service" means any service that is provided via telehealth and is one (1) of the following:

(a) Event;

(b) Encounter;

(c) Consultation;

(d) Visit;

(e) Remote patient monitoring;

(f) Referral; or

(g) Treatment.

Section 2. Client Requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the credential holder other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;

(5) 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;

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepsychology;

- (b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;
 - (c) Potential risks of disruption in the use of telepsychology;
 - (d) When and how the credential holder will respond to routine electronic messages;
 - (e) The circumstances in which 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) The reporting of clients required by 201 KAR 26:145, Section 7;
- (7) Within forty-eight (48) hours of the telehealth service, the credential holder shall document within the client's medical record that a service was provided by telehealth, and follow all documentation requirements of the practice.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records.

- (1) A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:
- (a) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;
 - (b) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
 - (c) Document the client's presenting problem, purpose, or diagnosis;
 - (d) Follow the record-keeping requirements of 201 KAR 26:145, Section 6;
 - (e) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data; and
 - (f) Document the client's written informed consent to the services being provided and the provision of those services via telehealth, including that the patient has the right to refuse telehealth consultation or services, has been informed of alternatives to telehealth services, that the client shall be entitled to receive information from the provider regarding the services rendered, that the client's information shall be protected by applicable federal and state law regarding patient confidentiality, that the client shall have the right to know the identity of all persons present at any site involved in the telehealth services, and to exclude any such person, and that the client shall have the right to be advised, and to object to, any recording of the telehealth consultation or services.
- (2) The requirement of a written informed consent shall not apply to an emergency situation if the client is unable to provide informed consent and the client's legally authorized representative is not available.

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

- (1) State law where the credential holder is credentialed and state law regarding the practice of psychology where the client is located at the time services are rendered; 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. A credential holder using telehealth to deliver psychological services or who practices telepsychology:

- (1) Shall not, by or on behalf of the credential holder, engage in false, misleading, or deceptive advertising of telepsychology; and

(2) Shall comply with 201 KAR 26:145.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

(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 Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

(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:

This amendment adds a requirement that documentation of the telehealth appointment takes place within 48 hours.

(b) The necessity of the amendment to this administrative regulation:

See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes:

See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes:

See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients. (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: The only action required by this amendment is for the practitioner to document telehealth appointments

within 48 hours. (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 psychologist. (c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the telehealth requirements.

(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 is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No answer provided.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No answer provided.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

No answer provided.

(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.

(b) On a continuing basis:

This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Kentucky Board of Examiners of Psychology 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 licensees 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?

This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

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

KRS 319.032(1).

(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?

This administrative regulation does not generate revenue for the Board.

(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?

There are no additional costs.

(d) How much will it cost to administer this program for subsequent years?

See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: