BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:100. Telehealth and telepractice.

RELATES TO: KRS 319C.140(2)
STATUTORY AUTHORITY: KRS 319C.140(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth.

(1) A licensee who provides applied behavior analytic services via telehealth shall:
(a) Maintain competence with the technologies utilized, including understanding and adequately addressing the actual and potential impact of those technologies on clients, supervisees, or other professionals;
(b) Maintain compliance with KRS Chapter 319C, 201 KAR Chapter 43, and all other applicable federal, state, and local laws;
(c) At the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the client so that those contacts shall be readily accessible in the event of an emergency;
(d) Protect and maintain the confidentiality of data and information in accordance with all applicable federal, state, and local laws; and
(e) Dispose of data and information only in accordance with federal, state, and local law and in a manner that protects the data and information from unauthorized access.

(2) If applied behavior analysis commences via telehealth,The licensee shall, at the initial meeting with the client:
(a) Make reasonable attempts to verify the identity of the client;
(b) Obtain alternative means of contacting the client other than electronically;
(c) Provide to the client alternative means of contacting the licensee other than electronically;
(d) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and
(e) Inform the client in writing about and obtain the client's informed written consent regarding:
1. The limitations of using technology in the provision of applied behavior analytic services;
2. Potential risks to confidentiality of information due to technology in the provision of applied behavior analytic services;
3. Potential risks of disruption in the use of telehealth technology;
4. When and how the licensee will respond to routine electronic messages;
5. In what circumstances the licensee will use alternative communications for emergency purposes;
6. Who else may have access to client communications with the licensee;
7. How communications can be directed to a specific licensee;
8. How the licensee stores electronic communications from the client; and
9. That the licensee or client may elect to discontinue the provision of services through telehealth at any time.

Section 2. Jurisdictional Considerations.

(1) A person providing applied behavior analytic services via telehealth to a person physically located in Kentucky while services are provided shall be licensed by the board.
(2) A person providing applied behavior analytic services via telehealth from a physical location in Kentucky shall be licensed by the board and may be subject to licensure requirements in other states where the services are received by the client.

Section 3. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services shall not:
(1) Engage in false, misleading, or deceptive advertising; and
(2) Split fees.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021
FILED WITH LRC: November 15, 2021 at 10:30 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. 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.