

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~~ ~~[Applied]~~ behavior analysis commences~~[with a client shall not commence]~~ via telehealth,~~[~~

~~[(a)] [An initial, in-person meeting for the licensee and client who prospectively utilize telehealth shall occur.]~~

~~[(b)]~~ The licensee shall, at the initial~~[, in-person]~~ meeting with the client:

- ~~(a) [1.]~~ Make reasonable attempts to verify the identity of the client;
- ~~(b) [2.]~~ Obtain alternative means of contacting the client other than electronically;
- ~~(c) [3.]~~ Provide to the client alternative means of contacting the licensee other than electronically;
- ~~(d) [4.]~~ 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) [5.]~~ Inform the client in writing about and obtain the client's informed written consent regarding:

- 1. ~~[a.]~~ The limitations of using technology in the provision of applied behavior analytic services;
- 2. ~~[b.]~~ Potential risks to confidentiality of information due to technology in the provision of applied behavior analytic services;
- 3. ~~[c.]~~ Potential risks of disruption in the use of telehealth technology;
- 4. ~~[d.]~~ When and how the licensee will respond to routine electronic messages;
- 5. ~~[e.]~~ In what circumstances the licensee will use alternative communications for emergency purposes;
- 6. ~~[f.]~~ Who else may have access to client communications with the licensee;
- 7. ~~[g.]~~ How communications can be directed to a specific licensee;
- 8. ~~[h.]~~ How the licensee stores electronic communications from the client; and

9. ~~11~~ 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does:

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.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 319C.140(2).

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

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.

(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 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

(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 eliminates the requirement that an initial meeting be conducted in-person.

(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 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers (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: This regulation will provide updated telehealth requirements that licensees will need to become familiar with (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None. (c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow

supervisors and prospective supervisors to have an updated understanding of the requirements for telehealth.

(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 Applied Behavior Analysis Licensing 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:

None.

(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 regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

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

KRS 319C.140(2).

(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?

None

(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: