

BOARDS AND COMMISSIONS
Board of Speech-Language Pathology and Audiology
(Amendment)

201 KAR 17:110. Telehealth and telepractice.

RELATES TO: KRS 334A.188, 334A.200, 211.332, 211.334, 211.336, 211.338

STATUTORY AUTHORITY: KRS 334A.080(1), 334A.200, 211.336(3).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.200 requires the Board of Speech Language Pathology and Audiology to promulgate administrative regulations to implement the use of telehealth services by speech-language pathologists and audiologists. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations relating to telehealth. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions.

- (1) "Client" means the person receiving the services of the speech-language pathologist or audiologist and the representative thereof if required by law.
- (2) "Telehealth" is defined by KRS 334A.200(3) and 211.332(5).
- (3) "Telepractice" means the practice of speech language pathology or audiology as defined by KRS 334A.020(4) and KRS 334.020(6) respectively provided by using communication technology that is two (2) way, interactive, and simultaneously audio and video.

Section 2. Client Requirements. A practitioner-patient relationship ~~may~~~~shall not~~ commence via telehealth. An in-person initial meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as set forth in KRS 211.336(2)(a). ~~[An initial, in person meeting for the practitioner and patient who prospectively utilize telehealth shall occur.]~~ A licensed health care practitioner may represent the licensee at the initial~~, in person~~ meeting. A licensee who uses telehealth to deliver speech language pathology or audiology services or who telepractices or the licensed healthcare practitioner representing the licensee shall, at the initial~~, in person~~ meeting 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 licensee other than electronically;
- (4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee; ~~and~~
- (5) In accordance with KRS 334A.200(1)(a) and 900 KAR 12:005 Section 2(1)(c), obtain the informed consent of the client; and
- (6) Inform the client in writing about:
 - (a) The limitations of using technology in the provision of telepractice;
 - (b) Potential risks to confidentiality of information due to technology in the provision of telepractice as required by KRS 334A.200(1)(b);
 - (c) Potential risks of disruption in the use of telepractice;
 - (d) When and how the licensee will respond to routine electronic messages;
 - (e) In what circumstances the licensee will use alternative communications for emergency purposes;
 - (f) Who else may have access to client communications with the licensee;
 - (g) How communications can be directed to a specific licensee;
 - (h) How the licensee stores electronic communications from the client; and

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

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

- (1) Limit the telepractice to the licensee's scope of practice;
- (2) Maintain continuing competency or associate with a group who has experience in telehealth delivery of care;
- (3) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 334A.200(1)(b) and KRS 211.332(5)(c);
- (4) Limit access to that information to only those necessary for the provision of services or those required by law; and
- (5) Ensure that confidential communications obtained and stored electronically cannot 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 licensee using telehealth to deliver speech language pathology and audiology services and telepractice shall ~~comply with~~:
 - (a) Maintain patient privacy and security in accordance with 900 KAR 12:005 Section 2(1)(b). ~~[State law by being licensed to practice speech language pathology or audiology, whichever is being telepracticed, in the jurisdiction where the practitioner-patient relationship commenced;]~~ and
 - (b) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.
- (2) If a person provides speech language pathology and audiology services via telepractice to a person physically located in Kentucky at the time the services are provided, that provider shall be licensed by the board or be a provider who is a participant in the audiology and speech-language pathology interstate compact recognized in KRS 334A.188 and delivers telehealth services to a person Kentucky under the standards and provisions of that interstate compact pursuant to KRS 211.336(2)(f).
- (3) A person providing speech language pathology and audiology services via telepractice from a physical location in Kentucky shall be licensed by the board. This person may be subject to licensure requirements in other states where the services are received by the client.

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices:

- (1) Shall conform to the statutes and regulations governing the provision of speech-language pathology and audiology services in Kentucky;
- (2) Shall not engage in false, misleading, or deceptive advertising of telepractice in violation of KRS 334A.200(2)(a); and
- (3) ~~{(2)}~~ Shall not split fees in violation of KRS 334A.200(2)(b).

DOUGLAS KEEFE, M.S., Chair

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 14, 2022 at 10:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 25, 2022 at 10:00 a.m. Eastern Time in Room 127CW, 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. Members of the public

may utilize the following link to attend the meeting by video conference: // Topic: SLPA Regulation Public Comment Hearing // Time: April 25, 2022 10:00 AM Eastern Time (US and Canada) // Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/83637763907?>

[pwd=VDhQUVZvZDVVR3dWcjNmbzd0WXVuZz09](https://us06web.zoom.us/j/83637763907?pwd=VDhQUVZvZDVVR3dWcjNmbzd0WXVuZz09) // Password: 583921 // or Telephone - Dial: USA 713 353 0212, USA 8888227517 (US Toll Free) // Conference code: 327149. Find local AT&T Numbers: <https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=327149>. Or an H.323/SIP room system: H.323: 162.255.37.11 (US West), 162.255.36.11 (US East), 115.114.131.7 (India Mumbai), 115.114.115.7 (India Hyderabad), 213.19.144.110 (Amsterdam Netherlands), 213.244.140.110 (Germany), 103.122.166.55 (Australia Sydney), 103.122.167.55 (Australia Melbourne), 149.137.40.110 (Singapore), 64.211.144.160 (Brazil), 149.137.68.253 (Mexico), 69.174.57.160 (Canada Toronto), 65.39.152.160 (Canada Vancouver), 207.226.132.110 (Japan Tokyo), 149.137.24.110 (Japan Osaka) // Meeting ID: 836 3776 3907 -- Password: 583921 // SIP: 83637763907@zoomcrc.com -- Password: 583921. // Individuals interested in attending this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm EST on April 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 264 SC, Frankfort, Kentucky 40601, phone (502) 782-8805 (office), email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes criteria for provision of telehealth services in the field of speech language pathology and audiology.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 334A.080 and KRS 334A.200.

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

KRS 334A.080 authorizes the Kentucky Board of Speech-Language Pathologists and Audiologists to promulgate administrative regulations regulating the practice of speech-language pathology and audiology. KRS 334A.200(2) requires the board to promulgate administrative regulations regarding telehealth. KRS 211.336(3) authorizes state agencies to promulgate administrative regulations relating to telehealth.

(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 334A by explaining how a licensee of the Board may provide telehealth to their clients.

(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 allows the initial meeting regarding telehealth to take place via telehealth, clarifies the requirements for informed consent, clarifies the requirements for a secure communication, and allows for the participation of a person licensed by a compact state.

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

This amendment is necessary to comply with KRS 211.332 to 211.336.

(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 the over 4,000 licensed speech-language pathologists and audiologists, and an unknown number of providers who participate in the audiology and speech-language pathology interstate compact.

(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:

This amendment requires the licensees to practice telehealth in conformity with the requirements of the law.

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

This amendment will add no additional cost to the licensees.

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

The licensees will understand how to practice telehealth.

(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 Speech-Language Pathology and Audiology 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 increase in fees or funding is necessary to implement the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No increase 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 Speech-Language Pathologists and Audiologists.

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

KRS 334A.080, KRS 334A.200, KRS 211.336.

(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: