

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(New Administrative Regulation)

201 KAR 21:105. Telehealth chiropractic services.

RELATES TO: KRS 312.019, 312.220, 211.332, 211.334, 211.335, 211.336

STATUTORY AUTHORITY: KRS 312.220, 211.332, 211.336.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.220(2) requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to: (a) Prevent abuse and fraud through the use of telehealth services; (b) Prevent fee-splitting through the use of telehealth services; and (c) Utilize telehealth in the provision of chiropractic services and in the provision of continuing education. Additionally, KRS 312.220(1) requires that a treating chiropractor utilizing telehealth ensures the patient's informed consent and maintains confidentiality. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations relating to telehealth. This administrative regulation establishes the requirements for telehealth for chiropractic services.

Section 1. Definitions.

- (1) "Client" means the person receiving the services of the chiropractor.
- (2) "Telehealth" is defined by KRS 312.220(3) and KRS 211.332(5).
- (3) "Telehealth chiropractic services " means the practice of chiropractic as defined by KRS 312.220(3), between the chiropractor and the patient that is provided, using:
 - (a) Interactive audio, video, or other electronic media; or
 - (b) Electronic media for diagnosis, consultation, treatment, and transfer of health or medical data.

Section 2. Client Requirements. A practitioner-patient relationship may 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). A licensed health care practitioner may represent the client at the initial meeting. A credential holder using telehealth to deliver chiropractic services 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 such as by the use of a telephone number or mailing address;
- (3) Provide to the client alternative means of contacting the credential holder other than electronically such as by the use of a telephone number or mailing address;
- (4) Provide contact methods of alternative communication the credential holder 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 telehealth provided by the credential holder;
- (6) 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;
- (7) In accordance with KRS 312.220(1)(a) and 900 KAR 12:005, Section 2(3), obtain the informed consent of the client; and
- (8) Inform the client in writing about:
 - (a) The limitations of using technology in the provision of telehealth chiropractic services;
 - (b) Potential risks to confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telehealth chiropractic

services;

- (c) Potential risks of disruption in the use of telehealth chiropractic services;
- (d) When and how the credential holder will respond to routine electronic messages;
- (e) In what circumstances 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) How the credential holder may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver telehealth chiropractic services shall:

- (1) Limit the practice of telehealth chiropractic services to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in the practice of telehealth chiropractic 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;
- (4) Follow the record-keeping requirements of 201 KAR 21:100;
- (5) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 312.220(1)(b) and 211.332(5)(c); and
- (6) Ensure that confidential communications obtained and stored electronically shall not be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver telehealth chiropractic services shall:

- (1) Maintain patient privacy and security in accordance with 900 KAR 12:005, Section 2(2);
- (2) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;
- (3) Be licensed or otherwise authorized by law to practice chiropractic where the client is physically present; and
- (4) Comply with applicable state laws and regulations in the event the credential holder provides telehealth services from a location outside of Kentucky.

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver chiropractic services or who practices telehealth chiropractic:

- (1) Shall not engage in false, misleading, or deceptive advertising of telehealth chiropractic services;
- (2) Shall comply with the Code of Ethics, 201 KAR 21:015;
- (3) Shall not allow fee-splitting through the use of telehealth chiropractic services in compliance with KRS 312.220(2)(b); and
- (4) Shall conform to the statutes and regulations governing the provision of chiropractic services in Kentucky and in consideration of the scope of practice relating to chiropractic.

Section 6. A person holding a license as a chiropractor who provides telehealth services to a person physically located in Kentucky shall be subject to the laws and regulations governing chiropractic services in Kentucky.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: March 13, 2023

FILED WITH LRC: March 14, 2023 at 1:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 25, 2023 at 12:00 noon EST 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, 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: Join from PC, Mac, Linux, iOS or Android: [https://us06web.zoom.us/j/82428127008?](https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaNkY5QT09)

[pwd=blg4a3hSZVkvTnFtUnpMWDFaNkY5QT09](https://us06web.zoom.us/j/82428127008?pwd=blg4a3hSZVkvTnFtUnpMWDFaNkY5QT09) // Password: 059844 // Or Telephone: Dial: USA 713 353 0212; USA 8888227517 (US Toll Free) // Conference code: 446599. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 2023, 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 on May 31, 2023. 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: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.