

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amended at ARRS Committee)

201 KAR 36:045. Distance counseling.

RELATES TO: KRS 335.505, 335.515(1), (3), (11), 211.332, 211.334, 211.336, 211.338

STATUTORY AUTHORITY: KRS 335.515(3), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations related to telehealth. This administrative regulation establishes procedures for preventing abuse and fraud through the use of distance counseling, prevents fee-splitting through the use of distance counseling, and utilizes distance counseling in the provision of professional counseling services and in the provision of continuing education.

Section 1. Client Requirements. A counselor-client relationship may commence via distance counseling. An in-person meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as established in KRS 211.336(2) (a). A licensee using distance counseling to deliver counseling services or who practices distance counseling 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 licensee other than electronically, such as by the use of a telephone number or mailing address;
- (4) Provide contact methods of alternative communication the licensee 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 distance counseling provided by the licensee;
- (6) Document which services were provided by distance counseling;
- (7) 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;
- (8) In accordance with KRS 211.334 and 900 KAR 12:005 Section 2(1)(c), obtain the informed consent of the client; and
- (9) Inform the client in writing about:
 - (a) The limitations of using technology in the provision of distance counseling;
 - (b) Potential risks to confidentiality of information due to technology in the provision of distance counseling as required by 900 KAR 12:005(2)(a);
 - (c) Potential risks of disruption in the use of distance counseling;
 - (d) When and how the licensee will respond to routine electronic messages;
 - (e) The circumstances in which 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;
 - (i) Whether the licensee or client may elect to discontinue the provision of services through distance counseling; and
 - (j) The reporting of clients required by 201 KAR 36:040, Sections 2 and 3.

Section 2. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

- (1) Limit the practice of distance counseling to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in the practice of distance counseling 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) Maintain records in accordance with the requirements of 201 KAR 36:040;
- (5) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 211.332(5)(c); and
- (6) 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 3. Compliance with Federal, State, and Local Law. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

- (1) Comply with the state law where the licensee initiates the distance counseling;
- (2) Be licensed to practice counseling where the client is domiciled;
- (3) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities; and
- (4) Maintain patient privacy and security in accordance with 900 KAR 12:005 Section 2(1)(b).

Section 4. Representation of Services and Code of Conduct. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

- (1) Conform to the statutes and administrative regulations governing the provision of counseling services in Kentucky;
- (2) Not engage in false, misleading, or deceptive advertising of distance counseling in violation of KRS 335.540(1)(c);
- (3) Comply with the code of ethics, 201 KAR 36:040; and
- (4) Not split fees.

Section 5. Utilization of Distance Counseling in the Provision of Continuing Education. Providers approved pursuant to 201 KAR 36:030 may utilize distance counseling in the provision of continuing education courses.

(Ky.R. 837, 1540; eff. 3-31-2017; 50 Ky.R. 893; eff. 2-16-2024.)

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