

BOARDS AND COMMISSIONS

Board of Social Work

(Amended at ARRS Committee)

201 KAR 23:170. Telehealth and social work practice.

RELATES TO: KRS 335.158

STATUTORY AUTHORITY: KRS 335.158(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.158(1) requires social workers utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. *KRS 335.158(2) requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of clinical social work services and in the provision of continuing education.* This administrative regulation protects the health and safety of individuals and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth by social workers who utilize telehealth in the provision of social work services, and the provision of continuing education.

Section 1. Definitions.

(1) "Client" is defined by 201 KAR 23:080, Section 1.

(2) "Clinical social worker" means a licensed clinical social worker or a certified social worker under the supervision of a licensed clinical social worker.

(3) "Electronic social work service" means the use of Technology-Enabled Modalities and other electronic means to:

- (a) Provide information to the public;
- (b) Deliver social work services to clients;
- (c) Communicate with clients;
- (d) Manage confidential information, personally identifiable information, protected health information, and financial and case records;
- (e) Deliver services through videoconferencing, electronic mail, text, chat, facsimile, virtual, ~~ff~~augmented, ~~ff~~extended, or ~~ff~~mixed reality, artificial intelligence, standard audio-only telephone, or digital and analog methods;
- (f) Store and access information about clients;
- (g) Provide synchronous telehealth or asynchronous telehealth; and
- (h) Arrange payment for professional services.

(4) "Telehealth" is defined ~~by~~fin KRS 335.158(3) and 211.332(5).

(5) "Telehealth service" means any service provided via electronic means that utilizes the social worker's skills, knowledge, and training for a client:~~ff~~

- (a) Event;
- (b) Encounter;
- (c) Consultation;
- (d) Visit;
- (e) Store-and-forward transfer;
- (f) Remote patient monitoring;
- (g) Referral; or
- (h) Treatment.

(6) ~~["Telehealth Terminology Glossary" in 900 KAR 12:005 is incorporated by reference.]~~

~~ff~~(7) "Teletherapy" means the practice of clinical social work as defined ~~by~~fin KRS 335.020 and 201 KAR 23:070.~~ff~~ ~~and~~

Section 2. Standards of Practice.

(1) Upon initial contact with a potential client and with the client thereafter, all licensees using telehealth to deliver telehealth, teletherapy, or electronic social work services shall ~~upon initial contact with a potential client and with the client thereafter~~:

~~(a) (1)~~ Make reasonable attempts to verify and document the identity of the ~~client~~client(s);

~~(b) (2)~~ Make reasonable attempts to verify and document the physical location of the ~~client~~client(s);

~~(c) (3)~~ Obtain alternative means of contacting the ~~client~~client(s) other than ~~including~~ electronically;

~~(d) (4)~~ Provide how communications can be directed to the social worker other than electronically;

~~(e) (5)~~ Assess and document that the client's needs are appropriate for telehealth, teletherapy, or electronic social work services and that the client has the necessary knowledge and skill to benefit from telehealth, teletherapy, or electronic social work services provided by the social worker;

~~(f) (6)~~ Use secure communications with clients, including encrypted text messages, email, non-public remote communication facing products, or secure internet sites;~~;~~

~~(g) (7)~~ Not use personally identifying information or PHI in non-secure communications without expressed written and periodically reviewed informed consent to use non-secure communication;~~;~~

~~(h) (8)~~ Obtain written informed consent for telehealth, teletherapy, or electronic social work services that ~~includes~~include:

~~1. (a)~~ The informed consent as required 201 KAR 23:080;

~~2. (b)~~ The client's right to request in-person visits; and

~~3. (c)~~ The limitations of using technology in the provision of services;

~~(i) (9)~~ Disclose the potential risks to privacy and confidentiality of information due to the use of technology in the provision of services ~~including~~;

~~1. (a)~~ The potential risks of disruption in the use of technology;

~~2. (b)~~ When and how the social worker utilizes electronic messages;

~~3. (c)~~ The circumstances in which the social worker ~~may~~will use alternative communications for emergency purposes, including medical, psychiatric, or other emergencies;

~~4. (d)~~ The identity of anyone who may have access to client communications with the social worker;

~~5. (e)~~ Identification of the social worker, their credentials, and the ~~jurisdiction~~jurisdiction(s) of licensed practice;

~~6. (f)~~ How or when recording of services ~~may be~~is permitted by either the licensee or the client; and~~;~~

~~7. (g)~~ How electronic signatures are obtained;~~;~~

~~(j) (10)~~ ~~The requirement of written informed consent shall not apply to an emergency if the client cannot provide informed consent, and the client's legally authorized representative is unavailable.~~

~~(11)~~ Provide how the social worker stores and disposes of recordings or electronic communications from the client; and~~;~~

~~(k) (12)~~ Document in the client's record that a service was provided by electronic social work service within forty-eight (48) hours of the service, including any technical difficulties and adherence to all standards of care.~~;~~

(2) The requirement of written informed consent shall not apply to an emergency if the client cannot provide informed consent, and the client's legally authorized representative is unavailable.

~~(3) ~~(13)~~~~ All licensees using telehealth, teletherapy, or electronic social work services to deliver social work services shall adhere to the same or appropriately adapted standards of care as in-person care.

~~(4) ~~(14)~~~~ All licensees shall be aware of the terminology and concepts defined in the Telehealth Terminology Glossary ~~including, such as, but not limited to,~~ asynchronous telehealth, clinical text ~~or~~ chat, distant site, and originating site.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records.

(1) A social worker using telehealth, teletherapy, or electronic social work services to deliver social work services shall:

(a) Limit the practice of telehealth or teletherapy, or electronic social work services to the area of competence in which proficiency has been gained through education, training, and experience;

(b) Maintain current competency in the practice of telehealth, teletherapy, or electronic social work services through continuing education, consultation, or other methods, in conformance with standards of care and professional knowledge;

~~(c) ~~(2)~~~~ Document the client's presenting problem, service needs, care plan, treatment, diagnosis, or reasons for social work services;

~~(d) ~~(a)~~~~ Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the social worker disposes of electronic equipment and data;

~~(e) ~~(b)~~~~ Ensure the availability and integrity of digital records;

~~(f) ~~(c)~~~~ Have a set and disclosed retention period for secure storage of records, recordings, or electronic communications; and

~~(g) ~~(d)~~~~ Provide services only within their scope of practice.

~~(2) ~~(3)~~~~ Licensees providing clinical social work under supervision by an approved LCSW supervisor shall:

(a) Disclose all telehealth, teletherapy, or electronic social work services in the contract for supervision required under 201 KAR 23:070 or 201 KAR 23:160; and ~~f~~

(b) Comply with the directives of the board.

~~(3) ~~(4)~~~~ A social worker licensed in another jurisdiction and using telehealth, teletherapy, or electronic social work services to deliver social work services to a client located in Kentucky at the time of service or is located in Kentucky at the time of service shall have a temporary permit to provide services or be licensed in Kentucky.

Section 4. Continued Education.

(1) All licensees shall attain or maintain their competence to deliver telehealth, teletherapy, or electronic social work services through appropriate supervision and continued education.

(2) All new licensees shall take a board approved two ~~(2) ~~f~~~~ hour course once within their first license cycle on the regulations for delivering telehealth, teletherapy, or electronic social work services.

(3) All current licensees shall take a two ~~(2) ~~f~~~~ hour course on the regulations for delivering telehealth, teletherapy, or electronic social work services approved by the board by June 30, 2024.

(4) Continued education presented as an electronic social work service shall comply with 201 KAR 23:075.

Section 5. Compliance with Federal, State, and Local Law. All licensees using telehealth to deliver social work services or teletherapy, or electronic social work services shall comply with ~~f the following~~:

(1) The federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9, any amendments or changes subsequently included, and other

applicable federal and state laws;~~ff~~

(2) The laws and regulations of the jurisdiction in which they are located, and in which the client is located at the time service is rendered, and under KRS 211.336(2)(i) when not in conflict with another state's laws;and

(3) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to allow telehealth, teletherapy, or electronic social work services accessible to a client with disabilities.

Section 6. Representation of Services and Code of Conduct. A licensee using telehealth to deliver social work services or teletherapy, or electronic social work services:

(1) Shall not, by or on behalf of the social worker, engage in false, misleading, or deceptive advertising of services via telehealth, teletherapy, or electronic social work services;

(2) Shall not employ fee-splitting with other telehealth persons or entities;

(3) Shall comply with 201 KAR 23:080, Code of ethical conduct; and

(4) Shall comply with all applicable administrative regulations.

Section 7. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", August 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

Section 8. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on March 11, 2024.

This proposed administrative regulation expired on April 12, 2024, pursuant to 2024 GA SB 65.

FILED WITH LRC: March 11, 2024

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email marc.kelly@ky.gov.