

BOARDS AND COMMISSIONS
BOARD OF LICENSED DIABETES EDUCATORS
(Amended at ARRS Committee)

201 KAR 45:190. Telehealth diabetes education.

RELATES TO: KRS ~~309.331, 211.332, 211.334, 211.335, 211.336, 211.338/309.331/~~

STATUTORY AUTHORITY: KRS 309.331, ~~211.332, 211.334, 211.335, 211.336, 211.338./~~

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 authorizes the board to promulgate administrative regulations to carry out and enforce KRS 309.325 to 309.339. KRS 211.332 authorizes the use of telehealth in the Commonwealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of diabetes educator services and in the provision of continuing education.

Section 1. Definitions.

- (1) "Client" means the person receiving the services of the licensed diabetes educator or the diabetes educator apprentice.
- (2) "Credential holder" is defined as licensed diabetes educator or the diabetes educator apprentice.
- (3) "Telehealth" is defined by KRS 211.332(5). Telehealth shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call and shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9.
- (4) "Telehealth diabetes education" means the practice of diabetes education, as defined by KRS 309.325(2), between the credential holder and the patient that is provided using:
 - (a) Electronic communication technology; or
 - (b) Two (2) way, interactive, simultaneous audio and video.
- (5) "Telehealth service" means any service that is provided via telehealth and is one (1) of the following:
 - (a) Event;
 - (b) Encounter;
 - (c) Consultation;
 - (d) Visit;
 - (e) Remote patient monitoring;
 - (f) Referral; or
 - (g) Treatment.

Section 2. Patient Requirements. A credential holder using telehealth to deliver diabetes education services or who practices diabetes education shall, upon initial contact with the patient:

- (1) Make reasonable attempts to verify the identity of the patient;
- (2) Obtain alternative means of contacting the patient other than electronically, which may include obtaining the patient's phone number or email address;
- (3) Provide to the patient alternative means of contacting the credential holder other than electronically, which may include providing the credential holder's phone number or email address;

- (4) Document if the patient has the necessary knowledge and skills to benefit from the type of diabetes education provided by the credential holder;
- (5) Use secure communications with the patient, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;
- (6) Inform the patient in writing about:
 - (a) The limitations of using technology in the provision of diabetes education;
 - (b) Potential risks to confidentiality of information due to technology in the provision of diabetes education;
 - (c) Potential risks of disruption in the use of diabetes education;
 - (d) When and how the credential holder will respond to routine electronic messages;
 - (e) The circumstances in which the credential holder will use alternative communications for emergency purposes;
 - (f) Who else may have access to patient communications with the credential holder;
 - (g) How communications can be directed to a specific credential holder; and
 - (h) How the credential holder stores electronic communications from the patient.
- (7) Within forty-eight (48) hours of the telehealth service, the credential holder shall document within the patient's medical record that a service was provided by telehealth, and follow all documentation requirements of the practice.

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

- (1) A credential holder using telehealth to deliver diabetes education services or who practices telehealth diabetes education shall:
 - (a) Limit the practice of telehealth diabetes education 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 diabetes education through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
 - (c) Follow all the record-keeping requirements;
 - (d) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data; and
 - (e) Document the patient's written informed consent to the services being provided and the provision of those services via telehealth, including that the patient or client:
 1. Has the right to refuse telehealth consultation or services;
 2. ~~f,]~~ Has been informed of alternatives to telehealth services;
 3. ~~f, that the patient or client]~~ Shall be entitled to receive information from the provider regarding the services rendered;
 4. ~~f, that the patient or client's]~~ Information shall be protected by applicable federal and state law regarding patient confidentiality;
 5. ~~f, that the patient or client]~~ Shall have the right to know the identity of all persons present at any site involved in the telehealth services, and to exclude any such person;~~f,]~~ and
 6. ~~f, that the patient or client]~~ Shall have the right to be advised, and to object to, any recording of the telehealth consultation or services.
- (2) The requirement of a written informed consent shall not apply to an emergency situation if the patient is unable to provide informed consent and the patient's legally authorized representative is not available.

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

- (1) Comply with the state law where the credential holder is credentialed and state law regarding the practice of diabetes education where the patient is located at the time

services are rendered;

- (2) ***Comply with*** Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a patient with disabilities; and
- (3) Maintain patient privacy and security in accordance with 900 KAR 12:005, Section 2(2).

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver diabetes education services:

- (1) Shall not, by or on behalf of the credential holder, engage in false, misleading, or deceptive advertising of telehealth diabetes services; and
- (2) Shall comply with the code of ethics established by 201 KAR 45:140.
- (3) Shall not allow fee-splitting through the use of telehealth diabetes education services.

Section 6. A person holding a license as a diabetes educator or a permit as a diabetes educator apprentice who provides telehealth services to a person physically located in Kentucky shall be subject to the laws and administrative regulations governing diabetes education in Kentucky.

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