

## **201 KAR 8:590. Teledentistry.**

RELATES TO: KRS 313.101(11), 313.021(1)(c), 313.060(9), 422.317, 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 313.021(1)(c), KRS 313.060(8), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration the board creates. KRS 313.060(8) and (9) require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of Kentucky. This administrative regulation establishes requirements and procedures for the practice of teledentistry.

Section 1. Definition. "Teledentistry" means the use of electronic and digital communications to provide dentistry and dental hygiene-related information and services.

Section 2. Practice of Teledentistry.

(1) To deliver teledentistry services in Kentucky, one shall have a current, valid dental or dental hygiene license issued by the Board of Dentistry. The practice of dentistry shall occur where the patient is located at the time teledentistry services are initiated.

(2) This administrative regulation shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting or in a manner not authorized by KRS Chapter 313. Teledentistry encounters shall be held to the same standard of care as a traditional in-person patient encounter.

(3)

(a) A patient shall only be treated via teledentistry by:

1. A Kentucky licensed dentist; or

2. A Kentucky licensed dental hygienist who is supervised by, and has delegated authority from, a Kentucky licensed dentist.

(b) Any individual may provide any photography or digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist for the sole and limited purpose of screening, assessment, or examination. Anyone providing photography or digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist shall comply with the same standards required for the recording of photography or digital imaging in accordance with KRS 313.010(11).

(4) A licensee using teledentistry in the provision of dental services to a patient shall establish the licensee-patient relationship and conduct an evaluation and history of the patient.

Section 3. Informed Consent. A licensee shall, to the extent possible:

(1) Confirm the identity of the requesting patient;

(2) Verify and authenticate the patient's health history;

(3) Disclose the licensee's identity, applicable credentials, and contact information, including a current phone number;

(4) Obtain an informed consent from the requesting patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to include any special informed consents regarding the use of teledentistry services. At a minimum, the informed consent shall inform the patient or legal guardian and document acknowledgment of the risk and limitations of:

(a) The use of electronic and communications in the provision of care;

(b) The potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;

(c) The potential disruption of electronic and digital communication in the use of teledentistry; and

- (d) The types of activities permitted using teledentistry services;
- (5) Inform the patient or legal guardian that it is the role of the licensee to determine whether the condition being diagnosed or treated is appropriate for a teledentistry encounter;
- (6) State the requirement for explicit patient or legal guardian consent to forward patient-identifiable information to a third party; and
- (7) Provide to the patient contact information for the Kentucky Board of Dentistry and a description of, or link to, the patient complaint process.

Section 4. Confidentiality. The licensee shall ensure that any electronic and digital communication used in the practice of teledentistry shall be secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 – 1320d-8, and all other applicable laws and administrative regulations.

Section 5. Dental Records.

- (1) Any dental record made through teledentistry shall be in compliance with 201 KAR 8:540, Section 2(1) and (2).
- (2) An informed consent obtained in connection with teledentistry services shall be filed in the patient's dental record.
- (3) The release of patient records established during the use of teledentistry shall comply with KRS 422.317.
- (4) The licensee shall document or record in the file:
  - (a) The patient's chief complaint;
  - (b) The licensee's differential diagnosis;
  - (c) The licensee's recommended treatment plan for the patient; and
  - (d) A description of all services provided by teledentistry.

Section 6. Prescribing.

- (1) The indication, appropriateness, and safety considerations for each prescription for medication, laboratory services, or dental laboratory services provided through the use of teledentistry services shall be evaluated by the licensee in accordance with 201 KAR 8:540, Section 3.
- (2) A licensee's use of teledentistry carries the same professional accountability as a prescription issued in connection with an in-person encounter.

Section 7. Representation of Services. A licensee using teledentistry to deliver dental services or who practices teledentistry shall not:

- (1) Directly or indirectly engage in false, misleading, or deceptive advertising of teledentistry services; or
  - (2) Allow fee-splitting for the use of teledentistry services.
- (46 Ky.R. 2355; 47 Ky.R. 52; eff. 7-29-2020.)