

201 KAR 26:310. Telehealth and telepsychology.

RELATES TO: KRS 319.140

STATUTORY AUTHORITY: KRS 319.032(2), 319.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires a treating psychologist utilizing telehealth 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 psychological services and in the provision of continuing education.

Section 1. Definitions.

(1) "Client" is defined by 201 KAR 26:145, Section 3.

(2) "Telehealth" means delivery of health care-related services, by a provider who is a health care provider licensed in Kentucky, to a patient through a face-to-face encounter with access to real-time interactive audio and video technology. 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.

(3) "Telepsychology" means the "practice of psychology", as defined by KRS 319.010(7), between the psychologist and the patient that is provided using:

- (a) Electronic communication technology; or
- (b) Two (2) way, interactive, simultaneous audio and video.

(4) "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. Client Requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology 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;
- (3) Provide to the client alternative means of contacting the credential holder other than electronically;
- (4) Document if the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;
- (5) 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;
- (6) Inform the client in writing about:
 - (a) The limitations of using technology in the provision of telepsychology;
 - (b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;
 - (c) Potential risks of disruption in the use of telepsychology;
 - (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 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) The reporting of clients required by 201 KAR 26:145, Section 7.

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

(1) A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:

- (a) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;
- (b) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
- (c) Document the client's presenting problem, purpose, or diagnosis;
- (d) Follow the record-keeping requirements of 201 KAR 26:145, Section 6;
- (e) 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
- (f) Document the client's written informed consent to the services being provided and the provision of those services via telehealth, including that the patient has the right to refuse telehealth consultation or services, has been informed of alternatives to telehealth services, that the client shall be entitled to receive information from the provider regarding the services rendered, that the client's information shall be protected by applicable federal and state law regarding patient confidentiality, that the 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, and that the 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 client is unable to provide informed consent and the client's legally authorized representative is not available.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall comply with:

- (1) State law where the credential holder is credentialed and state law regarding the practice of psychology where the client is located at the time services are rendered; and
- (2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

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

- (1) Shall not, by or on behalf of the credential holder, engage in false, misleading, or deceptive advertising of telepsychology; and
- (2) Shall comply with 201 KAR 26:145.

(37 Ky.R. 1597; 1987; eff. 3-4-2011; 47 Ky.R. 2069; 48 Ky.R. 328; eff. 8-26-2021.)