

## **201 KAR 32:110. Telehealth.**

RELATES TO: KRS 335.300, 335.305, 335.310, 335.320, 335.325, 335.332, 335.380, 335.399

STATUTORY AUTHORITY: KRS 335.320(9), 335.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(9) requires the Board of Licensure for Marriage and Family Therapists to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399. KRS 335.380 requires the board to promulgate administrative regulations to govern telehealth services in the provision of marriage and family therapy services. This administrative regulation establishes procedures for the use of telehealth by licensees and associates.

### **Section 1. Definitions.**

- (1) "Asynchronous" means a communication that does not occur simultaneously in real time.
- (2) "Electronic communication" means the use of Web sites, cell phones, email, texting, online social networking, video, or other digital methods and technology used to send and receive messages or post information.
- (3) "Encryption" means a mathematical process that converts text, video, or audio streams into a scrambled, unreadable format when transmitted electronically.
- (4) "Fee-splitting" means offering or accepting payment for referrals other than in an employer-employee or contractor-contractee relationship.
- (5) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub L. No. 104-191, 110 Stat. 1936 (1996).
- (6) "HITECH" means the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. 17901-17953.
- (7) "Social media" means a Web-based communication tool that enables people to interact with each other by both sharing and consuming information.
- (8) "Synchronous" means a communication that occurs simultaneously in real time.
- (9) "Telehealth" is defined by KRS 335.380(3).

### **Section 2. Licensure, Standard of Practice, and Competency.**

- (1) License or permit required. Each licensed marriage and family therapist, or permitted marriage and family therapy associate practicing telehealth in this state shall be licensed by the board, or hold a permit issued by the board, and comply with all statutes, administrative regulations, and ethics guidelines applicable to the practice of marriage and family therapy.
- (2) Standard of appropriate practice. A licensed marriage and family therapist, or permitted marriage and family therapy associate providing telehealth services in this state shall be held to the same standards of practice as those applicable for in-person therapy settings.
- (3) Competency. A licensed marriage and family therapist, or permitted marriage and family therapy associate shall only provide telehealth services in this state in those instances in which the licensed marriage and family therapist, or permitted marriage and family therapy associate has successfully completed all requirements set forth in Section 3(1) of this administrative regulation.
- (4) Continued competency. A licensed marriage and family therapist, or permitted marriage and family therapy associate providing telehealth services in this state shall have an ongoing obligation to assess his or her technical and clinical competency to render these services by successfully completing all requirements set forth in Section 3(2) of this administrative regulation.
- (5) Fee splitting. A licensed marriage and family therapist, or permitted marriage and family therapy associate providing telehealth services shall not split fees.

### Section 3. Education and Continuing Education Requirements.

(1) Initial educational requirements. Effective January 1, 2020, a licensed marriage and family therapist, or a permitted marriage and family therapy associate providing telehealth services in this state, and a licensed marriage and family therapist who is supervising a marriage and family therapy associate providing telehealth services in this state shall have completed fifteen (15) hours of board-approved training in the practice of telehealth as provided in 201 KAR 32:060, Section 2(2), which shall include three (3) hours of ethics in the practice of telehealth. Each approved course shall be live or online. Areas to be covered in the training shall include:

- (a) Appropriateness of teletherapy;
- (b) Teletherapy theory and practice;
- (c) Modes of delivery;
- (d) Legal and ethical issues;
- (e) Handling online emergencies; and
- (f) Best practices and informed consent.

(2) Continuing education requirements. A licensed marriage and family therapist, or permitted marriage and family therapy associate who has completed the initial training in the practice of telehealth shall complete at least two (2) credit hours of continuing education approved by the board, in accordance with 201 KAR 32:060, in the practice of telehealth during each subsequent renewal period.

(3) Credit hours earned to comply with subsections (1) and (2) of this Section may be applied to continuing education requirements set forth in 201 KAR 32:060.

Section 4. Verification of the Client. Prior to providing initial telehealth services in this state a licensed marriage and family therapist, or permitted marriage and family therapy associate shall require the client to produce a valid photo identification. If the client is a minor, prior to providing telehealth services in this state a licensed marriage and family therapist, or permitted marriage and family therapy associate shall verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

### Section 5. Client Assessment.

(1) Initial assessment. Prior to providing telehealth services in this state a licensed marriage and family therapist, or permitted marriage and family therapy associate shall conduct an initial assessment of the client to determine if telehealth is an appropriate delivery of treatment considering the professional, intellectual, or emotional needs of the client.

(2) Ongoing assessment. Throughout the duration of providing telehealth services in this state, a licensed marriage and family therapist, or permitted marriage and family therapy associate shall engage in a continual assessment of the appropriateness of providing these services to the client.

(3) Telehealth may not be appropriate if the client:

- (a) Recurrently experiences, or is likely to experience, crises or emergencies;
- (b) Is a suicide risk, or likely to become a suicide risk;
- (c) Is violent, or likely to become violent; or
- (d) Otherwise poses a risk to themselves or to others.

### Section 6. Informed Consent.

(1) Generally. Prior to providing telehealth services in this state, the licensed marriage and family therapist, or permitted marriage and family therapy associate providing these services shall obtain the informed consent of the client, which shall include:

- (a) Disclosure of specific information regarding the licensed marriage and family therapist's, or permitted marriage and family therapy associate's:
  - 1. Training and credentials;

2. License or permit number;
  3. Physical location and contact information;
  4. Social media policy;
  5. Encryption policy; and
  6. Collection, documentation, tracking, and storage of client information;
  - (b) Client confidentiality and the limits to confidentiality in electronic communication;
  - (c) Information on reporting complaints to the board and other appropriate licensing bodies;
  - (d) The specific services to be provided;
  - (e) The risks and benefits of engaging in telehealth in the clinical setting;
  - (f) The possibility of technology failure and alternate methods of service delivery;
  - (g) Time zone differences, if any;
  - (h) Cultural or language differences that may affect the delivery of services;
  - (i) The possible denial of insurance benefits;
  - (j) The pertinent legal rights and limitations governing practice across state lines or international boundaries, if applicable; and
  - (k) Whether delivery of service will be asynchronous or synchronous.
- (2) Minors. Except as allowed by KRS 214.185, if the client is a minor, prior to providing telehealth services in this state the licensed marriage and family therapist, or permitted marriage and family therapy associate shall, pursuant to Section 4 of this administrative regulation, verify the identity of the parent, guardian, or other person consenting to the minor's treatment and obtain from that person the informed consent required by this section.

Section 7. Emergency Procedures, Coordination of Care and Referrals. Prior to providing telehealth services in this state, the licensed marriage and family therapist, or permitted marriage and family therapy associate shall establish with the client:

- (1) Acceptable ways to contact the licensed marriage and family therapist, or permitted marriage and family therapy associate in an emergency;
- (2) Emergency procedures to include emergency services at the client's location;
- (3) Coordination of care with other professionals; and
- (4) Conditions under which telehealth services may be terminated and a referral made to in-person care.

Section 8. Compliance with Privacy Laws, Documentation, and Recordkeeping. A licensed marriage and family therapist, or permitted marriage and family therapy associate performing telehealth services in this state shall:

- (1) Comply with all privacy laws and regulations relating to the transmission and protection of protected health information, including HIPAA and HITECH; and
  - (2) Comply with all state and federal laws and regulations relating to the practice of telehealth, documentation of services delivered, and related recordkeeping.
- (45 Ky.R. 1855, 27005; eff. 5-3-2019; 47 Ky.R. 548, 707; eff. 10-28-2020.)