

1 201 KAR 26:310. Telehealth and telepsychology.

2 RELATES TO: KRS 319.140

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

4 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires a treating
5 psychologist utilizing telehealth to ensure a patient's informed consent and to maintain
6 confidentiality. This administrative regulation protects the health and safety of the citizens of
7 Kentucky and establishes procedures for preventing abuse and fraud through the use of
8 telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the
9 provision of psychological services and in the provision of continuing education.

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

11 (2) "Telehealth" means delivery of health care-related services, by a provider who is a health
12 care provider licensed in Kentucky, to a client~~[patient]~~ through a face-to-face encounter with
13 access to real-time interactive audio and video technology. Telehealth shall not include the
14 delivery of services through electronic mail, text chat, facsimile, or standard audio-only
15 telephone call and shall be delivered over a secure communications connection that complies
16 with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs.
17 1320d to 1320d-9.

18 (3) "Telepsychology" means the "practice of psychology", as defined by KRS 319.010(7), be-
19 tween the credential holder and the client~~[psychologist and the patient]~~ that is provided using:

20 (a) Electronic communication technology; or

21 (b) Two (2) way, interactive, simultaneous audio and video.

1 (4) "Telehealth service" means any service that is provided via telehealth and is one (1) of the
2 following:

- 3 (a) Event;
- 4 (b) Encounter;
- 5 (c) Consultation;
- 6 (d) Visit;
- 7 (e) Remote patient monitoring;
- 8 (f) Referral; or
- 9 (g) Treatment.

10 Section 2. Client Requirements. A credential holder using telehealth to deliver psychological
11 services or who practices telepsychology shall, upon initial contact with the client:

- 12 (1) Make reasonable attempts to verify the identity of the client;
- 13 (2) Obtain alternative means of contacting the client other than electronically;
- 14 (3) Provide to the client alternative means of contacting the credential holder other than
15 electronically;
- 16 (4) Document if the client has the necessary knowledge and skills to benefit from the type of
17 telepsychology provided by the credential holder;
- 18 (5) Use secure communications with clients, including encrypted text messages via e-mail or
19 secure Web sites, and not use personal identifying information in non-secure communications;
- 20 (6) Inform the client in writing about:
 - 21 (a) The limitations of using technology in the provision of telepsychology;
 - 22 (b) Potential risks to confidentiality of information due to technology in the provision of
23 telepsychology;

- 1 (c) Potential risks of disruption in the use of telepsychology;
- 2 (d) When and how the credential holder will respond to routine electronic messages;
- 3 (e) The circumstances in which the credential holder will use alternative communications for
- 4 emergency purposes;
- 5 (f) Who else may have access to client communications with the credential holder;
- 6 (g) How communications can be directed to a specific credential holder;
- 7 (h) How the credential holder stores electronic communications from the client; and
- 8 (i) The reporting of clients required by 201 KAR 26:145, Section 7.

9 (7) Within forty-eight (48) hours of the telehealth service, the credential holder shall document
10 within the client’s medical record that a service was provided by telehealth, and follow all
11 documentation requirements of the practice.

12 Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. (1) A
13 credential holder using telehealth to deliver psychological services or who practices
14 telepsychology shall:

- 15 (a) Limit the practice of telepsychology to the area of competence in which proficiency has been
- 16 gained through education, training, and experience;
- 17 (b) Maintain current competency in the practice of telepsychology through continuing education,
- 18 consultation, or other procedures, in conformance with current standards of scientific and
- 19 professional knowledge;
- 20 (c) Document the client’s presenting problem, purpose, or diagnosis;
- 21 (d) Follow the record-keeping requirements of 201 KAR 26:145, Section 6;
- 22 (e) Ensure that confidential communications obtained and stored electronically cannot be
- 23 recovered and accessed by unauthorized persons when the credential holder disposes of

1 electronic equipment and data; and

2 (f) Document the client’s written informed consent to the services being provided and the
3 provision of those services via telehealth, including that the patient has the right to refuse
4 telehealth consultation or services, has been informed of alternatives to telehealth services, that
5 the client shall be entitled to receive information from the provider regarding the services
6 rendered, that the client’s information shall be protected by applicable federal and state law
7 regarding patient confidentiality, that the client shall have the right to know the identity of all
8 persons present at any site involved in the telehealth services, and to exclude any such person,
9 and that the client shall have the right to be advised, and to object to, any recording of the
10 telehealth consultation or services.

11 (2) The requirement of a written informed consent shall not apply to an emergency situation if
12 the client is unable to provide informed consent and the client’s legally authorized representative
13 is not available.

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

16 (1) State law where the credential holder is credentialed and state law regarding the practice of
17 psychology where the client is located at the time services are rendered; and

18 (2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a
19 client with disabilities;

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

22 (1) Shall not, by or on behalf of the credential holder, engage in false, misleading, or deceptive
23 advertising of telepsychology; and

1 (2) Shall comply with 201 KAR 26:145.

201 KAR 26:310

Jean A. Deters, Psy. D.

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BOARD CHAIR

APPROVED BY AGENCY: November 8, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 pm EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSSt2ZU5RY3VmZz09>
Password: 889205

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 931924

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 893 0708 2752
Password: 889205

SIP: 89307082752@zoomcrc.com
Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm EST on January 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

Contact Person: Kevin Winstead
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 26:310

Contact Person: Kevin Winstead
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(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation 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.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds a requirement that documentation of the telehealth appointment takes place within 48 hours.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The only action required by this amendment is for the practitioner to document telehealth appointments within 48 hours.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the telehealth requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 201 KAR 26:310

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(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for the Board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: