

1 GENERAL GOVERNMENT CABINET

2 Kentucky Applied Behavior Analysis Licensing Board

3 (Amendment)

4 201 KAR 43:100. Telehealth and telepractice.

5 RELATES TO: KRS 319C.140(2)

6 STATUTORY AUTHORITY: KRS 319C.140(2)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.140(2) requires the board to
8 promulgate administrative regulations related to utilization of telehealth as a means of healthcare
9 delivery. This administrative regulation establishes the requirements for telehealth and teleprac-
10 tice in applied behavior analysis.

11 Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via
12 Telehealth. (1) A licensee who provides applied behavior analytic services via telehealth shall:

13 (a) Maintain competence with the technologies utilized, including understanding and ade-
14 quately addressing the actual and potential impact of those technologies on clients, supervisees,
15 or other professionals;

16 (b) Maintain compliance with KRS Chapter 319C, 201 KAR Chapter 43, and all other appli-
17 cable federal, state, and local laws;

18 (c) At the onset of the delivery of care via telehealth, identify appropriate emergency response
19 contacts local to the client so that those contacts shall be readily accessible in the event of an
20 emergency;

1 (d) Protect and maintain the confidentiality of data and information in accordance with all ap-
2 plicable federal, state, and local laws; and

3 (e) Dispose of data and information only in accordance with federal, state, and local law and
4 in a manner that protects the data and information from unauthorized access.

5 (2) If applied ~~[Applied]~~ behavior analysis commences ~~[with a client shall not commence]~~ via
6 telehealth_[-]

7 ~~—(a) An initial, in-person meeting for the licensee and client who prospectively utilize tele-~~
8 ~~health shall occur.~~

9 ~~(b)~~ ~~[F]~~ the licensee shall, at the initial ~~[-, in-person]~~ meeting with the client:

10 ~~(a)~~ ~~[1.]~~ Make reasonable attempts to verify the identity of the client;

11 ~~(b)~~ ~~[2.]~~ Obtain alternative means of contacting the client other than electronically;

12 ~~(c)~~ ~~[3.]~~ Provide to the client alternative means of contacting the licensee other than electroni-
13 cally;

14 ~~(d)~~ ~~[4.]~~ Document if the client has the necessary knowledge and skills to benefit from the type
15 of telehealth to be provided by the licensee; and

16 ~~(e)~~ ~~[5.]~~ Inform the client in writing about and obtain the client’s informed written consent re-
17 garding:

18 1. ~~[a.]~~ The limitations of using technology in the provision of applied behavior analytic ser-
19 vices;

20 2. ~~[b.]~~ Potential risks to confidentiality of information due to technology in the provision of
21 applied behavior analytic services;

22 3. ~~[c.]~~ Potential risks of disruption in the use of telehealth technology;

23 4. ~~[d.]~~ When and how the licensee will respond to routine electronic messages;

1 ~~5.[e.]~~ In what circumstances the licensee will use alternative communications for emergency
2 purposes;

3 ~~6.[f.]~~ Who else may have access to client communications with the licensee;

4 ~~7.[g.]~~ How communications can be directed to a specific licensee;

5 ~~8.[h.]~~ How the licensee stores electronic communications from the client; and

6 ~~9.[i.]~~ That the licensee or client may elect to discontinue the provision of services through
7 telehealth at any time.

8 Section 2. Jurisdictional Considerations. (1) A person providing applied behavior analytic
9 services via telehealth to a person physically located in Kentucky while services are provided
10 shall be licensed by the board.

11 (2) A person providing applied behavior analytic services via telehealth from a physical loca-
12 tion in Kentucky shall be licensed by the board and may be subject to licensure requirements in
13 other states where the services are received by the client.

14 Section 3. Representation of Services and Code of Conduct. A licensee using telehealth to de-
15 liver services shall not:

16 (1) Engage in false, misleading, or deceptive advertising; and

17 (2) Split fees.

201 KAR 43:100

A handwritten signature in black ink, appearing to read 'E. Dubuque', written in a cursive style.

Dr. Erick Dubuque

BOARD CHAIR

APPROVED BY AGENCY: November 11, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. 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/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09>
Password: 729285
Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 913047

Find local AT&T Numbers:
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=913047>

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: 885 0745 4480

Password: 729285
SIP: 88507454480@zoomcrc.com
Password: 729285

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 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
Title: Commissioner, Department of Professional Licensing
Address: 500 Mero Street
Phone Number: (502) 782-8805 (office)
Fax: (502) 564-3969
Email: KevinR.Winstead@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 43:100

Contact Person: David Ehsan
Phone Number: (502) 782-8805 (office)
Email: KevinR.Winstead@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 319C.140(2).

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

KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

(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 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

(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: The amendment eliminates the requirement that an initial meeting be conducted in-person.

(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 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers

(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: This regulation will provide updated telehealth requirements that licensees will need to become familiar with

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None.

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

(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 Applied Behavior Analysis Licensing Board 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: None.

(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 43:100

Contact Person: Kevin Winstead
Phone Number: (502) 782-8805 (office)
Email: KevinR.Winstead@ky.gov

(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 regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.140(2).

(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? None

(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: