

1 PUBLIC PROTECTION CABINET

2 Board of Licensure for Occupational Therapy

3 (Amendment)

4 201 KAR 28:235. Telehealth occupational therapy services.

5 RELATES TO: KRS 319A.080, 319A.300, KRS 211.332, 211.334, 211.335, 211.336, 211.338.

6 STATUTORY AUTHORITY: KRS 319A.070, 319A.300

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.300(2) requires the board to
8 promulgate an administrative regulation to implement telehealth in occupational therapy,
9 including to establish procedures to prevent abuse and fraud through the use of telehealth, prevent
10 fee-splitting through the use of telehealth, and utilize telehealth in the provision of occupational
11 therapy services and in the provision of continuing education. Additionally, KRS 319A.300(1)
12 requires an occupational therapist utilizing telehealth to ensure a client's [~~patient's~~] informed
13 consent and to maintain confidentiality. This administrative regulation establishes the
14 requirements for telehealth for occupational therapy services.

15 Section 1. Definitions.

16 (1) "Client" means the person receiving the services of the occupational therapist.

17 (2) "Credential holder" means an individual licensed by the Kentucky Board of Licensure
18 for Occupational Therapy pursuant to KRS Chapter 319A.

19 (3) "Telehealth" is defined by KRS 211.332(5)[319A.300(3) as the use of interactive audio,
20 video, or other electronic media to deliver health care. It includes the use of electronic media for
21 diagnosis, consultation, treatment, transfer of health or medical data, and continuing education].

1 ~~(4)~~~~(3)~~ "Telehealth occupational therapy" means the practice of occupational therapy as
2 defined by KRS 319A.010(2) and KRS 211.332(5).~~[, between the occupational therapist or~~
3 ~~occupational therapist assistant and the patient that is provided using:~~

4 ~~(a) An electronic communication technology; or~~

5 ~~(b) Two (2) way, interactive, simultaneous audio and video.]~~

6 Section 2. Client Requirements. A credential holder using telehealth to deliver occupational
7 therapy services shall, upon initial contact with the client:

8 (1) Make attempts to verify the identity of the client;

9 (2) Obtain alternative means of contacting the client other than through telehealth means
10 ~~[electronically]~~ such as by the use of a telephone number or email~~[mailing]~~ address;

11 (3) Provide to the client alternative means of contacting the credential holder other than
12 through telehealth means ~~[electronically]~~ such as by the use of a telephone number or email
13 ~~[mailing]~~ address;

14 (4) Provide contact methods of alternative communication the credential holder shall use
15 for emergency purposes such as an emergency on call telephone number;

16 (5) Document if the client has the necessary knowledge and skills to benefit from the type
17 of telehealth provided by the credential holder;

18 (6) Use secure communications with clients, including encrypted text messages via e-mail
19 or secure websites, and not use personal identifying information in non-secure communications
20 ~~[and];~~

21 (7) In accordance with KRS 319A.300(1)(a) and 900 KAR 12:005, Section 2(3), obtain the
22 informed consent of the client; and

23 ~~(8)~~ Inform the client in writing about:

1 (a) The limitations of using technology in the provision of telehealth occupational
2 therapy services;

3 (b) Potential risks to confidentiality of information, or inadvertent access of
4 protected health information, due to technology in the provision of telehealth occupational
5 therapy services;

6 (c) Potential risks of disruption in the use of telehealth occupational therapy
7 services;

8 (d) When and how the credential holder will respond to routine electronic
9 messages;

10 (e) In what circumstances the credential holder will use alternative communications
11 for emergency purposes;

12 (f) Who else may have access to client communications with the credential holder;

13 (g) How communications can be directed to a specific credential holder;

14 (h) How the credential holder stores electronic communications from the client; and

15 (i) How the credential holder may elect to discontinue the provision of services
16 through telehealth.

17 (9) The credential holder shall timely document within the client's record that a service
18 was provided by telehealth and follow all documentation requirements of the practice.

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

20 (1) A credential holder using telehealth to deliver occupational therapy services or who practices
21 telehealth occupational therapy shall:

22 (a)~~(1)~~ Limit the practice of telehealth occupational therapy to the area of competence in
23 which proficiency has been gained through education, training, and experience;

1 ~~(b)(2)~~ Maintain current competency in the practice of telehealth occupational therapy
2 through continuing education, consultation, or other procedures, in conformance with current
3 standards of scientific and professional knowledge;

4 ~~(c)(3)~~ Document the client's presenting problem, purpose, or diagnosis;

5 ~~(d)(4)~~ Follow the record-keeping requirements of 201 KAR 28:140; ~~and~~

6 ~~(e)(5)~~ Ensure that confidential communications obtained and stored electronically shall
7 not be recovered and accessed by unauthorized persons when the credential holder disposes of
8 electronic equipment and data; ~~and~~[-]

9 (f) Document the client's written informed consent to the services being provided and the
10 provision of those services via telehealth, including the following:

11 1. That the patient has the right to refuse telehealth consultation or services, has been
12 informed of alternatives to telehealth services;

13 2. That the client shall be entitled to receive information from the provider regarding the
14 services rendered;

15 3. That the client's information shall be protected by applicable federal and state law
16 regarding client confidentiality;

17 4. That the client shall have the right to know the identity of all persons present at any site
18 involved in the telehealth services, and to exclude any such person; and

19 5. That the client shall have the right to be advised, and to object to, any recording of the
20 telehealth consultation or services.

21 (2) When written informed consent cannot be obtained due to an emergency situation,
22 informed consent shall be obtained verbally and documented in the client's record.

1 Section 4. Compliance with Federal, State, and Local Law. A credential holder using
2 telehealth to deliver occupational therapy services or who practices telehealth occupational therapy
3 shall ~~[comply with]:~~

4 (1) Maintain patient privacy and security in accordance with 900 KAR 12:005, Section
5 2(2). ~~[State law where the credential holder is credentialed and be licensed to practice occupational~~
6 ~~therapy where the client is domiciled or adhere to standards set forth in 201 KAR 28:030; and]~~

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

9 (3) Be licensed or otherwise authorized by law to practice occupational therapy where the
10 client is physically located.

11 (4) Be licensed or otherwise authorized by law to practice occupational therapy where the
12 credential holder is physically located.

13 Section 5. Representation of Services and Code of Conduct.

14 ~~[(4)]~~ A credential holder using telehealth to deliver occupational therapy services or who practices
15 telehealth occupational therapy shall:

16 ~~(1)[(a)]~~ Not by or on behalf of the credential holder engage in false, misleading, or
17 deceptive advertising of telehealth occupational therapy;

18 ~~(2)[(b)]~~ Comply with the code of ethics and unprofessional conduct established in 201
19 KAR 28:140; and

20 ~~(3)[(c)]~~ Not allow fee-splitting through the use of telehealth occupational therapy services.

21 ~~[(2) Occupational therapy continuing competence educational processes established in 201 KAR~~
22 ~~28:200, Section 3(1), (2), (3), (5), (8), and (11), may occur through telehealth services.]~~

201 KAR 28:235

APPROVED BY AGENCY:

A handwritten signature in black ink, appearing to read "Scott DeBurger", written over a horizontal line.

Scott DeBurger
Vice Chair, Board of Licensure for Occupational Therapy

Date: February 12, 2026

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on July 27, 2026, at 10:00 AM, at the Mayo-Underwood Building, Room 206NW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 the proposed administrative regulation. Written comments shall be accepted through July 31, 2026. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person by using the PPC public comment portal at the address listed below.

CONTACT PERSON:

Name: Lilly Jean Coiner

Title: Executive Advisor

Agency: Department of Professional Licensing, Office of Legal Services

Address: 500 Mero Street, 2 NC WK#4

Phone Number: (502) 262-5065 (office)

Fax: (502) 564-4818

Email: lilly.coiner@ky.gov

Link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

201 KAR 28:235

Contact Person: Lilly Jean Coiner

Phone: 502-262-5065

Email: lilly.coiner@ky.gov

Subject Headings: Occupational Therapy, Licensing, Boards and Commissions

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for credential holders who use telehealth in delivering occupational therapy to clients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements under KRS 211.332.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 319A.070(3)(a) and 211.332 to 211.338.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective enforcement of KRS 319A.010 to 319A.990 in ensuring credential holders comply with the telehealth statutes.

(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 revises the existing administrative regulation by adding a definition for “credential holder,” clarifying the definition of telehealth, standardizing the use of the terms “credential holder” and “client,” clarifying statutory and regulatory requirements for telehealth, specifying documentation and informed consent requirements, clarifying the authority of credential holders to provide telehealth services based on the client’s location and the credential holder’s licensure, and removing unnecessary language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure regulatory clarity and consistency, align the regulation with current statutory requirements and telehealth practices, and provide clear guidance to credential holders regarding compliance, documentation, informed consent, and scope of authority across jurisdictions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 319A.070(3)(a) and 211.332 to 211.338.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the statutes by ensuring regulatory clarity and consistency, aligning the regulation with current statutory requirements and telehealth practices, and providing clear guidance to credential holders regarding compliance, documentation, informed consent, and scope of authority across jurisdictions.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? No.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 4,176 active credential holders and 89 inactive credential holders.

(5) Provide an analysis of how the entities identified in question (3) 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 that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each licensee will have to adhere to the requirements of the telehealth laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will vary, and licensee is not required to offer telehealth services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, credential holders will have the ability to properly offer telehealth services.

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

(a) Initially: There will be no initial cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost to the administrative body to implement this regulation.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Licensure for Occupational Therapy is funded by the fees paid by credential holders.

(8) 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 increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(10) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied because these requirements apply equally to all credential holders.

FISCAL IMPACT STATEMENT

201 KAR 28:235

Contact Person: Lilly Jean Coiner

Phone: 502-262-5065

Email: lilly.coiner@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 319A.080, 319A.300, KRS 211.332, 211.334, 211.335, 211.336, 211.338.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: Yes. KRS 211.336. Ky. Acts ch. 68, sec. 1, effective July 14, 2022. -- Created 2021 Ky. Acts ch. 67, sec. 3, effective June 29, 2021.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Licensure for Occupational Therapy is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: None.

For subsequent years: None.

2. Revenues:

For the first year: None.

For subsequent years: None.

3. Cost Savings:

For the first year: None.

For subsequent years: None.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: N/A

For subsequent years: N/A

2. Revenues:

For the first year: N/A

For subsequent years: N/A

3. Cost Savings:

For the first year: N/A

For subsequent years: N/A

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:
 - For the first year: N/A
 - For subsequent years: N/A
2. Revenues:
 - For the first year: N/A
 - For subsequent years: N/A
3. Cost Savings:
 - For the first year: N/A
 - For subsequent years: N/A

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: This administrative regulation will not have a fiscal impact.

(b) Methodology and resources used to reach this conclusion: No methodology nor resources were used to reach this conclusion because there is no fiscal impact.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(13): This administrative regulation will not have a “major economic impact”, as defined by KRS 13A.010(13).

(b) The methodology and resources used to reach this conclusion: No methodology nor resources were used to reach this conclusion because there is no “major economic impact”, as defined by KRS 13A.010(13).