



Board of Behavioral Sciences

Memo

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To: Board Members **Date:** February 13, 2025

From: Christy Berger
Regulatory Manager

Subject: Discussion and Consideration of:
a. Comments Received During the 45-Day Public Comment Period and Proposed Responses Thereto for the Board’s Rulemaking to Amend Title 16 of the California Code of Regulations (CCR), Section 1815.5 (Telehealth Regulations)
b. Adoption of Amendments to CCR, Title 16, Section 1815.5 (Telehealth Regulations)

Background

At its February 2024 meeting, the Board approved regulatory changes pertaining to its telehealth regulations. The proposed regulatory action was noticed to the public, and the 45-day public comment period began on November 1, 2024 and ended on December 16, 2024. The Board received several comments as summarized below, and which are provided in their entirety in Attachments B, C and D. Staff’s recommended responses to the comments are also provided below. As a result of the comments received, modifications to the proposed text are provided for the Board’s consideration, as shown in Attachment A.

Board Staff and Regulations Counsel recommend the Board approve the following proposed responses to the comments summarized below and then take the recommended action specified below to finalize adoption of the proposed changes.

I. Comments Received During the 45-Day Public Comment Period and Proposed Responses Thereto for the Board’s Rulemaking to Amend Title 16 of the California Code of Regulations (CCR), Section 1815.5 (Telehealth Regulations)

Shanti Ezrine, MPA, State Government Affairs Associate and Cathy Atkins, JD, Deputy Executive Director on behalf of the California Association of Marriage and Family Therapists (CAMFT) (Attachment B)

In a letter to the Board dated December 16, 2024 titled “Proposed changes to Telehealth: Division 18 of Title 16, California Code of Regulations (CCR) Section

1815.5”, CAMFT provides several objections and recommendations to the proposed regulatory action, each of which serve as a separate comment. They are as follows:

CAMFT COMMENT #1

“Telehealth as it applies to applicants pending associate registration. The current and proposed text in 16 CCR Section 1815.5 does not include language that specifies the practice via telehealth for applicants pending associate registration. While the BBS does not directly regulate new graduates, Business and Professions Code Section 4980.43(b) does set forth certain provisions that counts supervised hours gained during the window of time between the degree award date and the issue date of the associate registration number. Absent of language, it can be interpreted that postgraduate applicants pending associate registration cannot provide telehealth or that these regulations do not apply to them. CAMFT proposes the BBS to consider including reference to Business and Professions Code Section 4980.43(b) for applicants for Associate Marriage and Family Therapist registration and all other applicable sections for applicants for Associate Clinical Social Worker and Associate Professional Clinical Counselor registrations.”

Recommended Response: The Board rejects the comment and declines to make any changes due to this comment. The proposed regulations are interpreting Business and Professions Code (BPC) section 2290.5, which is the law that applies to all health care providers providing telehealth services as defined in that section and sets the standards for the Board’s authority to regulate telehealth. Included in the “health care provider” definition for section 2290.5(a)(3) are all licensees of the Board, associate marriage and family therapists, associate clinical social workers, marriage and family therapist trainees, associate professional clinical counselor trainees, and clinical counselor trainees. There is no mention of authority to regulate applicants pending associate registration in that section. As a result, the Board does not have the authority to extend its telehealth regulations to anyone other than a health care provider as defined in that section.

CAMFT COMMENT #2

“Telehealth as it applies to the 30-day temporary practice allowance. The proposed language in 16 CCR section 1815.5(a) specifies that to practice via telehealth with a client located in California, a “current and active” California license or registration is required. This language does not address therapists in another U.S. jurisdiction providing services to clients in California under the temporary practice allowance per Business and Professions Code Section 4980.11. To ensure adherence to these regulatory requirements, CAMFT proposes the BBS to consider adding an exception for therapists providing services to clients in California under the temporary practice allowance.”

Recommended Response: The Board rejects this comment and declines to make any changes due to this comment. The statute allowing the temporary practice allowance, BPC section 4980.11, provides the authority for a temporary practice allowance (not to exceed 30 consecutive days in any calendar year) to be issued if the applicant meets certain conditions as specified in subsection (a). It also states, in subsection (c) of that section that a person providing services pursuant to the temporary practice allowances is “deemed to have agreed to practicing under the jurisdiction of the Board and to be bound by the laws of this state,” which in this case would include BPC section 2290.5. Therefore, adding such language to the regulation is not necessary to authorize such practice as it is already authorized by BPC section 4980.11.

CAMFT COMMENT #3

“Defining ‘technology, method, and equipment’. The proposed language in 16 CCR section 1815.5(d)(3) replaces the phrase “communication medium” with language that instead specifies ‘the technology, method, and equipment used to provide services via telehealth.’ It remains unclear what is meant by the added terms ‘technology, method, and equipment’ and would likely require further guidance from the BBS to help practitioners navigate different telehealth scenarios. CAMFT requests the BBS to consider clarifying these terms and ensure they appropriately reflect language used in the cited state and federal security laws and regulations.”

Recommended Response: The Board accepts this comment and proposes striking the reference to “technology, method and equipment.” Instead, the requirement would be to comply with all applicable federal and state privacy, confidentiality, and security laws governing the use and disclosure of a client’s medical information or protected health information. Specific examples, including definitions, are added to provide the clarification requested by the commenter and are highlighted for easier review, as follows, and as shown in Attachment A:

(3) ~~Utilize industry best practices for telehealth to ensure both client confidentiality and the security of the communication medium. Ensure that the technology, method, and equipment used to provide services via telehealth~~ Comply with all applicable federal and state privacy, confidentiality, and security laws and regulations governing the use and disclosure of a client’s medical information or protected health information, including the following:

- i. The Confidentiality of Medical Information Act (Part 2.6 (commencing with section 56) of Division 1 of the Civil Code) with respect to a client’s medical information.
- ii. The Health Insurance Portability and Accountability Act of 1996 (“HIPAA” (42 U.S.C. §§ 1320d – 1320d-8)) as amended by subsequent legislation HIPAA’s security standards in Subpart C of Part 164, 45 Code of Federal Regulations (C.F.R) sections 164.302 through 164.318, with respect to a

client's PHI. For the purposes of this subparagraph, "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (42 United States Code sections 1320d-1320d-8) as amended by subsequent legislation and the implementation of Privacy, Security, and Enforcement Rules under 45 C.F.R. Part 160 and Subparts A, C, D, and E of Part 164.

iii. The regulations promulgated under HIPAA by the United States Department of Health and Human Services, including 45 Code of Federal Regulations parts 160 and 164, as are currently in effect or as later amended. For the purposes of subparagraphs (i) and (ii) of paragraph (3):

(aa). "Medical information" has the meaning set forth in section 56.05 of the Civil Code.

(bb). "Protected Health Information (PHI)" means the client's "individually identifiable health information" as defined in section 1320d of Title 42 of the United States Code. PHI includes a client's medical history, or mental health history, which is a written record of the client's personal health history that provides information about diagnoses, illnesses, surgeries, hospitalizations, medications, treatments, and results of physical or mental exams and tests.

The Board believes this amendment fulfills CAMFT's request to ensure the language aligns with established law and provides clearer guidance to practitioners. A similar approach to identifying the types of information required to be protected and the applicable HIPAA laws and regulations has been recently adopted by another healing arts board (Dental Hygiene Board of California) at title 16, California Code of Regulations section 1116 (effective July 1, 2024).

CAMFT COMMENT #4

"Complying with federal and state laws and regulations. The proposed language in 16 CCR Section 1815.5(d)(3) specifies that 'technology, method, and equipment used to provide services via telehealth comply with all applicable federal and state privacy, confidentiality, and security laws and regulations.' It is unclear if the cited laws and regulations are to be applicable to an individual provider's practice or to all clinicians generally. CAMFT requests the BBS to consider clarifying how specific the cited laws and regulations will apply to practitioners in different work settings."

Recommended Response: The Board accepts this comment with regards to the clarity issues raised involving "technology, method, and equipment used to provide services via telehealth comply with all applicable federal and state privacy, confidentiality, and security laws and regulations." The Board proposes to make changes to the text in response to this comment as specified in the response to Comment #3 noted above. However, the Board notes that it licenses and registers individual licensees and

registrants. It does not have the authority to regulate businesses. The Board's regulations pertain to all its licensees and registrants generally, regardless of work setting as specified in existing subsection (a) of this regulation and the applicable laws cited in the Board's proposal already set forth the minimum standards for licensees and registrants to comply with those laws. As a result, the Board believes that its current regulatory text is relatively straightforward in that regard and declines to make any further changes to clarify "how specific the cited laws and regulations will apply to practitioners in different work settings."

Comment from Lisa Larimer Burtis received by email on November 1, 2024 (Attachment C):

The commenter endorsed the proposed changes as a member of the LMFT professional community. It is a benefit to and reflects positively on the profession to promote gender neutral and consistent language. The commenter thanked the Board for their efforts.

Recommended Response: The Board acknowledges the commenter's support of the proposed regulation. No changes will be made to the text based upon the comment.

Comment from Mr. An Nguyen received by email on November 7, 2024 (Attachment D):

The commenter expressed support for changing the language from "valid and current" to "active and current" so that patients and providers know that the provider's license is current and that the provider can actively provide services. Keeping "valid" may bring a loophole where providers may say that their license is valid but not mention if it is current or expired. The commenter thanked the Board for their efforts.

Recommended Response: The Board acknowledges the commenter's support of the proposed regulation. No changes will be made to the text based upon the comment.

II. Adoption of Amendments to CCR, Title 16, Section 1815.5 (Telehealth Regulations)

If the Board agrees with the recommended responses and the modified text set forth in Attachment A, staff recommend the following motion:

Recommended Motion

Approve the proposed responses to public comments received as set forth in the meeting materials, approve the proposed modified regulation text for section 1815.5 as set forth in **Attachment A**, and initiate a 15-day public comment period. If no relevant, adverse comments are received during the public comment period, authorize the Executive Officer to make any nonsubstantive changes to the package, and take all steps necessary to complete the rulemaking and adopt the proposed regulations at section 1815.5 as noticed.

Attachments

Attachment A: Board-Approved Regulatory Language with Modified Text for 15-day Notice

Attachment B: Comments from the California Association of Marriage and Family Therapists

Attachment C: Comment from Lisa Larimer Burtis

Attachment D: Comment from Mr. An Nguyen

Attachment A

**TITLE 16. BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS**

MODIFIED TEXT

**Title 16, Division 18, California Code of Regulations
Section 1815.5**

Originally proposed amendments to the regulatory language are shown in single underline for text to be added and ~~single strikethrough~~ for text to be deleted.

Modifications to the proposed regulatory language are shown in double underline for new text and ~~double strikethrough~~ for newly proposed deletions.

AMEND § 1815.5. IN TITLE 16 OF DIVISION 18 OF THE CALIFORNIA CODE OF REGULATIONS TO READ AS FOLLOWS:

§ 1815.5. Standards of Practice for Telehealth.

- (a) Except as provided in section 2290.5 of the Code for trainees, All persons engaging in the practice of marriage and family therapy, educational psychology, clinical social work, or professional clinical counseling via telehealth, as defined in ~~§~~section 2290.5 of the Code, with a client who is physically located in this State must have a ~~valid and current~~ and active license or registration issued by the Board.
- (b) All psychotherapy services offered by board licensees and registrants via telehealth fall within the jurisdiction of the board just as traditional face-to-face services do. Therefore, all psychotherapy services offered via telehealth are subject to the board's statutes and regulations.
- (c) Upon initiation of telehealth services, a licensee or registrant shall do the following:
- (1) Obtain informed consent from the client consistent with ~~§~~section 2290.5 of the Code.
 - (2) Inform the client of the potential risks and limitations of receiving treatment via telehealth.
 - (3) Provide the client with ~~his or her~~ their license or registration number and the type of license or registration.

- (4) Document reasonable efforts made to ascertain the contact information of relevant resources, including emergency services, in the patient's geographic area.
- (d) Each time a licensee or registrant provides services via telehealth, ~~he or she~~ they shall do the following:
- (1) Verbally obtain from the client and document the client's full name and address of present location, at the beginning of each telehealth session.
 - (2) Assess whether the client is appropriate for telehealth, including, but not limited to, consideration of the client's psychosocial situation.
 - (3) ~~Utilize industry best practices for telehealth to ensure both client confidentiality and the security of the communication medium. Ensure that the technology, method, and equipment used to provide services via telehealth~~ Comply with all applicable federal and state privacy, confidentiality, and security laws and regulations governing the use and disclosure of a client's medical information or protected health information, including the following:
 - i. The Confidentiality of Medical Information Act (Part 2.6 (commencing with section 56) of Division 1 of the Civil Code) with respect to a client's medical information.
 - ii. ~~The Health Insurance Portability and Accountability Act of 1996 ("HIPAA" (42 U.S.C. §§ 1320d-1320d-8)) as amended by subsequent legislation~~ HIPAA's security standards in Subpart C of Part 164, 45 Code of Federal Regulations (C.F.R) sections 164.302 through 164.318, with respect to a client's PHI. For the purposes of this subparagraph, "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (42 United States Code sections 1320d-1320d-8) as amended by subsequent legislation and the implementation of Privacy, Security, and Enforcement Rules under 45 C.F.R. Part 160 and Subparts A, C, D, and E of Part 164.
 - iii. ~~The regulations promulgated under HIPAA by the United States Department of Health and Human Services, including 45 Code of Federal Regulations parts 160 and 164, as are currently in effect or as later amended. For the purposes of subparagraphs (i) and (ii) of paragraph (3):~~
 - (aa). "Medical information" has the meaning set forth in section 56.05 of the Civil Code.
 - (bb). "Protected Health Information (PHI)" means the client's "individually

identifiable health information” as defined in section 1320d of Title 42 of the United States Code. PHI includes a client’s medical history, or mental health history, which is a written record of the client’s personal health history that provides information about diagnoses, illnesses, surgeries, hospitalizations, medications, treatments, and results of physical or mental exams and tests.

(e) A licensee or registrant of this state may provide telehealth services to clients located in another jurisdiction only if the California licensee or registrant meets the requirements to lawfully provide services in that jurisdiction, and delivery of services via telehealth is allowed by that jurisdiction.

~~(f) Failure to comply with these provisions shall be considered unprofessional conduct.~~

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code.
Reference: Sections 2290.5, 4980, 4989.50, 4996, 4999.30 and 4999.82, Business and Professions Code; and Sections 56 et seq., Civil Code.

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December 16, 2024

VIA EMAIL to BBS.Rulemaking@dca.ca.gov

Christy Berger
Board of Behavioral Sciences
1625 North Market Blvd., Suite S-200
Sacramento, CA 95834

RE: Proposed changes to Telehealth: Division 18 of Title 16, California Code of Regulations (CCR) Section 1815.5

Dear Ms. Berger:

On behalf of our more than 37,000 members, the California Association of Marriage and Family Therapists (CAMFT) would like to comment on the proposed revisions to the Telehealth regulations as noticed on October 17, 2024, for public comment.

CAMFT appreciates that the Board of Behavior Sciences (BBS) is proposing language to its regulations that would clarify the status that an individual needs to hold and specify the list of laws and regulations that an individual needs to comply with to provide telehealth. We also support the proposal to repeal 16 CCR Section 1815.5(f).

We provide the following comments for inclusion in the Final Rulemaking:

- **Telehealth as it applies to applicants pending associate registration.** The current and proposed text in 16 CCR Section 1815.5 does not include language that specifies the practice via telehealth for applicants pending associate registration. While the BBS does not directly regulate new graduates, Business and Professions Code Section 4980.43(b) does set forth certain provisions that counts supervised hours gained during the window of time between the degree award date and the issue date of the associate registration number. Absent of language, it can be interpreted that postgraduate applicants pending associate registration cannot provide telehealth or that these regulations do not apply to them. CAMFT proposes the BBS to consider including reference to Business and Professions Code Section 4980.43(b) for applicants for Associate Marriage and Family Therapist registration and all other applicable sections for applicants for Associate Clinical Social Worker and Associate Professional Clinical Counselor registrations.

- **Telehealth as it applies to the 30-day temporary practice allowance.** The proposed language in 16 CCR Section 1815.5(a) specifies that to practice via telehealth with a client located in California, a “current and active” California license or registration is required. This language does not address therapists in another U.S. jurisdiction providing services to clients in California under the temporary practice allowance per Business and Professions Code Section 4980.11. To ensure adherence to these regulatory requirements, CAMFT proposes the BBS to consider adding an exception for therapists providing services to clients in California under the temporary practice allowance.
- **Defining “technology, method, and equipment.”** The proposed language in 16 CCR Section 1815.5(d)(3) replaces the phrase “communication medium” with language that instead specifies “the technology, method, and equipment used to provide services via telehealth.” It remains unclear what is meant by the added terms “technology, method, and equipment” and would likely require further guidance from the BBS to help practitioners navigate different telehealth scenarios. CAMFT requests the BBS to consider clarifying these terms and ensure they appropriately reflect language used in the cited state and federal security laws and regulations.
- **Complying with federal and state laws and regulations.** The proposed language in 16 CCR Section 1815.5(d)(3) specifies that “technology, method, and equipment used to provide services via telehealth comply with all applicable federal and state privacy, confidentiality, and security laws and regulations.” It is unclear if the cited laws and regulations are to be applicable to an individual provider’s practice or to all clinicians generally. CAMFT requests the BBS to consider clarifying how specific the cited laws and regulations will apply to practitioners in different work settings.

Thank you for considering our comments. We look forward to continuing the discussion regarding our concerns.

Sincerely,



Shanti Ezrine, MPA
State Government Affairs Associate



Cathy Atkins, JD
Deputy Executive Director

From: [Lisa L. Burtis](#)
To: [Rulemaking, BBS@DCA](#)
Subject: Telehealth Reg Proposed Change
Date: Friday, November 1, 2024 6:52:41 AM

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Good morning

I have read through the proposed changes and endorsed the proposed changes as a member of the LMFT professional community. It is a benefit to and reflects positively on the profession whenever we can alter our regs to promote gender neutral and consistent language.

Thank you for your efforts.

Lisa Larimer Burtis
Licensed Marriage & Family Therapist
LMFT49997

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From: [An Nguyen](#)
To: [Rulemaking, BBS@DCA](#)
Subject: Regarding proposed regulatory action concerning telehealth
Date: Thursday, November 7, 2024 10:45:58 AM

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To whomever receives this,

I support changing the language from "valid and current" to "active and current" so that patients and providers know that the provider's license is current and that the provider can actively provide services. Keeping "valid" may bring a loophole where providers may say that their license is valid but not mention if it is current or expired. Thank you.

Mr. An Nguyen, M.A., LMFT