



Board of Behavioral Sciences



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Gavin Newsom, Governor
State of California

Business, Consumer Services and Housing Agency
Department of Consumer Affairs

TELEHEALTH COMMITTEE MINUTES

A recorded webcast of this meeting is available at https://youtu.be/dKbGUcPR_60.

DATE January 22, 2021

MEETING PLATFORM WebEx Video/Phone Conference

Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.

TIME 8:30 a.m.

ATTENDEES

Members Present: Christina Wong, Chair, LCSW Member
Susan Friedman, Public Member

Members Absent: Crystal Anthony, LCSW Member

Staff Present: Steve Sodergren, Interim Executive Officer
Rosanne Helms, Legislative Manager
Christy Berger, Regulatory Analyst
Christina Kitamura, Administrative Analyst
Sabina Knight, Legal Counsel

Other Attendees: Public participation via WebEx video conference/phone conference

I. Call to Order and Establishment of Quorum

Christina Wong, Chair of the Telehealth Committee (Committee) called the meeting to order at 8:38 a.m. Roll was called, and a quorum was established.

II. Introductions

Committee members and Board staff introduced themselves.

III. Overview of Purpose and Role of the Committee

Purpose of the Committee

The Board of Behavioral Sciences (Board) has established the Telehealth Committee to determine if any of the Board's statutes and regulations related to the practice of telehealth by its licensees, registrants, and trainees need to be updated or clarified.

Issues for Discussion

Staff has identified the following potential topics related to telehealth that the Committee may wish to discuss at future meetings. These topics are based on feedback or common questions from licensees and registrants, stakeholders, Board members, and Board staff.

1. The ability of pre-licensed individuals (trainees) to perform services via telehealth (possible BPC §2290.5(a)(3) clarification).
2. The ability of MFT and PCC trainees to gain required practicum hours via telehealth. Possible clarification of "face-to-face" terminology in BPC §§4980.36(d)(1)(B), 4980.37(c)(2), 4999.32(c)(3), and 4999.33(c)(3).
3. The allowable settings for pre-licensed individuals to perform services via telehealth.
4. The supervision via videoconferencing requirements for associates and trainees. The use of the term "face-to-face" contact in these sections when defining direct supervisor contact. (BPC §§4980.43.2(b) and (d), 4996.23.1(b) and (f), 4999.46.2(b) and (d))
5. Review of current BBS telehealth regulations, including discussion of §1815.5(e).
6. Examination and discussion of delivery methods being offered.
7. Examination and discussion of regulating online therapy sites operating in California.

8. The possibility of adding a temporary/incidental allowance for out-of-state licensees to perform services for clients that have moved to California, or are temporarily located in California (both in an emergency situation and incidentally, such as traveling or for college).
9. Examination of the U.S. Department of Veteran's Affairs telehealth allowance.
10. Examination and discussion of interstate compacts.
11. Telehealth and Medicaid/Medicare reimbursement.
12. Discussion of outreach strategy to educate California consumers about online therapy (consumer rights, possible downfalls, etc.).

Members of public expressed concerns and provided ideas for future discussion:

- Concerns regarding 5150 applications and children in major topics, specifically for 5585
- Posting license in background while providing treatment via video platform
- Mandated telehealth training/scope of competence
- Telehealth considered as a therapeutic modality in the idea of having a scope of competence
- How to make the telehealth standard consistent among all states
- Clarifying temporary movement (college students) and determining which state board is responsible for their services.

IV. Discussion and Comparison of Other States and Other State Agencies' Laws Regarding Practice Across State Lines and the Use of Telehealth

The Board requires a therapist to hold a valid and current California license if they are engaging in therapy via telehealth with a client who is physically located in California.

Many states have a similar requirement. However, some deviate from this to allow additional flexibility so that clients who are travelling or who are transitioning to living in a new state may obtain temporary services from an out-of-state licensee.

Requirements of the following states and agencies, to provide telehealth with a client who is physically located in a different state, were provided: Arizona, Colorado, District of Columbia, Florida, New Jersey, Utah, Wyoming, California Board of Psychology, U.S. Department of Veterans Affairs

Steve: Suggested a discussion regarding a registration system for out-of-state licensees providing temporary services in California so that they could be tracked and monitored. The mechanism should be simple, not burdensome, and not a lengthy process.

Josie Baker: Supervision regarding this issue is important, especially for getting Kaiser's ASWs trained.

Michael Levy: There is potential need for federal considerations as behavioral health services change to a non-local and more interstate. Suggests looking "beyond state-by-state regulation" and collaborate with the federal government. Expressed concern about the potential for over-regulation and whether it has been established through research, complaints, evaluation or monitoring whether there are problems that need to be addressed. Expressed the importance to establish a need for training and regulation, before burdening professionals with additional regulation. Temporary licenses for interstate practice: this could be burdensome. Suggests looking at a "course of treatment" rather than an individual session.

Christa Tipton: Getting a single online course for teaching telehealth practices could be would be good for students. There has already been talk about that. NASW technology standards has a lot of supportive information on supervision.

The Committee suggested looking at the law for Utah and D.C. as examples to draft language. Staff will begin drafting language to present at a future meeting.

V. Review and Discussion of the Board's Current Telehealth Regulations (California Code of Regulations Title 16, section 1815.5)

Regulation §1815.5(e) states that a California licensee or registrant may only provide telehealth to a client in another jurisdiction if he or she meets the requirements to lawfully provide services in that jurisdiction, and if telehealth is allowed by that jurisdiction.

Regulation §1815.5(f) states that failure to comply with any provisions of the Board's telehealth regulations is unprofessional conduct.

The California Association of Marriage and Family Therapists (CAMFT) has raised a concern that making it unprofessional conduct if a therapist fails to check that he or she is following the laws of the jurisdiction where the client is located is too rigid and could lead to unintended consequences. They suggest that the location of 1815.5(e) be moved to after 1815.5(f) so that it functions as guidance, rather than a requirement that one must follow to avoid discipline.

Whether another jurisdiction decides to take disciplinary action based on a complaint they receive when a therapist is practicing with a patient in their jurisdiction who is traveling, transitioning, or in crisis is at their discretion and outside of the authority of this Board.

Telehealth Guidance

A significant amount of guidance for telehealth practice has been developed by various organizations since the Board adopted its initial telehealth regulations. Some examples are:

- The Center for Connected Health Policy's website discusses cross-state licensing and provides a general overview of current state efforts.
- The Association of Marital and Family Therapy Regulatory Boards (AMFTRB) released teletherapy guidelines in 2016.
- The American Counseling Association (ACA) and National Association of Social Workers (NASW) provide resources related to telehealth on their websites.

Jennifer Alley, CAMFT: CAMFT is looking for standards or guidance on what would be deemed unprofessional conduct when providing telehealth services to an existing patient in another state. Not checking with local laws in another state is not a good enough reason.

The Committee was receptive to CAMFT's request to flip the order of sections 1815.5(e) and 1815.5(f) and will discuss this further in future meetings.

VI. Public Comment for Items Not on the Agenda

A letter from Lyra Health was received and provided.

Alex Epps, Lyra Health: Explained that the letter was to provide information on Lyra Health, what Lyra Health does, and some of its interests.

Kassandre Clayton: Who are the gatekeepers for reviewing the telehealth companies that are emerging? Are telehealth platforms taken into consideration?

VII. Suggestions for Future Agenda Items

None

VIII. Adjournment

The Committee adjourned at 10:53 a.m.