

**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 18. BOARD OF BEHAVIORAL SCIENCES**

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Telehealth

Section(s) Affected: Section 1815.5 of Division 18 of Title 16 of the California Code of Regulations (CCR).

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows.

The 45-day public comment period began on November 1, 2024 and ended on December 16, 2024. The Board of Behavioral Sciences (Board) received written comments as described below. The comments received as well as the responses to those comments are summarized in the “Objections or Recommendations/Responses” section below. The Board considered the comments at its February 28, 2025 meeting and authorized modified text changes as indicated in the next section.

Modified Text

On its own motion and in response to some of the comments received (see comments “accepted”), the Board made changes to the noticed proposed regulations as described below.

1. Two non-substantive changes to correct capitalization of the word “section” in subsections (a) and (c)(1).
2. Corrected the acronym for the Health Insurance Portability and Accountability Act from “HIPPA” to “HIPAA” in subsection (d)(3)(ii).
3. Added a reference to section 56 et seq., Civil Code due to this code section’s inclusion in regulation text (subsection (d)(3)(i)).
4. Amended subsection (d)(3) to resolve ambiguity concerns raised by the public, ensure the language aligns with established law, and provide clearer guidance to practitioners. The modifications are shown below (additions are in double underline, deletions are in double strikethrough):

~~(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 issued a Notice of Modified Text on April 18, 2025 to make these changes, and that public comment period closed on May 5, 2025. No comments were received during the 15-day comment period.

On February 28, 2025, the Board delegated to the Executive Officer the authority to adopt the proposed modified text, as written, if no adverse comments were received and delegated to the Executive Officer the authority to make any technical or nonsubstantive changes that may be required in completing the rulemaking file.

A summary of the comments received, along with the Board's responses, is included below.

After submission of the rulemaking file to the Office of Administrative Law and pursuant to the Executive Officer's delegated authority, a nonsubstantive change was made to the Reference section of the regulation. The Board struck "; and, Sections 56 et seq., Civil Code" as it is unnecessary as a reference due to its inclusion in the text of the regulation at subsection (d)(3).

Additionally, for consistency throughout the Board's regulations, changes were made to the numbering in subsection (d)(3) to change "i", "ii" and "iii" to "(A)", "(B)", and "(C)", respectively; and to change "(aa)", "(bb)", and "(cc)" to "1.", "2.", and "3.", respectively.

LOCAL MANDATE

The proposed mandate does not impose a mandate on local agencies or school districts.

SMALL BUSINESS IMPACT

The Board has determined that the proposed regulations will not affect small businesses. This proposal would only impact licensees or registrants who provide services via telehealth. However, the Board believes the impact to individual licensees or registrants would not be significant for the following reasons:

- Striking regulations that duplicate statute has no adverse economic effect because the statutory provisions will continue to be in effect.
- Adding references to the CMIA and HIPAA has no adverse economic effect because these laws already apply to Board licensees and registrants providing services pursuant to these state and federal laws.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board as part of public comments received or at the Board's meetings would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. All recommendations provided during this rulemaking were considered by the Board and accepted or rejected as discussed above.

OBJECTIONS OR RECOMMENDATIONS/RESPONSES

Summary and Response to Comments Received During 45- Day Public Comment Period

A. Summary of Comments from 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)

In a letter to the Board dated December 16, 2024, CAMFT provides several objections and recommendations to the proposed regulatory action, each of which serve as a separate comment. They are as follows:

SUMMARY OF 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.”

Board Response: The Board rejected the comment and declined 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.

SUMMARY OF 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.”

Board Response: The Board rejected this comment and declined 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.

SUMMARY OF 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.”

Board Response: The Board accepted this comment and proposed 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, were added to provide the clarification requested by the commenter.

SUMMARY OF 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.”

Board Response: The Board accepted 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 proposed changes to the text in response to this comment as specified in the response to Comment #3 noted above. However, the Board noted 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 felt that the regulatory text was relatively straightforward in that regard and declined to make any further changes to clarify “how specific the cited laws and regulations will apply to practitioners in different work settings.”

B. Summary of Comment from Lisa Larimer Burtis received by email on November 1, 2024:

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.

Board Response: The Board acknowledged the commenter’s support of the proposed regulation. No changes were made to the text based upon the comment.

C. Summary of Comment from Mr. An Nguyen received by email on November 7, 2024:

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.

Board Response: The Board acknowledged the commenter’s support of the proposed regulation. No changes were made to the text based upon the comment.

COMMENTS RECEIVED DURING THE 15-DAY MODIFIED TEXT PUBLIC COMMENT PERIOD (dates)

No comments were received.