

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 42 BOARD OF SOCIAL WORK EXAMINERS

10.42.10 Teletherapy

Authority: *Health-General Article, §15-141.2; Health Occupations Article, §§1-901—1-903 and 1-1001—1-1006[.]; Insurance Article, §15-139; Annotated Code of Maryland*

Notice of Proposed Action

[22-208-P]

The Secretary of Health proposes to amend Regulations .01—.06 under **COMAR 10.42.10 Teletherapy**. This action was considered by the Board of Social Work Examiners at a public meeting held on October 9, 2020, notice of which was given by publication on the Board's website at <https://health.maryland.gov/bswe/Pages/default.aspx> pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend the current teletherapy guidelines for social workers pursuant to Chs. 15 and 16 (H.B. 448 and S.B. 402), Acts of 2020.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jourdan Green, Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through January 17, 2023. A public hearing has not been scheduled.

.01 Scope.

A. This chapter[:] *governs the practice of social work using teletherapy as an adjunct to, or replacement for, in-person client visits.*

[A. Applies to a:

- (1) Licensed certified social worker-clinical (LCSW-C);
- (2) Licensed certified social worker (LCSW) under the supervision of an LCSW-C; or
- (3) Licensed masters social worker (LMSW) under the supervision of an LCSW-C.

B. Does not prohibit the following from using electronic means as defined under Regulation .02B(4)(a) within their scope of practice:

- (1) A licensed bachelor social worker (LBSW) under supervision;
- (2) A licensed bachelor social worker (LBSW) practicing independently;
- (3) A licensed certified social worker (LCSW); or
- (4) A licensed masters social worker (LMSW) practicing independently.]

B. Nothing in this chapter restricts or limits reimbursement requirements pursuant to the Health-General Article and Insurance Article, Annotated Code of Maryland.

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1) "Asynchronous" means not occurring in real time.

[(1)] (2)—[(2)] (3) (text unchanged)

(4) "In-person" means within the physical presence of the client.

[(3)] (5) "Synchronous" means [simultaneously or quickly enough to allow two or more individuals to conduct a conversation] occurring in real time.

[(4)] (6) [Teletherapy.

(a) "Teletherapy" means [the use of interactive audio, video, or other telecommunications or electronic media by a licensed social worker to deliver psychotherapy:] *telehealth as defined in Health Occupations Article, §1-901, Annotated Code of Maryland.*

[(i)] Within the scope of practice of an LCSW-C, an LCSW under the supervision of an LCSW-C, or an LMSW under the supervision of an LCSW-C; and

(ii) At a location other than the location of the client;

(b) "Teletherapy" does not include:

(i) An audio-only telephone conversation between an LCSW-C, an LCSW under the supervision of an LCSW-C, or an LMSW under the supervision of an LCSW-C, and a client;

(ii) An electronic mail message between an LCSW-C, an LCSW under the supervision of an LCSW-C, or an LMSW under the supervision of an LCSW-C, and a client;

(iii) A facsimile transmission between an LCSW-C, an LCSW under the supervision of an LCSW-C, or an LMSW under the supervision of an LCSW-C, and a client; or

(iv) A text message or other type of message sent between an LCSW-C, an LCSW under the supervision of an LCSW-C, or an LMSW under the supervision of an LCSW-C, and a client by a short message service or multimedia messaging service.]

(7) "Teletherapy practitioner" means a Maryland licensed social worker performing teletherapy services within their respective scope of practice.

.03 Licensure.

[The following Board-approved licensees may provide psychotherapy using teletherapy if the client is in Maryland:

A. An LCSW-C;

B. An LCSW under the supervision of an LCSW-C; or

C. An LMSW under the supervision of an LCSW-C.]

Subject to the provisions of Health Occupations Article, Title 19, Subtitle 3, Annotated Code of Maryland, in order to practice teletherapy:

A. *The teletherapy practitioner shall be licensed in Maryland; and*

B. *The client shall be in Maryland and may not include a client located in another state, territory, or country.*

.04 Standards of Practice for Teletherapy.

A. Before providing teletherapy services, a [licensee who is permitted to use teletherapy under this chapter] *teletherapy practitioner shall develop and follow a procedure to:*

[A. Shall:

(1) Develop and follow a procedure to:]

[(a)] (1) Verify the identification of the client receiving teletherapy services[;] *within a reasonable degree of certainty through the use of:*

(a) *A government issued photograph identification;*

(b) *An insurance, Medicaid, or Medicare card; or*

(c) *Documentation of the client's:*

(i) *Date of birth; and*

(ii) *Home address;*

(2) *For an initial client encounter, disclose the teletherapy practitioner's:*

(a) *Name;*

(b) *Maryland license number and type; and*

(c) *Contact information;*

[(b)] (3) Obtain *oral or written informed consent* [specific to teletherapy services using appropriate language understandable to the client] *from a client or a client's parent or guardian if State law requires the consent of a parent or guardian, including informing clients of the risks, opportunities, and obligations associated with services available to the client;*

[(c)] (4) [Prevent] *Securely collect and transmit a client's clinical data and self-reported medical history, as necessary, and prevent access to data by unauthorized persons through encryption, or other means;*

[(d)] (5) (text unchanged)

[(e)] (6) Ensure that the teletherapy practitioner provides a secure and private teletherapy connection and complies with federal and State privacy laws; *and*

[(f)] (7) Establish safety protocols to be used in the case of an emergency, including contact information for emergency services at the client's location[;].

B. *Except when providing asynchronous teletherapy services, a teletherapy practitioner shall:*

[(g)] (1) (text unchanged)

[(h)] (2) [Determine] *Confirm whether the client is in Maryland and identify the client's specific location; and*

(i) For an initial teletherapy interaction only, disclose the name, location, Maryland license number, and contact information of the LCSW-C, the LCSW, or the LMSW; and]

[(j)] (3) Identify all individuals present at each location and confirm they are permitted to hear the client's health information[]; and].

[(2)] C. [Be] *A teletherapy practitioner shall be held to the same standards of practice and documentation as those applicable for in-person social work practice sessions[]; and].*

[B. May not treat a client based solely on an online questionnaire.]

.05 Client Evaluation.

A. A teletherapy practitioner shall:

[A.] (1) [A licensee who is permitted to use teletherapy under this chapter shall perform a] *Perform a synchronous or asynchronous clinical client evaluation [adequate to establish diagnoses and identify underlying conditions or contraindications to recommended treatment options] that is appropriate for the client and the condition with which the client presents before providing [subsequent teletherapy] treatment or services through teletherapy[.]; and*

[B. If the evaluation is adequate to comply with §A of this regulation, a licensee who is permitted to use teletherapy under this chapter may use:

(1) Live synchronous audio-visual communication;

(2) Other methods of performing social work remotely; or

(3) A social work evaluation performed by another licensee who is permitted to use teletherapy under this chapter providing coverage.]

(2) *If clinically appropriate for the client, provide or refer a client to:*

(a) *In-person treatment; or*

(b) *Another type of teletherapy service.*

B. A teletherapy practitioner may not treat a client based solely on an online questionnaire.

.06 Teletherapy Practitioner Discipline.

A. The Board shall use the same standards in evaluating and investigating a complaint and disciplining a licensee who [is permitted to use teletherapy under this chapter] *practices teletherapy* as it would use for a licensee [who is permitted to use teletherapy under this chapter] who does not use teletherapy technology *in the licensee's practice.*

B. The failure of a [licensee who is permitted to use teletherapy under this chapter] *teletherapy practitioner* to comply with this chapter shall constitute unprofessional conduct and may be subject to disciplinary action by the Board [in accordance with COMAR 10.42.09].

DENNIS R. SCHRADER
Secretary of Health