**PROPOSAL**

**Maryland Register**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 42 BOARD OF SOCIAL WORK EXAMINERS**

***10.42.10 Teletherapy***

*Authority: Health Occupations Article, §§1-901—1-903, Annotated Code of Maryland*

**Notice of Proposed Action**

[19-119-P]

The Secretary of Health proposes to adopt new Regulations **.01—.06** under a new chapter, **COMAR 10.42.10 Teletherapy**.

**Statement of Purpose**

The purpose of this action is to establish a new teletherapy chapter pursuant to Ch. 610, Acts of 2017.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**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 Jake Whitaker, Acting 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 July 22, 2019. A public hearing has not been scheduled.

***.01 Scope.***

*This chapter:*

*A. Applies to a licensed certified social worker-clinical (LCSW-C), or a licensed masters social worker (LMSW) under the supervision of an LCSW-C, who may provide behavioral health services using teletherapy in Maryland.*

*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);*

*(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.*

***.02 Definitions.***

*A. In this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

*(1) “Board” means the Maryland Board of Social Work Examiners.*

*(2) “Client” means the individual, couple, family, group, business, agency, school, organization, or association that the licensed social worker provides, or has provided, with professional services.*

*(3) “Synchronous” means simultaneously or quickly enough to allow two or more individuals to conduct a conversation.*

*(4) Teletherapy.*

*(a) “Teletherapy” means the use of interactive audio, video, or other telecommunications or electronic media by a licensed social worker to deliver social work services:*

*(i) Within the scope of practice 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 or an LMSW, under the supervision of an LCSW-C, and a client;*

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

*(iii) A facsimile transmission between 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 or an LMSW, under the supervision of an LCSW-C, and a client by a short message service or multimedia messaging service.*

***.03 Licensure.***

*An LCSW-C or an LMSW, under the supervision of an LCSW-C, licensed in Maryland may provide social work services using teletherapy if one or both of the following occurs:*

*A. The individual practicing teletherapy is physically located in Maryland; or*

*B. The client is in Maryland.*

***.04 Standards of Practice for Teletherapy.***

*A. Before providing teletherapy services, an LCSW-C or an LMSW, under the supervision of an LCSW-C, shall develop and follow a procedure to:*

*(1) Verify the identification of the client receiving teletherapy services;*

*(2) Obtain informed consent specific to teletherapy services using appropriate language understandable to the client;*

*(3) Prevent access to data by unauthorized persons through encryption, or other means;*

*(4) Notify clients in the event of a data breach;*

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

*(6) Establish safety protocols to be used in the case of an emergency, including contact information for emergency services at the client’s location.*

*B. An LCSW-C or an LMSW, under the supervision of an LCSW-C, shall:*

*(1) Obtain or confirm an alternative method of contacting the client in case of a technological failure;*

*(2) Determine whether the client is in Maryland and identify the client’s specific location;*

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

*(4) Identify all individuals present at each location and confirm they are permitted to hear the client’s health information; and*

*(5) Be held to the same standards of practice and documentation as those applicable for in-person sessions.*

*C. An LCSW-C or an LMSW, under the supervision of an LCSW-C, may not treat a client based solely on an online questionnaire.*

***.05 Client Evaluation.***

*An LCSW-C or an LMSW, under the supervision of an LCSW-C, shall perform a client evaluation to establish diagnoses and identify underlying conditions or contraindications to teletherapy before providing the teletherapy service.*

***.06 Discipline.***

*A. The Board shall use the same standards in evaluating and investigating a complaint and disciplining an LCSW-C or an LMSW, under the supervision of an LCSW-C, who practices teletherapy as it would use for an LCSW-C or an LMSW, under the supervision of an LCSW-C, who does not use teletherapy technology.*

*B. The failure of an LCSW-C or an LMSW, under the supervision of an LCSW-C, 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.*

ROBERT R. NEALL
Secretary of Health