

PROPOSAL
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Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 58 BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS

Notice of Proposed Action
[22-209-P]

The Secretary of Health proposes to:

- (1) Amend Regulations **.01—.06** under **COMAR 10.58.06 Teletherapy**; and
- (2) Amend Regulation **.02**, adopt new Regulation **.13**, and recodify existing Regulations **.13—.18** to be Regulations **.14—.19** under **COMAR 10.58.16 Behavior Analyst Advisory Committee**.

This action was considered by the Board of Professional Counselors and Therapists at a public meeting held on October 16, 2020 and May 20, 2022, notice of which was given by publication on the Board's website at [Maryland Department of Health Board of Professional Counselors and Therapists](#) 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 professional counselors and therapists, and adopt new telehealth guidelines for behavior analysts, 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 800-735-225), 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.

10.58.06 Teletherapy

Authority: *Health-General Article, §15-141.2; Health Occupations Article, §§1-901—1-903 and 1-1001—1-1006[,] and Insurance Article, §15-139, Annotated Code of Maryland; Ch. 505, Acts of 2008*

.01 Scope.

A. This chapter [applies to the following who provide behavioral health services using teletherapy in Maryland:] governs the practice of counseling and therapy services in Maryland pursuant to Health Occupations Article, Title 17, Annotated Code of Maryland, using teletherapy as an adjunct to, or replacement for, in-person client visits.

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

- [A. Certified associate counselor-alcohol and drug (CAC-AD);
- B. Certified professional counselor (CPC);
- C. Certified professional counselor-alcohol and drug (CPC-AD);
- D. Certified professional counselor-marriage and family therapist (CPC-MFT);
- E. Certified supervised counselor-alcohol and drug (CSC-AD);
- F. Licensed clinical alcohol and drug counselor (LCADC);
- G. Licensed clinical marriage and family therapist (LCMFT);

- H. Licensed clinical professional art therapist (LCPAT);
- I. Licensed clinical professional counselor (LCPC);
- J. Licensed graduate alcohol and drug counselor (LGADC);
- K. Licensed graduate marriage and family therapist (LGMFT);
- L. Licensed graduate professional art therapist (LGPAT); or
- M. Licensed graduate professional counselor (LGPC).]

.02 Definitions.

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

(1) *“Asynchronous” means not occurring in real time.*

[(1)] (2)—[(3)] (4) (text unchanged)

(5) *“In-person” means within the physical presence of the client.*

[(4)] (6) *“Synchronous” means [simultaneously or quickly enough to allow two or more individuals to conduct a conversation] occurring in real time.*

[(5)] (7) [Teletherapy.

(a) *“Teletherapy” means [the use of interactive audio, video, or other telecommunications or electronic media by a counselor of therapist to deliver counseling services:] telehealth as defined in Health Occupations Article, §1-901, Annotated Code of Maryland.*

[(i) Within the scope of practice of the counselor or therapist; and

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

(b) *“Teletherapy” does not include:*

(i) An audio-only telephone conversation between a counselor or therapist and a client;

(ii) An electronic mail message between a counselor or therapist and a client;

(iii) A facsimile transmission between a counselor or therapist and a client; or

(iv) A text message or other type of message sent between a counselor or therapist and a client by a short message service or multimedia messaging service.]

(8) *“Teletherapy practitioner” means an individual authorized to provide counseling and therapy services in Maryland pursuant to Health Occupations Article, Title 17, Annotated Code of Maryland, who performs teletherapy services within their respective scope of practice.*

.03 Licensure and Certification.

[A counselor or therapist licensed or certified in Maryland may provide counseling 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.]

Subject to the provisions of Health Occupations Article, Title 17, Subtitles 3 and 4, 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 [counselor or therapist] *teletherapy practitioner* shall develop and follow a procedure to:

(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 or certificate number and type; and*

(c) *Contact information;*

[(2)] (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 potential risks and benefits of services to be performed;*

[(3)] (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;*

[(4)] (5)—[(6)] (7) (text unchanged)

B. [A counselor or therapist] *Except when providing asynchronous teletherapy services, a teletherapy practitioner shall:*

(1) (text unchanged)

- (2) [Determine] *Confirm* whether the client is in Maryland and identify the client’s specific location; *and*
 (3) For an initial teletherapy interaction only, disclose the counselor or therapist’s name, location, license number, and contact information;]
 [(4)] (3) Identify all individuals present at each location and confirm they are permitted to hear the client’s health information; and].
 [(5)] C. [Be] *A teletherapy practitioner shall be* held to the same standards of practice and documentation as those applicable for in-person *counseling and therapy* sessions; and].
 [C. A counselor or therapist not treat a client based solely on an online questionnaire.]

.05 Client Evaluation.

- A. *A teletherapy practitioner shall:*
 [A.] (1) [A counselor or therapist shall perform] *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 counselor or therapist may use:
 (1) Live synchronous audio-visual communication;
 (2) Other methods of performing counseling examination remotely; or
 (3) A counseling evaluation performed by another counselor or therapist 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 counselor or therapist] *an individual authorized to practice pursuant to Health Occupations Article, Title 17, Annotated Code of Maryland, who practices teletherapy as it would use for [a counselor or therapist] an individual authorized to practice pursuant to Health Occupations Article, Title 17, Annotated Code of Maryland, who does not use teletherapy technology in their counseling or therapy practice.*
 B. The failure of a [counselor or therapist] *teletherapy practitioner* to comply with this chapter shall constitute unprofessional conduct and may be subject to disciplinary action by the Board.

10.58.16 Behavior Analyst Advisory Committee

Authority: Health Occupations Article, §§1-606, 1-1001—1-1006, and Title 17, Subtitle 6A, Annotated Code of Maryland

.02 Definitions.

- A. (text unchanged)
 B. Terms Defined.
 (1) *“Asynchronous” means not occurring in real time.*
 [(1)] (2)—[(4)] (5) (text unchanged)
 (6) *“In-person” means within the physical presence of the individual receiving behavior analyst services or the individual’s caregiver.*
 [(5)] (7)—[(10)] (12) (text unchanged)
 [(11)] (13) *“Supervision” means [the]:*
 (a) *The ongoing monitoring of implementation quality, the frequency of which should be based on the supervisee’s [training]:*
 (i) *Training*[, competence];
 (ii) *Competence*[,]; and [experience]
 (iii) *Experience* [and the];
 (b) *The nature of the assessment or intervention procedures delegated to the supervisee*[:]; *and*
 (c) *Meeting the minimum supervision requirements of the Behavior Analyst Certification Board.*
 [(12)] (14) *“Supervisor” means a licensed behavior analyst who [provides]:*
 (a) *Provides supervision to a supervisee*[:]; *and*
 (b) *Meets the minimum supervision requirements of the Behavior Analyst Certification Board.*
 (15) *“Synchronous” means occurring in real time.*
 (16) *“Telehealth” has the meaning stated in Health Occupations Article, §1-1001, Annotated Code of Maryland.*
 (17) *“Telehealth practitioner” means an individual authorized to provide telehealth services in Maryland pursuant to Health Occupations Article, Title 17, Subtitle 6A, Annotated Code of Maryland, who performs telehealth services within their respective scope of practice.*

.13 Telehealth.

A. Licensure. Subject to the provisions of Health Occupations Article, Title 17, Subtitle 6A, Annotated Code of Maryland, in order to practice telehealth:

- (1) The telehealth practitioner shall be licensed in Maryland; and*
- (2) The client shall be in Maryland and may not include a client located in another state, territory, or country.*

B. Standards of Practice.

- (1) Before providing telehealth services, a telehealth practitioner shall develop and follow a procedure to:*
 - (a) Verify the identification of the client, within a reasonable degree of certainty through the use of:*
 - (i) A government-issued photograph identification;*
 - (ii) An insurance, Medicaid, or Medicare card; or*
 - (iii) Documentation of the client's date of birth and home address;*
 - (b) For an initial client encounter, disclose the telehealth practitioner's:*
 - (i) Name;*
 - (ii) Maryland license number; and*
 - (iii) Contact information;*
 - (c) Obtain oral or written informed consent 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 potential risks and benefits of telehealth services to be performed;*
 - (d) 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;*
 - (e) Notify clients in the event of a data breach;*
 - (f) Ensure that the telehealth practitioner provides a secure and private telehealth connection and complies with federal and state privacy laws; and*
 - (g) Establish safety protocols to be used in the case of an emergency, including contact information for emergency services at the client's location.*
- (2) Except when providing asynchronous telehealth services, a telehealth practitioner shall:*
 - (a) Obtain or confirm an alternative method of contacting the client in case of a technological failure;*
 - (b) Confirm whether the client is in Maryland and identify the client's specific location; and*
 - (c) Identify all individuals present at each location and confirm they are permitted to hear the client's health information.*
- (3) A telehealth practitioner shall be held to the same standards of practice and documentation as those applicable for in-person sessions.*

C. Client Evaluation.

- (1) A telehealth practitioner shall:*
 - (a) Perform a synchronous or asynchronous client evaluation that is appropriate for the client and the condition with which the client presents before providing services through telehealth; and*
 - (b) If clinically appropriate for the client, provide or refer a client to:*
 - (i) In-person treatment; or*
 - (ii) Another type of telehealth service.*
- (2) A telehealth practitioner may not treat a client based solely on an online questionnaire.*

D. Telehealth Practitioner Discipline.

- (1) The Board shall use the same standards in evaluating and investigating a complaint and disciplining a telehealth practitioner who practices telehealth as it would use for a telehealth practitioner who does not use telehealth technology.*
- (2) The failure of a telehealth practitioner to comply with this chapter shall constitute unprofessional conduct and may be subject to disciplinary action by the Board.*

DENNIS R. SCHRADER
Secretary of Health