

4757-5-13

**Standards of practice and professional conduct: electronic service delivery (internet, email, teleconference, etc.).**

This emergency rule is being implemented to expand access to telehealth services.

Electronic service delivery is defined in paragraph (GG) of rule 4757-3-01 of the Administrative Code. Licensees are reminded that standards of ethical practice and professional conduct rules 4757-5-01 to 4757-5-12 of the Administrative Code apply to electronic service delivery.

(A) These standards govern the use of electronic or digital services in the provision of services to include when the counselor, social worker or marriage and family therapist and the client are not located in the same place during delivery of services or when electronic systems or digitally-assisted systems are used to support in-person face to face therapy.

- (1) All practitioners providing counseling, social work or marriage and family therapy via electronic service delivery to persons physically present in Ohio shall be licensed in Ohio.
- (2) All licensees of this board providing services to clients outside the state of Ohio shall comply with the laws and rules of that jurisdiction.
- (3) Licensees shall ~~provide~~ consider their education, training, and experience before providing electronic services and provide only electronic services for which they are competent. ~~qualified by education, training, and experience~~. Licensees shall assume responsibility to continually assess both their professional and technical competence when providing electronic services. This includes ensuring that all methods of delivering services are compliant with commonly accepted standards of technology safety and security at the time at which services are rendered.
- (4) Licensees shall screen potential distance service clients for appropriateness to receive services via distance methods, which includes considering their current mental and emotional status. Licensee ~~shall~~ should screen the client's technological capabilities as part of the intake process. Therapists shall acknowledge power dynamics when working with a family or group with differing levels of technological competence. These considerations shall be documented in the records.
- (5) Licensees shall be aware of cultural differences and how they can affect non-verbal cues. Electronic service delivery methods should be appropriate to the client's cultural experiences and environment, and shall also be sensitive to audio/visual impairment and cognitive impairment.

- (6) Licensee shall regularly review whether electronic service delivery is meeting the goals of therapy.
- ~~(7) Electronic service delivery shall require an initial face-to-face meeting, which may be via video/audio electronically, to verify the identity of the electronic service delivery client. At that meeting steps shall be taken to address impostor concerns, such as by establishing passwords or phrases to identify the client in future electronic contacts.~~
- ~~(8)~~(7) Licensees ~~shall~~should identify an appropriately trained professional who can provide local assistance, including crisis intervention, if needed. Licensees shall provide electronic service delivery clients the local crisis hotline telephone number and the local emergency mental health telephone number.
- ~~(9)~~(8) Licensees shall retain copies of all written therapeutically relevant communication with clients, to include emails, texts, instant messages, and chat history. Records. Such records should be maintained for a minimum of seven years.
- ~~(10)~~(9) Licensees must maintain records in accordance with rule 4757-5-09 of the Administrative Code.
- (B) Prior to providing services, licensees should establish informed consent. Informed consent ~~shall~~should include information defining electronic service delivery as practiced by the licensee and the potential risks and ethical considerations per paragraph (B) of rule 4757-5-02 of the Administrative Code.
- (1) Clients shall be given sufficient opportunity to ask questions and receive answers about electronic service delivery. These discussions should be documented in the client record.
- (2) Informed consent should include the risks of entering private information when using a public access computer, or one that is on a shared network, and caution against using auto-fill user names and passwords. Clients should be advised to consider employer policies related to use of work computers for personal communication.
- (3) Informed consent ~~shall~~should include the associated needs of delivery method, for example owning a computer with the correct capabilities or internet access, possibility of technology failure and what the procedure is in the event that services are disrupted, anticipated response time to electronic communication, alternative service deliveries, and electronic communication between scheduled appointments and after normal working hours.

- (4) Informed consent should include a discussion of how electronic service delivery may affect billing and access to insurance benefits.
- (5) Licensees shall obtain written permission prior to recording any part of the electronic service delivery session. If licensees are storing audiovisual data from sessions, these cannot be released to clients unless the client authorization specifically states they are to be released.
- (6) Licensees shall obtain client consent when using electronic search engines to gather information about the client, except in circumstances when such searches may provide information to help protect the client or other parties who may be at risk. The licensee must document the rationale for conducting any electronic search and why it is not harmful to the client.
- (7) Licensees ~~shall~~may provide links to websites for all of their certification bodies and licensure boards to facilitate consumer protection. Licensees shall provide a link to the board online license verification site on their web page.
- (8) Licensees ~~shall~~should try to obtain written informed consent. However if informed consent cannot be obtained in writing, informed consent may be established verbally and documented by the licensee. :-
- ~~(9) Licensees shall not provide services without client signed informed consent.~~
- (C) Confidentiality in electronic service delivery and records maintenance shall be maintained by the licensee.
- (1) ~~Licensees shall use encryption methods that are Health Insurance Portability and Accountability Act of 1996 compliant for electronic service delivery, except for treatment reminders, scheduling contacts or other information provided outside of a therapeutic context.~~

~~Clients may waive encryption via informed consent. Licensees must ensure clients understand the risk of non-encrypted communications.~~

During the COVID-19 national emergency, which also constitutes a nationwide public health emergency, and consistent with the "Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency" (Notification) issued by the Office for Civil Rights at the Department of Health and Human Services, covered health care providers subject to the HIPAA Rules may communicate with patients, and provide telehealth services, through remote communications technologies even though some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the

requirements of the HIPAA Rules. The restrictions in the Notification apply, including:

- (a) Providers can use any audio or video non-public facing remote communication product that is available to communicate with patients;
  - (b) Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers;
  - (c) Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications; and
  - (d) Providers are to exercise professional judgment in the use of telehealth examinations.
- (2) Licensees ~~shall~~should develop and disclose policies for notifying clients as soon as possible of any breach of confidential information.
- (3) Licensees ~~shall~~should create a policy for the secure storage, recovery, and destruction of data, as well as the technologies used to store, maintain, and transmit data.

Effective: 4/6/2020

CERTIFIED ELECTRONICALLY

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Certification

04/06/2020

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Date

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