Board of Behavioral Sciences

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Gavin Newsom, Governor
State of California

Business, Consumer Services and Housing Agency
Department of Consumer Affairs

TELEHEALTH COMMITTEE MINUTES

A recorded webcast of this meeting is available at
https://www.youtube.com/watch?v=Vf9DFX2qtX0

DATE March 26, 2021

MEETING PLATFORM WebEx Video/Phone Conference

Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.

TIME 9:00 a.m.

ATTENDEES

Members Present: Christina Wong, Chair, LCSW Member
Susan Friedman, Public Member
Christopher Jones, LEP Member

Members Absent: All members present

Staff Present: Steve Sodergren, Interim Executive Officer
Rosanne Helms, Legislative Manager
Christy Berger, Regulatory Analyst
Christina Kitamura, Administrative Analyst
Sabina Knight, Legal Counsel

Other Attendees: Public participation via WebEx video conference/phone conference

I. Call to Order and Establishment of Quorum

Christina Wong, Chair of the Telehealth Committee (Committee) called the meeting to order at 9:05 a.m. Roll was called, and a quorum was established.

II. Introductions

Committee members and Board staff introduced themselves.

III. Consent Calendar

a. Discussion and Possible Approval of January 22, 2021 Committee Meeting Minutes

MOTION: Approve the January 22, 2021 Committee meeting minutes.

Friedman moved; Wong seconded. Vote: 3 yea, 0 nay. Motion carried.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Susan Friedman	x				
Christopher Jones	x				
Christina Wong	x				

IV. Review of the Committee's First Meeting and Overview of the Committee's Roles and Tasks

The Committee held its first meeting on January 22, 2021. Committee members and stakeholders discussed the Board's existing statutes and regulations related to telehealth, as well as potential future topics. The Committee also reviewed the laws of several other states that pertain to practice across state lines. A list of future topics was provided.

V. Discussion and Possible Recommendation Regarding Telehealth Laws for Associates and Trainees (Business and Professions Code (BPC) §§23.8, 2290.5, 4980.36, 4980.37, 4980.43.3, 4980.78, 4996.23, 4999.32, and 4999.62)

The Committee discussed the following:

1. Should social work interns and PCC trainees be explicitly permitted in statute to perform services via telehealth, as MFT trainees are permitted?

2. Should reference to "face-to-face" practicum experience hours required in the qualifying LMFT and LPCC degree programs be clarified to be required

in-person? Or alternatively, should these hours, or some amount of them, be permitted to be done via telehealth?

3. Should the requirement for 750 “face-to-face” individual or group experience hours for ASWs in BPC §4996.23(d)(2) be clarified to further define “face-to-face”?

Discussion and Public Comment

Chris Jones: Encourages equity amongst licensees and allowance of telehealth for interns and trainees, with parameters in place for supervision.

Christina Wong: Concerned about the number of hours of telehealth to be counted.

Susan Friedman: Interns and trainees should be allowed to conduct services via telehealth.

Jones: Telehealth is not going away. This is an opportunity to train interns/trainees in this modality.

Ben Caldwell: During the discussions regarding AB 93, there were conversations regarding the allowance of hours gained via telehealth. However, there was no reason presented to not allow it. Also added that supervision can be accomplished remotely.

Sierra Smith: In Los Angeles, telehealth is a benefit for the client (i.e., transportation, parking) to gain access to care. Telehealth is environmentally friendly.

Steven Tierney: Telehealth is a reality, and it will continue. Supports telehealth and training in telehealth.

Paul Jenkins: Limitations to telehealth: limits to access, certain populations are difficult to reach, such as children and families. Faculty of the school programs want the Board to implement rules and regulations that they must follow. Implementing telehealth requirements would be helpful to ensure that the programs have a level of accountability and training.

Rebecca Gonzales, National Association of Social Workers California Chapter (NASW-CA): It would be helpful if it were more explicit in law that ASWs can perform telehealth services. NASW keeps social work trainees out of the law because they are controlled by the schools and practicum sites.

Michelle Morrison: Suggested a telehealth requirement as part of the 3000 hours of experience before licensure rather than part of the degree program.

Jennifer Alley, California Association of Marriage and Family Therapists (CAMFT): CAMFT is divided on this in 3 groups: (1) trainees should be able to get all of their hours via telehealth; (2) "trainees should get teletherapy" but not as it is currently set up – a modification to ensure that there is proper training (3) risks of a new licensee having no "in-person experience." Suggested that the Committee obtain more feedback from stakeholders.

Wong: Agrees that there is a population in which telehealth will not work.

Steve Sodergren: How much oversight does the Board want to have over practicum hours and education? Does not want to control what the schools are doing. Telehealth is a modality. The schools would be doing the students a disservice is they are not training students on telehealth and face-to-face. Would rather not do this in statutes, but instead address it in a different format.

Sabina Knight: Suggested that Ms. Helms draft language with different options and bring it back to the next meeting.

Jones: Agreed that the Board does not have authority to dictate what the training programs do; however, the Board can require its licensees to get continuing education in telehealth administration. This may trickle down to the schools, prompting them to start training in telehealth. This is evolving, and as the trend moves forward, the Board may move in that direction and begin to define its requirements.

Ms. Helms will draft language, providing options for the Committee and stakeholders to view and discuss at an upcoming meeting.

VI. Discussion and Possible Recommendation Regarding Allowance of Supervision via Videoconferencing (BPC §§4980.43.2, 4996.23.1, and 4999.46.2)

The Committee discussed the following:

1. Should supervision via videoconferencing continue to only be permitted in exempt settings, or should it be allowed in other settings as well? If allowed in other settings, should it be allowed fully in those settings, or only partially?

2. Clarifying whether "face-to-face contact" refers only to in-person supervision or whether it also includes supervision via videoconferencing.

Discussion and Public Comment

Jones: Supervision should be in-person so that the supervisor can know the supervisee and have a level of relationship, and for training. Some of it can be done via video conferencing. Need to look at the effectiveness of providing quality supervision and training while ensuring students have access to their

supervisors and ensuring public protection. Also need to ensure that supervisors have access to all information needed to do their jobs effectively.

Friedman: Students who completed their programs via telehealth, should be required to have at least 2-3 sessions of face-to-face supervision.

Caldwell: We don't know how effective remote supervision is compared to in-person. There is value to face-to-face interaction, physically or via video conferencing. Today, there is information supporting the idea that video-based therapy is as effective as in-person therapy, but in some instances, can be more effective. Need to consider what is being achieved by a requirement for in-person contact that is not achieved via video conferencing.

Alley, CAMFT: CAMFT does not have a position on this issue but would like to hear input and ensure that associates are not set up for failure or for harm.

Jenkins: Concerned about fully electronic interaction and complete human disconnect. Cannot do a 5150 or an involuntary hold through telehealth.

Smith: Requested the Committee to consider accommodations for people with disabilities to continue with video supervision. They face additional challenges for face-to-face supervision (both supervisors and pre-licensed folks).

Marianne Callahan: From an organizational perspective, having maximum flexibility in terms of, whether supervision can be provided remotely or whether it would be in-person and onsite.

Gonzales, NASW-CA: It's important to keep options open for all settings. However, has concerns about supervision being entirely remote.

Kathleen Wenger: Recommends that moving forward, supervision via video conferencing be allowed for trainees and associates. Finds that "telehealth supervision" to be very effective and believes that consumers are better served and protected by easily accessible supervision and accessible supervisees. Furthermore, in addition to clinical supervision, MFT trainees enrolled in practicum are also meeting with a licensed practicum instructor and receiving face-to-face oversight.

Darlene Davis, HOPE Counseling Center: If trainees and associates are doing telehealth with clients, then supervision should mirror that and be offered to supervisees via video conferencing.

Sodergren: The number of associates is growing, and there will be a need for a larger pool of supervisors. Video conferencing will help with that. Need to determine if arbitrary numbers (for allowable hours) add more constraints on associates and supervisors and limits access or protect the public. Feels that

face-to-face is valuable. Recommends brining this back to discuss numbers in more depth.

Rosanne Helms: A few years ago, the Supervision Committee left the discretion to the supervisors, and that was the direction the Board was heading. Suggested polling trainees, associates, schools, and supervisors for feedback regarding their supervision experiences.

Staff will bring this discussion back to the Committee after stakeholder feedback is received.

VII. Discussion and Possible Recommendation Regarding Allowable Telehealth Settings for Associates and Trainees (BPC §§4980.43.4, 4996.23.3, 4999.46.4)

The Committee discussed the following:

Associates Registered in California:

- Can an associate, temporarily located in another state, practice with clients located in California via telehealth?

- Can an associate, temporarily located in another country, practice with clients located in California via telehealth?

- Can an associate, temporarily located in another state or country, count experience hours for practice with clients located in that other state or country, if they follow the rules of the other jurisdiction and have supervision by a California-licensed supervisor who meets the Board's supervision requirements?

Trainees in a Degree Program Intended to Lead to California Licensure with the Board:

- Can a trainee, temporarily located in another state, practice with clients located in California via telehealth? Can they gain their required practicum hours for this?

- Can a trainee, temporarily located in another country, practice with clients located in California via telehealth? Can they gain their required practicum hours for this?

- Can a trainee, temporarily located in another state or country, count practicum experience hours for practice with clients located in that other state or country, if they follow the rules of the other jurisdiction and have supervision by a California-licensed supervisor who meets the Board's supervision requirements?

Discussion and Public Comment

Jones: There should be some parameters in place with regards to how telehealth is provided by associates.

Wong: Agrees that parameters need to be in place and the amount of time should be determined. Trainees need the least flexibility. However, language regarding trainees is difficult to put in place.

Alley, CAMFT: CAMFT does not have a formal position; however, there are a lot of questions. How does the associate ensure that they're complying with other jurisdictions' laws? If they're practicing outside of California, whose laws do they follow? Current law is silent on this, and there should be some clarity. How do we know what the other state laws require, and how will the clarification be remedied? What if there is a conflict in the law between the two? What is considered temporary? Are we going to define it?

Davis: (1) Important for supervisors to have access to trainees or associates when necessary. (2) They do not have the time or ability to research all the different states to find out the laws in those states.

Callahan: (1) Many situations have come up at her training center: leaving the state to care for an ill family member, moving away and becoming geographically unavailable, etc. Their response was typically "no." Is it ok to allow telehealth in these situations for continuity of care? (2) Issue of malpractice insurance and whether the insurance companies will support services outside of the state.

Smith: Requesting flexibility for the best judgment of the agencies.

Sodergren: Likes the idea of keeping it flexible for the supervisors, and perhaps provide outreach/education to the supervisors.

Jones: Prefers to see something in the middle of the road. Guidelines are necessary and they could include 45-60 days, some sort of registration and some accountability.

Wong: Parameters are necessary. Prefers some of the Utah law: person must have been a client immediately before relocating and allow short-term transitional therapy.

Ms. Helms will draft language, providing options for the Committee and stakeholders to view and discuss at an upcoming meeting.

VIII. Discussion and Comparison of the Range of Temporary Practice Allowances of Other State Agencies

The Board requires a therapist to hold a valid and current California license if the individual is engaging in therapy via telehealth with a client who is physically located in California.

As was discussed at the January 2021 meeting, many states have a similar requirement, though some allow for flexibility so that clients who are travelling or who are transitioning to living in a new state may obtain temporary services for continuity of care from an out-of-state licensee.

Several examples from other states were provided at the January 2021 meeting. From those examples, a chart was created to show a comparison of various law components and provided. A narrative description of other states' laws was also provided.

Least Restrictive Example #1: Arizona

The therapist may provide behavioral health services in Arizona for no more than 90 days in one calendar year if they are authorized to perform the services by the state or country where they reside, and if they inform the client of the limited nature of the services and that they are not licensed in Arizona.

Least Restrictive Example #2: District of Columbia

The District of Columbia (DC) provides for several options for telehealth services provided by out-of-state practitioners:

1. Any health professional not licensed, registered or certified in DC (whether licensed or unlicensed in the other state), may provide treatment or advice in any case of emergency. "Emergency" is not defined, nor is a time limit specified.

2. A health professional licensed in another state may provide care for a limited time in DC, or provide professional consultation regarding a specific patient, provided these services are performed in affiliation with a comparable DC licensee.

3. A health professional authorized to practice in a state that adjoins DC may provide telehealth services to a client in DC if they register with the DC board first and pay a fee.

Most Restrictive Example #1: Utah

An individual licensed in another state or U.S. territory to practice mental health therapy may provide short term transitional mental health therapy remotely to a client in Utah if all the following are met:

(i) the therapist is present in the state or territory where they are licensed to practice;

(ii) the client relocates to Utah;

(iii) the client is a client of the therapist immediately before the client relocates to Utah;

(iv) the therapist provides the short term transitional mental health therapy remotely to the client only during the 45-day period beginning on the day on which the client relocates to Utah;

(v) within 10 days after the day on which the client relocates to Utah, the therapist provides written notice to the division of the therapist's intent to provide short-term transitional mental health therapy remotely to the client; and

(vi) the therapist does not engage in unlawful conduct or unprofessional conduct.

Most Restrictive Example #2: New Jersey

New Jersey allows a therapist who is certified or licensed in another state under requirements the New Jersey board considers equivalent, to practice for a period not to exceed 10 consecutive business days or 15 business days in any 90-day period. The practitioner must provide the New Jersey board a minimum of 10 days' written notice of intention to practice in New Jersey, including a summary of qualifications.

Discussion and Public Comment

Jones: Supports continuity of care when someone moves to California from another state.

Alley, CAMFT: CAMFT supports temporary flexibility for continuity of care for people coming to California. Guidelines are needed for therapists that would be practicing in California.

Gonzales, NASW-CA: NASW received questions regarding out-of-state therapists whose clients (typically college students) temporarily relocated to California during the pandemic. DC's law mentioned a state of emergency, although it wasn't clearly defined. That could be helpful to have that in California's law along with providing flexibility for temporary treatment.

Jones: Prefers to see something in the middle of the road.

Wong: Likes some of the Utah law: emergency, requirement to be client immediately before.

Ms. Berger will draft language, providing options for the Committee and stakeholders to view and discuss at an upcoming meeting.

IX. Public Comment for Items Not on the Agenda

None

X. Suggestions for Future Agenda Items

Darlene Davis: Requests a discussion regarding the telehealth law that requires documenting physical address.

Friedman: To address online therapy sites that are advertising services, develop a mechanism to register those sites, and have oversight of those sites.

XI. Adjournment

The Committee adjourned at 12:23 p.m.