



Board of Behavioral Sciences

Memo

1625 North Market Blvd., Suite S-200
 Sacramento, CA 95834
 (916) 574-7830, (916) 574-8625 Fax
 www.bbs.ca.gov

To: Committee Members **Date:** March 15, 2021

From: Rosanne Helms **Telephone:** (916) 574-7897
 Legislative Manager

Subject: Discussion of Telehealth Laws for Associates and Trainees

A common question, especially now due to the COVID-19 state of emergency, is whether associates and trainees are permitted to provide services to clients via telehealth.

Note: Associates are individuals who have graduated from their master’s degree program and have registered with the Board to gain their required supervised experience hours. Trainees are still in their master’s degree program.

Associates and Telehealth

Marriage and family therapist associates (AMFT) and trainees are both explicitly permitted to perform services via telehealth. Licensed Marriage and Family Therapist (LMFT) law states the following (Business and Professions Code (BPC) §4980.43.3(i)):

§4980.43.3(i) An associate or a trainee may provide services via telehealth that are in the scope of practice outlined in this chapter.

The Licensed Clinical Social Workers (LCSW) and Licensed Professional Clinical Counselors (LPCC) practice acts are silent about the matter. However, associate clinical social workers (ASWs) and associate professional clinical counselors (APCCs) are permitted to perform services via telehealth because of BPC §2290.5, which defines a health care provider who performs telehealth as the following:

BPC §2290.5(a)(3) “Health care provider” means any of the following:

- (A) A person who is licensed under this division.*
- (B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.*
- (C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.*

The reason that ASWs and APCCs are permitted to perform services via telehealth, even though not explicitly stated, is because BPC §23.8 states that when “licensees” are referred to in the Business and Professions Code, the term also includes registrants (associates). This means when BPC §2290.5 defines a “health care provider” as anyone licensed under Division 2 of the Business and Professions Code, this also includes all registrants. Therefore, AMFT, ASW, and APCC associates technically do not need to be specifically listed in the definition of a health care provider in BPC §2290.5 in order to be permitted to practice via telehealth.

However, the fact that AMFTs are listed in the definition but APCCs and ASWs are not has led to confusion about whether ASWs and APCCs can perform services via telehealth. They can, because of BPC §23.8. However, this is a subtle distinction for those not familiar with law, and it would be helpful to clarify it by specifically listing them in BPC §2290.5 as being able to perform services via telehealth, since AMFTs are specifically listed.

Due to the above, the Board is pursuing an amendment in this year’s omnibus bill to include ASWs and APCCs in the definition of health care providers who may provide services via telehealth in BPC §2290.5.

In summary, the law already establishes that all of the Board’s associates may provide services via telehealth, and the Board is already taking steps to clarify this in the law.

Trainees and Telehealth

The law does not specifically address whether social work interns (the social work profession uses the term “intern” instead of “trainee”) and professional clinical counselor trainees (PCC trainees) may provide services via telehealth

These trainees are presumably not included in the definition of a “licensee” in BPC 23.8 like associates are, because they are not in any way registered with the Board and are not regulated by the Board yet.

MFT trainees are already included as providers who can perform services via telehealth, because this is explicitly stated in BPC §§2290.5, and 4980.43.3(i). However, social work interns and PCC trainees are not permitted to count pre-degree hours like MFT trainees are, and therefore, their supervision requirements are less stringent.

The Committee may wish to discuss whether or not social work interns and PCC trainees should also be explicitly permitted in statute to perform services via telehealth.

Practicum Clarification: “Face-to-Face” Requirement

Should the Board determine that all trainees may provide services via telehealth, a question arises about the required “face-to-face” practicum hours required as part of the degree programs leading to LMFT and LPCC licensure.

The Committee may wish to discuss clarifying whether “face-to-face” hours must be in person, via telehealth, or some combination of the two.

Both MFT and PCC trainees must, as part of their qualifying degree program, gain a specified number of “face-to-face” practicum experience hours counseling individuals, families or groups. This requirement can be found in the current degree program requirements in BPC sections 4980.36(d)(1)(B)(ii) and (vi) (for LMFT in-state applicants) 4980.78(b)(1)(C) (for LMFT out-of-state applicants), 4999.33(c)(3)(K) (for LPCC in-state applicants), and 4999.62(b)(1)(C) (for LPCC out-of-state applicants).

The reference to “face-to-face” practicum experience hours can also be found in the degree program requirements for older degrees: BPC sections 4980.37(c)(2) (LMFT in-state applicants) and 4999.32(c)(3)(l) (LPCC in-state applicants). To qualify for licensure under the degree program requirements of these sections, the degree must have been completed by December 2018. Because of this, staff does not believe the language in these sections should be changed.

Clarification for LCSW Experience Hours: “Face-to-Face” Requirement

ASWs also are required by law to obtain at least 750 “face-to-face” individual or group psychotherapy hours in the context of clinical social work services (BPC §4996.23(d)(2)). The Committee may wish to discuss clarifying whether these “face-to-face” hours must be in person, via telehealth, or some combination of the two.

Recommendation

Conduct an open discussion about the following:

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

Attachments

Attachment A: Reference Sections Related to Associates, Trainees, and Telehealth: BPC §§23.8, 2290.5, 4980.43.3 (Pertinent subsections highlighted).

Attachment B: Reference Sections Related to Trainee “Face-to-Face” Practicum Requirements: BPC §§4980.36(d)(1)(B)(ii) and (vi), 4980.37(c)(2), 4980.78(b)(1)(C), 4999.32(c)(3)(l), 4999.33(c)(3)(K), and 4999.62(b)(1)(C)

Attachment C: Reference Section Related to “Face-to-Face” Experience for ASWs:
BPC §4996.23(d)(2)

Attachment A
Reference Sections Related to Associates, Trainees, and Telehealth

Business and Professions Code (BPC) §23.8.

“Licensee” means any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600.

Any reference to licentiate in this code shall be deemed to refer to licensee.

BPC §2290.5.

(a) For purposes of this division, the following definitions shall apply:

(1) “Asynchronous store and forward” means the transmission of a patient’s medical information from an originating site to the health care provider at a distant site.

(2) “Distant site” means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) “Health care provider” means any of the following:

(A) A person who is licensed under this division.

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(4) “Originating site” means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) “Synchronous interaction” means a real-time interaction between a patient and a health care provider located at a distant site.

(6) “Telehealth” means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable

mode of delivering health care services and public health. The consent shall be documented.

(c) This section does not preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of a health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to the patient's medical information shall apply to telehealth interactions.

(g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider's license shall apply to that health care provider while providing telehealth services.

(h) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(i) (1) Notwithstanding any other law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

BPC §4980.43.3.

(a) A trainee, associate, or applicant for licensure shall only perform mental health and related services as an employee or volunteer, and not as an independent contractor. The requirements of this chapter regarding hours of experience and supervision shall apply equally to employees and volunteers. A trainee, associate, or applicant for licensure shall not perform any services or gain any experience within the scope of practice of the profession, as defined in Section 4980.02, as an independent contractor. While an associate may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.

- (1) If employed, an associate shall provide the board, upon application for licensure, with copies of the W-2 tax forms for each year of experience claimed.
 - (2) If volunteering, an associate shall provide the board, upon application for licensure, with a letter from his or her employer verifying the associate's status as a volunteer during the dates the experience was gained.
- (b) (1) A trainee shall not perform services in a private practice. A trainee may be credited with supervised experience completed in a setting that meets all of the following:
- (A) Is not a private practice.
 - (B) Lawfully and regularly provides mental health counseling or psychotherapy.
 - (C) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements in this chapter and is within the scope of practice for the profession, as defined in Section 4980.02.
- (2) Only experience gained in the position for which the trainee volunteers or is employed shall qualify as supervised experience.
- (c) An associate may be credited with supervised experience completed in any setting that meets both of the following:
- (1) Lawfully and regularly provides mental health counseling or psychotherapy.
 - (2) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements in this chapter and is within the scope of practice for the profession, as defined in Section 4980.02.
 - (3) Only experience gained in the position for which the associate volunteers or is employed shall qualify as supervised experience.
 - (4) An applicant for registration as an associate shall not be employed or volunteer in a private practice until he or she has been issued an associate registration by the board.
- (d) Any experience obtained under the supervision of a spouse, relative, or domestic partner shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.
- (e) A trainee, associate, or applicant for licensure shall not receive any remuneration from patients or clients and shall only be paid by his or her employer, if an employee.
- (f) A trainee, associate, or applicant for licensure shall have no proprietary interest in his or her employer's business and shall not lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of his or her employer.
- (g) A trainee, associate, or applicant for licensure who provides voluntary services in any lawful work setting other than a private practice and who only receives reimbursement for expenses actually incurred shall be considered an employee. The

board may audit an applicant for licensure who receives reimbursement for expenses and the applicant for licensure shall have the burden of demonstrating that the payment received was for reimbursement of expenses actually incurred.

(h) A trainee, associate, or applicant for licensure who receives a stipend or educational loan repayment from a program designed to encourage demographically underrepresented groups to enter the profession or to improve recruitment and retention in underserved regions or settings shall be considered an employee. The board may audit an applicant who receives a stipend or educational loan repayment and the applicant shall have the burden of demonstrating that the payment received was for the specified purposes.

(i) An associate or a trainee may provide services via telehealth that are in the scope of practice outlined in this chapter.

(j) Each educational institution preparing applicants pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital, conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her associates and trainees regarding the advisability of undertaking individual, marital, conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, educational institutions and supervisors are encouraged to assist the applicant to locate counseling or psychotherapy at a reasonable cost.

Attachment B
Reference Sections Related to Trainee “Face-to-Face” Practicum Requirements

Note: Sections Shown are Partial Sections

LMFT Current Requirements – In-State Applicants

Business and Professions Code (BPC) §4980.36(d) The degree described in subdivision (b) shall contain no less than 60 semester or 90 quarter units of instruction that includes, but is not limited to, the following requirements:

(1) Both of the following:

(A) No less than 12 semester or 18 quarter units of coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to marriage and family therapy and marital and family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships.

(B) Practicum that involves direct client contact, as follows:

(i) A minimum of six semester or nine quarter units of practicum in a supervised clinical placement that provides supervised fieldwork experience.

(ii) A minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(iii) A student must be enrolled in a practicum course while counseling clients, except as specified in subdivision (c) of Section 4980.42.

(iv) The practicum shall provide training in all of the following areas:

(I) Applied use of theory and psychotherapeutic techniques.

(II) Assessment, diagnosis, and treatment planning.

(III) Treatment of individuals and premarital, couple, family, and child relationships, including trauma and abuse, dysfunctions, healthy functioning, health promotion, illness prevention, and working with families.

(IV) Professional writing, including documentation of services, treatment plans, and progress notes.

(V) How to connect people with resources that deliver the quality of services and support needed in the community.

(v) Educational institutions are encouraged to design the practicum required by this subparagraph to include marriage and family therapy experience in low income and multicultural mental health settings.

(vi) In addition to the 150 hours required in clause (ii), 75 hours of either of the following, or a combination thereof:

(I) Client centered advocacy, as defined in Section 4980.03.

(II) Face-to-face experience counseling individuals, couples, families, or groups.

LMFT Old Requirements – In-State Applicants

BPC §4980.37(c) (1) In addition to the 12 semester or 18 quarter units of coursework specified in subdivision (b), the doctoral or master's degree program shall contain not less than six semester units or nine quarter units of supervised practicum in applied psychotherapeutic technique, assessments, diagnosis, treatment planning, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

LMFT Current Requirements – Out-of-State Applicants (Non-Streamlined Pathway)

BPC §4980.78 (a) This section applies to persons with education gained from an out-of-state school who apply for licensure or registration and who do not qualify for a license under Section 4980.72.

(b) For purposes of Section 4980.74, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited institution or approved institution and consists of, at a minimum, the following:

(A) (i) For an applicant who obtained a degree within the timeline prescribed by subdivision (a) of Section 4980.36, the degree shall contain no less than 60 semester units or 90 quarter units of instruction.

(ii) Up to 12 semester units or 18 quarter units of instruction may be remediated, if missing from the degree. The remediation may occur while the applicant is registered as an associate.

(B) For an applicant who obtained a degree within the timeline prescribed by subdivision (a) of Section 4980.37, the degree shall contain no less than 48 semester units or 72 quarter units of instruction.

(C) (i) Six semester units or nine quarter units of supervised practicum, including, but not limited to, a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups, and an additional 75 hours of either face-to-face experience counseling individuals, couples, families, or groups or client centered advocacy, or a combination of face-to-face experience counseling individuals, couples, families, or groups and client centered advocacy.

LPCC Current Requirements – In-State Applicants

BPC §4999.33(c) The degree described in subdivision (b) shall be a single, integrated program that contains not less than 60 graduate semester units or 90 graduate quarter units of instruction, which shall, except as provided in subdivision (f), include all of the following:

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience that involves direct client contact in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Treatment planning.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Professional writing including documentation of services, treatment plans, and progress notes.

(I) How to find and use resources.

(J) Other recognized counseling interventions.

(K) A minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

LPCC Old Requirements – In-State Applicants

BPC §4999.32(c) The degree described in subdivision (b) shall be a single, integrated program that contains not less than 48 graduate semester units or 72 graduate quarter units of instruction, which shall, except as provided in subdivision (d), include all of the following:

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience that involves direct client contact in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Treatment planning.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Other recognized counseling interventions.

(I) A minimum of 150 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

LPCC Current Requirements – Out-of-State Applicants (Non-Streamlined Pathway)

BPC §4999.62(a) This section applies to persons with education gained from an out-of-state school who apply for licensure or registration and who do not qualify for a license under Section 4999.60.

(b) For purposes of Section 4999.61, education is substantially equivalent if all of the following requirements are met:

(1) The degree is obtained from an accredited or approved institution, as defined in Section 4999.12, and consists of, at a minimum, the following:

(A) (i) For an applicant who obtained a degree within the timeline prescribed by subdivision (a) of Section 4999.33 the degree shall contain no less than 60 graduate semester or 90 graduate quarter units of instruction.

(ii) Up to 12 semester or 18 quarter units of instruction may be remediated, if missing from the degree. The remediation may occur while the applicant is registered as an associate.

(B) For an applicant who obtained a degree within the timeline prescribed by subdivision (a) of Section 4999.32 the degree shall contain no less than 48 graduate semester or 72 graduate quarter units of instruction.

(C) (i) Six semester or nine quarter units of supervised practicum or field study experience, including, but not limited to, a minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

Attachment C

Reference Section Related to “Face-to-Face” Experience for ASWs

Business and Professions Code (BPC) §4996.23

(a) To qualify for licensure, each applicant shall complete 3,000 hours of post-master’s degree supervised experience related to the practice of clinical social work. Except as provided in subdivision (b), experience shall not be gained until the applicant is registered as an associate clinical social worker.

(b) Preregistered postdegree hours of experience shall be credited toward licensure if all of the following apply:

(1) The registration applicant applies for the associate registration and the board receives the application within 90 days of the granting of the qualifying master’s or doctoral degree.

(2) For applicants completing graduate study on or after January 1, 2020, the experience is obtained at a workplace that, prior to the registration applicant gaining supervised experience hours, requires completed Live Scan fingerprinting. The applicant shall provide the board with a copy of that completed “State of California Request for Live Scan Service” form with the application for licensure.

(3) The board subsequently grants the associate registration.

(c) The applicant shall not be employed or volunteer in a private practice until the applicant has been issued an associate registration by the board.

(d) The experience shall be as follows:

(1) (A) At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology, licensed professional clinical counselor, licensed marriage and family therapist, psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900), licensed educational psychologist, or licensed clinical social worker.

(B) A maximum of 1,200 hours gained under the supervision of a licensed educational psychologist providing educationally related mental health services that are consistent with the scope of practice of an educational psychologist, as specified in Section 4989.14.

(2) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling; however, at least 750 hours shall be face-to-face individual or group psychotherapy provided in the context of clinical social work services.

(3) A maximum of 1,000 hours in client centered advocacy, consultation, evaluation, research, direct supervisor contact, and workshops, seminars, training sessions, or conferences directly related to clinical social work that have been approved by the applicant’s supervisor.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was received by the board.

(5) No more than 40 hours of experience may be credited in any seven consecutive days.

(6) For hours gained on or after January 1, 2010, no more than six hours of supervision, whether individual, triadic, or group supervision, shall be credited during any single week.

(e) An individual who submits an application for licensure between January 1, 2016, and December 31, 2020, may alternatively qualify under the experience requirements of this section that were in place on January 1, 2015.