



Board of Behavioral Sciences

Memo

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To: Committee Members **Date:** October 4, 2021
From: Rosanne Helms **Telephone:** (916) 574-7897
Legislative Manager
Subject: Discussion of Potential Amendments to Clarify Telehealth Law 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. The Telehealth Committee has determined a need to clarify this further in statute.

(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 (AMFTs) 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 (SB 801) 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.

Proposed Amendments Related to Associates (Attachment A):

- Amend BPC sections 4996.23.2(k) (LCSW law) and 4999.46.3(j) (LPCC law) to correspond with the already existing clarification in 4980.43.3(i) of LMFT law that associates may perform services via telehealth.

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, the law is silent on this for social work interns and PCC trainees. Social work interns and PCC trainees are not permitted to count pre-degree hours like MFT trainees are, and therefore, it should be noted that their supervision requirements are less stringent.

Proposed Amendments Related to Trainees (Attachment A):

- Amend BPC section 2290.5 to specify that professional clinical counselor trainees may provide services via telehealth. (Note: NASW-CA has expressed a preference that a similar clarification for social work interns not be made. They note that social work schools already have their own policies.)
- Amend BPC section 4999.46.3(j) (LPCC law) to correspond with the already existing clarification in 4980.43.3(i) of LMFT law that trainees may perform services via telehealth. (Note: NASW-CA has expressed a preference that a similar clarification for social work interns not be made for the same reason specified above.)
- Amendments to BPC sections 4980.42(LMFT law) and 4999.36 (LPCC law) to state trainee experience via telehealth is at the discretion of the school and the site.

Previous Committee Discussion

At its October 1, 2021 meeting, the Telehealth Committee discussed the proposed amendments. It directed staff to bring the amendments in **Attachment A** to the Policy and Advocacy Committee for consideration.

Recommendation

Conduct an open discussion regarding the proposed amendments in **Attachment A**. Direct staff to make any discussed amendments, and any non-substantive amendments, and bring to the Board for consideration as a legislative proposal.

Attachment

Attachment A: Proposed Amendments Related to Associates, Trainees, and Telehealth: BPC §§2290.5, 4980.42, 4980.43.3, 4996.23.2, 4999.36, 4999.46.3

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Attachment A

Proposed Amendments Related to Associates, Trainees, and Telehealth: BPC §§2290.5, 4980.42, 4980.43.3, 4996.23.2, 4999.36, 4999.46.3

Note: Red underline/strikeout is language being proposed via legislation this year. Blue underline/strikeout is newly proposed language for discussion today.

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.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2.

(E) An associate professional clinical counselor or professional clinical counselor trainee functioning pursuant to Section 4999.46.3.

(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.

§ 4980.42. TRAINEES' SERVICES

(a) Trainees performing services in any work setting specified in Section 4980.43.3 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee."

- (b) Trainees subject to Section 4980.37 may gain hours of experience and counsel clients outside of the required practicum. This subdivision shall apply to hours of experience gained and client counseling provided on and after January 1, 2012.
- (c) Trainees subject to Section 4980.36 may gain hours of experience outside of the required practicum but must be enrolled in a practicum course to counsel clients. Trainees subject to Section 4980.36 may counsel clients while not enrolled in a practicum course if the period of lapsed enrollment is less than 90 calendar days, and if that period is immediately preceded by enrollment in a practicum course and immediately followed by enrollment in a practicum course or completion of the degree program.
- (d) All hours of experience gained pursuant to subdivisions (b) and (c) shall be subject to the other requirements of this chapter.
- (e) All hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. If an applicant has gained hours of experience while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those hours of trainee experience were gained in compliance with this section.
- (f) The school and the site shall assess the appropriateness of allowing a trainee to gain any hours of experience via telehealth. In making the assessment, the school and the site shall take into account such factors as the ability of the trainee and the appropriateness of telehealth for the client.

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.

§ 4996.23.2. SUPERVISED EXPERIENCE: ACCEPTABLE SETTINGS; ACCEPTABLE SUPERVISION PRACTICES

(a) An associate clinical social worker or applicant for licensure shall only perform mental health and related services as an employee or as a volunteer, not as an independent contractor. The requirements of this chapter regarding hours of experience and supervision shall apply equally to employees and volunteers. An 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 4996.9, 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 corresponding 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) "Private practice," for purposes of this chapter, is defined as a setting owned by a licensed clinical social worker, a licensed marriage and family therapist, a psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900), a licensed professional clinical counselor, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.
- (c) Employment in a private practice shall not commence until the applicant has been registered as an associate clinical social worker.
- (d) Experience shall only be gained in a setting that meets both of the following:
 - (1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.
 - (2) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.
- (e) Only experience gained in the position for which the associate clinical social worker volunteers or is employed shall qualify as supervised experience.
- (f) Any experience obtained under the supervision of a spouse or relative by blood or marriage 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.
- (g) An associate clinical social worker 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 shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.
- (h) An associate clinical social worker 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 payments received were for the specified purposes.
- (i) An 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.

- (j) An 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.

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

- (~~k~~) 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 supervisees 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.

§ 4999.36. TRAINEE ACTIVITIES AND SERVICES; APPLICANT AND SCHOOL RESPONSIBILITIES

- (a) A clinical counselor trainee may perform activities and services provided that the activities and services constitute part of the clinical counselor trainee's supervised course of study and that the person is designated by the title "clinical counselor trainee."
- (b) All practicum and field study hours gained as a clinical counselor trainee shall be coordinated between the school and the site where hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site.

(c) The school and the site shall assess the appropriateness of allowing a trainee to gain any hours of experience via telehealth. In making the assessment, the school and the site shall take into account such factors as the ability of the trainee and the appropriateness of telehealth for the client.

- (~~e~~) If an applicant has gained practicum and field study hours while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those practicum and field study hours were gained in compliance with this section.
- (~~d~~) A clinical counselor trainee shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under supervision.
- (~~e~~) No hours earned while a clinical counselor trainee may count toward the 3,000 hours of required postdegree supervised experience.

§ 4999.46.3. SUPERVISED EXPERIENCE: ACCEPTABLE SETTINGS; ACCEPTABLE SUPERVISION PRACTICES

- (a) A clinical counselor 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 clinical counselor 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 4999.20, 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 corresponding 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) A clinical counselor trainee shall not perform services in a private practice.
- (c) A trainee shall complete the required predegree supervised practicum or field study experience in a setting that meets all of the following requirements:
 - (1) Is not a private practice.
 - (2) Lawfully and regularly provides mental health counseling or psychotherapy.
 - (3) Provides oversight to ensure that the clinical counselor trainee's work at the setting meets the experience and supervision requirements in this chapter and is within the scope of practice of the profession, as defined in Section 4999.20.
 - (4) Only experience gained in the position for which the clinical counselor trainee volunteers or is employed shall qualify as supervised practicum or field study experience.
- (d) (1) An associate may be credited with supervised experience completed in any setting that meets both of the following:
 - (A) Lawfully and regularly provides mental health counseling or psychotherapy.
 - (B) 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 4999.20.

- (2) Only experience gained in the position for which the associate volunteers or is employed shall qualify as supervised experience.
- (3) 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.
- (e) 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.
- (f) A clinical counselor 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.
- (g) A clinical counselor 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.
- (h) A clinical counselor 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 payments received were for reimbursement of expenses actually incurred.
- (i) A clinical counselor 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 payments were for the specified purposes.
- (j) An associate or a trainee may provide services via telehealth that are in the scope of practice outlined in this chapter.
- (k) 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 that counseling or psychotherapy at a reasonable cost.