



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 the following links:

Part 1: <https://www.youtube.com/watch?v=YGaiHaln4SI>

Part 2: <https://www.youtube.com/watch?v=lv56gt8SrA>

DATE October 1, 2021

MEETING PLATFORM WebEx Video/Phone Conference

TIME 9:00 a.m.

ATTENDEES

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

Members Absent: *All members present*

Staff Present: Steve Sodergren, 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

Chris Jones, Chair of the Telehealth Committee (Committee) called the meeting to order at 9:02 a.m. Roll was called, and a quorum was established.

II. Introductions

Committee members and Board staff introduced themselves.

Agenda items VIII and IX were taken out of order and heard before item III.

III. Consent Calendar

a. Discussion and Possible Approval of September 9, 2021 Committee Meeting Minutes

This item was tabled.

IV. Overview of the Committee's Roles and Tasks

The Committee members and stakeholders have discussed the following:

- Future topic areas for Committee discussion.
- The Board's existing statutes and regulations related to telehealth.
- Laws of several other states that pertain to temporary practice across state lines.
- Potential telehealth coursework requirement.
- Potential clarification of telehealth laws for associates and trainees.
- Supervision via videoconferencing.

V. Discussion of Potential Telehealth Coursework Requirement

Previously, the Committee directed staff to draft language requiring telehealth coursework, using the recently added statute requiring coursework in suicide risk assessment and intervention as a model.

The draft language does the following:

- Requires applicants for licensure on or after January 1, 2023 to submit proof of completion of 6 hours of training or coursework in the provision of mental health services via telehealth.
- Requires licensees, upon their first renewal on or after January 1, 2023, to attest to having completed 6 hours of training or coursework in the provision of mental health services via telehealth.

- Specifies that the training or coursework is a one-time requirement and may be completed either as part of the qualifying degree program or by taking a continuing education course.

The draft language applies to applicants applying for licensure and to current licensees.

Under the Board's currently proposed supervision regulations, which may become effective by January 1, 2022, a one-time 15-hour training for new supervisors would be required. Existing supervisors would not need to take a one-time 15-hour course; however, they must complete 6 hours of continuing professional development each renewal cycle.

Committee Discussion

Christina Wong: Likes the draft language; it is consistent with what is already required for associates.

Chris Jones: Agrees that this is consistent with other requirements, specifically with the suicide assessment requirement.

Susan Friedman: Agreed with Wong and Jones.

Public Comment

Dr. Leah Brew: Six hours is too many hours. Coursework/training providers can cover a substantial amount of information in one hour. Three hours is sufficient to capture all the information in telehealth. Timeline for effective date may be problematic if the bill is signed in October with a January 2021 effective date; people may not be able to meet that requirement. Need time to develop courses. Suggests pushing it out to July 2023 or 2024 so that coursework could be developed.

Angelina Gutierrez: Requests that it be added to degree programs as well. Agreed that 6 hours is too long.

Benjamin Caldwell: Agreed that 3 hours is adequate. It is counterintuitive to require this at the licensure stage when proving that the training was completed, considering that people have been doing telehealth for several years before the pandemic. Feels that this should be placed alongside the other telehealth requirements that took effect around 2017, stating that if you're going to do this kind of work, then you need to have training beforehand.

Rebecca Gonzales, National Association of Social Workers California Chapter (NASW-CA): More time is needed to discuss issues. Agrees with a delayed implementation. Agreed with a 3-hour course.

Jennifer Alley, California Association of Marriage and Family Therapists (CAMFT): Wants to discuss length of training, when its required and how much. If trainees and associates are going to utilize telehealth, there should be a conversation about it being included in their degree requirements. Training should occur prior to the service being delivered in that modality.

Jordan Boehler: Feels that the training is not necessary.

Committee Discussion

Wong: There is a need for coursework. Survey shows that less than 50% of school programs offer this coursework. To add this to coursework will take time, and legislation would have to be introduced. Currently, there is already a gap of at least one year. This is a reasonable way to ensure that the associated are trained and the licensees are also covered. This is an urgency and equity issue.

Jones: Agrees that the Board should move forward with this.

The Committee discussed the proposed language and considered the following:

1. Is 6 hours an appropriate amount of training or coursework?

The Committee agreed that a 3-hour course is adequate.

2. Is the timing of when the training or coursework is required appropriate? Should existing licensees be required to take the coursework?

The Committee agreed that the timing is appropriate and that existing licensees should be required to take the coursework.

3. The proposal does not allow applied experience to count.

No objections from the Committee.

4. Is delayed implementation needed?

The Committee agreed that delayed implementation is not necessary; however, suggested a July 1, 2023 implementation date to correspond with June graduations.

5. Does the training or coursework description used in the proposal, “provision of mental health services via telehealth” accurately capture what the Board is trying to achieve? Should more specific course topics be called out?

The Committee agreed that the description is accurate, and the draft language is appropriate as written.

6. The language does not address training for supervisors regarding videoconference supervision. If the Committee wishes to address this, it will need to be done separately via regulations.

The Committee agreed that this should be discussed separately.

Public Comment

Dr. Brew: Recommended a change in description to “address legal and ethical issues.” July implementation is helpful to create the course in universities.

Karen Wall: Provided a resource for CE www.telehealth.org.

R. Gonzales, NASW-CA: Professional practitioners should be trusted to take the CE courses that they feel they need. NASW-CA prefers having the training in school. Agreed that 3 hours is adequate and better than 6 hours.

J. Alley, CAMFT: Education and training should be part of the degree requirement instead as CE. Concerned about the speed that these changes are taking place.

After stakeholder input, the Committee agreed that more discussion on this topic is necessary.

The Committee agreed on the following:

- A 3-hour course
- Course description should be “3 hours of training and coursework in the provision of mental health services via telehealth including law and ethics related to telehealth.”
- Delayed implementation date of July 1, 2023.

Staff will make the discussed changes to the proposed language and bring it to the Policy and Advocacy Committee for recommendation to the full Board.

VI. Discussion and Possible Recommendation of Amendments to Clarify Telehealth Laws for Associates and Trainees (Business and Professions Code (BPC) §§2290.5, 4980.36, 4980.37, 4980.42, 4980.43.3, 4980.78, 4996.23, 4996.23.2, 4999.32, 4999.33, 4999.36, 4999.46.3, 4999.62)

The Committee has determined a need to clarify whether associates and trainees are permitted to provide services to clients via telehealth.

Associates and Telehealth

Marriage and family therapist associates (AMFTs) and trainees are permitted to perform services via telehealth, per Business and Professions Code (BPC) §4980.43.3(i) - Licensed Marriage and Family Therapist (LMFT) law.

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 per BPC §2290.5, which defines a health care provider who performs telehealth as 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.

ASWs and APCCs are permitted to perform services via telehealth, although not explicitly stated, because BPC §23.8 states that “licensees” referred to in BPC Code also includes associates.

The Board is pursuing an amendment in the 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.

Proposed Amendments

Amend BPC §§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) (LMFT law) that associates may perform services via telehealth.

Trainees and Telehealth

MFT trainees are already included as providers who can perform services via telehealth, because it is stated in BPC §§2290.5, and 4980.43.3(i). However, the law is silent for social work interns and PCC trainees. These trainees are not included in the definition of “licensee” in BPC §23.8, because they are not registered with the Board and are not regulated by the Board.

Proposed Amendments

- Amend BPC §2290.5 to specify that PCC trainees may provide services via telehealth.
- Amend BPC §4999.46.3(j) (LPCC law) to correspond with the already existing clarification in 4980.43.3(i) (LMFT law) that trainees may perform services via telehealth.

- Amend BPC §§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.

NASW-CA has expressed a preference that a similar clarification for social work interns is not made.

Committee/Staff Discussion

Rosanne Helms: In light of CAMFT's letter, the Committee may want to hold on the proposed amendments to the LMFT law and have more discussion.

Jones: Wants to hear from the trainers.

Practicum Clarification: "Face-to-Face" Requirement

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

At its previous meeting, the Committee determined a need to clarify whether "face-to-face" hours must be in person, via videoconference, via other forms of telehealth, or some combination of these.

Proposed Amendments

Strike the "face-to-face" reference in the practicum requirements in BPC §§ 4980.36 (current LMFT degrees), 4980.78 (out-of-state LMFT applicants), 4999.33 (current LPCC degrees), and 4999.62 (out-of-state LPCC applicants). The change was not made in §4980.37 (LMFT older degrees) and §4999.32 (older LPCC degrees).

Committee Discussion

Jones and Wong: Prefers to hear from the trainers.

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)).

Staff believes the main intent of this language is to ensure that ASWs gain a specific amount of experience hours directly related to clinical social work - not to distinguish whether or not these hours are gained in-person or via telehealth.

Staff believes the term "face-to-face" can be struck because clarifications are being made elsewhere in law in which experience hours can be gained by associates via telehealth.

Proposed Amendment

Strike the term “face-to-face” in BPC §4996.23(d)(2).

Committee Discussion

The Committee does not object.

Public Comment

J. Alley, CAMFT: Has reservations about removing face-to-face requirement. Trainees are not under the jurisdiction of the Board, but schools rely on the Board for direction regarding degree requirements. CAMFT is requesting clear direction for education and training. CAMFT wants a longer discussion regarding removal of face-to-face experience.

B. Caldwell: Less concerned with phone interaction in terms of its viability in telehealth experience. More concerned about what removing face-to-face language would potentially allow in terms of other forms of both synchronous and asynchronous interactions (chat-based platforms, email) to count as potential experience. Requests a longer and more thoughtful process and integrate research and more stakeholder input.

Cathy Atkins, CAMFT: Concerned about removal of face-to-face requirement after discussions involving requirements for telehealth training. Concerned about unintended consequences by rushing legislation. Agrees that more discussion is necessary.

R. Gonzales, NASW-CA: NASW-CA supports proposed amendments in attachment A (associates may provide services via telehealth).

J. Boehler: Suggests making the language a recommendation instead of a requirement. Making this a requirement will limit accessibility.

Face-to-face requirement proposals (provided as attachments B and C) were tabled.

Public Comment on Attachment A

C. Atkins, CAMFT: Supports amendments allowing trainees to provide services via telehealth.

B. Caldwell: Supports proposed amendments.

J. Alley, CAMFT: Implementation date states January 2023. Should it be July 2023 or at discretion of the supervisor?

Helms: The language is intended as clarification to the schools. Implementation date should not have an impact. Establishing a delayed implementation could cause confusion.

Motion: Direct staff to make any discussed amendments on Attachment A, and any non-substantive amendments, and bring to the Policy and Advocacy Committee for consideration.

Wong moved; Friedman seconded.

Roll call vote:

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

Vote: yea - 3; nay - 0. Motion carried

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

Supervision via Videoconferencing

Current law permits associates working in an exempt setting to obtain supervision via videoconferencing. The Board is currently pursuing an amendment (AB 690) that would change the law to permit supervisees working in an exempt setting to obtain supervision via videoconferencing.

During the COVID-19 state of emergency, the director of the Department of Consumer Affairs (DCA) issued a law waiver that allows supervision to be via videoconference, regardless of the setting. The waiver will expire on October 31, 2021

Based on discussion at its September 2021 meeting, the Committee directed staff to draft potential amendments to statute regarding supervision via videoconferencing based on two options:

Option One: 50% In-Person Supervision Required

- Clarifies that face-to-face direct supervisor contact means either in-person or via two-way, real time videoconferencing.
- Continues to allow supervisees working in an exempt setting to obtain their supervision via videoconferencing with no limit.

- Permits supervisees working in a non-exempt setting to obtain up to 50% of their required supervision hours, per supervisor and per month via videoconferencing.

Option Two: Supervision Via Videoconference Allowed with First Meeting In-Person

- Clarifies that “face-to-face direct supervisor contact” means either in-person or via two-way, real time videoconferencing.
- Requires that a supervisor must conduct an initial in-person meeting with a supervisee before initiating direct supervision.
- Requires that during the initial in-person meeting, the supervisor must assess the appropriateness of allowing the supervisee to gain experience hours via telehealth and the appropriateness of the supervisee to receive supervision via videoconferencing. Results of the assessment must be documented.

Committee Discussion

Wong: Not in favor of Option 2. As a supervisor, group supervision is very difficult. Observation, not just physical cues, is important when dealing with transference and counter transference, and being able to observe face-to-face is important. There are many things that cannot be accomplished through video conferencing.

Friedman: In favor for at least one in-person meeting.

Public Comment

J. Boehler: Does not agree in forcing people back into the office. This is restricting access and making it so fewer people can get supervised and licensed. Making physical contact with someone has no relevance to supervision.

B. Caldwell: Agrees with Boehler. In favor of Option 2. The past 18 months of online supervision has been going well. In terms of public protection, Option 2 appears more sensible than Option 1.

Cody Q.: Uncomfortable meeting in-person (immunocompromised). In favor of Option 2.

Marianne Callahan: Concerned about access to quality supervisors. In her exempt setting, she relies on 75 volunteer supervisors. It’s difficult getting those volunteers and must look further out for supervisors. Even the one-time meeting requirement would be a barrier. Requested to remove exempt settings if Option 2 moves forward.

R. Gonzales, NASW-CA: Leans toward Option 2. Option 1 not based on data. Concerned about initial in-person meeting requirement, especially for those with underlying health conditions.

Dr. Brew: 1) Has 100 trainees in school (who are remote) and has seen an increase in problems between supervisors and trainees, specifically with those who never had an in-personal relationship with the supervisor; whereas there were fewer relationship problems prior to going remote. 2) Questioned whether there could be an exception for those who are immunocompromised.

J. Alley, CAMFT: No recommendation for either option. 1) Requested a clause for a sunset date to determine if the option worked. 2) Requested clarification regarding whether “in-person” means face-to-face or video conferencing. 3) With waivers ending, is urgency legislation being considered? 4) Remote use, sites and settings – all should be part of the conversation.

Cathy Atkins, CAMFT: Requested that the Committee consider separating telehealth and tele-supervision into two different legislative vehicles and consider urgent legislation for tele-supervision.

Dr. Brew: A supervisor needs to assess whether the supervisee is appropriate to engage in both telehealth and tele-supervision, which may be done virtually. However, there may be some individuals who are not appropriate for that modality, and the onus falls on the supervisor. Would like to codify that in law.

Many more comments were received regarding: Access to care, struggles to find quality supervisors, supervisors relocating, immunocompromised population, individuals with disabilities, and private practices that would have to let their associates go if telehealth supervision is restricted. All favored Option 2.

Steve Sodergren: Opined that video supervision is good, and it should be allowed in different settings. Need to have deeper discussions to ensure that the supervision is appropriate. Concerned about access to care. There’s not enough time to put anything in place to keep the waivers going.

Cara Sanner, Association of Social Work Boards (ASWB): Model used is the Social Work Practice Act. ASWB updated the model law to incorporate provisions related to electronic social work services. The model law is not very prescriptive as it relates to electronic social work services. It acknowledges that electronic practice, or teletherapy is social work. ASWB published (in partnership with NASW, the Council on Social Work Education and the Clinical Social Work Association) two guidance documents: 1) Technology Standards in Social Work Practice and 2) Model Regulatory Standards for Technology and Social Work Practice. One document targets the practitioner and the other

supports regulators. There isn't any data or research to support more prescriptive supervision provisions.

The Committee agreed have further discussions on Option 2.

Further Considerations on Option 2

- Whether the initial in-person meeting requirement should apply to all settings (as currently written) or to non-exempt settings only.

Committee: All settings.

- Whether the initial in-person meeting requirement should apply only to new supervisory relationships after its effective date or all supervisory relationships.

Committee: On or after January 1, 2023, before initiating direct supervision, a supervisor must conduct an initial in-person meeting within 60 days with each new supervisee.

- Whether fitness for videoconferencing supervision should be the only assessment, or whether fitness for telehealth with clients should be assessed as well, as currently written.

Committee: Fitness for telehealth with clients should also be assessed, as currently written.

- Should the language about "assessing the appropriateness of allowing the supervisee" to receive videoconference supervision/practice via telehealth be more specific? Or is it appropriate to leave the language as is to give more discretion to the supervisor?

Committee: Leave the language as is to give more discretion to the supervisor.

- Instead of requiring an initial in-person meeting before supervision begins, the Committee could alternatively require the meeting to take place within the first 60 days of commencing supervision.

Committee: The supervisor must conduct an in-person meeting within 60 days of commencing supervision.

Implications for Out-of-State Practice

Questions to be considered:

- Should an associate, temporarily or permanently located in another state or country, be able to practice with clients located in California? (Assuming the associate is registered in California and has a California-licensed supervisor, who they are seeing via videoconference.)
- Should a trainee, temporarily or permanently located in another state or country, be allowed to practice with clients located in California?
- Should an associate or trainee, located in another state or country, be permitted to count experience hours for practice with clients who are located in that 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?

Public Comment

Dr. Brew: A supervisor would not know the legal codes in another state unless they're licensed in that state. The supervisor needs to be licensed in California and in the other state. If a California client is out of the state for more than 30 days, they should find a local therapist/counselor/social worker. Not too concerned about where the supervisee is located; more concerned about where the supervisor is located. Some state laws indicate that it's the location of the therapist, not the location of the client.

C. Atkins, CAMFT: Urged the Committee to move forward with tele-supervision legislation, Option 2 as proposed, in time for the 2022 legislative session. A discussion regarding what sites are acceptable will derail the conversation.

M. Furie: Agreed with Atkins; however, stated that Option 2 still does not address accessibility.

Committee agreed to move forward with the language agreed upon in discussion, establish a sunset date, and continue the discussion regarding settings.

Motion: Direct staff to make discussed amendments on Option 2 to state that before initiating direct supervision, a supervisor must conduct an initial in-person meeting within 60 days with each new supervisee, and add a sunset date of January 1, 2025; and make any non-substantive changes and bring to the Policy and Advocacy Committee for consideration.

Wong moved; Friedman seconded.

Public Comments

J. Alley, CAMFT: Agrees with amendments.

M. Furie: Requested accommodations for individuals with disabilities.

R. Gonzales, NASW-CA: Agrees with amendments, but has concerns regarding disabilities and accommodations.

Roll call vote:

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

Vote: 3 yea, 0 nay. Motion carried

VIII. Public Comment for Items not on the Agenda

Letter from the CAMFT presented. Jennifer Alley requested that the Committee continue to work through 2022 to further flush out the complicated issues pointed out in the letter.

A. Gutierrez: Will the BBS consider offering extensions for the 6-year requirement for licensure of completing hours for those who experienced a significant decrease in hours due to the pandemic?

Ben Caldwell: Stated that there is not much progress in the initial AMFT registrations and questioned the reason for this.

Friedman: Has the Board considered doing a questionnaire that therapists can send to their clients about their thoughts on telehealth?

IX. Suggestions for Future Agenda Items

None

X. Adjournment

The Committee adjourned at 2:52 p.m.