ata ACTION
Telehealth Policy to Transform Healthcare

September 18, 2026

Lilly Jean Coiner
Executive Advisor
Department of Professional Licensing, Office of Legal Services
500 Mero Street, 2 NC WK#4
Frankfort, Kentucky 40601

RE: ATA Action Comments on 201 KAR 28:235, Telehealth Occupational Therapy Services

Dear Ms. Coiner and members of the Board of Licensure for Occupational Therapy,

On behalf of ATA Action, I am writing to comment on the Board of Licensure for Occupational Therapy's proposed amendments to 201 KAR 28:235, governing telehealth occupational therapy services**.**

ATA Action is the affiliated policy and legislative advocacy arm of the American Telemedicine Association. ATA Action is the leading advocacy organization dedicated to advancing policy and accelerating the adoption of technology-enabled healthcare. Working collaboratively with federal and state legislators and policymakers, our organization drives industry momentum by influencing legislative and regulatory developments in telehealth, virtual care, remote patient monitoring, artificial intelligence in health, health data privacy, private sector healthcare investment, and more. We represent a diverse membership – including hospital systems, technology companies, professional associations, direct-to-consumer digital health providers, payers, pharmaceutical manufacturers, digital therapeutics developers, and remote monitoring organizations.

ATA Action appreciates the Board's work to modernize this regulation. We believe several of the proposed amendments are appropriate. Aligning the definition of telehealth with KRS 211.332(5) replaces a narrower definition that had been tied to specific communication technologies, and that change supports the modality-neutral approach ATA Action advocates for nationally. The expanded informed consent provisions in Section 3(1)(f), the accommodation for verbal consent in emergency situations under Section 3(2), and the documentation requirement in Section 2(2) all provide useful clarity to practitioners and meaningful protection to clients. We support these provisions.

ATA Action does, however, have a significant concern with one provision, and we respectfully urge the Board to strike it.

Section 4(4) Would Condition Practice on the Practitioner's Physical Location

Section 4 of the proposed regulation provides that a credential holder using telehealth shall:

> (3) Be licensed or otherwise authorized by law to practice occupational therapy where the client is physically located.

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(4) Be licensed or otherwise authorized by law to practice occupational therapy where the credential holder is physically located.

Subsection (3) is correct and consistent with national practice. Subsection (4) is neither, nor it is necessary to accomplish anything subsection (3) does not already accomplish.

This is a new requirement rather than a restatement of existing policy. The language being replaced in Section 4(1) connected the licensure obligation to where the client is domiciled. The proposed amendment retains that standard in subsection (3) and then layers a second, independent licensure condition on top of it in subsection (4). The Board's own regulatory impact analysis describes the amendment as clarifying practitioner authority based on client location and credential holder licensure, but it offers no explanation of why a second licensure requirement tied to the practitioner's, potentially short-term, physical location is needed.

Subsection (4) departs from how every other state treats telehealth practice. The settled national rule is that the practice of a health profession occurs where the patient is located, and licensure requirements follow accordingly. The Federation of State Medical Boards states plainly that "the practice of medicine occurs where the patient is located at the time that telemedicine technologies are used."[1] That principle is the organizing premise of interstate telehealth practice across professions, and it is the premise on which occupational therapy licensure portability has been built.

Section 4(4) Is in Tension with the Occupational Therapy Licensure Compact

Additionally, Kentucky has enacted the Occupational Therapy Licensure Compact and the Board is separately amending 201 KAR 28:240 to incorporate the Compact Commission's current rules. Under the compact, privilege is tied to the state where the client is located. A practitioner exercising that privilege is accountable to the client's state, not to whichever jurisdiction the practitioner happens to be sitting in. Section 4(4) cuts against that structure by making the practitioner's own location an independent licensure trigger. The Board itself has recognized in the fiscal impact statement accompanying 201 KAR 28:240 that interstate compacts take precedence over conflicting state law under the Compacts Clause. We encourage the Board to resolve that tension now, in this rulemaking, rather than leaving practitioners to navigate two regulations that point in different directions.

The Practical Consequences for Kentucky Clients and Practitioners

The most immediate effect of Section 4(4) falls on Kentucky clients being treated by Kentucky-licensed practitioners. Under the proposed language, a Kentucky-licensed occupational therapist who is physically outside the Commonwealth attending a continuing education conference, traveling, caring for a family member or temporarily relocated for any reason, could not deliver telehealth services to their Kentucky client unless they also held a license in the state they happened to be in that day. The client is in Kentucky. The practitioner is licensed in Kentucky. The care is governed by Kentucky law. Yet the session would be prohibited. Continuity of care would be interrupted for

[1] Report of the FSMB Workgroup on Telemedicine, April 2022. https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf

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reasons that have nothing to do with the client, the practitioner's qualifications or the standard of care.

The provision also creates a dual-compliance burden for Kentucky-based practitioners serving clients in other states. Requiring practitioners to satisfy the licensure requirements of both Kentucky and the client's state, when Kentucky has no regulatory interest in care delivered to a non-Kentucky client, imposes administrative cost and legal uncertainty that discourages practitioners from offering care across state lines. That outcome disadvantages Kentucky practitioners relative to their peers in other states and reduces the supply of available care without any corresponding gain in client protection.

Other states have recognized this problem and corrected course. In Maryland, several licensing boards proposed rules containing similar outbound-care provisions. Those proposals were withdrawn and repromulgated without them. Kentucky need not repeat a step that other boards have already retraced.

Recommendation

ATA Action respectfully recommends that the Board strike Section 4(4) in its entirety. Section 4(3) already establishes the licensure requirement that protects Kentucky clients, and it does so in a manner consistent with the Occupational Therapy Licensure Compact, with KRS Chapter 319A and with national telehealth standards. Removing subsection (4) would leave the regulation's client protections fully intact while eliminating a barrier that serves no identified regulatory purpose.

Thank you for the opportunity to comment and for the Board's continued attention to telehealth practice standards. Please let us know if there is anything we can do to assist the Board in this rulemaking. If you have any questions or would like to discuss the telehealth industry's perspective further, please contact me at hyoung@ataaction.org.

Kind regards,

Hunter Young
Head of State Government Relations
ATA Action