



October 23, 2026

Sara Boswell Janes  
Staff Attorney III  
Department of Professional Licensing, Office of Legal Services  
500 Mero Street  
Frankfort, Kentucky 40601

**RE: ATA Action Comments on 201 KAR 33:071, Telehealth and Telepractice**

Dear Ms. Janes and members of the Board of Licensure and Certification for Dietitians and Nutritionists,

On behalf of ATA Action, I am writing in support of the Board's proposed new administrative regulation, 201 KAR 33:071, establishing telehealth and telepractice standards for licensed dietitians and certified nutritionists. The proposed regulation is sound in most respects and reflects a thoughtful approach to telehealth delivery. We write to recommend one change, concerning the licensure provisions in Section 4.

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.

**Provisions ATA Action Supports**

Several features of the proposed regulation deserve recognition. The definition of “telepractice” at Section 1(5) expressly encompasses “two (2) way, interactive, simultaneous audio and video, or audio-only encounters.” Express recognition of audio-only delivery is not universal among state telehealth regulations, and inclusion of this modality is essential for clients without reliable broadband or video-capable devices, many of whom live in rural areas and already face the greatest barriers to in-person care.

We likewise support the Board's decision not to impose an in-person initial visit requirement. Nutrition counseling is well suited to remote delivery, and conditioning the initiation of care on an in-person encounter would have excluded precisely the rural and underserved clients for whom telepractice offers the clearest benefit. The provision at Section 2 permitting a licensed health care professional to represent the practitioner at the initial meeting further supports access by accommodating care models that pair remote practitioners with local clinical staff. Furthermore, the imposition of a prior in-person encounter

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absent an imperative to meet a standard of care would be arbitrary and inconsistent with current Kentucky telehealth policy.

### **Recommendation: Strike Section 4(3) and Revise Section 4(4)**

Section 4 contains two licensure provisions that operate independently of one another. Section 4(2) requires licensure where services are provided “to a person when he or she is physically located in Kentucky.” Section 4(3) separately requires licensure where services are provided “from a physical location in Kentucky.” Section 4(4) then directs the practitioner to “[c]omply with the state law where the practitioner initiates services.”

Section 4(2) accomplishes what the Board needs. It ensures that any practitioner serving a Kentucky client is accountable to this Board, which is the Board’s regulatory interest and the basis on which Kentucky clients are protected. Sections 4(3) and 4(4) add a second, independent condition keyed to where the practitioner happens to be sitting, a circumstance that bears no relationship to the client’s welfare, the services delivered, or the standard of care applied.

This departs from the settled national approach. The practice of a health profession is understood to occur where the client is located, and licensure follows accordingly. The Federation of State Medical Boards states the principle plainly in its Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine: the practice of medicine occurs where the patient is located at the time telemedicine technologies are used.<sup>1</sup> That principle is not confined to medicine; it is the organizing premise of interstate telehealth practice across the health professions, and it is the premise on which dietetic licensure portability has been built.

Section 4(3) itself acknowledges the difficulty it creates. Its second sentence provides that a practitioner subject to the provision “may be subject to licensure requirements in other states where the services are received by the client.” The regulation thus contemplates that a Kentucky-based practitioner serving an out-of-state client will hold two licenses: one from this Board, because of where the practitioner is sitting, and another from the client’s state, because of where the client is. Kentucky has no regulatory interest in care delivered to a client in another state, and the administrative cost and legal uncertainty of dual compliance discourage Kentucky-based practitioners from serving clients across state lines at all. That outcome disadvantages Kentucky practitioners relative to their peers elsewhere and reduces the supply of available care without any corresponding gain in client protection. Furthermore, it is uncertain if the Board has the authority to enforce a requirement on a licensed professional that mandates professional licensure in a state other than Kentucky.

Other states have reconsidered provisions of this kind. In Maryland, several licensing boards, including the Board of Dietetic Practice, proposed rules containing similar outbound-care provisions, and those proposals were withdrawn and repromulgated in 2023 without them.

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<sup>1</sup> Federation of State Medical Boards, The Appropriate Use of Telemedicine Technologies in the Practice of Medicine, April 2022, at 4. <https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>



## **Sections 4(3) and 4(4) Are in Tension with the Dietitian Licensure Compact**

There is a further consideration that we suspect was not before the Board when this regulation was drafted. Kentucky has enacted the Dietitian Licensure Compact, codified at KRS 310.090 and effective July 15, 2026, the same date on which this regulation was approved by the agency. The proposed regulation makes no reference to the Compact.

The Compact is built on client location. A dietitian exercising a compact privilege is authorized to practice in a remote state where the client is located, functions within the scope of practice established by that state and is subject to that state's regulatory authority. Section 4(4)'s instruction to "comply with the state law where the practitioner initiates services" states the opposite rule. A practitioner reading the regulation and the Compact together would receive conflicting direction about which state's law governs the care they are providing.

Section 4(3) presents a related problem. A dietitian whose home state is not Kentucky, but who is physically present in Kentucky while serving a client in the home state, would be required to obtain a Kentucky license under Section 4(3) even though no Kentucky client is involved and the Compact affords no privilege applicable to that situation. We respectfully suggest that the Board would not wish to create a licensure obligation that the interstate framework Kentucky has just joined does not contemplate.

We also encourage the Board to confirm, whether in this regulation or in guidance accompanying it, that a valid compact privilege issued under KRS 310.090 satisfies the licensure requirement in Section 4(2). The provision applies to a person "for which an exception to licensure does not apply," and practitioners would benefit from clarity that compact privilege falls within that exception.

## **The Statutory Directive Does Not Reach Practitioner-Location Licensure**

The Board's necessity statement explains that KRS 310.200 requires the Board to adopt regulations that "prevent abuse and fraud through the use of telehealth, prevent fee-splitting through the use of telehealth, and utilize telehealth in the provision of dietitian and nutrition services." The proposed regulation addresses each of those directives: Section 5(2) prohibits fee-splitting, Sections 2 and 3 establish identity verification, documentation, and record-retention standards that guard against abuse and fraud, and Sections 1 through 3 establish the framework for delivering services through telehealth.

Conditioning licensure on the practitioner's physical location advances none of the three. It does not prevent abuse or fraud, because the practitioner's location is unrelated to either. It does not prevent fee-splitting, which Section 5(2) addresses directly. And it does not facilitate the use of telehealth in service delivery; it restricts it. We respectfully submit that this condition falls outside the regulation the General Assembly directed the Board to promulgate.

## **Requested Amendments**

1. Strike Section 4(3) in its entirety. Section 4(2) already establishes the licensure requirement that protects Kentucky clients and does so consistent with the Dietitian Licensure Compact and with the practice of other states.



2. Revise Section 4(4) so that a practitioner is directed to comply with the law of the state in which the client is located at the time services are delivered, rather than the state from which the practitioner initiates services.

3. Confirm that a compact privilege issued under KRS 310.090 satisfies the licensure requirement in Section 4(2).

None of these changes would weaken the protections the regulation seeks to establish. A practitioner serving a Kentucky client would remain fully accountable to this Board under Section 4(2), and the client requirements, competence standards, record-retention obligations, and conduct prohibitions elsewhere in the regulation would remain intact. What the amendments remove is a licensure condition that turns on the practitioner's location rather than the client's, consistent with current Kentucky telehealth policy.

Thank you for the opportunity to comment, and for the Board's work in developing a telehealth framework that recognizes audio-only delivery and avoids an in-person visit mandate. We would welcome the opportunity to provide any additional information that may be useful to the Board. If you have any questions or would like to discuss the telehealth industry's perspective further, please contact me at [hyoung@ataaction.org](mailto:hyoung@ataaction.org).

Kind regards,

A handwritten signature in black ink that reads "Hunter Young". The signature is written in a cursive, flowing style.

Hunter Young  
Head of State Government Relations  
ATA Action