

**State of California
Office of Administrative Law**

In re:
Board of Psychology

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 1396.8

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

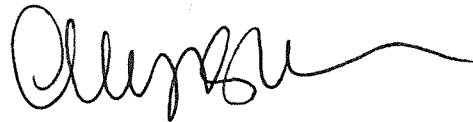
OAL Matter Number: 2021-0601-05

OAL Matter Type: Regular (S)

In this regular rulemaking action, the Board of Psychology adopts one section establishing the standards of practice for telehealth services.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 8/10/2021.

Date: August 10, 2021



**Amy R. Gowan
Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Antonette Sorrick,
Executive Officer**

Copy: Jason Glasspiegel

REGULAR

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2020-0804-04	REGULATORY ACTION NUMBER 2021-0601-05	EMERGENCY NUMBER S
-------------------------	--	---	------------------------------

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMINISTRATIVE LAW	
Electronic Submission	
RECEIVED DATE 08/4/2020	PUBLICATION DATE 08/14/2020

2021 JUN -1 P 4: 46
 OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
 in the office of the Secretary of State
 of the State of California
AUG 10 2021
 2:17 PM

NOTICE	REGULATIONS
AGENCY WITH RULEMAKING AUTHORITY Psychology Board	AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Standards of Practice for Telehealth	TITLE(S) 16	FIRST SECTION AFFECTED 1396.8	2. REQUESTED PUBLICATION DATE August 14, 2020
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Jason Glasspiegel	TELEPHONE NUMBER 916-574-7137	FAX NUMBER (Optional) 916-574-8672
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Standards of Practice for Telehealth	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
---	---

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
<table border="1"> <tr> <td rowspan="3">SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT 1396.8</td> </tr> <tr> <td>AMEND</td> </tr> <tr> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1396.8	AMEND	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 1396.8		
		AMEND		
	REPEAL			
TITLE(S) 16				

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
 December 7, 2020 - December 22, 2020.

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
---	---	---	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) <u>Kimberly Kirchmeyer, Director, Department of Consumer Affairs</u>		

7. CONTACT PERSON Jason Glasspiegel	TELEPHONE NUMBER (916) 574-7137	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) jason.glasspiegel@dca.ca.gov
---	---	------------------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <u>Antonette Sorrick</u> <small>Antonette Sorrick (May 4, 2021 08:58 PDT)</small>	DATE 5/4/21
TYPED NAME AND TITLE OF SIGNATORY Antonette Sorrick, Executive Officer	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
AUG 10 2021
 Office of Administrative Law

Title 16. Board of Psychology

Order of Adoption

Proposed new language is underlined.

Add Section 1396.8 of Article 8 of Division 13.1 of Title 16 of the California Code of Regulations to read:

§1396.8. Standards of Practice for Telehealth Services

- (a) A licensee is permitted to provide psychological health care services via telehealth subject to the laws and regulations of the other jurisdiction where either the licensee and/or the client is located, including, but not limited to, the following circumstances:
- (1) To a client at an originating site in this State, as defined in section 2290.5 of the Code, when a licensee is located at a distant site within this State.
 - (2) To a client who has received services in this State, and who is temporarily located outside of this State.
 - (3) To a client who is located in this State when a licensee is temporarily located outside of this State.
- (b) As used in this section, a licensee shall include a licensee, registrant, psychology trainee, or other supervised individual permitted to provide psychological services under the Psychology Licensing Law, beginning with section 2900 of the Code.
- (c) The provision of psychological health care services under subdivision (a) are subject to the following conditions:
- (1) The licensee holds a valid and current license issued by the Board or is otherwise allowed to practice under this section.
 - (2) The licensee obtains and documents informed consent for the provision of psychological health care services via telehealth from the client. Such consent shall cover concerns unique to the receipt of psychological health care services via telehealth, including risks to confidentiality and security, data storage policies and procedures specific to telehealth, the possibility of disruption and/or interruption of service due to technological failure, insurance coverage considerations, and other issues that the licensee can reasonably anticipate regarding the non-comparability between psychological health care services delivered in person and those delivered via telehealth.

- (3) The licensee determines that delivery of psychological health care services via telehealth is appropriate after considering at least the following factors:
- (A) The client's diagnosis, symptoms, and medical/psychological history;
 - (B) The client's preference for receiving psychological health care services via telehealth;
 - (C) The nature of the psychological health care services to be provided, including anticipated benefits, risks, and constraints resulting from their delivery via telehealth;
 - (D) The benefits, risks, or constraints posed by the client's physical location. These include the availability of appropriate physical space for the receipt of psychological health care services via telehealth, accessibility of local emergency psychological health care services, and other considerations related to the client's diagnosis, symptoms, or condition.
 - (E) The provision of telehealth services is within the scope of competency of a psychology trainee, or other supervised individuals as specified in (b) above, who provides psychological health care services under the supervision of the licensee.
- (4) The licensee is competent to deliver such services based upon whether the licensee possesses the appropriate knowledge, skills, and abilities relating to delivery of psychological health care services via telehealth, the information technology chosen for the delivery of telehealth services, and how such services might differ from those delivered in person.
- (5) The licensee takes reasonable steps to ensure that electronic data is transmitted securely, and informs the client immediately of any known data breach or unauthorized dissemination of data.
- (6) The licensee complies with all other provisions of the Psychology Licensing Law and its attendant regulations, and all other applicable provisions of law and standards of care in this State and the other jurisdiction, if any, where either the licensee or the client is located.

Authority: Section 2930, Business and Professions Code

Reference: Sections 686, 2290.5, 2904.5, 2960, and 2960.6, Business and Professions Code