



KENTUCKY BOARD OF NURSING
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ADVISORY OPINION STATEMENT

The Kentucky Board of Nursing issues advisory opinions as to what constitutes safe nursing practice. As such, an opinion is not a regulation of the Board and does not have the force and effect of law. It is issued as a guideline to licensees who wish to engage in safe nursing practice.

TELEHEALTH AND NURSING

The Kentucky Board of Nursing is authorized by Kentucky Revised Statutes (KRS) Chapter 314 to regulate nurses, nursing education and practice, promulgate regulations and to issue advisory opinions on nursing practice, in order to assure that safe and effective nursing care is provided by nurses to the citizens of the Commonwealth.

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Opinion: Telehealth and Nursing

Approved Date: 12/2019

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Accountability and Responsibility of Nurses

In accordance with KRS 314.021(2), nurses are responsible and accountable for making decisions that are based upon the individuals' educational preparation and current clinical competence in nursing, and requires licensees to practice nursing with reasonable skill and safety. Nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidence based.

Rationale for Advisory Opinion

Advancements in technology and the need to provide health care to those who are unable to access care through traditional means or who want the convenience technology provides has led to the utilization of technology in the delivery of nursing care. The Board receives inquiries related to the use of telehealth in nursing to provide safe and effective health care. The Board issued the following advisory opinion.

Advisory Opinion

Telehealth

Pursuant to KRS 314.155 (3) “‘telehealth’ means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.” The term does not include audio-only telephone calls, email messages, or facsimile transactions.

The Utilization of Technology in Nursing

Nurses utilize technology as a method to deliver and apply their educational and clinical experience and competency to provide health care to their patients. Nurses should be cognizant and knowledgeable of how to integrate telehealth technology into their practice to deliver effective and safe patient care.

Technology may be utilized in many aspects of care including but not limited to:

- Consultations with patients and other health care providers via videoconferencing (e.g. telehealth);
- Obtaining information and assessing the needs of the patient via electronic communications;
- Electronic prescribing;
- Monitoring of vital signs using electronic devices; and
- Remote monitoring that electronically sends information directly to the provider.

However, not all nursing care activities are able to be performed via telehealth. This may be due to the available technology, the condition of the patient, or the very nature of the activity or situation. The practitioner must determine the needs of the patient, the patient’s ability to use telehealth and the best method of delivery of health care for the situation.

Telehealth may be practiced by LPNs, RNs, and APRNs as defined by their licensed scope of practice in KRS 314.011. LPN’s, RN’s, APRNs utilizing telehealth to provide patient care must follow all requirements listed in KRS 314.155 and 201 KAR 20:520 and as relevant 907 KAR 3:170E and have an active license to practice in the state of Kentucky, hold a multistate license, or hold a privilege to practice in Kentucky. The patient must be located in Kentucky at the time services are being provided.

Informed Consent

Informed consent is defined by The Joint Commission as an:

“...agreement or permission accompanied by full notice about the care, treatment, or service that is the subject of the consent. A patient must be apprised of the nature, risks, and alternatives of a medical procedure or treatment before the physician or other health care professional begins any such course. After receiving this information, the patient then either consents to or refuses such a procedure or treatment.” The Joint Commission, 2016 Comprehensive Accreditation Manual Glossary. (Retrieved from: https://www.jointcommission.org/assets/1/23/Quick_Safety_Issue_Twenty-One_February_2016.pdf)

Facilities should have documents as a means for providing informed consent that clearly outline the care and treatment a patient will receive when utilizing telehealth, as well written policies and procedures in place for staff. Providers can improve the process of informed consent and enhance the safety of the patient by:

- Ensuring that the informed consent is truly informed by making sure that patient understands what they are consenting to undergo.
- Not assuming that patients understand the medical terms in the consent form.
- Making sure to use decision aids, interactive media, graphical tools and other aids to enhance shared decision making and effectively assess and present risks during shared decision making.
- Using everyday language instead of medical jargon or acronyms in communicating with patients or substitute decision makers.
- Using appropriate communication materials based on the patient's cultural or language preferences and allow patients time to consider the information provided.
- Overcoming language barriers by making use of health literacy screening tools and medical interpreter services for patients with limited health literacy and/or limited English proficiency.
- Employing patient engagement techniques and use more open ended questions to elicit information regarding patients' needs and preferences and to encourage patients to ask questions
- Using tools such as the teach-back method to determine whether patients understand risks, benefits and alternatives to treatment.

The Joint Commission, Division of Health Care Improvement (2016). *Quick Safety Informed Consent: More Than Getting a Signature*. Issue 21. (Retrieved at https://www.jointcommission.org/assets/1/23/Quick_Safety_Issue_Twenty-One_February_2016.pdf)

Practitioner- Patient Relationship

One of the most important elements in patient care is the medical relationship that exists between the nurse and the patient. The relationship is termed the “practitioner-patient relationship” and is defined in KRS 218A.010 (41) used in relation to prescribing controlled substances....and means “.....a... relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his or her designee has conducted at least one (1) good faith prior examination;”

KRS 218A.010(18) also defines “Good faith prior examination”:

“ means an in-person medical examination of the patient conducted by the prescribing practitioner or other health care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. ‘In-person’ includes telehealth examinations....”

Telehealth providers may use telehealth to perform a patient evaluation. If a telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient, the telehealth provider is not required to research a patient's medical history or conduct a physical examination of the patient before using telehealth to provide health care services to the patient.

Jurisdictional Licensing Requirements

Pursuant to 201 KAR 20:520 nursing care occurs *where the patient is located*. Any nurse providing care via telehealth routes to a patient located in Kentucky is required to possess either:

- An active unencumbered Kentucky license as an LPN, RN, or APRN; or
- An unencumbered RN or LPN license in another Nurse Licensure Compact state.

The Nurse Licensure Compact that is in effect for RNs and LPNs does not include APRNs. An APRN must have an active unencumbered Kentucky APRN license to practice in Kentucky.

All nurses practicing in the Commonwealth are responsible and accountable for knowing and following *Kentucky Nursing Laws* and practicing within their scope of practice. KRS 314.155 provides the specific duties of nurses practicing in telehealth.

“(1) A treating nurse who provides or facilitates the use of telehealth shall ensure:

- (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth;”

Scope of Practice

Telehealth providers have a duty to practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for health care professionals who provide in- person health care service to patients in this state.

Telehealth provider means an individual who provides health care and related services utilizing telehealth.

"Health care provider" means any health care facility or provider of health services, including but not limited to, those licensed, certified, or regulated under the provisions of KRS Chapters 211, 216, 311, 312, 313, or 314;

Telehealth includes all elements of nursing practice as defined in KRS 314.011 for LPNs, RNs, and APRNs. Each nurse must practice within their licensed scope of practice.

The nurse’s individual scope of practice in the performance of an activity is determined by the:

- Definition provided in KRS 314.011 for their licensed type;
- Their educational preparedness;
- Their clinical competence and experience; and
- The technological knowledge and skills they possess.

The Board issued Advisory Opinion Statement #41 RN/LPN Scope of Practice Determination Guidelines, which contains the KBN Decision-Making Model for Determining Scope of Practice for RNs/LPNs, and published the APRN Scope of Practice Decision Making Model to provide guidance to nurses to determine if a particular activity is within their own scope of practice.

Best Telehealth Practices Guidelines

Technical Service Requirements

- Utilize a HIPAA-compliant platform for virtual services. Ensure technology platforms sufficiently safeguard patients' rights for confidentiality and privacy and are compliant with HIPAA and other applicable federal and state laws.
- Consents and documentation: Utilize a HIPAA-compliant and legally binding method for sharing consent forms and obtaining signatures from members and collateral contacts.
- Ensure that technical equipment is working, patient privacy is assured, and IT assistance is readily available should it be needed.
- Provider clear expectations with patients regarding appropriate behaviors in virtual visits.
- Patients should be notified that virtual platforms carry different privacy risks over in-person services.
- All available encryption and privacy tools should be utilized when using virtual platforms.

Documentation

Documentation in the patient's medical record should include the health care services rendered using telehealth according to the same standard as used in-person services. Medical records including video, audio, electronic, or other records generated as a result of providing such services are confidential as pursuant to 201.KAR: 20:520. Nurses must utilize policies and appropriate informed consent forms to obtain the patient's consent prior to providing telehealth care pursuant to KRS 314.155.

Coordination of care

- It is important to ensure coordination of care with other providers.
- For tele-prescribing standards for prescriptive authority should be followed as granted by each state's practice act.

(Best Practices Guidelines based upon information from New Directions website)

<https://www.ndbh.com/docs/ContentManaged/Providers/Resources/2020/Telehealth%20Best%20Practices%20Document%20FINAL.pdf> and TELEHEALTH.HHS.GOV: [Getting started with telehealth | Telehealth.HHS.gov](https://www.gettingstartedwithtelehealth.gov/))

Determining Scope of Practice

KRS 314.021(2) holds all nurses individually responsible and accountable for the individual's acts based upon the nurse's education and experience. Each nurse must exercise professional and prudent judgment in determining whether the performance of a given act is within the scope of practice for which the nurse is both licensed and clinically competent to perform. In addition to this advisory opinion statement, the Kentucky Board of Nursing issued Advisory Opinion Statement #41 RN/LPN Scope of Practice Determination Guidelines which contains the KBN Decision-Making Model for Determining Scope of Practice for RNs/LPNs, and published the APRN Scope of Practice Decision Making Model providing guidance to nurses in determining whether a selected act is within an individual nurse's scope of practice now or in the future. A copy of the KBN Decision-Making Model for Determining Scope of Practice for RNs/LPNs may be downloaded from the Board's website and a copy of the APRN guidelines may be downloaded from the Board's website at www.kbn.ky.gov.

Applicable Statutes From the *Kentucky Nursing Laws*¹

KRS 314.011(6) defines "registered nursing practice" as:

...The performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

- a) The care, counsel, and health teaching of the ill, injured, or infirm;
- b) The maintenance of health or prevention of illness of others;
- c) The administration of medication and treatment as prescribed by physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Scope and Standards of Practice or with standards of practice established by nationally accepted organizations of registered nurses. Components of medication administration include, but are not limited to:
 - 1. Preparing and giving medication in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
 - 2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
 - 3. Intervening when emergency care is required as a result of drug therapy;
 - 4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
 - 5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
 - 6. Instructing an individual regarding medications;
- d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and
- e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses.

KRS 314.011(8) defines "Advanced practice registered nursing" as:

...the performance of additional acts by registered nurses who have gained advanced clinical knowledge and skills through an accredited education program that prepares the registered nurse for one (1) of the four (4) APRN roles; who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced practice registered nursing as a certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or clinical nurse specialist; and who certified in at least one (1) population focus. The additional acts shall, subject to approval of the board, include but not be limited to

¹ A copy of the *Kentucky Nursing Laws* may be downloaded from the Kentucky Board of Nursing website at <http://kbn.ky.gov>.

prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced practice registered nurses who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances described in or as classified pursuant to KRS 218A.020, 218A.060, 218A.080, 218A.100, and 218A.120 under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.

- (a)
 1. Prescriptions issued by advanced practice registered nurses for Schedule II controlled substances classified under KRS 218A.060, except hydrocodone combination products as defined in KRS 218A.010, shall be limited to a seventy-two (72) hour supply without any refill.
 2. Prescriptions issued by advanced practice registered nurses for hydrocodone combination products as defined in KRS 218A.010 shall be limited to a thirty (30) day supply without any refill.
 3. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced practice registered nurse certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS Chapter 216B or in a regional services program for mental health or individuals with an intellectual disability as defined in KRS Chapter 210.
- (b) Prescriptions issued by advanced practice registered nurses for Schedule III controlled substances classified under KRS 218A.080 shall be limited to a thirty (30) day supply without any refill. Prescriptions issued by advanced practice registered nurses for Schedules IV and V controlled substances classified under KRS 218A.100 and 218A.120 shall be limited to the original prescription and refills not to exceed a six (6) month supply.

Nothing in this chapter shall be construed as requiring an advanced practice registered nurse designated by the board as a certified registered nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;

KRS 314.011(10) defines "licensed practical nursing practice" as:

...The performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

- a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, advanced practice registered nurse, physician assistant, a licensed physician, or dentist;
- b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;
- c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;

- d) Teaching, supervising, and delegating except as limited by the board; and
- e) The performance of other nursing acts, which are authorized or limited by the board and which are consistent with the National Federation of [Licensed] Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

KRS 314.155 Duty of treating nurse utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".

- (1) A treating nurse who provides or facilitates the use of telehealth shall ensure:
 - (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and
 - (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.
- (2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:
 - (a) Prevent abuse and fraud through the use of telehealth services;
 - (b) Prevent fee-splitting through the use of telehealth services; and
 - (c) Utilize telehealth in the provision of nursing services and in the provision of continuing education.
- (3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

201 KAR 20:520 Telehealth

Section 1. Definitions. (1) "Board" is defined by KRS 314.011(1).

(2) "Nurse" means a licensed practical nurse as defined by KRS 314.011(9), a registered nurse as defined by KRS 314.011(5), or an advanced practice registered nurse as defined by KRS 314.011(7).

(3) "Telehealth" is defined by KRS 314.155(3).

Section 2. Jurisdictional Considerations. A nurse providing nursing services via telehealth to a person physically located in Kentucky shall be licensed by the board or hold a privilege to practice pursuant to KRS 314.470.

Section 3. Representation of Services and Code of Conduct. A nurse using telehealth to deliver services shall not:

- (1) Engage in false, misleading, or deceptive advertising; or
- (2) Split fees.

Section 4. Initial Communication Requirements. A nurse using telehealth to deliver nursing services shall, upon initial contact with the patient:

- (1) Make attempts to verify the identity of the patient;
- (2) Obtain alternative means of contacting the patient other than electronically such as by use of a telephone number or mailing address;
- (3) Provide to the patient alternative means of contacting the nurse other than electronically such as by use of a telephone number or mailing address; and

(4) Provide contact methods of alternative communication the nurse shall use for emergency purposes such as an emergency on call telephone number.

Section 5. Limits on Practice, Informed Consent, Maintenance, and Retention of Records. A nurse using telehealth to deliver nursing services shall:

- (1) Be responsible for determining and documenting that telehealth is appropriate for the patient;
- (2) Document which services were provided by telehealth;
- (3) Use secure communications with each patient, including encrypted text messages, via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;
- (4) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the nurse disposes of electronic equipment and data; and
- (5) Inform the patient and document acknowledgement of the risk and limitations of:
 - (a) The use of telehealth in the provision of nursing;
 - (b) The potential breach of confidentiality, or inadvertent access, of protected health information using telehealth in the provision of nursing;
 - (c) The potential disruption of electronic communication in the use of telehealth;
 - (d) When and how the nurse will respond to routine electronic messages;
 - (e) The circumstances in which the nurse will use alternative communications for emergency purposes;
 - (f) Others who may have access to patient communications with the nurse;
 - (g) How communications shall be directed to a specific nurse;
 - (h) How the nurse stores electronic communications from the patient; and
 - (i) Whether the nurse or patient may elect to discontinue the provision of services through telehealth.