

Ethical Considerations for Telepractice

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Telepractice has been deemed “an appropriate model of service delivery for audiologists and speech-language pathologists (SLPs)” by the American Speech-Language-Hearing Association (ASHA) and the State of Texas licensing board, The Texas Department of Licensing and Regulation (TDLR.) However, just as with every service delivery model, it is important that practitioners carefully consider client needs and professional responsibilities in order to establish that telepractice is an appropriate service delivery option.

Two members of the TSHA Telepractice Committee collaborated to address ethical issues involved in the delivery of speech-language and audiology services through telepractice. Their discussion follows and is in a question-and-answer format with each answer supported by the reference to the newly amended TDLR rule. A reference appendix is provided at the end of the article.

Q: *Are behaviors/characteristics of my client conducive to a remote service delivery, and are there specific rules that I must address when utilizing a telepractice option?*

A: Ethically, a provider should evaluate a client’s eligibility for a remote service delivery with a protocol that addresses behavioral, physical, and cognitive abilities of the client, the client’s level of comfort with technology, and any cultural and linguistic variables that could affect assessment and intervention with the client. Recently, the rule for assessing a client’s eligibility for a telepractice service delivery has been amended to allow the determination assessment (typically the initial contact) through telehealth/telepractice.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.212 (h), (i), (j), (m)]

Q: *Are there restrictions to providing telepractice in the state of Texas?*

A: Yes, first a provider must be a Texas-licensed speech-language pathologist and/or audiologist. (ASHA recommends that the provider should be licensed in both the state where the client is physically as well as the state where the provider is physically.) In addition, the provider is ethically charged to make sure they are competent in the methodology and technology/equipment required to provide the service. To be a provider of SLP or audiology services via telepractice, the provider must be an individual who holds a current, renewable, unrestricted speech-language pathology or audiology license under Texas Occupations Code §401.302 and §401.304 or an individual who holds an audiology intern license under Texas Occupations Code §401.311. ^[SEP]A frequent question is, “Can an SLP Assistant deliver services via telepractice?” The answer is no, but the SLP Assistant may be a facilitator, which is an individual at the client site who assists with the delivery of the telehealth services at the direction of the audiologist or speech-language pathologist.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V : § 111.210 (4), (5), § 111.212 (e), § 111.214 (a), (b)]

Q: *Are the services to the client compromised by remote delivery?*

A: Providers are ethically responsible to ensure that the service they provide remotely is the same as if it was provided during in-person sessions. They need to make sure that the telecommunications technology and transmission does not compromise the scope and nature of the service. They need to make sure that the equipment used is working properly and that they utilize the technology smoothly and efficiently.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.212 (c), (d), (e), (f), (g) § 111.215 (h)]

Q: *Are systems of support identified, clarified, and delivered in order to achieve “in-person” service quality?*

A: Some executive practices are recommended that are instrumental in delivering the content and

managing the environment to emulate the “in-person” experience. In many cases, a facilitator will be present at the client site. As defined in the rule, a facilitator is an individual at the client site who assists with the delivery of the telehealth services at the direction of the audiologist or speech-language pathologist. The facilitator should be competent in managing materials and troubleshooting the telecommunications equipment as well as be trained in how to assist, guide, and prompt the client. For audiologists utilizing a facilitator, the requirements are more specific. The provider must be visible and audible and able to direct the facilitator at all times during the remote session. The facilitator must only do tasks they were specifically trained to do, and the provider audiologist must verify and document the facilitator’s qualifications, training, and competence in each task. With both audiology and speech-language pathology providers, when a consultant is utilized, the provider should be able to make the needed adjustments to maximize the level of comfort of the consultant with the telecommunications technology. It is important that the provider makes sure that the client’s environment can appropriately accompany the necessary staff, clients, materials, and equipment for the session and ensures there is privacy, proper lighting, and adequate acoustics for remote communication. Client safety always should be addressed in the support plan, but only the audiology rules specifically address the issue of safety by stating that if there is not a facilitator present and a facilitator is necessary for safety and service effectiveness, telepractice is not to be rendered.
[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.210 (4), § 111.212 (k) § 111.215 (c), (g)]

Q: *Does telepractice require a unique set of rules for patient/family notification of service and consent?*

A: Yes, clients and their families must be informed of the procedures and ramifications of a telehealth service delivery, other service delivery options, how to file and resolve complaints, and ultimately be allowed to refuse telehealth services. Protection, privacy, and portability of health information should be addressed in the notification and consent documentation.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.212 (o) (p) § 111.215 (j)]

Q: *Does telepractice service require a unique set of rules for patient records and documentation?*

A: Yes, for all types of service delivery options, there are laws, rules, and regulations governing the maintenance of client records, but specific documentation is required to evaluate the effectiveness of the service provided via telehealth. It is recommended that the provider document the efficiency and calibration of the equipment and technology utilized as well as the proficiency of the provider, facilitator, consultant, and client in using it. If the session is compromised because of issues specific to the session’s telepractice activity, this should be recorded and addressed.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.212 (n), (o) § 111.215 (i), (j)]

Q: *Is telepractice a billable service under my client’s third-party payer?*

A: The law is not clearly defined with regards to reimbursement. It is left up to the payers in many cases. Before they begin providing services via telepractice, audiologists and speech-language pathologists always should confirm with each payer that telepractice services will be reimbursed and confirm payer guidelines for reimbursement, billing, coding, modifier use, student/clinical fellow supervision, and coverage. Therefore, providers have an ethical responsibility to understand third-party requirements prior to seeking reimbursements.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.210 (10)]

Q: *Are there specific rules pertaining to a provider of telepractice in regards to liability and malpractice?*

A: A provider of telehealth services is held to the same standard of practice as if the service was provided in person, and there is no specific rule addressing a distinct telepractice liability requirement. However, it is recommended that a provider makes sure that their liability/malpractice insurance covers telepractice prior to providing telehealth services.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.212 (l)]

Q: *Can telecommunications technology be used to supervise assistants and interns?*

A: Telecommunications technology may be used to supervise an SLP Assistant with some limitation. Six of the eight required hours for supervision of an assistant may be done utilizing a remote connection. This includes the four (of the four) required indirect activities and two (of the four) required direct supervision activities. Direct supervision of a licensed intern in speech-language pathology shall not be undertaken through telecommunications technology. Supervision of a licensed assistant in audiology may be undertaken through the use of telecommunication technology with some limitation for specific tasks.

[Title 16 Texas Administrative Code, Chapter 111, Subchapter V: § 111.213 (b) (1) & (2), (c) § 111.216 (b) §111.51, §111.91 (f)(5) §111.92(c) (1)-(4)]

Reference Appendix

Texas Department of Licensing and Regulation, Title 16 Texas Administrative Code (TAC), Chapter 111 Speech-Language Pathology and Audiology

Speech-Language Pathologists and Audiologists Administrative Rules document:

<https://www.tdlr.texas.gov/slpa/slparules050118.pdf>

111.210 Definitions Relating to Telehealth

(4) Facilitator--The individual at the client site who assists with the delivery of the telehealth services at the direction of the audiologist or speech-language pathologist. [L] [SEP]

(5) Provider--An individual who holds a current, renewable, unrestricted speech-language pathology or audiology license under Texas Occupations Code §401.302 and §401.304; or an individual who holds an audiology intern license under Texas Occupations Code §401.311.

(10) Telehealth services--The application of telecommunication technology to deliver speech-language pathology and/or audiology services at a distance for assessment, intervention, and/or consultation. [L] [SEP]

111.212. Requirements for the Use of Telehealth by Speech-Language Pathologists.

(b) A provider shall comply with the commission's Code of Ethics and Scope of Practice requirements when providing telehealth services. [L] [SEP]

(c) The scope, nature, and quality of services provided via telehealth are the same as that provided during in- person sessions by the provider. [L] [SEP]

(d) The quality of electronic transmissions shall be equally appropriate for the provision of telehealth services as if those services were provided in person. [L] [SEP]

(e) A provider shall only utilize technology which they are competent to use as part of their telehealth services. [L] [SEP]

(f) Equipment used for telehealth services at the clinician site shall be maintained in appropriate operational status to provide appropriate quality of services. [L] [SEP]

(g) Equipment used at the client/patient site at which the client or consultant is present shall be in appropriate working condition and deemed appropriate by the provider. [L] [SEP]

(h) The initial contact between a licensed speech-language pathologist and client may be at the same physical location or through telehealth/telepractice, as determined appropriate by the licensed speech-language pathologist. [L] [SEP]

(i) A provider shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth/telepractice. [L] [SEP]

(j) A provider shall be aware of the client or consultant level of comfort with the technology being used as part of the telehealth services and adjust their practice to maximize the client or consultant level of comfort. [L] [SEP]

(l) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telehealth services were provided in person.

(m) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients. [L] [SEP]

(n) Upon request, a provider shall submit to the department data which evaluates effectiveness of services provided via telehealth including, but not limited to, outcome measures. [L] [SEP]

(o) Telehealth providers shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained. [L] [SEP]

(p) Notification of telehealth services shall be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and instructions on filing and resolving complaints. [L] [SEP]

111.213. Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.

(b) Supervision of a licensed assistant in speech-language pathology may be undertaken through the use of telecommunications technology as described under §111.51 and as follows: (1) no more than two (2) hours of direct supervision per month shall be undertaken through the use of telecommunications technology; and [L] [SEP] (2) no more than six (6) total hours of supervision per month shall be undertaken through the use of telecommunications technology. [L] [SEP]

(c) Direct supervision of a licensed intern in speech-language pathology shall not be undertaken through the use of telecommunications technology.

111.214. Requirements for Providing Telehealth Services in Speech-Language Pathology.

(a) A provider of telehealth services who practices in the State of Texas shall be licensed by the department. [L] [SEP]

(b) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service. [L] [SEP]

111.215. Requirements for Providing Telepractice Services in Audiology.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telepractice services. [L] [SEP]

(g) A provider shall not render telepractice services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session. [L] [SEP]

(h) The scope, nature, and quality of the telepractice services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client. [L] [SEP]

(i) The provider shall not render telepractice services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telepractice services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent audiology service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use. [L] [SEP]

(j) Providers and facilitators involved in the provider's delivery of telepractice services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telepractice services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator. [L] [SEP]

111.216. Limitations on the Use of Telecommunications Technology by Audiologists.

(b) Supervision of a licensed assistant in audiology may be undertaken through the use of telecommunications technology as described under §111.91, except for duties described under §§111.92(c)(1) - (4) where the supervisor must provide in-person, direct supervision. [L] [SEP]

111.91. Assistant in Audiology License--Supervision Requirements.

(5) For the purposes of this subsection, the telehealth and telepractice provisions described under

§111.215 may be used except for duties described under §§111.92(c)(1) - (4) where the supervisor must provide in-person, direct supervision.

111.92. Assistant in Audiology License--Practice and Duties of Assistants.(c) Duties that a supervisor may assign to an assistant, who has received appropriate training, include the following:

- (1) under in-person, direct supervision, conduct or participate in, hearing screening including screening otoscopy, tympanometry, otoacoustic emissions procedures and pure tone air conduction procedures, but may not diagnose hearing loss or disorders of the auditory system, or make statements of severity or implication;
- (2) under in-person, direct supervision, assist the audiologist with play audiometry, visual reinforcement audiometry, and tasks such as picture-pointing speech audiometry;
- (3) under in-person, direct supervision, assist the audiologist in the evaluation of difficult-to-test patients;
- (4) under in-person, direct supervision, assist the audiologist with technical tasks for diagnostic evaluation such as preparing test rooms, attaching electrodes, and preparing patients prior to procedures