

**TITLE 16. BOARD OF PSYCHOLOGY  
DEPARTMENT OF CONSUMER AFFAIRS**

**NOTICE IS HEREBY GIVEN** that the Board of Psychology (hereinafter “Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Wednesday September 30, 2020, 1:00 p.m. – 2:00 p.m.  
Department of Consumer Affairs  
El Dorado Room #220  
1625 N Market Blvd  
Sacramento, CA 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on Tuesday, September 29, 2020, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2930 of the Business and Professions Code, and to implement, interpret or make specific Sections 686, 2290.5, 2904.5 and 2960 of said Code, the Board is considering changes to Division 13.1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

Business and Professions Code (Code) section 2930 authorizes the Board of Psychology to adopt rules and regulations as may be necessary. Sections 2290.5 and 2904.5 of the Code allow licensees of the Board to provide psychological health care services via telehealth. Section 2290.5 defines “originating site.”

The Board proposes to add Section 1396.8 to Title 16 of the California Code of Regulations to do the following:

Subdivision (a) states that licensed California psychologists, registrants, and psychology trainees may provide psychological health care services via telehealth to an originating site in this State, or to a client who is domiciled or resides in California, but who is temporarily located outside of this State. It also defines “resident” and “domicile.”

Subdivision (b) sets out the conditions for the provision of services via telehealth, including:

- holding a valid and current license issued by the board;
- obtaining informed consent covering the unique concerns related to telehealth;
- determining that the provision of services via telehealth is appropriate after considering the various factors, as well as whether providing telehealth is within the scope of competence of a trainee who may be providing such services;
- possessing the appropriate knowledge, skills, and abilities relating to the delivery of and technology used to provide telehealth services;
- ensuring the appropriate security of any transmitted client data; and
- complying with all other provisions of the Psychology Licensing Law and all other applicable provisions of law and standards of care in this and the other relevant jurisdiction.

Subdivision (c) states that failure to follow these provisions, as well as provisions of another state, constitutes unprofessional conduct.

#### B. Policy Statement Overview/Anticipated Benefits of Proposal

Adoption of this proposal will benefit licensed California psychologists and psychology trainees who provide psychological services via telehealth by providing guidance to and establishing standards for such services. Telehealth services benefit consumers who live in remote areas or who, due to illness or mobility problems, cannot leave home by increasing their access to care. Telehealth services also provide psychological support to clients between regularly scheduled office visits or while they are temporarily located outside of this State. Overall consumer protection is advanced because the informed consent must address the uniqueness of receiving telehealth services, making for a more educated consumer who is more able to determine whether receipt of services in this manner is right for him or her. Additionally, the licensee is likewise required to take into account the circumstances unique to each client, as well as his or her own competence, before engaging in telehealth services. It requires that licensees take reasonable steps to ensure that confidential information is securely transmitted and that patients are notified of any breaches. By ensuring that both provider and client have

considered the ramifications of services via telehealth, consumer protection is advanced. Lastly, it informs providers of possible consequences for failing to meet these minimum standards.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search of similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

N/A

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate:

None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 – 17630:

None

Business Impact:

The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

Although the proposed regulations require the licensee to take reasonable steps to ensure that the data is transmitted securely, licensees may be separately required to follow more prescriptive guidelines under the Health Insurance Portability and Accountability Act (HIPAA). Compliance with HIPAA may impact representative private persons or businesses, due to the potential cost regarding the use of a secure system, but the Board is unable to quantify the specific cost. In addition, current law does not prohibit the use of telehealth, but lacks clarity in regulations regarding Board's specific requirement for its licensees. Any licensees that are currently practicing telehealth should already be in compliance with HIPAA, and already be utilizing a secure system.

Effect on Housing Costs:

None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses, as it does not increase reporting or administrative burdens on small private practices.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents, worker safety, and the state's environment as it establishes guidelines for licensed California psychologists and psychology

trainees for providing telehealth services to residents of California both in California, and those who are temporarily located outside of California.

### CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

### INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person, or by accessing the Board's website, [www.psychology.ca.gov](http://www.psychology.ca.gov).

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

## CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Jason Glasspiegel  
Address: 1625 North Market Blvd., Suite N215  
Sacramento, CA 95834  
Telephone No.: (916) 574-7137  
Fax No.: (916) 574-8672  
E-Mail Address: [Jason.Glasspiegel@dca.ca.gov](mailto:Jason.Glasspiegel@dca.ca.gov)

The backup contact person is:

Name: Jeffrey Thomas  
Address: 1625 North Market Blvd., Suite N215  
Sacramento, CA 95834  
Telephone No.: (916) 574-7116  
Fax No.: (916) 574-8672  
E-Mail Address: [Jeffrey.Thomas@dca.ca.gov](mailto:Jeffrey.Thomas@dca.ca.gov)

## Website Access:

Materials regarding this proposal can be found under "Proposed Regulations" at [www.psychology.ca.gov/laws\\_regs/index.shtml](http://www.psychology.ca.gov/laws_regs/index.shtml).