

CS FOR HOUSE BILL NO. 265(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 3/14/22

Referred: Finance

Sponsor(s): REPRESENTATIVES SPOHNHOLZ, Gillham

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to telehealth; relating to the practice of medicine and the practice of**
2 **nursing; relating to medical assistance coverage for services provided by telehealth; and**
3 **providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 08.01 is amended by adding a new section to read:

6 **Sec. 08.01.085. Telehealth.** (a) A health care provider licensed in this state
7 may provide health care services within the health care provider's authorized scope of
8 practice to a patient in this state through telehealth without first conducting an in-
9 person visit.

10 (b) If a health care provider determines in the course of a telehealth encounter
11 with a patient under this section that some or all of the encounter will extend beyond
12 the health care provider's authorized scope of practice, the health care provider shall
13 advise the patient that the health care provider is not authorized to provide some or all
14 of the services to the patient, recommend that the patient contact an appropriate

1 provider for the services the health care provider is not authorized to provide, and limit
 2 the encounter to only those services the health care provider is authorized to provide.
 3 The health care provider may not charge for any portion of an encounter that extends
 4 beyond the health care provider's authorized scope of practice.

5 (c) A fee for a service provided through telehealth under this section must be
 6 reasonable and consistent with the ordinary fee typically charged for that service and
 7 may not exceed the fee typically charged for that service.

8 (d) A physician, podiatrist, osteopath, or physician assistant licensed under
 9 AS 08.64 may prescribe, dispense, or administer through telehealth under this section
 10 a prescription for a controlled substance listed in AS 11.71.140 - 11.71.190 if the
 11 physician, podiatrist, osteopath, or physician assistant complies with AS 08.64.364.

12 (e) An advanced practice registered nurse licensed under AS 08.68 may
 13 prescribe, dispense, or administer through telehealth under this section a prescription
 14 for a controlled substance listed in AS 11.71.140 - 11.71.190 if the advanced practice
 15 registered nurse complies with AS 08.68.710.

16 (f) Except as authorized under (d) and (e) of this section, a person licensed
 17 under this title or in another state may not prescribe, dispense, or administer through
 18 telehealth under this section a controlled substance listed in AS 11.71.140 - 11.71.190.

19 (g) A health care provider may not be required to document a barrier to an in-
 20 person visit to provide health care services through telehealth. The department or a
 21 board may not limit the physical setting from which a health care provider may
 22 provide health care services through telehealth.

23 (h) Nothing in this section requires the use of telehealth when a health care
 24 provider determines that providing health care services through telehealth is not
 25 appropriate or when a patient chooses not to receive health care services through
 26 telehealth.

27 (i) In this section,

28 (1) "health care provider" means an audiologist or speech-language
 29 pathologist licensed under AS 08.11; a behavior analyst licensed under AS 08.15; a
 30 chiropractor licensed under AS 08.20; a professional counselor licensed under
 31 AS 08.29; a dental hygienist licensed under AS 08.32; a dentist licensed under

AS 08.36; a dietitian or nutritionist licensed under AS 08.38; a naturopath licensed under AS 08.45; a marital and family therapist licensed under AS 08.63; a physician licensed under AS 08.64; a podiatrist, osteopath, or physician assistant licensed under AS 08.64; a direct-entry midwife certified under AS 08.65; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a psychologist or psychological associate licensed under AS 08.86; or a social worker licensed under AS 08.95;

(2) "licensed" means holding a current license in good standing;

(3) "telehealth" has the meaning given in AS 47.05.270(e).

* **Sec. 2.** AS 08.64.364(b) is amended to read:

(b) The board may not impose disciplinary sanctions on a physician or physician assistant for prescribing, dispensing, or administering a prescription drug that is a controlled substance or botulinum toxin if the requirements under (a) of this section and AS 08.64.363 are met [AND THE PHYSICIAN OR PHYSICIAN ASSISTANT PRESCRIBES, DISPENSES, OR ADMINISTERS THE CONTROLLED SUBSTANCE OR BOTULINUM TOXIN WHEN AN APPROPRIATE LICENSED HEALTH CARE PROVIDER IS PRESENT WITH THE PATIENT TO ASSIST THE PHYSICIAN OR PHYSICIAN ASSISTANT WITH EXAMINATION, DIAGNOSIS, AND TREATMENT].

* **Sec. 3.** AS 08.68 is amended by adding a new section to article 6 to read:

Sec. 08.68.710. Prescription of drugs without physical examination. (a) The board may not impose disciplinary sanctions on an advanced practice registered nurse for rendering a diagnosis, providing treatment, or prescribing, dispensing, or administering a prescription drug that is not a controlled substance to a person without conducting a physical examination if

(1) the advanced practice registered nurse or another licensed health care provider in the medical practice is available to provide follow-up care; and

(2) the advanced practice registered nurse requests that the person consent to sending a copy of all records of the encounter to the person's primary care provider if the prescribing advanced practice registered nurse is not the person's

1 primary care provider and, if the person consents, the advanced practice registered
2 nurse sends the records to the person's primary care provider.

3 (b) The board may not impose disciplinary sanctions on an advanced practice
4 registered nurse for prescribing, dispensing, or administering a prescription drug that
5 is a controlled substance if the requirements under (a) of this section and
6 AS 08.68.705 are met and the advanced practice registered nurse prescribes,
7 dispenses, or administers the controlled substance.

8 (c) Notwithstanding (a) and (b) of this section, an advanced practice registered
9 nurse may not prescribe, dispense, or administer a prescription drug in response to an
10 Internet questionnaire or electronic mail message to a person with whom the advanced
11 practice registered nurse does not have a prior provider-patient relationship.

12 (d) In this section,

13 (1) "controlled substance" has the meaning given in AS 11.71.900;

14 (2) "prescription drug" has the meaning given in AS 08.80.480;

15 (3) "primary care provider" has the meaning given in AS 21.07.250.

16 * **Sec. 4.** AS 18.08 is amended by adding a new section to read:

17 **Sec. 18.08.100. Telehealth.** (a) An individual certified or licensed under this
18 chapter may practice within the individual's authorized scope of practice under this
19 chapter through telehealth with a patient in this state if the individual's certification or
20 license is in good standing.

21 (b) If an individual certified or licensed under this chapter determines in the
22 course of a telehealth encounter with a patient that some or all of the encounter will
23 extend beyond the individual's authorized scope of practice, the individual shall advise
24 the patient that the individual is not authorized to provide some or all of the services to
25 the patient, recommend that the patient contact an appropriate provider for the services
26 the individual is not authorized to provide, and limit the encounter to only those
27 services the individual is authorized to provide. The individual certified or licensed
28 under this chapter may not charge for any portion of an encounter that extends beyond
29 the individual's authorized scope of practice.

30 (c) A fee for a service provided through telehealth under this section must be
31 reasonable and consistent with the ordinary fee typically charged for that service and

1 may not exceed the fee typically charged for that service.

2 (d) An individual certified or licensed under this chapter may not be required
3 to document a barrier to an in-person visit to provide health care services through
4 telehealth. The department or the council may not limit the physical setting from
5 which an individual certified or licensed under this chapter may provide health care
6 services through telehealth.

7 (e) Nothing in this section requires the use of telehealth when an individual
8 certified or licensed under this chapter determines that providing services through
9 telehealth is not appropriate or when a patient chooses not to receive services through
10 telehealth.

11 (f) In this section, "telehealth" has the meaning given in AS 47.05.270(e).

12 * **Sec. 5.** AS 47.07 is amended by adding a new section to read:

13 **Sec. 47.07.069. Payment for telehealth.** (a) The department shall pay for all
14 services covered by the medical assistance program provided through telehealth in the
15 same manner as if the services had been provided in person, including

16 (1) behavioral health services;

17 (2) services covered under home and community-based waivers;

18 (3) services covered under state plan options under 42 U.S.C. 1396 -
19 1396p (Title XIX, Social Security Act);

20 (4) services provided by a community health aide or a community
21 health practitioner certified by the Community Health Aide Program Certification
22 Board;

23 (5) services provided by a behavioral health aide or behavioral health
24 practitioner certified by the Community Health Aide Program Certification Board;

25 (6) services provided by a dental health aide therapist certified by the
26 Community Health Aide Program Certification Board;

27 (7) services provided by a chemical dependency counselor certified by
28 a certifying entity for behavioral health professionals in the state specified by the
29 department in regulation;

30 (8) services provided by a rural health clinic or a federally qualified
31 health center;

(9) services provided by an individual or entity that is required by statute or regulation to be licensed or certified by the department or that is eligible to receive payments, in whole or in part, from the department;

(10) services provided through audio, visual, or data communications, alone or in any combination, or through communications over the Internet or by telephone, including a telephone that is not part of a dedicated audio conference system, electronic mail, text message, or two-way radio;

(11) assessment, evaluation, consultation, planning, diagnosis, treatment, case management, and the prescription, dispensing, and administration of medications, including controlled substances; and

(12) services covered under federal waivers or demonstrations other than home and community-based waivers.

(b) The department shall adopt regulations for services provided by telehealth, including setting rates of payment. Regulations calculating the rate of payment for a rural health clinic or federally qualified health center must treat services provided through telehealth in the same manner as if the services had been provided in person, including calculations based on the rural health clinic or federally qualified health center's reasonable costs or on the number of visits for recipients provided services, and must define "visit" to include a visit provided by telehealth. The department may not decrease the rate of payment for a telehealth service based on the location of the person providing the service, the location of the eligible recipient of the service, the communication method used, or whether the service was provided asynchronously or synchronously. The department may exclude or limit coverage or reimbursement for a service provided by telehealth, or limit the telehealth modes that may be used for a particular service, only if the department

(1) specifically excludes or limits the service from telehealth coverage or reimbursement by regulations adopted under this subsection;

(2) determines, based on substantial medical evidence, that the service cannot be safely provided using telehealth or using the specified mode; or

(3) determines that providing the service using the specified mode would violate federal law or render the service ineligible for federal financial

1 participation under applicable federal law.

2 (c) All services delivered through telehealth under this section must comply
3 with the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

4 (d) In this section,

5 (1) "federally qualified health center" has the meaning given in 42
6 U.S.C. 1396d(l)(2)(B);

7 (2) "rural health clinic" has the meaning given in 42 U.S.C.
8 1396d(l)(1);

9 (3) "state plan" means the state plan for medical assistance coverage
10 developed under AS 47.07.040;

11 (4) "telehealth" has the meaning given AS 47.05.270(e).

12 * **Sec. 6.** AS 47.30 is amended by adding a new section to read:

13 **Sec. 47.30.585. Telehealth.** (a) An entity designated by the department under
14 AS 47.30.520 - 47.30.620 may provide community mental health services authorized
15 under AS 47.30.520 - 47.30.620 through telehealth to a patient in this state.

16 (b) If an individual employed by an entity designated by the department under
17 AS 47.30.520 - 47.30.620, in the course of a telehealth encounter with a patient,
18 determines that some or all of the encounter will extend beyond the community mental
19 health services authorized under AS 47.30.520 - 47.30.620, the individual shall advise
20 the patient that the entity is not authorized to provide some or all of the services to the
21 patient, recommend that the patient contact an appropriate provider for the services the
22 entity is not authorized to provide, and limit the encounter to only those services the
23 entity is authorized to provide. The entity may not charge a patient for any portion of
24 an encounter that extends beyond the community mental health services authorized
25 under AS 47.30.520 - 47.30.620.

26 (c) A fee for a service provided through telehealth under this section must be
27 reasonable and consistent with the ordinary fee typically charged for that service and
28 may not exceed the fee typically charged for that service.

29 (d) An entity permitted to provide telehealth under this section may not be
30 required to document a barrier to an in-person visit to provide health care services
31 through telehealth. The department may not limit the physical setting from which an

1 entity may provide health care services through telehealth.

2 (e) Nothing in this section requires the use of telehealth when an individual
3 employed by an entity designated by the department under AS 47.30.520 - 47.30.620
4 determines that providing services through telehealth is not appropriate or when a
5 patient chooses not to receive services through telehealth.

6 (f) In this section, "telehealth" has the meaning given in AS 47.05.270(e).

7 * **Sec. 7.** AS 47.37 is amended by adding a new section to read:

8 **Sec. 47.37.145. Telehealth.** (a) A public or private treatment facility approved
9 under AS 47.37.140 may provide health care services authorized under AS 47.37.030 -
10 47.37.270 through telehealth to a patient in this state.

11 (b) If an individual employed by a public or private treatment facility
12 approved under AS 47.37.140, in the course of a telehealth encounter with a patient,
13 determines that some or all of the encounter will extend beyond the health care
14 services authorized under AS 47.37.030 - 47.37.270, the individual shall advise the
15 patient that the facility is not authorized to provide some or all of the services to the
16 patient, recommend that the patient contact an appropriate provider for the services the
17 facility is not authorized to provide, and limit the encounter to only those services the
18 facility is authorized to provide. The facility may not charge a patient for any portion
19 of an encounter that extends beyond the authorized health care services under
20 AS 47.37.030 - 47.37.270.

21 (c) A fee for a service provided through telehealth under this section must be
22 reasonable and consistent with the ordinary fee typically charged for that service and
23 may not exceed the fee typically charged for that service.

24 (d) A facility permitted to practice telehealth under this section may not be
25 required to document a barrier to an in-person visit to provide health care services
26 through telehealth. The department may not limit the physical setting from which a
27 facility may provide health care services through telehealth.

28 (e) Nothing in this section requires the use of telehealth when an individual
29 employed by a facility approved under AS 47.37.140 determines that providing
30 services through telehealth is not appropriate or when a patient chooses not to receive
31 services through telehealth.

(f) In this section, "telehealth" has the meaning given in AS 47.05.270(e).

* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEDICAID STATE PLAN FEDERAL APPROVAL. To the extent necessary to implement this Act, the Department of Health and Social Services shall amend and submit for federal approval the state plan for medical assistance coverage consistent with AS 47.07.069, enacted by sec. 5 of this Act.

* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REGULATIONS. (a) Each applicable board responsible for licensing a profession authorized to provide telehealth services under sec. 1 of this Act shall adopt regulations necessary to implement sec. 1 of this Act. The licensing boards shall adopt the regulations not later than June 30, 2023.

(b) The State Medical Board shall adopt regulations necessary to implement sec. 2 of this Act. The State Medical Board shall adopt the regulations not later than June 30, 2023.

(c) The Department of Health and Social Services shall adopt regulations necessary to implement secs. 4 - 7 of this Act. The Department of Health and Social Services shall adopt the regulations not later than June 30, 2023.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT; NOTIFICATION. (a) Section 5 of this Act takes effect only if, on or before January 1, 2023, the United States Department of Health and Human Services

(1) approves amendments to the state plan for medical assistance coverage under AS 47.07.069, enacted by sec. 5 of this Act; or

(2) determines that its approval of the amendments to the state plan for medical assistance coverage under AS 47.07.069, enacted by sec. 5 of this Act, is not necessary.

(b) The commissioner of health and social services shall notify the revisor of statutes in writing within 30 days after the United States Department of Health and Human Services approves amendments to the state plan or determines that approval is not necessary under

1 (a)(1) or (2) of this section.

2 * **Sec. 11.** If sec. 5 of this Act takes effect, it takes effect on the day after the date the revisor
3 of statutes receives notice from the commissioner of health and social services under sec.
4 10(b) of this Act.

5 * **Sec. 12.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

6 * **Sec. 13.** Except as provided in secs. 11 and 12 of this Act, this Act takes effect June 30,
7 2023.