

CS FOR HOUSE BILL NO. 265(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/20/22

Referred: Rules

Sponsor(s): REPRESENTATIVES SPOHNHOLZ, Gillham, McCarty, Rasmussen, Schrage, Ortiz, Tarr, Merrick

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) A physician licensed in another state may provide health care services
11 through telehealth to a patient located in the state as provided in this subsection,
12 subject to the investigative and enforcement powers of the department under
13 AS 08.01.087, and subject to disciplinary action by the State Medical Board under
14 AS 08.64.333. The privilege to practice under this subsection extends only to ongoing

1 treatment or follow-up care related to health care services previously provided by the
2 physician to the patient and applies only if

3 (1) the physician and the patient have an established physician-patient
4 relationship; and

5 (2) the physician has previously conducted a physical examination of
6 the patient in person.

7 (c) If a health care provider determines in the course of a telehealth encounter
8 with a patient under this section that some or all of the encounter will extend beyond
9 the health care provider's authorized scope of practice, the health care provider shall
10 advise the patient that the health care provider is not authorized to provide some or all
11 of the services to the patient, recommend that the patient contact an appropriate
12 provider for the services the health care provider is not authorized to provide, and limit
13 the encounter to only those services the health care provider is authorized to provide.
14 The health care provider may not charge for any portion of an encounter that extends
15 beyond the health care provider's authorized scope of practice.

16 (d) A fee for a service provided through telehealth under this section must be
17 reasonable and consistent with the ordinary fee typically charged for that service and
18 may not exceed the fee typically charged for that service.

19 (e) A physician, podiatrist, osteopath, or physician assistant licensed under
20 AS 08.64 may prescribe, dispense, or administer through telehealth under this section
21 a prescription for a controlled substance listed in AS 11.71.140 - 11.71.190 if the
22 physician, podiatrist, osteopath, or physician assistant complies with AS 08.64.364
23 and any federal law governing the prescription, dispensing, or administering of a
24 controlled substance.

25 (f) An advanced practice registered nurse licensed under AS 08.68 may
26 prescribe, dispense, or administer through telehealth under this section a prescription
27 for a controlled substance listed in AS 11.71.140 - 11.71.190 if the advanced practice
28 registered nurse complies with AS 08.68.710 and any federal law governing the
29 prescription, dispensing, or administering of a controlled substance.

30 (g) Except as authorized under (e) and (f) of this section, a person licensed
31 under this title may not prescribe, dispense, or administer through telehealth under this

1 section a controlled substance listed in AS 11.71.140 - 11.71.190.

2 (h) A health care provider may not be required to document a barrier to an in-
3 person visit to provide health care services through telehealth. The department or a
4 board may not limit the physical setting from which a health care provider may
5 provide health care services through telehealth.

6 (i) Nothing in this section requires the use of telehealth when a health care
7 provider determines that providing health care services through telehealth is not
8 appropriate or when a patient chooses not to receive health care services through
9 telehealth.

10 (j) In this section,

11 (1) "health care provider" means

12 (A) an audiologist or speech-language pathologist licensed
13 under AS 08.11; a behavior analyst licensed under AS 08.15; a chiropractor
14 licensed under AS 08.20; a professional counselor licensed under AS 08.29; a
15 dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a
16 dietitian or nutritionist licensed under AS 08.38; a naturopath licensed under
17 AS 08.45; a marital and family therapist licensed under AS 08.63; a physician
18 licensed under AS 08.64; a podiatrist, osteopath, or physician assistant licensed
19 under AS 08.64; a direct-entry midwife certified under AS 08.65; a nurse
20 licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an
21 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a
22 physical therapist or occupational therapist licensed under AS 08.84; a
23 psychologist or psychological associate licensed under AS 08.86; or a social
24 worker licensed under AS 08.95; or

25 (B) a physician licensed in another state;

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

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

28 * **Sec. 2.** AS 08.64 is amended by adding a new section to read:

29 **Sec. 08.64.333. Disciplinary sanctions: physician licensed in another state.**

30 (a) The board may sanction a physician licensed in another state who provides health
31 care services through telehealth under AS 08.01.085(b) if the board finds after a

1 hearing that the physician

2 (1) committed an act that constitutes grounds to sanction a physician
3 licensed in this state under AS 08.64.326(a)(1) - (13);

4 (2) exceeded the scope of the physician's privilege to practice in this
5 state under AS 08.01.085; or

6 (3) prescribed, dispensed, or administered through telehealth to a
7 patient located in the state a controlled substance listed in AS 11.71.140 - 11.71.190.

8 (b) If the board finds grounds to sanction a physician under (a) of this section,
9 the board may

10 (1) permanently prohibit the physician from practicing in the state;

11 (2) prohibit the physician from practicing in the state for a determinate
12 period;

13 (3) censure the physician;

14 (4) issue a letter of reprimand to the physician;

15 (5) place the physician on probationary status under (d) of this section;

16 (6) limit or impose conditions on the physician's privilege to practice
17 in the state;

18 (7) impose a civil fine of not more than \$25,000;

19 (8) issue a cease and desist order prohibiting the physician from
20 providing health care services through telehealth under AS 08.01.085(b); an order
21 issued under this paragraph remains in effect until the physician submits evidence
22 acceptable to the board showing that the violation has been corrected;

23 (9) promptly notify the licensing authority in each state in which the
24 physician is licensed of a sanction imposed under this subsection.

25 (c) In a case involving a physician alleged to have committed an act under
26 AS 08.64.326(a)(13), the final findings of fact, conclusions of law, and order of the
27 authority that suspended or revoked a license or certificate constitute a prima facie
28 case that the license or certificate was suspended or revoked and the grounds under
29 which the suspension or revocation was granted.

30 (d) The board may place a physician on probation under this section until the
31 board finds that the deficiencies that required the imposition of a sanction have been

1 remedied. The board may require a physician on probation to

2 (A) report regularly to the board on matters involving the
3 reason for which the physician was placed on probation;

4 (B) limit the physician's practice in the state to those areas
5 prescribed by the board;

6 (C) participate in professional education until the board
7 determines that a satisfactory degree of skill has been attained in areas
8 identified by the board as needing improvement.

9 (e) The board may summarily prohibit a physician from practicing in the state
10 under AS 08.01.085(b) if the board finds that the physician, by continuing to practice,
11 poses a clear and immediate danger to public health and safety. A physician prohibited
12 from practicing under this subsection is entitled to a hearing conducted by the office of
13 administrative hearings (AS 44.64.010) not later than seven days after the effective
14 date of the order prohibiting the physician from practicing. The board may lift an order
15 prohibiting a physician from practicing if the board finds after a hearing that the
16 physician is able to practice with reasonable skill and safety. The physician may
17 appeal a decision of the board under this subsection to the superior court.

18 (f) The board may recover from a physician the cost of proceedings resulting
19 in a sanction under (b) of this section, including the costs of investigation by the board
20 and department, and hearing costs.

21 (g) The board may prohibit a physician from practicing in the state upon
22 receipt of a certified copy of evidence that a license to practice medicine in another
23 state or territory of the United States or province or territory of Canada has been
24 suspended or revoked. The prohibition remains in effect until a hearing can be held by
25 the board.

26 (h) The board shall be consistent in the application of disciplinary sanctions. A
27 significant departure from earlier decisions of the board involving similar situations
28 must be explained in findings of fact or orders made by the board.

29 * **Sec. 3.** AS 08.64.364(b) is amended to read:

30 (b) The board may not impose disciplinary sanctions on a physician or
31 physician assistant for prescribing, dispensing, or administering a prescription drug

1 that is a controlled substance or botulinum toxin if the requirements under (a) of this
 2 section and AS 08.64.363 are met [AND THE PHYSICIAN OR PHYSICIAN
 3 ASSISTANT PRESCRIBES, DISPENSES, OR ADMINISTERS THE
 4 CONTROLLED SUBSTANCE OR BOTULINUM TOXIN WHEN AN
 5 APPROPRIATE LICENSED HEALTH CARE PROVIDER IS PRESENT WITH
 6 THE PATIENT TO ASSIST THE PHYSICIAN OR PHYSICIAN ASSISTANT
 7 WITH EXAMINATION, DIAGNOSIS, AND TREATMENT].

8 * **Sec. 4.** AS 08.68.100(a) is amended to read:

9 (a) The board shall

10 (1) adopt regulations necessary to implement this chapter, including
 11 regulations

12 (A) pertaining to practice as an advanced practice registered
 13 nurse, including requirements for an advanced practice registered nurse to
 14 practice as a certified registered nurse anesthetist, certified clinical nurse
 15 specialist, certified nurse practitioner, or certified nurse midwife; regulations
 16 for an advanced practice registered nurse who holds a valid federal Drug
 17 Enforcement Administration registration number must address training in pain
 18 management and opioid use and addiction;

19 (B) necessary to implement AS 08.68.331 - 08.68.336 relating
 20 to certified nurse aides in order to protect the health, safety, and welfare of
 21 clients served by nurse aides;

22 (C) pertaining to retired nurse status; [AND]

23 (D) establishing criteria for approval of practical nurse
 24 education programs that are not accredited by a national nursing accrediting
 25 body; **and**

26 **(E) establishing guidelines for rendering a diagnosis,**
 27 **providing treatment, or prescribing, dispensing, or administering a**
 28 **prescription drug to a person without conducting a physical examination**
 29 **under AS 08.68.710; the guidelines must include a nationally recognized**
 30 **model policy for standards of care of a patient who is at a different**
 31 **location than the advanced practice registered nurse;**

1 (2) approve curricula and adopt standards for basic education programs
2 that prepare persons for licensing under AS 08.68.190;

3 (3) provide for surveys of the basic nursing education programs in the
4 state at the times it considers necessary;

5 (4) approve education programs that meet the requirements of this
6 chapter and of the board, and deny, revoke, or suspend approval of education
7 programs for failure to meet the requirements;

8 (5) examine, license, and renew the licenses of qualified applicants;

9 (6) prescribe requirements for competence before a former registered,
10 advanced practice registered, or licensed practical nurse may resume the practice of
11 nursing under this chapter;

12 (7) define by regulation the qualifications and duties of the executive
13 administrator and delegate authority to the executive administrator that is necessary to
14 conduct board business;

15 (8) develop reasonable and uniform standards for nursing practice;

16 (9) publish advisory opinions regarding whether nursing practice
17 procedures or policies comply with acceptable standards of nursing practice as defined
18 under this chapter;

19 (10) require applicants under this chapter to submit fingerprints and the
20 fees required by the Department of Public Safety under AS 12.62.160 for criminal
21 justice information and a national criminal history record check; the department shall
22 submit the fingerprints and fees to the Department of Public Safety for a report of
23 criminal justice information under AS 12.62 and a national criminal history record
24 check under AS 12.62.400;

25 (11) require that a licensed advanced practice registered nurse who has
26 a federal Drug Enforcement Administration registration number register with the
27 controlled substance prescription database under AS 17.30.200(n).

28 * **Sec. 5.** AS 08.68 is amended by adding a new section to article 6 to read:

29 **Sec. 08.68.710. Prescription of drugs without physical examination.** (a) The
30 board may not impose disciplinary sanctions on an advanced practice registered nurse
31 for rendering a diagnosis, providing treatment, or prescribing, dispensing, or

1 administering a prescription drug that is not a controlled substance to a person without
2 conducting a physical examination if

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

5 (2) the advanced practice registered nurse requests that the person
6 consent to sending a copy of all records of the encounter to the person's primary care
7 provider if the prescribing advanced practice registered nurse is not the person's
8 primary care provider and, if the person consents, the advanced practice registered
9 nurse sends the records to the person's primary care provider.

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

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

19 (d) In this section,

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

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

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

23 * **Sec. 6.** AS 18.08 is amended by adding a new section to read:

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

28 (b) If an individual certified or licensed under this chapter determines in the
29 course of a telehealth encounter with a patient that some or all of the encounter will
30 extend beyond the individual's authorized scope of practice, the individual shall advise
31 the patient that the individual is not authorized to provide some or all of the services to

the patient, recommend that the patient contact an appropriate provider for the services the individual is not authorized to provide, and limit the encounter to only those services the individual is authorized to provide. The individual certified or licensed under this chapter may not charge for any portion of an encounter that extends beyond the individual's authorized scope of practice.

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

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

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

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

* **Sec. 7.** AS 47.07 is amended by adding a new section to read:

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

- (1) behavioral health services;
- (2) services covered under home and community-based waivers;
- (3) services covered under state plan options under 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act);
- (4) services provided by a community health aide or a community health practitioner certified by the Community Health Aide Program Certification Board;
- (5) services provided by a behavioral health aide or behavioral health practitioner certified by the Community Health Aide Program Certification Board;

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

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

6 (8) services provided by a rural health clinic or a federally qualified
7 health center;

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

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

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

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

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

1 particular service, only if the department

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

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

6 (3) determines that providing the service using the specified mode
7 would violate federal law or render the service ineligible for federal financial
8 participation under applicable federal law.

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

11 (d) In this section,

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

14 (2) "rural health clinic" has the meaning given in 42 U.S.C.
15 1396d(l)(1);

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

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

19 * **Sec. 8.** AS 47.30 is amended by adding a new section to read:

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

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

1 under AS 47.30.520 - 47.30.620.

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

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

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

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

14 * **Sec. 9.** AS 47.37 is amended by adding a new section to read:

15 **Sec. 47.37.145. Telehealth.** (a) A public or private treatment facility approved
16 under AS 47.37.140 may provide health care services authorized under AS 47.37.030 -
17 47.37.270 through telehealth to a patient in this state.

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

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

31 (d) A facility permitted to practice telehealth under this section may not be

1 required to document a barrier to an in-person visit to provide health care services
2 through telehealth. The department may not limit the physical setting from which a
3 facility may provide health care services through telehealth.

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

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

9 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).