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**CS FOR HOUSE BILL NO. 265( )**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE SPOHNHOLZ**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to telehealth; relating to the practice of medicine; relating to medical**  
2 **assistance coverage for services provided by telehealth; and providing for an effective**  
3 **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 other than a physician  
7 licensed in another state may provide health care services within the health care  
8 provider's authorized scope of practice to a patient in this state through telehealth  
9 without first conducting an in-person visit.

10 (b) A physician licensed in another state may provide health care services  
11 within the physician's authorized scope of practice through telehealth to a patient  
12 located in the state if

13 (1) the physician and the patient have an established physician-patient  
14 relationship;

(2) the physician has previously conducted a physical examination of the patient in person; and

(3) the health care services provided through telehealth consist of ongoing treatment or follow-up care related to health care services previously provided by the physician to the patient.

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

(d) 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.

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

(f) An advanced practice registered nurse licensed under AS 08.68 may prescribe, dispense, or administer through telehealth under this section a prescription for a controlled substance listed in AS 11.71.140 - 11.71.190.

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

(h) A health care provider may not be required to document a barrier to an in-person visit to provide health care services through telehealth. The department or a

board may not limit the physical setting from which a health care provider may provide health care services through telehealth.

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

(j) In this section,

(1) "health care provider" means

(A) an audiologist or speech-language pathologist licensed under AS 08.11; a behavior analyst licensed under AS 08.15; a chiropractor licensed under AS 08.20; a professional counselor licensed under 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; and

(B) a physician licensed in another state;

(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

1 APPROPRIATE LICENSED HEALTH CARE PROVIDER IS PRESENT WITH  
2 THE PATIENT TO ASSIST THE PHYSICIAN OR PHYSICIAN ASSISTANT  
3 WITH EXAMINATION, DIAGNOSIS, AND TREATMENT].

4 \* **Sec. 3.** AS 18.08 is amended by adding a new section to read:

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

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

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

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

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

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

31 \* **Sec. 4.** AS 47.07 is amended by adding a new section to read:

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

4                   (1) behavioral health services;

5                   (2) services covered under home and community-based waivers and  
6 other federal waivers or demonstrations;

7                   (3) services covered under state plan options under 42 U.S.C. 1396 -  
8 1396p (Title XIX, Social Security Act);

9                   (4) services provided by a community health aide or a community  
10 health practitioner certified by the Community Health Aide Program Certification  
11 Board;

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

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

16                   (7) services provided by a chemical dependency counselor certified by  
17 the Alaska Commission for Behavioral Health Certification;

18                   (8) services provided by a rural health clinic or a federally qualified  
19 health center;

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

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

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

30           (b) The department shall adopt regulations for services provided by telehealth,  
31 including setting rates of payment. Regulations calculating the rate of payment for a

1 rural health clinic or federally qualified health center must treat services provided  
2 through telehealth in the same manner as if the services had been provided in person,  
3 including calculations based on the rural health clinic or federally qualified health  
4 center's reasonable costs or on the number of visits for recipients provided services,  
5 and must define "visit" to include a visit provided by telehealth. The department may  
6 not decrease the rate of payment for a telehealth service based on the location of the  
7 person providing the service, the location of the eligible recipient of the service, the  
8 communication method used, or whether the service was provided asynchronously or  
9 synchronously. The department may exclude or limit coverage or reimbursement for a  
10 service provided by telehealth, or limit the telehealth modes that may be used for a  
11 particular service, only if the department

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

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

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

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

21 (d) In this section,

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

24 (2) "rural health clinic" has the meaning given in 42 U.S.C.  
25 1396d(l)(1);

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

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

29 \* **Sec. 5.** AS 47.30 is amended by adding a new section to read:

30 **Sec. 47.30.585. Telehealth.** (a) An entity designated by the department under  
31 AS 47.30.520 - 47.30.620 may provide community mental health services authorized

under AS 47.30.520 - 47.30.620 through telehealth to a patient in this state.

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

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

(e) Nothing in this section requires the use of telehealth when an individual employed by an entity designated by the department under AS 47.30.520 - 47.30.620 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. 6.** AS 47.37 is amended by adding a new section to read:

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

(b) If an individual employed by a public or private treatment facility approved under AS 47.37.140, in the course of a telehealth encounter with a patient, determines that some or all of the encounter will extend beyond the health care services authorized under AS 47.37.030 - 47.37.270, the individual shall advise the

1 patient that the facility is not authorized to provide some or all of the services to the  
2 patient, recommend that the patient contact an appropriate provider for the services the  
3 facility is not authorized to provide, and limit the encounter to only those services the  
4 facility is authorized to provide. The facility may not charge a patient for any portion  
5 of an encounter that extends beyond the authorized health care services under  
6 AS 47.37.030 - 47.37.270.

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

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

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

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

19 \* **Sec. 7.** The uncoded law of the State of Alaska is amended by adding a new section to  
20 read:

21 MEDICAID STATE PLAN FEDERAL APPROVAL. To the extent necessary to  
22 implement this Act, the Department of Health and Social Services shall amend and submit for  
23 federal approval the state plan for medical assistance coverage consistent with AS 47.07.069,  
24 enacted by sec. 4 of this Act.

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

27 CONDITIONAL EFFECT; NOTIFICATION. (a) Section 4 of this Act takes effect  
28 only if, on or before January 1, 2023, the United States Department of Health and Human  
29 Services

30 (1) approves amendments to the state plan for medical assistance coverage  
31 under AS 47.07.069, enacted by sec. 4 of this Act; or

1 (2) determines that its approval of the amendments to the state plan for  
2 medical assistance coverage under AS 47.07.069, enacted by sec. 4 of this Act, is not  
3 necessary.

4 (b) The commissioner of health and social services shall notify the revisor of statutes  
5 in writing within 30 days after the United States Department of Health and Human Services  
6 approves amendments to the state plan or determines that approval is not necessary under  
7 (a)(1) or (2) of this section.

8 \* **Sec. 9.** If sec. 4 of this Act takes effect, it takes effect on the day after the date the revisor  
9 of statutes receives notice from the commissioner of health and social services under sec. 8(b)  
10 of this Act.

11 \* **Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect immediately under  
12 AS 01.10.070(c).