

CS FOR SENATE BILL NO. 91(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR CLAMAN

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to telehealth; relating to multidisciplinary care teams; and relating to
2 the practice of medicine."

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

4 * **Section 1.** AS 08.02.130(b) is amended to read:

5 (b) A physician licensed in another state or an out-of-state member of the
6 physician's multidisciplinary care team may provide health care services through
7 telehealth to a patient located in the state as provided in this subsection, subject to the
8 investigative and enforcement powers of the department under AS 08.01.087. A
9 member of a physician's multidisciplinary care team may provide a health care
10 service through telehealth to a patient located in this state if the health care
11 service, as provided by the multidisciplinary care team, is not reasonably
12 available in the state. A physician shall be [, AND] subject to disciplinary action by
13 the State Medical Board under AS 08.64.333, and a member of the physician's
14 multidisciplinary care team shall be subject to disciplinary action by the

1 **department under AS 08.02.140.** The privilege to practice under this subsection
2 extends only to

3 (1) ongoing treatment or follow-up care related to health care services
4 previously provided by the physician to the patient and applies only if

5 (A) the physician and the patient have an established physician-
6 patient relationship; and

7 (B) the physician has previously conducted an in-person visit
8 with the patient; [OR]

9 (2) a visit regarding a suspected or diagnosed life-threatening
10 condition for which

11 (A) the patient has been referred to the physician licensed in
12 another state by a physician licensed in this state and that referral has been
13 documented by the referring physician; and

14 (B) the visit involves communication with the patient regarding
15 diagnostic or treatment plan options or analysis of test results for the life-
16 threatening condition; **or**

17 **(3) ongoing treatment or follow-up care provided by a physician**
18 **licensed in another state or a member of the physician's multidisciplinary care**
19 **team regarding a suspected or diagnosed life-threatening condition.**

20 * Sec. 2. AS 08.02.130(j)(1) is amended to read:

21 (1) "health care provider" means

22 (A) an audiologist or speech-language pathologist licensed
23 under AS 08.11; a behavior analyst licensed under AS 08.15; a chiropractor
24 licensed under AS 08.20; a professional counselor licensed under AS 08.29; a
25 dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a
26 dietitian or nutritionist licensed under AS 08.38; a naturopath licensed under
27 AS 08.45; a marital and family therapist licensed under AS 08.63; a physician
28 licensed under AS 08.64; a podiatrist, osteopath, or physician assistant licensed
29 under AS 08.64; a direct-entry midwife certified under AS 08.65; a nurse
30 licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an
31 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; [OR]

(B) a physician licensed in another state; **or**

(C) a member of a multidisciplinary care team who is other state;

* **Sec. 3.** AS 08.02.130(j) is amended by adding a new paragraph to read:

(5) "member of a multidisciplinary care team" means an audiologist, speech-language pathologist, behavior analyst, professional counselor, dietitian, nutritionist, naturopath, marital and family therapist, podiatrist, osteopath, physician assistant, nurse, pharmacist, physical therapist, occupational therapist, psychologist or psychological associate, advanced nurse practitioner, or a social worker who is a member of a team coordinated by a physician licensed in another state who meets the requirements of (b)(3) of this section.

* Sec. 4. AS 08.02 is amended by adding new sections to read:

Sec. 08.02.135. Grounds for imposition of disciplinary sanctions of out-of-state multidisciplinary care team members. The department may sanction a member of an out-of-state physician's multidisciplinary care team who provides health care services through telehealth under AS 08.02.130 if the department finds after a hearing that the member

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation while providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted, including conviction based on a guilty plea or plea of nolo contendere, of

(A) a class A or unclassified felony or a crime in another jurisdiction with elements similar to a class A or unclassified felony in this jurisdiction;

(B) a class B or class C felony or a crime in another jurisdiction

with elements similar to a class B or class C felony in this jurisdiction if the felony or other crime is substantially related to the qualifications, functions, or duties of the member; or

(C) a crime involving the unlawful procurement, sale, prescription, or dispensing of drugs;

(5) has procured, sold, prescribed, or dispensed drugs in violation of a law regardless of whether there has been a criminal action or harm to the patient;

(6) intentionally or negligently permitted the performance of patient care by persons under the member's supervision that does not conform to minimum professional standards even if the patient was not injured;

(7) failed to comply with AS 08.02.130 - 08.02.140, a regulation adopted under AS 08.02.130 - 08.02.140, or an order of the department;

(8) has demonstrated

(A) professional incompetence, gross negligence, or repeated negligent conduct; the department may not base a finding of professional incompetence solely on the basis that a member's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient;

(B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the member's ability to practice safely;

(C) unfitness because of physical or mental disability;

(9) engaged in unprofessional conduct, in sexual misconduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients; in this paragraph, "sexual misconduct" includes sexual contact, or attempted sexual contact with a patient outside the scope of generally accepted methods of examination or treatment of the patient, regardless of the patient's consent or lack of consent, during the term of the health care provider-patient relationship, unless the patient was the member's spouse at the time of the contact or, immediately preceding the health care provider-patient relationship, was in a dating, courtship, or engagement relationship with the member;

(10) has violated any code of ethics adopted imposed by the department;

(11) has denied care or treatment to a patient or person seeking assistance from the member if the only reason for the denial is the failure or refusal of the patient to agree to arbitrate as provided in AS 09.55.535(a);

(12) has had a license or certificate to practice health care in another state or territory of the United States, or a province or territory of Canada, denied, suspended, revoked, surrendered while under investigation for an alleged violation, restricted, limited, conditioned, or placed on probation unless the denial, suspension, revocation, or other action was caused by the failure of the member to pay fees to that state, territory, or province;

(13) exceeded the scope of the member's privilege to practice in this state under AS 08.02.130; or

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

Sec. 08.02.140. Disciplinary sanctions for an out-of-state multidisciplinary care team member. (a) If the department finds grounds to sanction a member of an out-of-state physician's multidisciplinary care team under AS 08.02.135, the department may

(1) permanently prohibit the member from practicing in the state;

(2) prohibit the member from practicing in the state for a determinate

(3) censure the member;

(4) issue a letter of reprimand to the member;

(5) place the member on probationary status under (c) of this section;

(6) limit or impose conditions on the member's privilege to practice in

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

(8) issue a cease and desist order prohibiting the member from providing health care services through telehealth under AS 08.02.130; an order issued under this paragraph remains in effect until the member submits evidence acceptable to the department showing that the violation has been corrected;

(9) promptly notify the licensing authority in each state in which the

1 member is licensed of a sanction imposed under this subsection.

2 (b) In a case finding grounds for sanction under AS 08.02.135(12), the final
3 findings of fact, conclusions of law, and order of the authority that suspended or
4 revoked a license or certificate constitute a *prima facie* case that the license or
5 certificate was suspended or revoked and the grounds under which the suspension or
6 revocation was granted.

7 (c) The department may place a member on probation under this section until
8 the department finds that the deficiencies that required the imposition of a sanction
9 have been remedied. The department may require a member on probation to

10 (1) report regularly to the department on matters involving the reason
11 for which the member was placed on probation;

12 (2) limit the member's practice in the state to those areas prescribed by
13 the department;

14 (3) participate in professional education until the department
15 determines that a satisfactory degree of skill has been attained in areas identified by
16 the department as needing improvement.

17 (d) The department may summarily prohibit a member from practicing in the
18 state under AS 08.02.130 if the department finds that the member, by continuing to
19 practice, poses a clear and immediate danger to public health and safety. A member
20 prohibited from practicing under this subsection is entitled to a hearing conducted by
21 the office of administrative hearings (AS 44.64.010) not later than seven days after the
22 effective date of the order prohibiting the member from practicing. The department
23 may lift an order prohibiting a member from practicing if the department finds after a
24 hearing that the member is able to practice with reasonable skill and safety. The
25 member may appeal a decision of the department under this subsection to the superior
26 court.

27 (e) The department shall take measures to recover from a member the cost of
28 proceedings resulting in a sanction under (a) of this section, including the costs of
29 investigation by the department, and hearing costs.

30 (f) The department may prohibit a member from practicing in the state upon
31 receiving a certified copy of evidence that a license or certificate to practice within the

1 member's scope of practice in another state or territory of the United States or
2 province or territory of Canada has been suspended or revoked. The prohibition
3 remains in effect until a hearing can be held by the department.

4 (g) The department shall be consistent in the application of disciplinary
5 sanctions. A significant departure from earlier decisions of the department involving
6 similar situations must be explained in findings of fact or orders made by the
7 department.

8 * **Sec. 5.** AS 44.33.381(b) is amended to read:

9 (b) The department shall maintain the registry of businesses performing
10 telemedicine services in the state. The registry must include the name, address, and
11 contact information of businesses performing telemedicine services in the state. **The**
department may renew every two years the registration of a business that meets
all renewal requirements established by regulation and pays a renewal fee every
two years.

15 * **Sec. 6.** AS 44.33.381 is amended by adding a new subsection to read:

16 (d) The department shall charge the following fees for businesses performing
17 telemedicine services in the state:

18 (1) initial registration fee, \$100, adjusted for inflation in a manner
19 determined by the department;

20 (2) renewal fee, \$100, adjusted for inflation in a manner determined by
21 the department;

22 (3) fee to report changes in the business's registration information, \$50.