

SENATE BILL NO. 91

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR CLAMAN

Introduced: 3/6/23

Referred: Health & Social Services, Finance

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 physician shall be [, AND] subject to disciplinary action by the State Medical Board
10 under AS 08.64.333, and a member of the physician's multidisciplinary care team
11 shall be subject to disciplinary action by the department under AS 08.02.140. The
12 privilege to practice under this subsection extends only to
13 (1) ongoing treatment or follow-up care provided by a physician
14 licensed in another state, or a member of the physician's multidisciplinary care

1 **team, that is** related to health care services previously provided by the physician to
 2 the patient and applies only if

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

5 (B) the physician has previously conducted an in-person visit
 6 with the patient; or

7 (2) a visit **with a physician licensed in another state, or a member**
 8 **of the physician's multidisciplinary care team,** regarding a suspected or diagnosed
 9 life-threatening condition for which

10 (A) the patient has been referred to the physician licensed in
 11 another state, **or a member of the physician's multidisciplinary care team,**
 12 by a physician licensed in this state **or by a physician licensed in another**
 13 **state who meets the requirements of (1) of this subsection** and that referral
 14 has been documented by the referring physician; and

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

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

19 (1) "health care provider" means

20 (A) an audiologist or speech-language pathologist licensed
 21 under AS 08.11; a behavior analyst licensed under AS 08.15; a chiropractor
 22 licensed under AS 08.20; a professional counselor licensed under AS 08.29; a
 23 dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a
 24 dietitian or nutritionist licensed under AS 08.38; a naturopath licensed under
 25 AS 08.45; a marital and family therapist licensed under AS 08.63; a physician
 26 licensed under AS 08.64; a podiatrist, osteopath, or physician assistant licensed
 27 under AS 08.64; a direct-entry midwife certified under AS 08.65; a nurse
 28 licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an
 29 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a
 30 physical therapist or occupational therapist licensed under AS 08.84; a
 31 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 that includes a physician licensed in another state who meets the requirements of (b)(1) of this section;

* **Sec. 3.** 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

1 professional standards even if the patient was not injured;

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

4 (8) has demonstrated

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

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

11 (C) unfitness because of physical or mental disability;

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

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

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

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

(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 the state;

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

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

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

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

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

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

8 (d) The department may summarily prohibit a member from practicing in the
9 state under AS 08.02.130 if the department finds that the member, by continuing to
10 practice, poses a clear and immediate danger to public health and safety. A member
11 prohibited from practicing under this subsection is entitled to a hearing conducted by
12 the office of administrative hearings (AS 44.64.010) not later than seven days after the
13 effective date of the order prohibiting the member from practicing. The department
14 may lift an order prohibiting a member from practicing if the department finds after a
15 hearing that the member is able to practice with reasonable skill and safety. The
16 member may appeal a decision of the department under this subsection to the superior
17 court.

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

21 (f) The department may prohibit a member from practicing in the state upon
22 receiving a certified copy of evidence that a license or certificate to practice within the
23 member's scope of practice in another state or territory of the United States or
24 province or territory of Canada has been suspended or revoked. The prohibition
25 remains in effect until a hearing can be held by the department.

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