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CS FOR SENATE BILL NO. 175(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR WILSON

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 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 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 if the advanced practice registered nurse complies with AS 08.68.710.

(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.

(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

1 provide health care services through telehealth.

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

6 (j) In this section,

7 (1) "health care provider" means

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

21 (B) a physician licensed in another state;

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

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

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

25 (b) The board may not impose disciplinary sanctions on a physician or
26 physician assistant for prescribing, dispensing, or administering a prescription drug
27 that is a controlled substance or botulinum toxin if the requirements under (a) of this
28 section and AS 08.64.363 are met [AND THE PHYSICIAN OR PHYSICIAN
29 ASSISTANT PRESCRIBES, DISPENSES, OR ADMINISTERS THE
30 CONTROLLED SUBSTANCE OR BOTULINUM TOXIN WHEN AN
31 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 primary care provider and, if the person consents, the advanced practice registered nurse sends the records to the person's primary care provider.

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

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

(d) In this section,

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

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

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

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

Sec. 18.08.100. Telehealth. (a) An individual certified or licensed under this chapter may practice within the individual's authorized scope of practice under this

chapter through telehealth with a patient in this state if the individual's certification or license is in good standing.

(b) If an individual certified or licensed under this chapter determines in the course of a telehealth encounter with a patient that some or all of the encounter will extend beyond the individual's authorized scope of practice, the individual shall advise 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. 5.** 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 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;

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

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

(8) services provided by a rural health clinic or a federally qualified 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 participation under applicable federal law.

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

(d) In this section,

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

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

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

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

* **Sec. 6.** AS 47.07.069(a), enacted by sec. 5 of this Act, is amended to read:

(a) The department shall pay for services covered by the medical assistance program provided through telehealth **if the department pays for those services when** [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;

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

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

(8) services provided by a rural health clinic or a federally qualified 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.

* **Sec. 7.** AS 47.07.069(b), enacted by sec. 5 of this Act, is amended to read:

(b) The department shall adopt regulations for services provided by telehealth, including setting rates of payment. **The department may set a rate of payment for a service provided through telehealth that is different from the rate of payment for the same service provided in person.** [REGULATIONS CALCULATING THE

1 RATE OF PAYMENT FOR A RURAL HEALTH CLINIC OR FEDERALLY
2 QUALIFIED HEALTH CENTER MUST TREAT SERVICES PROVIDED
3 THROUGH TELEHEALTH IN THE SAME MANNER AS IF THE SERVICES
4 HAD BEEN PROVIDED IN PERSON, INCLUDING CALCULATIONS BASED
5 ON THE RURAL HEALTH CLINIC OR FEDERALLY QUALIFIED HEALTH
6 CENTER'S REASONABLE COSTS OR ON THE NUMBER OF VISITS FOR
7 RECIPIENTS PROVIDED SERVICES, AND MUST DEFINE "VISIT" TO
8 INCLUDE A VISIT PROVIDED BY TELEHEALTH. THE DEPARTMENT MAY
9 NOT DECREASE THE RATE OF PAYMENT FOR A TELEHEALTH SERVICE
10 BASED ON THE LOCATION OF THE PERSON PROVIDING THE SERVICE,
11 THE LOCATION OF THE ELIGIBLE RECIPIENT OF THE SERVICE, THE
12 COMMUNICATION METHOD USED, OR WHETHER THE SERVICE WAS
13 PROVIDED ASYNCHRONOUSLY OR SYNCHRONOUSLY.] The department may
14 exclude or limit coverage or reimbursement for a service provided by telehealth, or
15 limit the telehealth modes that may be used for a particular service, only if the
16 department

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

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

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

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

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

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

AS 47.37.030 - 47.37.270.

(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) A facility permitted to practice 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 a facility may provide health care services through telehealth.

(e) Nothing in this section requires the use of telehealth when an individual employed by a facility approved under AS 47.37.140 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. 10.** The uncoded law of the State of Alaska is amended by adding a new section to read:

MEDICAID STATE PLAN FEDERAL APPROVAL. (a) 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.

(b) To the extent necessary to implement this Act, the Department of Health shall amend and submit for federal approval the state plan for medical assistance coverage consistent with AS 47.07.069(a), as amended by sec. 6 of this Act, and AS 47.07.069(b), as amended by sec. 7 of this Act.

* **Sec. 11.** The uncoded 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 shall adopt regulations necessary to implement secs. 4, 5, 8, and 9 of this Act. The Department of Health shall adopt the regulations not later than June 30, 2023.

* **Sec. 12.** 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 June 30, 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 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 (a)(1) or (2) of this section.

(c) Sections 6 and 7 of this Act take effect only if sec. 5 of this Act takes effect as provided in (a) of this section and if, after June 30, 2023, and on or before June 30, 2030, 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(a), as amended by sec. 6 of this Act, and AS 47.07.069(b), as amended by sec. 7 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(a), as amended by sec. 6 of this Act, and AS 47.07.069(b), as amended by sec. 7 of this Act, is not necessary.

(d) The commissioner of health 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 (c)(1) or (2) of this section.

* **Sec. 13.** Sections 10(a) and 11(a) and (b) of this Act take effect immediately under AS 01.10.070(c).

* **Sec. 14.** Section 11(c) of this Act takes effect July 1, 2022.

1 * **Sec. 15.** If sec. 5 of this Act takes effect under sec. 12(a) of this Act, it takes effect
2 June 30, 2023.

3 * **Sec. 16.** If secs. 6 and 7 of this Act take effect under sec. 12(c) of this Act, they take effect
4 June 30, 2030.

5 * **Sec. 17.** Except as provided in secs. 13 - 16 of this Act, this Act takes effect June 30,
6 2023.