

HOUSE BILL NO. 265

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES SPOHNHOLZ, Gillham, McCarty, Rasmussen, Schrage, Ortiz, Tarr, Merrick, Fields, Story, Hannan, Drummond, Josephson, Patkotak, Nelson, LeBon, McCabe, Foster

Introduced: 1/18/22

Referred: Health and Social Services, Finance

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 may provide health care
7 services within the health care provider's authorized scope of practice to a patient in
8 this state through telehealth without first conducting an in-person examination if the
9 health care provider holds a license in good standing. If a health care provider is
10 licensed in another state, the health care provider may provide services under this
11 section only to a patient who is referred by a health care provider licensed under this
12 title or a federal or tribal health care program.

13 (b) If a health care provider determines in the course of a telehealth encounter
14 with a patient under this section that some or all of the encounter will extend beyond

1 the health care provider's authorized scope of practice, the health care provider shall
2 advise the patient that the health care provider is not authorized to provide some or all
3 of the services to the patient, recommend that the patient contact an appropriate
4 provider for the services the health care provider is not authorized to provide, and limit
5 the encounter to only those services the health care provider is authorized to provide.
6 The health care provider may not charge for any portion of an encounter that extends
7 beyond the health care provider's authorized scope of practice.

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

11 (d) A physician, osteopath, physician assistant, or advanced practice registered
12 nurse may examine, diagnose, and provide treatment through telehealth under this
13 section for opioid use disorder. No other person licensed under this title or licensed in
14 another state may examine, diagnose, or provide treatment through telehealth under
15 this section for opioid use disorder.

16 (e) A physician, podiatrist, osteopath, or physician assistant may prescribe,
17 dispense, or administer through telehealth under this section a prescription for a
18 controlled substance listed in AS 11.71.140 - 11.71.190 or a botulinum toxin if the
19 physician, podiatrist, osteopath, or physician assistant complies with AS 08.64.364.
20 An advanced practice registered nurse may prescribe, dispense, or administer through
21 telehealth under this section a prescription for a controlled substance listed in
22 AS 11.71.140 - 11.71.190 other than buprenorphine to a patient if the advanced
23 practice registered nurse first conducts an in-person examination of the patient. No
24 other person licensed under this title or in another state may prescribe, dispense, or
25 administer through telehealth under this section a prescription for a controlled
26 substance listed in AS 11.71.140 - 11.71.190 or a botulinum toxin.

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

31 (g) In this section,

(1) "health care provider" means an audiologist or speech-language pathologist licensed under AS 08.11 or in another state; a behavior analyst licensed under AS 08.15 or in another state; a chiropractor licensed under AS 08.20 or in another state; a professional counselor licensed under AS 08.29 or in another state; a dental hygienist licensed under AS 08.32 or in another state; a dentist licensed under AS 08.36 or in another state; a dietitian or nutritionist licensed under AS 08.38 or in another state; a naturopath licensed under AS 08.45 or in another state; a marital and family therapist licensed under AS 08.63 or in another state; a physician, podiatrist, osteopath, or physician assistant licensed under AS 08.64 or in another state; a direct-entry midwife certified under AS 08.65 or in another state; a nurse licensed under AS 08.68 or in another state; a dispensing optician licensed under AS 08.71 or in another state; an optometrist licensed under AS 08.72 or in another state; a pharmacist licensed under AS 08.80 or in another state; a physical therapist or occupational therapist licensed under AS 08.84 or in another state; a psychologist or psychological associate licensed under AS 08.86 or in another state; or a social worker licensed under AS 08.95 or in another state;

(2) "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 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 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

1 license is in good standing.

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

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

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

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

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

20 **Sec. 47.07.069. Payment for telehealth.** (a) The department shall pay for
21 services provided through telehealth in the same manner as if the services had been
22 provided in person. Except as provided in (b) of this section, the department shall pay
23 for all services covered by the medical assistance program, including

24 (1) behavioral health services;

25 (2) services covered under federal waivers or demonstrations;

26 (3) services provided by a community health aide or a community
27 health practitioner certified by the Community Health Aide Program Certification
28 Board;

29 (4) services provided by a behavioral health aide or behavioral health
30 practitioner certified by the Community Health Aide Program Certification Board;

31 (5) services provided by a dental health aide therapist certified by the

1 Community Health Aide Program Certification Board;

2 (6) services provided by a chemical dependency counselor certified by
3 the Alaska Commission for Behavioral Health Certification;

4 (7) services provided by a rural health clinic or a federally qualified
5 health center;

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

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

13 (10) assessment, evaluation, consultation, planning, diagnosis,
14 treatment, case management, and the prescription, dispensing, and administration of
15 medications, including controlled substances.

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

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

30 (2) determines, based on substantial medical evidence, that the service
31 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) 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) "telehealth" has the meaning given AS 47.05.270(e).

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEDICAID STATE PLAN FEDERAL APPROVAL. 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. 4 of this Act.

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT; NOTIFICATION. (a) Section 4 of this Act takes effect only if, on or before January 1, 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. 4 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. 4 of this Act, is not necessary.

(b) The commissioner of health and social services 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.

* **Sec. 7.** If sec. 4 of this Act takes effect, it takes effect on the day after the date the revisor of statutes receives notice from the commissioner of health and social services under sec. 6(b)

1 of this Act.

2 * **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect immediately under
3 AS 01.10.070(c).