

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
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Anchorage, Alaska 99501
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Debbie Morgan
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 

DATE: October 11, 2019

RE: Filed Permanent Regulations: Department of Commerce Community and Economic Development

Department of Commerce, Community, and Economic Development Regulation re:
Board of Professional Counselors: Technology-assisted Distance Professional Services
(12 AAC 62.400 - .420)

Attorney General File:	2018200815
Regulation Filed:	10/11/2019
Effective Date:	11/10/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO REGULATIONS
OF THE BOARD OF PROFESSIONAL COUNSELORS


The attached four pages of regulations, dealing with standards of practice for distance professional services, are hereby certified to be a correct copy of the regulation changes that the Board of Professional Counselors adopted at its September 19-20, 2019 meeting, under the authority of AS 08.29.020, AS 08.29.200, AS 08.29.400, and AS 08.29.490, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Board of Professional Counselors paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: 9-19-19
Anchorage, Alaska


Debra Hamilton, LPC, Chair
Board of Professional Counselors

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on October 11, 2019 at 8:38 Am., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.


Kevin Meyer, Lieutenant Governor

Effective: November 10, 2019.

Register: 232, January 2020.

Chapter 62. Board of Professional Counselors.

12 AAC 62 is amended by adding new sections to read:

Article 4. Distance Professional Services.

Section

400. Distance professional services

410. Safety and confidentiality of communications

420. Informed consent

12 AAC 62 is amended by adding a new section to read:

12 AAC 62.400. Distance professional services. (a) The National Board for Certified Counselors (NBCC) *Policy Regarding the Provision of Distance Professional Services* (approved February 6, 2016), is adopted by reference for distance professional services provided by licensees to the extent it does not conflict with 12 AAC 62.

(b) Before providing distance professional services, a licensee must:

(1) be licensed in good standing under AS 08.29;

(2) have completed a minimum of six continuing education hours from a National Board for Certified Counselors (NBCC) approved continuing education provider pertaining to distance professional services; and

(3) determine that the client is intellectually, emotionally, and physically capable of using distance professional services, and that the delivery method for providing distance professional services is appropriate for the client's needs.

(c) An individual, wherever located, must obtain a license from the board before

providing professional counseling service to a client in this state through distance professional services.

(d) An individual located in this state must be licensed under AS 08.29 before providing distance professional counseling service, regardless of the location of the client receiving the service.

(e) Before providing distance professional services, a licensee must develop a safety plan with the client to identify local resources in the client's community should emergency care become necessary; the plan must identify an individual, and the individual's contact information, who is trusted by the client who is available during distance professional services.

(f) At the beginning of every distance professional services session, the licensee must verify and document the client's identity in the progress note.

(g) When distance professional services are deemed inappropriate by the licensee or client, the licensee must refer the client to a local health-care provider for in-person services. If the client refuses a referral to a local health-care provider for in-person services, the licensee must document the rationale for continuing to provide distance professional services. (Eff.

11/10/2019, Register 232)

Authority: AS 08.29.020 AS 08.29.400 AS 08.29.490

Editor's note: A copy of the National Board for Certified Counselors (NBCC) *Policy Regarding the Provision of Distance Professional Services* (approved February 6, 2016), adopted by reference in 12 AAC 64.400, may be obtained from the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Board of Professional Counselors, P.O. Box 110806, Juneau, Alaska 99811-0806; telephone: (907) 465-2694, or website at

<http://nbcc.org/Assets/Ethics/NBCCPolicyRegardingPracticeofDistanceCounselingBoard.pdf>.

12 AAC 62 is amended by adding a new section to read:

12 AAC 62.410. Safety and confidentiality of communications. (a) A licensee must comply with the requirements of 45 C.F.R. Parts 160 and 164 regarding privacy, security, and breach for purposes of P.L. 104-191 (Health Insurance Portability and Accountability Act of 1996) for communication, including electronic communications and online scheduling. A licensee must notify the client if a communication is not confidential and limit electronic transmissions to general communications that are not client specific. A licensee must notify the client if online scheduling software is not encrypted and therefore may not be confidential.

(b) A licensee must discourage a client from texting personal information. A text message is considered a part of the client's record and must be kept in the client's file.

(c) A licensee must endeavor to protect clients from unwanted interruptions during distance professional services sessions. (Eff. 11 /10 /2019, Register 232)

Authority: AS 08.29.020 AS 08.29.200 AS 08.29.490

12 AAC 62 is amended by adding a new section to read:

12 AAC 62.420. Informed consent. To provide distance professional services as the practice of professional counseling as defined under AS 08.29.490, a licensee shall ensure informed consent from a client. The informed consent must:

(1) inform the client of who might have authorized or unauthorized access to electronic transmissions;

(2) identify pertinent legal rights and limitations governing the licensee's practice

over state lines or international boundaries;

(3) inform clients if and for how long records are archived and maintained;

(4) inform the client of emergency procedures, such as calling 911 or a local crisis hotline when the licensee is not available;

(5) inform the client of the limits of confidentiality under AS 08.29.200;

(6) identify, as applicable time zone differences, local customs, and cultural or language differences that might impact services delivery;

(7) inform the client when distance professional services are not covered by insurance; and

(8) fully disclose the licensee's licensing, credentials, and areas of expertise.

(Eff. 11 / 10 / 2019, Register 232)

Authority: AS 08.29.020 AS 08.29.400 AS 08.29.490
AS 08.29.200

The article heading for Article 4 is amended to read:

Article 5 [4]. General Provisions.

12 AAC 62.990(c) is amended by adding a new subsection to read:

(5) "distance professional services" means the use of audio, visual, or data communications by a licensee under this chapter to provide professional counseling services to a client when physically separated from the client. (Eff. 10/30/99, Register 152; am 1/28/2005, Register 173; am 11 / 10 / 2019, Register 232)

Authority: AS 08.29.020

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: October 1, 2019

File No.: 2018200815

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Department of Commerce,
Community, and Economic
Development Regulation re: 12 AAC
62.400-.420: Board of Professional
Counselors: Technology-assisted
Distance Professional Services

The Department of Law has reviewed the attached regulations of the Department of Commerce, Community, and Economic Development against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted after the close of the public comment period. The regulations concern the standards of practice for distance processional services. The regulations adopt by reference the National Board for Certified Counselor *Policy Regarding the Provision of Distance Professional Services* (February 6, 2016) to the extent it does not conflict with AS 12 AAC 62.

The August 29, 2018 public notice and the September 19, 2019 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

SRP:hjh

cc: Honorable Julie Anderson, Commissioner
Department of Commerce, Community, & Economic Development
Amy Demboski, Assistant Commissioner
Department of Commerce, Community, & Economic Development
Glenn Hoskinson, Junior Special Assistant to the Commissioner
Department of Commerce, Community, & Economic Development
Debbie Morgan, Regulations Contact
Department of Commerce, Community, & Economic Development
Jun Maiquis, Regulations Specialist
Department of Commerce, Community, & Economic Development
Sher Zinn, Regulations Specialist
Department of Commerce, Community, & Economic Development
Megyn Weigand, Assistant Attorney General
Department of Law, Commercial & Fair Business Section

Excerpt from the Draft Minutes of the
September 19-20, 2019 Meeting of the
Board of Professional Counselors

216 The board reviewed and considered the Department of Law's edits and recommendations
217 regarding the telehealth regulations.

218
219 On a motion duly made by Alice Baum, seconded by Eleanor Vinson, and approved,
220 it was

221
222 **RESOLVED** to readopt the telehealth regulations distance professional
223 services 12 AAC62.400-420 as amended.
224

225	APPROVE	DENY	ABSTAIN	ABSENT
226	Debra Hamilton	x		
227	Alice Baum	x		
228	Kyle Cardwell	x		
229	Eleanor Vinson	x		
230	Janece Richard	x		

231
232 The certification order was signed by the Chair.

233
234 Motion passes with no further discussion.
235

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

AFFIDAVIT OF BOARD ACTION

I, Andy Khmelev, Licensing Examiner for the Board of Professional Counselors, being duly sworn, state the following:


The attached motion dealing with standards of practice for distance professional services was passed by the Board of Professional Counselors during its September 19-20, 2019 meeting.

Date: 10/11/19
Juneau, Alaska

Andy Khmelev, Licensing Examiner

SUBSCRIBED AND SWORN TO before me this 1st day of OCTOBER, 2019.





Notary Public in and for the
State of Alaska
My commission expires: WITH OFFICE

**NOTICE OF PROPOSED CHANGES RELATING TO STANDARDS OF PRACTICE FOR
TECHNOLOGY-ASSISTED DISTANCE PROFESSIONAL SERVICES IN THE REGULATIONS
OF THE BOARD OF PROFESSIONAL COUNSELORS**

BRIEF DESCRIPTION: The Board of Professional Counselors proposes to establish standards of practice and related issues for distance professional services.

The Board of Professional Counselors (Board) proposes to adopt regulation changes in Title 12, Chapter 62 of the Alaska Administrative Code including the following:

1. **12 AAC 62.400. Technology-assisted distance professional services**, is a proposed new section that establishes standards of practice for technology-assisted distance professional services, and to adopt by reference the National Board for Certified Counselors (NBCC) Policy Regarding the Provision of Distance Professional Services.
2. **12 AAC 62.410. Safety and confidentiality of communications**, is a proposed new section that establishes safety and confidentiality of communications guidelines for distance professional services between a licensee and a client.
3. **12 AAC 62.420. Informed consent**, is a proposed new section that clarifies the informed consent requirements for distance professional services between a licensee and a client.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jun Maiquis, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806. Additionally, the Board will accept comments by facsimile at (907) 465-2974 and by electronic mail at RegulationsAndPublicComment@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system at <http://notice.alaska.gov/191221>, and using the comment link. **The comments must be received not later than 5:00 p.m. on October 1, 2018.** Comments received after this deadline will not be considered by the Board.

Oral comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, may also be given at a hearing to be held on September 13, 2018, at the Atwood Building, 550 W. 7th Avenue, ACC 106, Anchorage, Alaska. The hearing will begin at 11:30 a.m. and will end when those who have called in or signed up before 11:30 a.m. to give oral testimony have had the opportunity to comment. If you wish to give your comments via telephone, please call 1-800-315-6338 access code 52538. The chair of the Board may limit each participant's length of oral testimony, determined by the chair before the hearing begins, to allow enough time for all those who have called in or signed up and timely registered to give testimony.

You may submit written questions relevant to the proposed action to Jun Maiquis, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806 or by e-mail at RegulationsAndPublicComment@alaska.gov. **The questions must be received at least 10 days before the end of the public comment period.** The Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and on the Board's website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/ProfessionalCounselors.aspx>. The Board may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jun Maiquis at (907) 465-2537 or RegulationsAndPublicComment@alaska.gov not later than September 24, 2018 to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Jun Maiquis at (907) 465-2537 or RegulationsAndPublicComment@alaska.gov, or go to <https://www.commerce.alaska.gov/web/portals/5/pub/PCO-0818.pdf>.

A copy of the material proposed for adoption by reference may be viewed at the Board's office at the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, State Office Building, 333 Willoughby Avenue, 9th Floor, Juneau, AK.

After the public comment period ends, the Board will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.** Written comments and questions received are public records and are subject to public inspection.


Statutory Authority: AS 08.29.020; AS 08.29.200; AS 08.29.400; AS 08.29.490

Statutes Being Implemented, Interpreted, or Made Specific: AS 08.29.020; AS 08.29.200; AS 08.29.400; AS 08.29.490

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: _____

8/29/18



Jun Maiquis, Regulations Specialist
Division of Corporations, Business and
Professional Licensing

For each occupation regulated under the Division of Corporations, Business and Professional Licensing, the Division keeps a list of individuals or organizations who are interested in the regulations of that occupation. The Division automatically sends a Notice of Proposed Regulations to the parties on the appropriate list each time there is a proposed change in an occupation's regulations in Title 12 of the Alaska Administrative Code. If you would like your address added to or removed from such a list, send your request to the Division at the address above, giving your name, either your e-mail address or mailing address (as you prefer for receiving notices), and the occupational area in which you are interested.

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 268972

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Order#

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Product

ADN-Anchorage Daily News

Placement

0300

Position

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STATE OF ALASKA THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

August 30, 2018

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed

Joleesa Stepetin

Subscribed and sworn to before me
this 30th day of August, 2018

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

Notary Public
BRITNEY L. THOMPSON
State of Alaska

My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES RELATING TO STANDARDS OF PRACTICE FOR TECHNOLOGY-ASSISTED DISTANCE PROFESSIONAL SERVICES IN THE REGULATIONS OF THE BOARD OF PROFESSIONAL COUNSELORS

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You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jun Maiquis, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806. Additionally, the Board will accept comments by facsimile at (907) 465-2974 and by electronic mail at

ANCHORAGE DAILY NEWS

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SUBSCRIPTION ONLINE

Published: July 25-27, 29-31
August 1-3, 5-10, 12-17, 19-24
26-31 September 2-7, 2018

healthymats.org.
downloaded
complete RFI may be
tkalyak@healthymats.org. The
Time, 9/7/18
electronically by 5:00 PM, Alaska
signed cover
completed proposal, along with
parties must submit a
to MSHF grantees. Interested
provide technical assistance (TA)
from prospective consultants to
(MSHF) requests applications
The Mat-Su Health Foundation
Pub: August 23, 30, Sept 6, 2018

MANLEY & BRAUTIGAM P.C.
Attorneys for Stephen M. Ellis
Personal Representative
Marbeth Conway
Alaska Bar No. 9706040
marbeth@mb-lawyers.com
Pub: August 23, 30, Sept 6, 2018

Deadlines for legal advertising are:
Tuesday-Friday: 3pm Monday-Thursday
Sunday-Monday: 3pm Friday

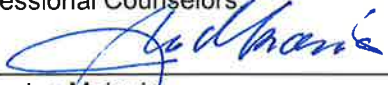
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LEGAL
ADVERTISING

Published: August 29-31 & Sept.
2-7, 9-14, 16-21, 23-28, 20, 2018

September 2, 2018
The Mat-Su Health Foundation
requests applications
from qualified vendors to
provide ground clearing and
building removal services for the
property located at 7744 Visitors
View in Palmer, AK. The
complete RFP may be
downloaded at
healthymats.org. Interested
parties must submit a
completed proposal, along with
signed cover letter,
electronically by 4 PM, Alaska
Time, 9/30/18
cemonad@healthymats.org.

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. **Adopting agency:** Board of Professional Counselors – Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing.
2. **General subject of regulation:** Technology-assisted distance professional services, safety and confidentiality of communications, and informed consent.
3. **Citation of regulation:** 12 AAC 62.400, 12 AAC 62.410, and 12 AAC 62.420.
4. **Department of Law file number:** To be assigned.
5. **Reason for the proposed action:** Compliance with state statute.
6. **Appropriation/Allocation:** Corporations, Business and Professional Licensing – #2360.
7. **Estimated annual cost to comply with the proposed action to:**
A private person: None known.
Another state agency: None known.
A municipality: None known.
8. **Cost of implementation to the state agency and available funding (in thousands of dollars):**
No costs are expected in FY 2019 or in subsequent years.
9. **The name of the contact person for the regulation:**
Rissa Teske, Licensing Examiner
Board of Professional Counselors
Division of Corporations, Business and Professional Licensing
Telephone: (907) 465-2694
E-mail: rissa.teske@alaska.gov
10. **The origin of the proposed action:** Board of Professional Counselors
11. **Date:** 8/29/18 **Prepared by:** 
Jun Maiquis
Regulations Specialist
(907) 465-2537

FIRST JUDICIAL DISTRICT

**AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION**

I, Jun Maiquis, Regulations Specialist, of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 12 AAC 62.400, 12 AAC 62.410, and 12 AAC 62.420, dealing with standards of practice for technology-assisted distance professional services, has been given by being

1. published in a newspaper or trade publication;
2. furnished to every person who has filed a request for notice of proposed action with the state agency;
3. furnished to appropriate state officials;
4. furnished to interested persons;
5. furnished to the Department of Law, along with a copy of the proposed regulation;
6. furnished electronically to incumbent State of Alaska legislators;
7. posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to persons in (2), (4), and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

DATE: 4/30/19
Juneau, Alaska


Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 30 day of April, 2019.



James
Notary Public in and for the
State of Alaska
My commission expires: w/o office

FIRST JUDICIAL DISTRICT

} ss.

I, Andy Khmelev, Licensing Examiner for the Board of Professional Counselors, being sworn, state the following:

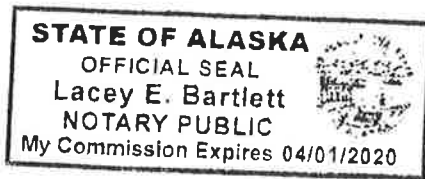
September 13, 2018, at 11:30 a.m., at the Atwood Building,
550 W. 7th Avenue, ACC 106, Anchorage, Alaska.

Date:

4/130/19
Juneau, Alaska

Andy Khmelev, Licensing Examiner

SUBSCRIBED AND SWORN TO before me this 30 day of April, 2019.



Janez B. Barrett
Notary Public in and for the
State of Alaska
My Commission Expires: 04/01/2020

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) ss.

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Jun Maiquis, Regulations Specialist for the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being duly sworn, state the following:

In compliance with AS 44.62.215, the Board of Professional Counselors has kept a record of its use or rejection of factual or other substantive information that was submitted in writing and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Board of Professional Counselors regulations on dealing with standards of practice for technology-assisted distance professional services.

DATE: 4/30/19
Juneau, Alaska


Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 30 day of April, 2019.



Notary Public in and for the
State of Alaska
My commission expires: 6/01/16