

Kevin Meyer  
Lieutenant Governor  
State Capitol  
Juneau, Alaska 99811  
907.465.3520  
WWW.LTGOV.ALASKA.GOV




530 West 7<sup>th</sup> Ave, Suite 1700  
Anchorage, Alaska 99501  
907.269.7460 269.0263  
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Amy Demboski  
Department of Commerce Community and Economic Development

**FROM:** April Simpson, Office of the Lieutenant Governor   
465.4081

**DATE:** May 7, 2020

**RE:** Filed Emergency Regulations: Board of Nursing  
  
Board of Nursing Emergency Regulation re: standards of practice for telehealth (12 AAC 44.770; 12 AAC 44.925; 12 AAC 44.990)

---

Attorney General File:	Emergency Regulations
Regulation Filed:	5/7/2020
Effective Date:	5/7/2020
Expiration Date:	September 3, 2020 unless made permanent by the adopting agency
Print:	234, July 2020

cc with enclosures: Harry Hale, Department of Law  
Judy Herndon, LexisNexis  
Jun Maiquis, Regulations Specialist

FINDING OF EMERGENCY

The Board of Nursing finds that an emergency exists under AS 44.62.250 and that an emergency regulation change is necessary to 12 AAC 44.770, 12 AAC 44.925, and 12 AAC 44.990, dealing with standards of practice for telehealth, for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

The lack of telehealth regulations could negatively impact the health of the public by decreasing access to healthcare during the public health emergency caused by the Covid19 pandemic.

ORDER CERTIFYING ADOPTION

I certify that the Board of Nursing, under the authority of AS 08.68.100, AS 08.68.275, and AS 08.68.805, adopted at its May 6-7, 2020 zoom meeting the attached five pages of regulation changes as an emergency regulation to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE: 5/6/2020  
Anchorage, Alaska

Marianne Murray  
Marianne Murray, Executive Administrator  
Board of Nursing

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on May 7<sup>th</sup>, 2020 at 2:01 p.m., I filed the attached regulation according to the provisions of AS 44.62.

for April Simpson  
Kevin Meyer, Lieutenant Governor

Effective: May 7, 2020

Register: 234, July 2020

Expires September 3<sup>rd</sup> 2020  
unless made "permanent"  
by the adopting agency

**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff  
Kady Levale, Notary Administrator  
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on December 11th, 2018.**



*Kevin Meyer*

**KEVIN MEYER  
LIEUTENANT GOVERNOR**

EMERGENCY REGULATION

Register 234, July 2020 PROFESSIONAL REGULATIONS

**Chapter 44. Board of Nursing.**

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted. Complete new sections are not in boldface or underlined.)

12 AAC 44.770(36) is amended to read:

**12 AAC 44.770. Unprofessional conduct.** Nursing conduct that could adversely affect the health and welfare of the public constitutes unprofessional conduct under AS 08.68.270(7) and includes the following:

...

(36) prescribing, dispensing, or furnishing a prescription medication to a person without first conducting a physical examination of that person, unless the licensee has a patient-APRN relationship with the person; this paragraph does not apply to prescriptions written or medications issued

**(A)** for expedited partner therapy for sexually transmitted diseases; [, OR]

**(B)** in response to an infectious disease investigation, public health emergency, infectious disease outbreak, or act of bioterrorism; **or**

**(C) by an APRN practicing telehealth under 12 AAC 44.925;**

...

(Eff. 4/27/83, Register 86; am 11/7/87, Register 104; am 4/9/94, Register 130; am 11/10/2002, Register 164; am 7/22/2004, Register 171; am 10/15/2004, Register 172; am 5/18/2006, Register 178; am 11/19/2008, Register 188; am 12/23/2009, Register 192; am 3/19/2014, Register 209; am 5/16/2018, Register 226; am 5 / 7 / 2020, Register 234)

## EMERGENCY REGULATION

Register 234, July 2020 PROFESSIONAL REGULATIONS

**Authority:** AS 08.68.100

12 AAC 44 is amended by adding a new section to read:

**12 AAC 44.925. Standards of practice for telehealth.** (a) The guiding principles for telehealth practice in the American Telemedicine Association (ATA), *Core Operational Guidelines for Telehealth Services Involving Provider-Patient Interaction*, dated May 2014, and the American Psychiatric Association (APA) and the American Telemedicine Association (ATA), *Best Practices in Videoconferencing-Based Telemental Health*, dated April 2018, are adopted by reference as the standards of practice when providing treatment, rendering a diagnosis, prescribing, dispensing, or administering a prescription or controlled substance without first conducting an in-person physical examination under this section.

(b) An advanced practice registered nurse (APRN) may practice telehealth, including prescribing, dispensing, or administering a prescription drug that is not a controlled substance if

(1) the APRN is licensed by the board;

(2) the APRN, or another licensed health care provider in the group practice is available to provide follow-up care; and

(3) the APRN 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 APRN is not the person's primary care provider and, if the person consents, the APRN sends the records to the person's primary care provider.

(c) An APRN may prescribe, dispense, or administer a prescription drug that is a controlled substance if the requirements under (b) of this section and AS 08.68.705 are met and

## EMERGENCY REGULATION

Register 234, July 2020 PROFESSIONAL REGULATIONS

the APRN prescribes, dispenses, or administers the controlled substance when an appropriate health care provider is present with the patient to assist the APRN with examination, diagnosis, and treatment.

(d) Notwithstanding (c) of this section, during a public health disaster emergency declared by the governor of this state under AS 26.23.020, an appropriate health care provider need not be present with the patient to assist an APRN with examination, diagnosis, and treatment if the APRN is prescribing, dispensing, or administering buprenorphine to initiate treatment for opioid use disorder and the APRN

(1) is a Drug Addiction Treatment Act (DATA) waived practitioner;

(2) documents all attempts to conduct a physical examination under this section and the reason why the examination cannot be performed; and

(3) requires urine or oral toxicology screenings as part of the patient's medication adherence plan.

(e) Notwithstanding (b) and (c) of this section, an APRN 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 APRN does not have a prior APRN-patient relationship.

(f) For a telehealth encounter, an APRN must complete and document:

(1) the patient's informed consent to use telehealth technologies;

(2) a clinical history and review of systems establishing diagnoses and identifying conditions and contra-indications to recommended treatment; and

(3) a treatment plan that lists all recommendations and prescriptions issued via electronic means. The treatment plan must meet the same standards as in-person settings.

## EMERGENCY REGULATION

Register 234, July 2020 PROFESSIONAL REGULATIONS

(g) An APRN practicing telehealth must ensure compliance with HIPAA and medical record retention rules, and transmissions, including patient e-mail, prescriptions, and laboratory results must be secure within existing technology to include password-protected, encrypted electronic prescriptions, or other reliable authentication techniques.

(h) 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;

(4) "health care provider" has the meaning given in AS 18.15.395;

(5) an "APRN-patient relationship" is established when there is an in-person health examination or examination by telehealth technology of the patient by the APRN or another APRN, physician, or a physician assistant in the same group practice and the patient record is available to the treating APRN. (Eff. 5 / 7 / 2020, Register 234)

**Authority:** AS 08.68.100

**Editor's note:** A copy of the American Telemedicine Association (ATA) *Core Operational Guidelines for Telehealth Services Involving Provider-Patient Interaction*, adopted by reference in 12 AAC 44.925 may be obtained from the American Telemedicine Association, 901 N. Glebe Road, Suite 850, Arlington, VA 22203, or on the association's Internet website at [info@americantelemed.org](mailto:info@americantelemed.org). A copy of the American Psychiatric Association (APS) and the American Telemedicine Association (ATA), *Best Practices in Videoconferencing-Based Telemental Health*, adopted by reference in 12 AAC 44.925 may be obtained from the American Psychiatric Association, 800 Maine Avenue, S.W., Suite 900, Washington, D.C. 20024, or on the

**EMERGENCY REGULATION**

Register 234, July 2020 **PROFESSIONAL REGULATIONS**

association's Internet website at [apa@psych.org](mailto:apa@psych.org).

12 AAC 44.990 is amended by adding a new paragraph to read:

**12 AAC 44.990. Definitions.** As used in this chapter, unless the context otherwise requires,

...

(33) "telehealth" has the meaning given in AS 47.05.270(e). (Eff. 1/13/80, Register 73; am 10/8/81, Register 80; am 12/1/84, Register 91; am 4/2/86, Register 97; am 4/29/91, Register 118; am 7/28/95, Register 135; am 11/2/2001, Register 160; am 6/16/2002, Register 162; am 11/10/2002, Register 164; am 10/14/2004, Register 172; am 2/9/2007, Register 181; am 11/19/2008, Register 188; am 12/27/2012, Register 204; am 8/10/2016, Register 219; am 5/16/2018, Register 226; am 5 / 7 / 2020, Register 234)

**Authority:** AS 08.68.100 AS 08.68.275 AS 08.68.805



**AFFIDAVIT OF BOARD ACTION**


I, Marianne Murray, Executive Administrator for the Board of Nursing, being duly sworn, state the following:

The attached motion dealing with standards of practice for telehealth was passed by the Board of Nursing during its May 6-7, 2020 zoom meeting.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 5.6.2020

  
Marianne Murray, Executive Administrator

State of Alaska  
Anchorage

Excerpt from the Draft Minutes of the  
May 6, 2020 Meeting of the  
Alaska Board of Nursing

Telehealth regulation

**On a motion by Wendy Monrad and second by Lena Lafferty and carried with 6 ayes, it was passed:**

**RESOLVED that the Alaska Board of Nursing adopt the following telehealth regulation, to become permanent regulations.**

12 AAC 44.770(36) is amended to read:

**12 AAC 44.770. Unprofessional conduct.** Nursing conduct that could adversely affect the health and welfare of the public constitutes unprofessional conduct under AS 08.68.270(7) and includes the following:

...

(36) prescribing, dispensing, or furnishing a prescription medication to a person without first conducting a physical examination of that person, unless the licensee has a patient-APRN relationship with the person; this paragraph does not apply to prescriptions written or medications issued

**(A)** for expedited partner therapy for sexually transmitted diseases; [, OR]

**(B)** in response to an infectious disease investigation, public health

emergency, infectious disease outbreak, or act of bioterrorism; or

**(C) by an APRN practicing telehealth under 12 AAC 44.925;**

...

(Eff. 4/27/83, Register 86; am 11/7/87, Register 104; am 4/9/94, Register 130; am 11/10/2002, Register 164; am 7/22/2004, Register 171; am 10/15/2004, Register 172; am 5/18/2006, Register 178; am 11/19/2008, Register 188; am 12/23/2009, Register 192; am 3/19/2014, Register 209; am 5/16/2018, Register 226; am \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 08.68.100

12 AAC 44 is amended by adding a new section to read:

**12 AAC 44.925. Standards of practice for telehealth.** (a) The guiding principles for telehealth practice in the American Telemedicine Association (ATA), *Core Operational Guidelines for Telehealth Services Involving Provider-Patient Interaction*, dated May 2014, and the American Psychiatric Association (APA) and the American Telemedicine Association (ATA), *Best Practices in Videoconferencing-Based Telemental Health*, dated April 2018, are adopted by reference as the standards of practice when providing treatment, rendering a diagnosis, prescribing, dispensing, or administering a prescription or controlled substance without first conducting an in-person physical examination under this section.

(b) An advanced practice registered nurse (APRN) may practice telehealth, including prescribing, dispensing, or administering a prescription drug that is not a controlled substance if

(1) the APRN is licensed by the board;

(2) the APRN, or another licensed health care provider in the group practice is available to provide follow-up care; and

(3) the APRN 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 APRN is not the person's primary care provider and, if the person consents, the APRN sends the records to the person's primary care provider.

(c) An APRN may prescribe, dispense, or administer a prescription drug that is a controlled substance if the requirements under (b) of this section and AS 08.68.705 are met and the APRN prescribes, dispenses, or administers the controlled substance when an appropriate health care provider is present with the patient to assist the APRN with examination, diagnosis, and treatment.

(d) Notwithstanding (c) of this section, during a public health disaster emergency declared by the governor of this state under AS 26.23.020, an appropriate health care provider need not be present with the patient to assist an APRN with examination, diagnosis, and treatment if the APRN is prescribing, dispensing, or administering buprenorphine to initiate treatment for opioid use disorder and the APRN

(1) is a Drug Addiction Treatment Act (DATA) waived practitioner;

(2) documents all attempts to conduct a physical examination under this section and the reason why the examination cannot be performed; and

(3) requires urine or oral toxicology screenings as part of the patient's medication adherence plan.

(e) Notwithstanding (b) and (c) of this section, an APRN 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 APRN does not have a prior APRN-patient relationship.

(f) For a telehealth encounter, an APRN must complete and document:

(1) the patient's informed consent to use telehealth technologies;

(2) a clinical history and review of systems establishing diagnoses and identifying conditions and contra-indications to recommended treatment; and

(3) a treatment plan that lists all recommendations and prescriptions issued via electronic means. The treatment plan must meet the same standards as in-person settings.

(g) An APRN practicing telehealth must ensure compliance with HIPAA and medical record retention rules, and transmissions, including patient e-mail, prescriptions, and laboratory results must be secure within existing technology to include password-protected, encrypted electronic prescriptions, or other reliable authentication techniques.

(h) 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;

(4) "health care provider" has the meaning given in AS 18.15.395;

(5) an "APRN-patient relationship" is established when there is an in-person health examination or examination by telehealth technology of the patient by the APRN or another APRN, physician, or a physician assistant in the same group practice and the patient record is available to the treating APRN. (Eff. \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 08.68.100

**Editor's note:** A copy of the American Telemedicine Association (ATA) *Core Operational Guidelines for Telehealth Services Involving Provider-Patient Interaction*, adopted by reference in 12 AAC 44.925 may be obtained from the American Telemedicine Association, 901 N. Glebe Road, Suite 850, Arlington, VA 22203, or on the association's Internet website at info@americantelemed.org. A copy of the American Psychiatric Association (APA) and the American Telemedicine Association (ATA), *Best Practices in Videoconferencing-Based Telemental Health*, adopted by reference in 12 AAC 44.925 may be obtained from the American Psychiatric Association, 800 Maine Avenue, S.W., Suite 900, Washington, D.C. 20024, or on the association's Internet website at apa@psych.org.

12 AAC 44.990 is amended by adding a new paragraph to read:

**12 AAC 44.990. Definitions.** As used in this chapter, unless the context otherwise requires,

...

**(33) "telehealth" has the meaning given in AS 47.05.270(e).** (Eff. 1/13/80, Register 73; am 10/8/81, Register 80; am 12/1/84, Register 91; am 4/2/86, Register 97; am 4/29/91, Register 118; am 7/28/95, Register 135; am 11/2/2001, Register 160; am 6/16/2002, Register 162; am 11/10/2002, Register 164; am 10/14/2004, Register 172; am 2/9/2007, Register 181; am 11/19/2008, Register 188; am 12/27/2012, Register 204; am 8/10/2016, Register 219; am 5/16/2018, Register 226; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 08.68.100 AS 08.68.275 AS 08.68.805

#### FINDING OF EMERGENCY

The Board of Nursing finds that an emergency exists under AS 44.62.250 and that an emergency regulation change is necessary to 12 AAC 44.770, 12 AAC 44.925, and 12 AAC 44.990, dealing with standards of practice for telehealth, for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

The lack of telehealth regulations could negatively impact the health of the public by decreasing access to healthcare during the public health emergency caused by the COVID-19 pandemic.