

Kevin Meyer  
Lieutenant Governor  
State Capitol  
Juneau, Alaska 99811  
907.465.3520  
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Anchorage, Alaska 99501  
907.269.7460  
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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**M E M O R A N D U M**

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

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

**DATE:** August 20, 2020

**RE:** Filed Permanent Regulations: Board of Nursing  
  
Board of Nursing Emergency Regulations Made Permanent re: Telehealth (12 AAC 44.770(36); 12 AAC 44.925; 7 AAC 44.990(33))

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Attorney General File:	2020200361
Regulation Filed:	8/20/2020
Effective Date:	5/7/2020
Print:	235, October 2020

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

## CERTIFICATION OF COMPLIANCE

I, Marianne Murray, Executive Administrator for the Board of Nursing, certify that, as required by AS 44.62.260 in order to make the attached five pages of regulations permanent, as of this date a legal opinion of the Department of Law has been requested under AS 44.62.060, a notice conforming to AS 44.62.200 was issued in compliance with AS 44.62.190, and an opportunity for public comment was provided under AS 44.62.210, for the following emergency regulation:


12 AAC 44.770(36), 12 AAC 44.925, and 12 AAC 44.990(33), relating to standards of practice for telehealth.

This regulation originally was filed as an emergency regulation on May 7, 2020.

This action is not expected to require an increased appropriation.

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

DATE: 7.16.2020  
Anchorage, Alaska

  
Marianne Murray, Executive Administrator  
Board of Nursing

*April Gimpson for*

## FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on August 20<sup>th</sup>, 2020 at 3:37 p.m., I filed the attached regulation according to the provisions of AS 44.62.

  
Kevin Meyer, Lieutenant Governor

Register: 235, October 2020.

**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  
LIEUTENANT GOVERNOR**

### **Chapter 44. Board of Nursing.**

The emergency amendment of 12 AAC 44.770(36) is made permanent to read:

(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;

(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 3/5/2020, Register 233;) am 5/16/2018, Register 226; am 5/7/2020, Register 234)

**Authority:** AS 08.68.100

The emergency adoption of 12 AAC 44.925 is made permanent 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

under 21 U.S.C. 823(g)(2) (Drug  
Addiction Treatment Act (DATA))

(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 contraindications to recommended treatment; and

(3) a treatment <sup>(of care)</sup> plan that lists all recommendations and prescriptions issued <sup>(by)</sup> via

electronic means. The treatment plan must meet the same standards as in-person settings.

(P.L. 104-191 (Health Insurance Portability and Accountability Act of 1996 (HIPAA)))

(g) An APRN practicing telehealth must ensure compliance with HIPAA and medical (electronic mail) 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,

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

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

definition of  
"APRN-patient  
relationship" on  
page 5 goes here )))

definition of  
"health care  
provider" on  
page 5 goes  
here )))



cc Move  
to spots  
marked on  
previous  
page.))

(5)

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

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

(1) (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 (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](mailto:apa@psych.org).

cc Publisher: Please insert the  
handwritten material from page 5  
here, as a second paragraph to  
the editor's  
note.))

The emergency adoption of 12 AAC 44.990(33) is made permanent to read:

(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

CC Publisher: At the spot marked on page 4, please add the following new paragraph. »

The adoption of 12 AAC 44.925 took effect on May 7, 2020, <sup>as</sup> ~~an~~ emergency regulation, and was first published in Register 234 (July 2020). In reviewing the "permanent" regulation in accordance with AS 44.62-060 and 44.62.125(b), the regulations attorney made technical changes to 12 AAC 44.925. The technical changes appeared in the "permanent" regulations as published in Register 235 (October 2020). The history note for 12 AAC 44.925 does not reflect the changes made by the regulations attorney.



# MEMORANDUM

## State of Alaska Department of Law

**To:** The Honorable Kevin Meyer  
Lieutenant Governor

**Date:** August 14, 2020

**File No.:** 2020200361

**Tel. No.:** 465-3600

**From:** Steven C. Weaver *SCW*  
Senior Assistant Attorney General  
Legislation and Regulations Section

**Re:** Board of Nursing emergency  
regulations made permanent re:  
telehealth (12 AAC 44.770(36);  
12 AAC 44.925; 7 AAC 44.990(33))

The Department of Law has reviewed the attached regulations of the Board of Nursing against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. I have reviewed this project under a delegation of authority dated March 23, 2020 from the regulations attorney. 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 May 6, 2020 as emergency regulations, were filed on May 7, 2020, and will expire September 3, 2020 unless made permanent. The Board of Nursing proceeded to public notice and comment in order to make the regulations permanent under AS 44.62.260. In response to the COVID-19 pandemic, the regulations increase access to health care by establishing standards for the practice of telehealth by an advanced practice registered nurse (APRN), and in particular provide that, during a disaster emergency declared by the governor, the APRN may use telehealth to examine, diagnose, and treat a patient for an opioid use disorder without a health care provider present with the patient.

The May 6, 2020 certification of adoption order for the emergency regulations, the May 8, 2020 public notice, and the July 16, 2020 certification of compliance all state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to the emergency regulations as adopted to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations. Because the corrections are technical edits added by the regulations attorney, the technical changes will be reflected in the printed copy in the AAC, but they do not change the effective date of the regulations, which remains the date the regulations were adopted as emergency regulations.

SCW

cc w/enc: Danette Schloeder, Chair  
Board of Nursing  
(via e-mail through Jun Maiquis)

Amy Demboski, Assistant Commissioner and Regulations Contact  
Department of Commerce, Community, and Economic Development

Marianne Murray, Executive Administrator, Board of Nursing  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, and Economic Development

Jun Maiquis, Regulations Specialist  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, and Economic Development

Megyn Weigand, Assistant Attorney General  
Commercial, Fair Business, and Child Support Section

## NOTICE OF ADOPTION OF EMERGENCY REGULATION ON TELEHEALTH IN THE REGULATIONS OF THE BOARD OF NURSING

**BRIEF DESCRIPTION:** The Board of Nursing proposes to make permanent regulation changes made by emergency regulation regarding standards of practice for telehealth.

On May 6, 2020, the Board of Nursing (Board) adopted, as an emergency regulation, changes in 12 AAC 44 of the Alaska Administrative Code dealing with standards of practice for telehealth, including the following:

1. **12 AAC 44.770. Unprofessional conduct**, is proposed to amend the regulations related to unprofessional conduct paragraph (36) by adding, "... this paragraph does not apply to ... an advanced practice registered nurse (APRN) practicing telehealth under 12 AAC 44.925".
2. **12 AAC 44.925. Standards of practice for telehealth**, is a proposed new section that establishes guidelines for APRN practicing telehealth; and to adopt by reference the guiding principles for telehealth practice in the American Telemedicine Association (ATA), Core Operational Guidelines for Telehealth Services Involving Provider-Patient Interaction and the American Psychiatric Association and the ATA, Best Practices in Videoconferencing-Based Telemental Health, 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.
3. **12 AAC 44.990. Definitions**, is proposed to add a definition for "telehealth".

The emergency regulation took effect on **May 7, 2020** and will expire **September 3, 2020**. The Board intends to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the 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](mailto: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/198144>, and using the comment link. **The comments must be received not later than 4:30 p.m. on June 15, 2020.** Comments received after this deadline will not be considered by the Board.

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](mailto: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/BoardofNursing.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](mailto:RegulationsAndPublicComment@alaska.gov) not later than June 8, 2020 to ensure that any necessary accommodation can be provided.

A copy of the emergency regulation is available on the Alaska Online Public Notice System and by contacting Jun Maiquis at (907) 465-2537 or [RegulationsAndPublicComment@alaska.gov](mailto:RegulationsAndPublicComment@alaska.gov), or go to <https://www.commerce.alaska.gov/web/portals/5/pub/NUR-Telehealth-EmergencyRegs-0520.pdf>.

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System and on the Board's website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofNursing.aspx>, or go to <https://www.commerce.alaska.gov/web/portals/5/pub/NUR-Telehealth-AdoptedByReference.pdf>.


The language of the permanent regulations may be different from that of the original emergency regulation and may include other provisions dealing with the same subject. **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 08.68.100; AS 08.68.275; AS 08.68.805

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 08.68.100; AS 08.68.275; AS 08.68.805

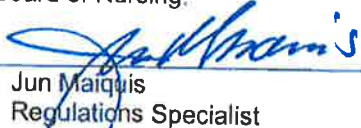
**Fiscal Information:** The regulations are not expected to require an increased appropriation.

DATE: 5/8/2020

  
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.

**ADDITIONAL REGULATION NOTICE INFORMATION**  
**(AS 44.62.190(d))**

1. **Adopting agency:** Board of Nursing – Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing.
2. **General subject of regulation:** Standards of practice for telehealth.
3. **Citation of regulation:** 12 AAC 44.770, 12 AAC 44.925, and 12 AAC 44.990.
4. **Department of Law file number:** 2020200361.
5. **Reason for the proposed action:** Emergency regulations.
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 2020 or in subsequent years.
9. **The name of the contact person for the regulation:**  
Marianne Murray, Executive Administrator  
Alaska Board of Nursing  
Division of Corporations, Business and Professional Licensing  
Department of Commerce, Community, and Economic Development  
Telephone: (907) 269-8160  
E-mail: marianne.murray@alaska.gov
10. **The origin of the emergency regulation action:** Board of Nursing.
11. **Date:** 5/8/2020      **Prepared by:**   
Jun Maiquis  
Regulations Specialist



# ANCHORAGE DAILY NEWS

## AFFIDAVIT OF PUBLICATION

Account #: 268972 ST OF AK/DEC/OCCU  
Attention To: ATTN TO: JUN MAIQUIS  
PO BOX 110806, JUNEAU, AK 99811

Order #: W0015170

Cost: \$587.68

RECEIVED  
JUNEAU  
JUN 02 2020  
Division of Corporations, Business  
and Professional Licensing

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that 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 afore-said 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

05/10/2020

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

Subscribed and sworn to before me  
this 18th day of May 2020.

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

MY COMMISSION EXPIRES

7/14/2020

STATE OF ALASKA  
NOTARY  
PUBLIC  
Jada L. Nowling

### NOTICE OF ADOPTION OF EMERGENCY REGULATION ON TELEHEALTH IN THE REGULATIONS OF THE BOARD OF NURSING

On May 6, 2020, the Board of Nursing (Board) adopted, as an emergency regulation, changes in 12 AAC 44 of the Alaska Administrative Code dealing with standards of practice for telehealth, including the following:

1. 12 AAC 44.770. Unprofessional conduct, is proposed to amend the regulations related to unprofessional conduct paragraph (3a) by adding, "... this paragraph does not apply to ... an advanced practice registered nurse (APRN) practicing telehealth under 12 AAC 44.925".

2. 12 AAC 44.925. Standards of practice for telehealth, is a proposed new section that establishes guidelines for APRN practicing telehealth; and to adopt by reference the guiding principles for telehealth practice in the American Telemedicine Association (ATA), Core Operational Guidelines for Telehealth Services Involving Provider-Patient Interaction and the American Psychiatric Association and the ATA, Best Practices in Videoconferencing-Based Telehealth, 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.

3. 12 AAC 44.990. Definitions, is proposed to add a definition for "telehealth".

The emergency regulation took effect on May 7, 2020 and will expire September 3, 2020. The Board intends to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the 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/198144>, and using the comment link. The comments must be received no later than 4:30 p.m. on June 15, 2020. Comments received after this deadline will not be considered by the Board.

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/BoardofNursing.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 June 8, 2020 to ensure that any necessary accommodation can be provided.

A copy of the emergency regulation 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/s/pub/NUR-Telehealth-EmergencyRegs-0520.pdf>.

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System and on the Board's website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofNursing.aspx>, or go to <https://www.commerce.alaska.gov/web/portals/s/pub/NUR-Telehealth-AdoptedByReference.pdf>.

The language of the permanent regulations may be different from that of the original emergency regulation and may include other provisions dealing with the same subject. 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 08.68.100; AS 08.68.275; AS 08.68.805

Statutes Being Implemented, Interpreted, or Made Specific: AS 08.68.100; AS 08.68.275; AS 08.68.805

Fiscal Information: The regulations are not expected to require an increased appropriation.

DATE: 5/8/2020

/s/ 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.

Published: May 10, 2020



**AFFIDAVIT OF NOTICE OF ADOPTION OF EMERGENCY 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 44.62.250, notice of the May 7, 2020 emergency changes to 12 AAC 44.770, 12 AAC 44.925, and 12 AAC 44.990, dealing with standards of practice for telehealth, has been given under AS 44.62.190(a) 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 regulation;
6. electronically transmitted 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).

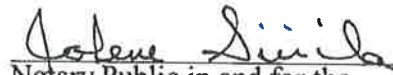
As required by AS 44.62.190, additional regulation notice information regarding the May 7, 2020 emergency changes to the regulation described above has been furnished to interested persons and furnished to those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

DATE: 6/5/2020  
Juneau, Alaska

  
\_\_\_\_\_  
Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 5 day of June, 2020.



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

**AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT**

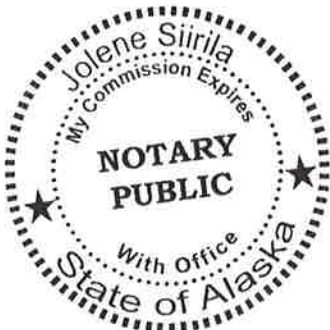
I, Jun Maiquis, Regulations Specialist for the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being duly sworn, state the following:

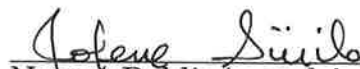
In compliance with AS 44.62.215, the Board of Nursing has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Board of Nursing emergency regulations on dealing with standards of practice for telehealth.

DATE: 7/17/2020  
Juneau, Alaska

  
\_\_\_\_\_  
Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 17 day of July, 2020.



  
\_\_\_\_\_  
Notary Public in and for the  
State of Alaska  
My commission expires: 6/office

## 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 July 13, 2020 teleconference meeting.

Date: 7.16.2020  
Anchorage, Alaska

  
Marianne Murray, Executive Administrator

SUBSCRIBED AND SWORN TO before me this 16<sup>th</sup> day of July, 2020.





Notary Public in and for the  
State of Alaska

My commission expires: with office

Excerpt from the Draft Minutes of the  
July 13, 2020 Teleconference Meeting of the  
Alaska Board of Nursing

**Emergency Telehealth Regulations – 12 AAC 44.770(36), 12 AAC 44.925, and 12 AAC 990(33)**

The first agenda item for the board was to discuss the emergency telehealth regulations to evaluate if there were changes needed.

Board member Wendy Monrad had questions related to the prescribing of opiates via telehealth and the board referred to SB 79 relating to the prescription of opioids which was passed into legislation in 2017. Chair Schloeder noted that new legislation would be required to change current practice.

Board member Wendy Monrad wanted to be sure that the definition of telehealth was included, and the regulations specialist Jun Maiquis explained where the definition was located.

**RESOLVED on a motion made by Julie Tisdale seconded by Lena Lafferty and carried with 5 ayes, in considering the telehealth emergency regulations project, sections 12 AAC 44.770(36), 12 AAC 44.925, and 12 AAC 44.990(33), to be made permanent, the Board reviewed and considered public comments received. The Board does not expect the regulation changes to incur cost to private persons or to require an increased appropriation. The Alaska Board of Nursing adopted the telehealth emergency regulations to be made permanent as written and publicly noticed.**

**The motion passed with no further discussion.**

## 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, Executive Administrator  
Board of Nursing

April Simpson for

## FILING CERTIFICATION

I, <sup>↑</sup>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)

Adopted 5/6/2020

## 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

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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.

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(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

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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