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Lieutenant Governor
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Anchorage, Alaska 99501
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Glenn Hoskinson
Department of Commerce, Community, and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: August 26, 2021

RE: Filed Permanent Regulations: Board of Nursing

Board of Nursing emergency regulations made permanent re: telehealth by advanced practice registered nursed (APRNs) in an urgent situation (12 AAC 44.925)

| | |
|------------------------|-------------------|
| Attorney General File: | 2021200167 |
| Regulation Filed: | 8/26/2021 |
| Effective Date: | 5/11/2021 |
| Print: | 239, October 2021 |

cc with enclosures: Joseph Felkl, Department of Law
Judy Herndon, LexisNexis
Jun Maiquis, Regulations Specialist

CERTIFICATION OF COMPLIANCE

I, Danette Schloeder, Chair for the Board of Nursing, certify that, as required by AS 44.62.260 in order to make the attached one page 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 44.925, dealing with standards of practice for telehealth by APRNs during an urgent situation.

This regulation originally was filed as an emergency regulation on May 11, 2021.

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: August 5, 2021

Danette M. Schloeder
Danette Schloeder, RN, Chair
Alaska Board of Nursing

April Simpson for
↑

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on August 26, 2021 at 10:31 a.m., I filed the attached regulation according to the provisions of AS 44.62.

for April Simpson
Kevin Meyer, Lieutenant Governor

Register: 239, October 2021.

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**

Chapter 44. Board of Nursing.

The emergency amendment of 12 AAC 44.925(d) is made permanent to read:

(d) Notwithstanding (c) of this section, during a disaster emergency declared by the governor, or when the board has determined an urgent situation exists as defined in this section, 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 or continue treatment for opioid use disorder and the APRN

(1) is a waived practitioner under 21 U.S.C. 823(g)(2) (Drug Addiction Treatment Act (DATA));

(2) documents all attempts to conduct a physical examination under this section, the reason why the examination cannot be performed, and the reason why another health care provider cannot be present with the patient; and

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

The emergency adoption of 12 AAC 44.925(h)(6) is made permanent to read:

(6) "urgent situation" means a health crisis affecting all or part of the state when circumstances prohibit another licensed health care provider's presence with the patient. (Eff. 5/7/2020, Register 234; am 5/11/2021, Register 238)

Authority: AS 08.68.100

MEMORANDUM


State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: August 25, 2021

File No.: 2021200167

Tel. No.: (907) 465-3600

From: Rebecca C. Polizzotto 
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Board of Nursing emergency
regulations made permanent re:
telehealth by advanced practice
registered nurses (APRNs) in an
urgent situation (12 AAC 44.925)

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. The regulations were adopted May 6, 2021 as emergency regulations, were filed on May 11, 2021, and will expire September 7, 2021 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.

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 provide that, not only during a disaster emergency declared by the governor but also during an urgent situation--as defined in the regulations and including, for example, the pandemic spread of the COVID-19 Delta variant--an advanced practice registered nurse (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 Board of Nursing adopted the "urgent situation" exception under the authority in AS 08.68.100(a)(1)(A) to regulate APRN practice; here, the board allowed an existing APRN practice to continue as the board determines necessary, without the governor's declaration of a disaster emergency under AS 26.23.020, and also without expanding the scope of the board's authority to define an APRN's practice.

The May 6, 2021 certification of adoption order for the emergency regulations, the May 13, 2021 public notice, and the August 5, 2021 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 a technical correction to a footer in the emergency regulations, but not to the emergency regulations themselves. The technical correction is shown on the attached copy of the regulations.

When printing the emergency regulations in the quarterly supplement for Register 238 of the Alaska Administrative Code (AAC) (July 2021), the publisher moved all of permanent 12 AAC 44.925 to the emergency regulations section of the AAC supplement pamphlet, so that none of 12 AAC 44.925 appears as a permanent regulation. We ask that, when preparing Register 239 (October 2021) for printing, the publisher double-check to ensure that 12 AAC 44.925 is restored to the permanent regulations, and not kept with the emergency regulations.

RCP:SCW

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

Glenn Hoskinson, Special Assistant and Regulations Contact
Department of Commerce, Community, and Economic Development

Lisa Maroney, Licensing Supervisor
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

Harriet Dinigar-Milks, Senior Assistant Attorney General
Commercial, Fair Business, and Child Support Section

NOTICE OF ADOPTION OF EMERGENCY REGULATION ON TELEHEALTH IN THE REGULATIONS OF THE ALASKA 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 by APRNs during an urgent situation.

On **May 6, 2021**, 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:

12 AAC 44.925. Standards of practice for telehealth, is proposed to allow APRNs who are licensed in Alaska to have flexibilities to prescribe, dispense, and administer buprenorphine via telehealth without an in-person visit during an urgent situation or the public health emergency caused by the COVID-19 pandemic.

The emergency regulation took effect on **May 11, 2021**, and will expire **September 7, 2021** unless made permanent by the Board. 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/202475>, and using the comment link. **The comments must be received not later than 4:30 p.m. on June 18, 2021.** 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 11, 2021 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/5/pub/NUR-Telehealth-EmergencyRegs-0521.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

Statutes Being Implemented, Interpreted, or Made Specific: AS 08.68.100

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

DATE: 5/12/21

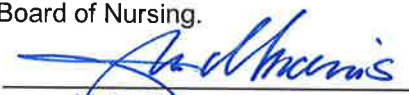

Jun Maiquis, Regulations Specialist
Division of Corporations, Business and
Professional Licensing

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 44.925.
4. **Department of Law file number:** 2021200167.
5. **Reason for the proposed action:** Emergency regulation due to urgent situation or public health emergency caused by the COVID-19 pandemic.
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 2021 or in subsequent years.
9. **The name of the contact person for the regulation:**
Lisa Maroney, Licensing Supervisor
Alaska Board of Nursing
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community, and Economic Development
Telephone: (907) 269-8892
E-mail: lisa.maroney@alaska.gov
10. **The origin of the emergency regulation action:** Board of Nursing.

11. **Date:** 5/12/21

Prepared by: 
Jun Maiquis
Regulations Specialist

**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 11, 2021 emergency changes to 12 AAC 44.925, dealing with standards of practice for telehealth by APRNs during an urgent situation, 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 11, 2021 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: 8/6/21
Juneau, Alaska



Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 6 day of August, 2021.





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 by APRNs during an urgent situation.

DATE: 8/6/21
Juneau, Alaska

Jun Maiquis
Jun Maiquis, Regulations Specialist

SUBSCRIBED AND SWORN TO before me this 6 day of August, 2021.



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

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 105545 ST OF AK/DEC/OCCU
Attention To: ATTN TO: JUN MAIQUIS
PO BOX 110806, JUNEAU, AK 99811

RECEIVED
Juneau

MAY 24 2021

Order #: W0022631

Cost: \$458.2

CBPL

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

05/13/2021

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.

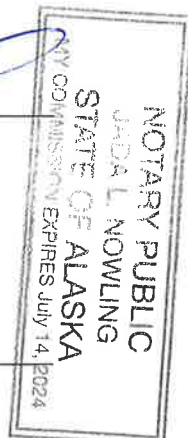
Signed _____

Subscribed and sworn to before me
this 13th day of May 2021.

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

MY COMMISSION EXPIRES

7/14/2024



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

On May 6, 2021, 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:

12 AAC 44.925. Standards of practice for telehealth, is proposed to allow APRNs who are licensed in Alaska to have flexibilities to prescribe, dispense, and administer buprenorphine via telehealth without an in-person visit during an urgent situation or the public health emergency caused by the COVID-19 pandemic.

The emergency regulation took effect on May 11, 2021, and will expire September 7, 2021 unless made permanent by the Board. 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/202475>, and using the comment link. The comments must be received not later than 4:30 p.m. on June 18, 2021. 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 11, 2021 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/5/pub/NUR-Telehealth-EmergencyRegs-0521.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
Statutes Being Implemented, Interpreted, or Made Specific: AS 08.68.100

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

DATE: 5/12/2021
/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.

Pub: May 13, 2021

AFFIDAVIT OF BOARD ACTION

I, Lisa Maroney, Licensing Supervisor for the Board of Nursing, being duly sworn, state the following:

The attached motion dealing with standards of practice for telehealth by APRNs during an urgent situation was passed by the Board of Nursing during its August 4-5, 2021 teleconference meeting.


Date: August 5, 2021
Anchorage, Alaska



Lisa Maroney, Licensing Supervisor

SUBSCRIBED AND SWORN TO before me this 5 day of August, 2021.





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

Excerpt from the Draft Minutes of the
August 4-5, 2021 Teleconference Meeting of the
Alaska Board of Nursing

Emergency Regulation re: 12 AAC 44.925 – Standards of practice for telehealth

On a motion made by Wendy Monrad and seconded by Julie Tisdale and carried with 5 ayes, it was RESOLVED that the Board of Nursing after further review and considering public comments received and cost to private persons, the board moved to adopt the emergency regulation changes to 12 AAC 44.925(d) and (h)(6), dealing with standards of practice for telehealth by APRNs during an urgent situation, to be made permanent as proposed 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 44.925, 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 urgent need related to access to care through telehealth to Alaskans during the public health emergency caused by the COVID-19 pandemic.
- To allow APRNs who are licensed in Alaska to have flexibilities to prescribe, dispense, and administer buprenorphine via telehealth without an in-person visit during an urgent situation.

ORDER CERTIFYING ADOPTION

I certify that the Board of Nursing, under the authority of AS 08.68.100, adopted at its May 6, 2021 teleconference meeting the attached two 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: May 6, 2021
Anchorage, Alaska
Anchorage, Alaska

Danette Schloeder
Danette Schloeder, RN, Chair
Alaska Board of Nursing

April Simpson, for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on May 11, 2021 at 10:12 a.m., I filed the attached regulation according to the provisions of AS 44.62.

Kevin Meyer
Kevin Meyer, Lieutenant Governor

Effective: May 11, 2021

Register: 238, July 2021

Expires September 7, 2021
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 238, July 2021 PROFESSIONAL REGULATIONS

Chapter 44. Board of Nursing.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

12 AAC 44.925(d) is amended to read:

12 AAC 44.925. Standards of practice for telehealth.

...

(d) Notwithstanding (c) of this section, during a disaster emergency declared by the governor, **or when the board has determined an urgent situation exists as defined in this section,** 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 **or continue** treatment for opioid use disorder and the APRN

(1) is a waived practitioner under 21 U.S.C. 823(g)(2) (Drug Addiction Treatment Act (DATA));

(2) documents all attempts to conduct a physical examination under this section, [AND] the reason why the examination cannot be performed, **and the reason why another health care provider cannot be present with the patient;** and

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

12 AAC 44.925(h) is amended by adding a new paragraph to read:

(h) In this section,

EMERGENCY REGULATION

Register 238, July 2021 PROFESSIONAL REGULATIONS

...

(6) "urgent situation" means a health crisis affecting all or part of the state when circumstances prohibit another licensed health care provider's presence with the patient. (Eff. 5/7/2020, Register 234; am 5 / 11 / 2021, Register 238)

Authority: AS 08.68.100