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**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

A handwritten signature in blue ink, appearing to be "AS", located to the right of the "FROM:" field.

**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 20th, 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.**



*K-Meyer*  
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**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 <sup>a</sup>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 <sup>5</sup>~~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 contra<sup>y</sup>indications to recommended treatment; and

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

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. 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.

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, ~~and~~ <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.