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**OFFICE OF THE LIEUTENANT GOVERNOR
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MEMORANDUM

TO: Debbie Morgan
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 

DATE: October 11, 2019

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

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

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

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

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


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

This action is not expected to require an increased appropriation.

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

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

DATE: 9-19-19
Anchorage, Alaska



Debra Hamilton, LPC, Chair
Board of Professional Counselors

FILING CERTIFICATION

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



Kevin Meyer, Lieutenant Governor

Effective: November 10, 2019.

Register: 232, January 2020.

Chapter 62. Board of Professional Counselors.

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

Article 4. Distance Professional Services.

Section

400. Distance professional services

410. Safety and confidentiality of communications

420. Informed consent

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

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

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

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

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

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

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

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

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

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

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

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

11/10/2019, Register 232)

Authority: AS 08.29.020 AS 08.29.400 AS 08.29.490

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

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

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

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

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

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

Authority: AS 08.29.020 AS 08.29.200 AS 08.29.490

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

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

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

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

over state lines or international boundaries;

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

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

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

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

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

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

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

Authority: AS 08.29.020 AS 08.29.400 AS 08.29.490
AS 08.29.200

The article heading for Article 4 is amended to read:

Article 5 [4]. General Provisions.

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

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

Authority: AS 08.29.020