

Notice of Proposed Regulations Changes – The Department of Commerce, Community, and Economic Development proposes to adopt new regulations regarding telemedicine business registry requirements for health care providers delivering services in this state. Notice Published: September 20, 2016.

Below are responses to questions received on the proposed regulation changes. The period for written comments ends October 24, 2016. To be considered, comments must be received not later than 5:00 p.m. on October 24, 2016. Comments received after this deadline will not be considered by the Department.

### Regulatory Questions

1 9/26/2016	<b>My partner and I represent Teladoc, a telemedicine provider and they had a question: is it your impression that Teladoc would register as the business or does the Department expect every physician who uses telemedicine to register? It's quite vague.</b>
<p><b>Answer:</b> The enabling statute requires <u>businesses</u> to register. Teladoc would need to register as a business providing telemedicine services. If individual doctors are acting as businesses (i.e. independent contractors), they would also need to register. However, doctors who are employees of businesses will not.</p> <p><b>Sec. 44.33.381. Telemedicine business registry.</b> (a) The department shall adopt regulations for establishing and maintaining a registry of businesses performing telemedicine services in the state.</p> <p>(b) The department shall maintain the registry of businesses performing telemedicine services in the state. The registry must include the name, address, and contact information of businesses performing telemedicine services in the state.</p> <p>(c) In this section,</p> <p>(1) "department" means the Department of Commerce, Community, and Economic Development;</p> <p>(2) "telemedicine services" means the delivery of health care services using the transfer of medical data through audio, visual, or data communications that are performed over two or more locations by a provider who is physically separated from the recipient of the health care services.</p>	
2 10/6/2016	<b>What is the purpose of the regulation requiring an additional registration, administrative burden, and cost for businesses who practice telemedicine in the state of Alaska?</b>
<p><b>Answer:</b> The Alaska State Legislature voted to require this registry. You may wish to contact your legislator to discuss the intent of this statute change.</p>	
3 10/6/2016	<b>Is this regulation related to healthcare professionals who prescribe prescription medication? If so, does it still apply to healthcare professionals who do not prescribe medication?</b>
<p><b>Answer:</b> The statute does not restrict the requirement to register only to those prescribing.</p>	
4 10/6/2016	<b>Can't the identification of businesses providing telemedicine services be achieved by simply checking a box at time of registration of the business?</b>
<p><b>Answer:</b> The division is seeking the least cumbersome method of compliance with the new law. The initial registration will require an</p>	

additional form; however, it is possible that subsequent renewal of the registration can be streamlined with the business or professional license renewal.	
5 10/6/2016	<b>What about businesses that provide telemedicine services but don't employ the healthcare professionals?</b>
<b>Answer:</b> The statute requires businesses providing telemedicine services to register. It does not exempt those that have contractual, rather than employment, relationships with professional licensees.	
6 10/6/16	<b>Is there different treatment for an Alaska based business that practices telemedicine both within and outside the state of Alaska and a business outside the state of Alaska who wants to practice telemedicine within the state of Alaska? Or are they both subject to the additional fees, additional registration, and additional paperwork burden?</b>
<b>Answer:</b> The statute requires all businesses providing telemedicine services to register and does not clarify location. However, the division is seeking legal clarification regarding whether the division has the authority to apply the registry solely to those providing services from outside the state.	
7 10/6/16	<b>What is the definition of a healthcare provider? Is it defined as a healthcare professional or is it a company that provides telemedicine services or are both required the additional burdens of this regulation?</b>
<p><b>Answer:</b> The proposed regulations state: "for the purpose of telemedicine business registry, "health care provider" means any professional licensed under AS 08 or any entity defined in AS 47.32.900 and is engaged in delivering telemedicine services." Please see below for these citations:</p> <p><b>Sec. 08.01.010. Applicability of chapter.</b> This chapter applies to the</p> <ol style="list-style-type: none"> <li>(1) Board of Public Accountancy (<a href="#">AS 08.04.010</a>);</li> <li>(2) regulation of acupuncturists under <a href="#">AS 08.06</a>;</li> <li>(3) State Board of Registration for Architects, Engineers, and Land Surveyors (<a href="#">AS 08.48.011</a>);</li> <li>(4) Athletic Commission (<a href="#">AS 05.05</a> and <a href="#">AS 05.10</a>);</li> <li>(5) regulation of athletic trainers under <a href="#">AS 08.07</a>;</li> <li>(6) regulation of audiologists and speech-language pathologists under <a href="#">AS 08.11</a>;</li> <li>(7) Board of Barbers and Hairdressers (<a href="#">AS 08.13.010</a>);</li> <li>(8) regulation of behavior analysts under <a href="#">AS 08.15</a>;</li> <li>(9) Big Game Commercial Services Board (<a href="#">AS 08.54.591</a>);</li> <li>(10) regulation of business licenses under <a href="#">AS 43.70</a>;</li> <li>(11) Board of Chiropractic Examiners (<a href="#">AS 08.20.010</a>);</li> <li>(12) regulation of collection agencies under <a href="#">AS 08.24</a>;</li> <li>(13) regulation of concert promoters under <a href="#">AS 08.92</a>;</li> <li>(14) regulation of construction contractors and home inspectors under <a href="#">AS 08.18</a>;</li> <li>(15) Board of Dental Examiners (<a href="#">AS 08.36.010</a>);</li> <li>(16) regulation of dietitians and nutritionists under <a href="#">AS 08.38</a>;</li> </ol>	

- (17) Board of Certified Direct-Entry Midwives ([AS 08.65.010](#));
- (18) regulation of dispensing opticians under [AS 08.71](#);
- (19) regulation of electrical and mechanical administrators under [AS 08.40](#);
- (20) regulation of agencies that perform euthanasia services under [AS 08.02.050](#);
- (21) regulation of professional geologists under [AS 08.02.011](#);
- (22) regulation of private professional guardians and private professional conservators ([AS 08.26](#));
- (23) regulation of hearing aid dealers under [AS 08.55](#);
- (24) Board of Marine Pilots ([AS 08.62.010](#));
- (25) Board of Marital and Family Therapy ([AS 08.63.010](#));
- (26) Board of Massage Therapists ([AS 08.61.010](#));
- (27) State Medical Board ([AS 08.64.010](#));
- (28) regulation of morticians under [AS 08.42](#);
- (29) regulation of the practice of naturopathy under [AS 08.45](#);
- (30) Board of Nursing ([AS 08.68.010](#));
- (31) regulation of nursing home administrators under [AS 08.70](#);
- (32) Board of Examiners in Optometry ([AS 08.72.010](#));
- (33) regulation of pawnbrokers ([AS 08.76.100](#) - 08.76.590);
- (34) Board of Pharmacy ([AS 08.80.010](#));
- (35) State Physical Therapy and Occupational Therapy Board ([AS 08.84.010](#));
- (36) Board of Professional Counselors ([AS 08.29.010](#));
- (37) Board of Psychologist and Psychological Associate Examiners ([AS 08.86.010](#));
- (38) Real Estate Commission ([AS 08.88.011](#));
- (39) Board of Certified Real Estate Appraisers ([AS 08.87.010](#));
- (40) Board of Social Work Examiners ([AS 08.95.010](#));
- (41) Board of Veterinary Examiners ([AS 08.98.010](#)).

**Sec. 47.32.900. Definitions.** In this chapter,

- (1) "ambulatory surgical center" means a facility that
  - (A) is not a part of a hospital or a physician's general medical practice; and
  - (B) operates primarily for the purpose of providing surgical services to patients who do not require hospitalization;
- (2) "assisted living home"
  - (A) means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or federal payment for services regardless of the number of adults served; the department shall consider a facility to be an assisted living home if the facility

- (i) provides housing and food services to its residents;
  - (ii) offers to provide or obtain for its residents assistance with activities of daily living;
  - (iii) offers personal assistance as defined in [AS 47.33.990](#); or
  - (iv) provides or offers any combination of these services;
- (B) does not include
- (i) a correctional facility;
  - (ii) an emergency shelter;
  - (iii) a program licensed under [AS 47.10.310](#) for runaway minors;
  - (iv) a type of entity listed in [AS 47.32.010\(b\)\(5\), \(8\), \(9\), \(10\), \(11\), or \(12\)](#);
- (3) "child placement agency" means an agency that arranges for placement of a child
- (A) in a foster home, residential child care facility, or adoptive home; or
  - (B) for guardianship purposes;
- (4) "commissioner" means the commissioner of health and social services;
- (5) "department" means the Department of Health and Social Services;
- (6) "entity" means an entity listed in [AS 47.32.010\(b\)](#);
- (7) "foster home" means a place where the adult head of household provides 24-hour care on a continuing basis to one or more children who are apart from their parents;
- (8) "free-standing birth center" means a facility that is not a part of a hospital and that provides a birth service to maternal clients;
- (9) "frontier extended stay clinic" means a rural health clinic that is authorized to provide 24-hour care to one or more individuals;
- (10) "home health agency" means a public agency or private organization, or a subdivision of a public agency or private organization, that primarily engages in providing skilled nursing services in combination with physical therapy, occupational therapy, speech therapy, or services provided by a home health aide to an individual in the individual's home, an assisted living home, or another residential setting; in this paragraph,
- (A) "public agency" means an agency operated by the state or a local government;
  - (B) "subdivision" means a component of a multi-function facility or home health agency, such as the home health care division of a hospital or the division of a public agency, that independently meets the requirements for licensure as a home health agency;
- (11) "hospice" or "agency providing hospice services or operating hospice programs" means a program that provides hospice services;
- (12) "hospice services" means a range of interdisciplinary palliative and supportive services
- (A) provided in a home or at an inpatient facility to persons who are terminally ill and to those persons' families in order to meet their physical, psychological, social, emotional, and spiritual needs; and
  - (B) based on hospice philosophy; for purposes of this subparagraph, "hospice philosophy" means a philosophy that is life affirming, recognizes dying as a normal process of living, focuses on maintaining the quality of remaining life, neither hastens nor postpones death, strengthens the client's role in making informed decisions about care, and stresses the delivery of services in the least

restrictive setting possible and with the least amount of technology necessary by volunteers and professionals who are trained to help a client with the physical, social, psychological, spiritual, and emotional issues related to terminal illness so that the client can feel better prepared for the death that is to come;

(13) "hospital" means a public or private institution or establishment devoted primarily to providing diagnosis, treatment, or care over a continuous period of 24 hours each day for two or more unrelated individuals suffering from illness, physical or mental disease, injury or deformity, or any other condition for which medical or surgical services would be appropriate; "hospital" does not include a frontier extended stay clinic;

(14) "intermediate care facility for individuals with an intellectual disability or related condition" has the meaning given in 42 C.F.R. 440.150;

(15) "licensed entity" means an entity that has a license issued under this chapter;

(16) "maternity home" means a place of residence the primary function of which is to give care, with or without compensation, to pregnant individuals, regardless of age, or that provides care, as needed, to mothers and their newborn infants;

(17) "nursing facility" means a facility that is primarily engaged in providing skilled nursing care or rehabilitative services and related services for those who, because of their mental or physical condition, require care and services above the level of room and board; "nursing facility" does not include a facility that is primarily for the care and treatment of mental diseases;

(18) "residential child care facility" means a place, staffed by employees, where one or more children who are apart from their parents receive 24-hour care on a continuing basis;

(19) "residential psychiatric treatment center" means a secure or semi-secure facility, or an inpatient program in another facility, that provides, under the direction of a physician, psychiatric diagnostic, evaluation, and treatment services on a 24-hour-a-day basis to children with severe emotional or behavioral disorders;

(20) "runaway shelter" means a facility housing a runaway child;

(21) "rural health clinic"

(A) means a facility or clinic that is authorized to provide health care services and is located in a rural area;

(B) includes a frontier extended stay clinic;

(C) does not include a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

8 10/6/16	<b>In the case of sleep medicine, there are no sleep medicine cognitive behavioral therapists (CBT) in the state of Alaska. This requires us to affiliate with a sleep CBT specialist in the lower 48. Why is the state of Alaska creating a heavier burden for Alaska residents to get access to expert care not available within the state?</b>
<b>Answer:</b> The Alaska State Legislature voted to require this registry. You may wish to contact your legislator to discuss the intent of this statute change.	
9 10/6/16	<b>What is included in telemedicine:</b> <ul style="list-style-type: none"><li>- Telephone calls to patients in the Bush? Telephone calls/texts across town?</li><li>- Radiology reading/over reading of radiology images from a physician not located in the same building as the machine?</li></ul>

	<ul style="list-style-type: none"> <li>- Is there a distance threshold? A municipality threshold? A state boundary threshold?</li> <li>- If the threshold is the state of Alaska boundary, why would a healthcare professional closer to Sitka but residing in Seattle have a burden greater than a provider residing farther away in Anchorage?</li> <li>- Does telemedicine include any healthcare professional service provided in a municipality where no physical office address exists? If so, would a healthcare professional be exempt if they had a physical office even though they provided their services from a remote location?</li> <li>- Is the requirement for a “physical exam” by the provider a differentiating point? If so, would it still be telemedicine if a healthcare professional’s medical assistant performed the physician exam with assistance of the healthcare professional?</li> </ul>
<p><b>Answer:</b> The proposed regulations state: “telemedicine services” has the meaning given in AS 44.33.381. Please see below for this citation:</p> <p><b>Sec. 44.33.381. Telemedicine business registry.</b>  (2) "telemedicine services" means the delivery of health care services using the transfer of medical data through audio, visual, or data communications that are performed over two or more locations by a provider who is physically separated from the recipient of the health care services.</p>	
10 10/6/16	<p><b>Will this requirement apply to Alaska Native Healthcare System professionals? Active Duty military healthcare professionals? Veterans Administration healthcare professionals? Healthcare professionals in a Alaska providing telemedicine services to Alaska Medicaid patients? Or is this regulation primarily applicable to healthcare professionals practicing on patients with commercial insurance?</b></p>
<p><b>Answer:</b> The statute requires businesses providing telemedicine services to register. It does not exempt businesses providing telemedicine services according to their organization or clientele. The division is seeking legal clarification to determine whether this statutory requirement pertains to businesses that are delivering telemedicine services through professionals who are not required to hold an Alaska license, such as military personnel or employees of an Indian Health Service facility.</p>	
11 10/10/16	<p><b>Will the proposed licensure and fees apply to each provider employed by a business providing telemedicine or will one telemedicine license and fee cover the business and its respective employed telemedicine providers?</b></p>
<p><b>Answer:</b> The statute only requires businesses to register, so it will not mandate registration by individual providers who are employees of the business. An individual provider who is also a business (such as a professional counselor with a small counseling business as a sole proprietor) will need to register.</p>	
12 10/11/16	<p><b>Am I correct in understanding that this regulation proposes charging an additional fee of \$100 application plus \$50 annual registration over and above my current professional license fees if I chose to provide OT services in Alaska via telemedicine?</b></p>
<p><b>Answer:</b> Yes, this is the proposal. The division appreciates public comment speaking to the proposed fee amounts.</p>	
13	<p><b>Also, am I correct in understanding that currently licensed OTs in Alaska may provide telerehabilitation per</b></p>

10/11/16	<b>12 AAC 54.825?</b>
<p><b>Answer:</b> Yes; however, SB74 amended statute pertaining to OTs, opening up telehealth further as follows:</p> <p><b>Sec. 13.</b> AS 08.84.120 is amended by adding new subsections to read:</p> <p>(c) The board may not impose disciplinary sanctions on a licensee for the evaluation, diagnosis, or treatment of a person through audio, video, or data communications when physically separated from the person if the licensee</p> <p>(1) or another licensed health care provider is available to provide follow-up care;</p> <p>(2) requests that the person consent to sending a copy of all records of the encounter to a primary care provider if the licensee is not the person's primary care provider and, if the person consents, the licensee sends the records to the person's primary care provider; and</p> <p>(3) meets the requirements established by the board in regulation.</p> <p>(d) The board shall adopt regulations restricting the evaluation, diagnosis, supervision, and treatment of a person as authorized under (c) of this section by establishing standards of care, including standards for training, confidentiality, supervision, practice, and related issues.</p>	
14 10/11/16	<p><b>I'm confused about whether this new regulation applies only to non-Alaska licensed OTs or whether Alaska-licensed OTs will be required to pay and join a telehealth registry when provision of rehab services via telehealth delivery is already included in our Alaska professional license scope of practice.</b></p>
<p><b>Answer:</b> The Alaska State Legislature mandated the registry for anyone delivering telemedicine services as follows. It doesn't exempt those practicing telehealth within Alaska, though the division is seeking clarification on this point from the Department of Law.</p> <p><b>Sec. 44.33.381. Telemedicine business registry.</b> (a) The department shall adopt regulations for establishing and maintaining a registry of businesses performing telemedicine services in the state.</p> <p>(b) The department shall maintain the registry of businesses performing telemedicine services in the state. The registry must include the name, address, and contact information of businesses performing telemedicine services in the state.</p> <p>(c) In this section,</p> <p>(1) "department" means the Department of Commerce, Community, and Economic Development;</p> <p>(2) "telemedicine services" means the delivery of health care services using the transfer of medical data through audio, visual, or data communications that are performed over two or more locations by a provider who is physically separated from the recipient of the health care services.</p>	
15 10/11/16	<p><b>I will submit my public comments separately, but my overall concern is that this new statute which creates the registry requirement essentially double-charges my profession for providing telehealth services in Alaska. The current PT and OT licensure regulations define telerehabilitation; it's in our scope of practice. I'm glad it's under review by the Dept. of Law. It's incumbent on us (licensees) to understand the impact &amp; proposed fees and provide input before 10/24/16.</b></p>
<p><b>Answer:</b> The registry is in addition to the preexisting and new provisions for PT and OT telerehabilitation, so it requires additional infrastructure on our part and, thus, additional cost that has not been factored into license fees. It is mandated by the legislature, so your</p>	

input will be useful in helping our agency determine the most streamlined way of adding this new registry to all of our health care professions.