out-of-state to provide telehealth services in the same manner as licensed Alaska physicians located in-state, and would affirmatively allow certain Alaska-licensed behavioral health professionals to provide services remotely. The FTC staff offers no opinion on any aspect of SB 74 not directly addressed in this letter.

Telehealth, the use of telecommunications to provide health care services to remotely located patients,[4] readily crosses jurisdictional boundaries. Because of the state's vast size, rural nature, and harsh conditions, telehealth has long been a staple of Alaskan health care delivery.[5] FTC staff believes that the provisions in SB 74 that would allow out-of-state as well as in-state Alaska licensees to provide telehealth services without an in-person examination would represent a procompetitive improvement in Alaska's telehealth law. These provisions would likely increase the supply of telehealth providers, enhance competition, and reduce health care costs, thereby benefiting Alaskans, especially underserved populations with limited access to health care.

I. INTEREST AND EXPERIENCE OF THE FEDERAL TRADE COMMISSION

The FTC is charged under the FTC Act with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[6] Competition is at the core of America's economy,[7] and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, and robust innovation. Because of the importance of health care competition to the economy and consumer

In the 2004 FTC & U.S. Department of Justice report, IMPROVING HEALTH CARE: A DOSE OF COMPETITION, the agencies considered the competitive effects of State Restrictions on the Interstate Practice of Telemedicine.[11] The central finding of that analysis is still accurate today: "When used properly, telemedicine has considerable promise as a mechanism to broaden access, lower costs, and improve health care quality."[12] The report also observed that "the practice of telemedicine has crystallized tensions between the states' role in ensuring patients have access to quality care and the anticompetitive effects of protectionist state policies that insulate in-state physicians from out-of-state competition."[13]

of telehealth by behavioral health professionals, its requirement that behavioral health professionals providing services remotely, unlike those providing services in person, share sensitive mental health records with a primary care provider could discourage its use for patients who wish to keep such records confidential.[24] In addition, as discussed below, we suggest that legislators consider whether special standards of care are needed for remotely provided behavioral health services.[25]

III. POTENTIAL COMPETITIVE EFFECTS OF SB 74's TELEHEALTH PROVISIONS

Alaskans have long relied on telehealth to mitigate provider shortages and enhance access to care throughout the state. However, by allowing only physicians located in Alaska to prescribe medication without conducting a physical examination, current Alaska law unnecessarily restricts access to care from a substantial pool of providers. By eliminating the "state" requirement, SB 74 would potentially increase the supply of physicians and competition from lower-cost providers, reduce transportation costs, and improve access to quality care.

A. Telehealth Already Expands Access to Health Care in Alaska

Telehealth, including services from out-of-state providers, has long been a way to address

the supply of physicians who could provide telehealth services, based on estimates that approximately two thousand Alaska-licensed physicians have in-state addresses while another two thousand have out-of-state addresses.[46] As explained by a previous analysis of Alaska physician license records that also found that many Alaska licensees are located out of state, such licensees include physicians who sometimes work in-state, physicians who previously worked in-state but still maintain their Alaska license, physicians who provide telemedicine services for Alaska patients, and some who obtained a license but decided not to practice in the state.[47] In addition, Alaskan authorities predict that elimination of the in-state requirement would encourage out-of-state physicians who are not currently licensed in Alaska and wish to provide telehealth services to apply for Alaska licensure.[48] In sum, by eliminating the in-state requirement, SB 74 could immediately provide access to a variety of Alaska-licensed physicians located out-of-state, many of whom may have previously worked in Alaska and are familiar with the state's unique health care challenges.

This increase in the supply of practitioners likely has the potential to increase competition, enhance the quality of care readily available to remote patients, and reduce costs. Authoritative sources have found that health care prices in Alaska are high, in part due to insufficient competition. For example, the AHCC found that on average, "reimbursement for physician services in Alaska is 60% higher than in comparison states for all payers, 69% higher for commercial health insurers."[49] The AHCC attributed these high prices, in part, to "the relative lack of competition among practitioners, particularly in specialty care. . . . As a result, physicians can largely dictate the fees they are paid by commercial payers."[50]

By expanding the supply of telehealth services provided by Alaska-licensed but out-of-state practitioners, SB 74 could help reduce costs. Services provided by out-of-state providers are likely to cost less because of the provider's location. For example, use of an out-of-state provider could reduce costs for the Alaska Medical Assistance (Medicaid) program. If telehealth services provided by an out-of-state practitioner meet all requirements for reimbursement, Alaska Medical Assistance reimburses such services at the lesser of the "rate established by the Medicaid agency in the state where the services were provided;" or "the rate or payment methodology established by Alaska Medical Assistance."[51] Accordingly, use of an out-of-state Medicaid telehealth provider would cost no more than use of a provider in Alaska, and may cost less.[52] Similarly, Medicare's Geographic Adjustment Factor ("GAF") for fee-for-service reimbursement of providers in Alaska is 1.29, the highest in the nation.[53] As a result, when an out-of-state physician provides covered telehealth services for an Alaska patient, Medicare reimbursement on average would be about 78% of what the reimbursement would have been, had the practitioner providing the services been located in Alaska.[54] Finally, if the relative reimbursement of in-state and out-of-state telehealth services by private sector payers is the same as what the AHCC found for overall reimbursement of physician services by commercial health insurers, private sector reimbursement of out-of-state providers of telehealth services would be only 59% of that paid to Alaska physicians.[55]

By eliminating the in-state requirement in ALASKA STAT. § 08.64.364, SB 74 would also facilitate the expansion of services from nationwide direct-to-consumer telehealth companies that operate in most states and have recently begun offering services to Alaskan patients or are interested in doing so.[56] Such companies connect patients with a provider upon consumer

Finally, we urge the legislature to consider the potential consequences of SB 74's proposed requirements that the relevant professional boards adopt regulations establishing special standards of care for physician and behavioral health practitioners who provide services remotely. The bill would require the ASMB to "adopt regulations establishing standards of care for a physician who is rendering a diagnosis, providing treatment, or prescribing, dispensing, or administering a prescription drug to a person without conducting a physical examination[.]"[72] A telehealth provider who has not made a physical examination is already subject to the state's licensure requirements, including an obligation to meet the state's existing standard of care. The development of additional "safeguards" solely for telehealth providers might lead to the adoption of unnecessary restrictions that would only serve to restrict competition, and thereby undermine SB 74's goal of enhancing access to telehealth services.

We encourage the Alaska legislature to consider clarifying the proposed amendments to ensure that any subsequent regulations are narrowly tailored and would not undermine this goal of SB 74. In particular, the legislature may wish to include a provision expressly acknowledging that the physician-patient relationship can be established using telehealth communications.[73] Similarly, we encourage the legislature to consider whether the bill's requirements that behavioral health boards "adopt regulations restricting the evaluation, diagnosis, supervision, and treatment of a person" provided remotely by establishing standards of care, including standards for supervision, practice, and other matters, could lead to regulations that undermine the availability of telemental health services, and whether they are needed.[74]

IV. CONCLUSION

By enacting ALASKA STAT. § 08.64.364, the Alaska legislature determined that Alaskans would benefit from increased access to telehealth services by eliminating the in-person physical examination requirement under certain circumstances. That provision did not extend to physicians licensed in Alaska, but located out-of-state. FTC staff urges the legislature to consider whether there are any legitimate health or safety justifications for prohibiting physicians licensed in Alaska, but located out of state, from providing telehealth services in the same manner as in-state physicians. By eliminating the "in-state" requirement, SB 74 would likely expand the supply of telehealth providers, promote competition, and increase access to safe and cost-effective care. It could also

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[1] This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has voted to authorize us to submit these comments.

[2] S.B. 74, 29th Leg., 2nd Sess., sec. 7, 1 (Alaska 2016) (FIN Committee Substitute, amended, March 12, 2016) http://www.legis.state.ak.us/PDF/29/Bills/SB0074E.PDF.

[3] S.B. 98, 29th Leg., 2nd Sess., (Alaska 2016) (L&C Committee Substitute, March 4, 2016) http://www.akleg.gov/PDF/29/Bills/SB0098C.PDF.

[4] While there is no single, universally accepted definition of telehealth or telemedicine, both terms "describe the use of medical information exchanged from one site to another via electronic communications to improve the patient's health status." BOARD ON HEALTH CARE SERVICES, INSTITUTE OF MEDICINE, THE ROLE OF TELEHEALTH IN AN EVOLVING HEALTH CARE ENVIRONMENT: WORKSHOP SUMMARY 3, 134 (Tracy A. Lustig, Rapporteur) (2012) [hereinafter INSTITUTE OF MEDICINE, THE ROLE OF TELEHEALTH IN AN EVOLVING HEALTH CARE ENVIRONMENT], i(E)Tj -0.006 Tc 0.0

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from providing telehealth services in or out-of-state. In general, the amendments to these sections provide that the

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Social Services "has been using stateside physicians for years to deliver health care via telemedicine to Alaskans at a far more reasonable rate and it has worked out very well").

[50] 2011 ANNUAL REPORT OF THE ALASKA HEALTH CARE COMMISSION, supra note 49, at 14. The Report also explains that "Physician discounts are low in Alaska relative to the comparison states, an indication that physicians in Alaska have more market power relative to pricing." Id. at 13. It also states that, "Alaska's higher medical prices are due in part to higher operating costs for providers stemming from a higher cost of living, more costly employee benefits, transportation and shipping costs, fuel prices, and workforce shortages." Id. at 7. See also FOSTER & GOLDSMITH, supra note 29, at 8 (the small markets in hundreds of Alaska communities "mean providers can't take advantage of economies of scale and have limited competition. Those factors don't entirely explain Alaska's high health-care spending, but they help put it in context.").

[51] See ALASKA ADMIN. CODE tit. 7 §§ 110.620, 110.625, 110.630, 110.635, 110.639.

[52] Out-of-State Services, ALASKA MED. ASSISTANCE HEALTH ENTERPRISE PORTAL, http://manuals.medicaidalaska.com/physician/general_program_info_section_iii/out_of_state_services.htm (last updated June 2012).

[53] Out-of-state costs may well be less. Alaska's Medicaid costs per enrollee are the highest in the nation. See

[59] See, e.g., Mehrotra et al., *supra* note 58, at 73; Ateev Mehrotra, The Convenience Revolution for Treatment of Low-Acuity Conditions, 310 JAMA 35 (2013).

[60] See, e.g., Patrick T. Courneya, Kevin J. Palatta & Jason M. Gallagher, HealthPartners' Online Clinic for Simple Conditions Delivers Savings of $88 Per Episode and High Patient Approval, 32 HEALTH AFF. 385, 386, 388-89 (2013); Daniel & Sulmasy, *supra* note 45, at App. 4 ("An e-visit typically costs approximately $40 (vs. $73 for an in-person visit")).

[61] See, e.g., Uscher-Pines & Mehrotra, *supra* note 58, at 261 (study of CALPers enrollees offered the option of using Teladoc); Daniel & Sulmasy, *supra* note 45, at App. 4 (employers and insurance companies may reimburse direct-to-patient telemedicine services).

[62] See, e.g., Patrick Brunett et al., Use of voice and video internet technology as an alternative to in-person non-urgent care clinic visits, 21 J. TELEMED. TELECARE 219 (2015) (patient-initiated online Internet visits are an alternative to urgent and primary care). Cf. Uscher-Pines & Mehrotra, *supra* note 58, at 263 (Teladoc visits are highly likely to be less expensive than office visits and the emergency department, but "it is unclear to what extent Teladoc visits are substituting for office or ED visits and to what extent they represent new use of health care for conditions that would have resolved themselves without intervention.").

[63] See ALASKA MEDICAID 2015 ANNUAL REPORT, *supra* note 43, at 43 (telehealth " brings more timely services to the patient when time is of the essence, it saves the patient the inconvenience of traveling to receive care, and it reduces Medicaid program travel expenditures..")

[64] See, e.g., Innovations Exchange Team, Agency for Healthcare Research and Quality, U.S. Dep't of Health & Human Services, Telehealth Improves Access and Quality of Care for Alaska Natives,

[71] As discussed above, some physicians licensed in Alaska but located outside the state have previously worked in Alaska, and could have as much knowledge of local conditions as state practitioners. See supra note 47 and accompanying text.

[72] S.B. 74, 29th Leg., 2nd Sess., sec. 3, § 08.64.101(6) (Alaska 2016) (CSFIN Committee Substitute, amended, March 11, 2016).

[73] Although we take no position on the telemedicine policies of the Federation of State Medical Boards ("FSMB") and the American College of Physicians ("ACP"), we note that under both policies, a physician-patient relationship can be established during a telemedicine encounter. See FED'N OF STATE MEDICAL BOARDS, MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF MEDICINE 5 (2014), https://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/FSMB_Telemedicine_Policy.pdf (the physician-patient relationship to "be established using telemedicine technologies so long as the standard of care is"); Daniel & Sulmasy, supra note 45, at 788 (ACP takes the position that "a telemedicine encounter itself can establish a patient-physician relationship"). The FSMB policy also concluded that physicians using telemedicine may, in their professional discretion, recommend treatment and prescribe medications in the absence of a physical examination "in accordance with current standards of practice and . . . [with] the same professional accountability as prescriptions delivered during an encounter in person." FSMB MODEL POLICY, supra at 8.

[74] S.B. 74, 29th Leg., 2nd Sess., sec. 18, § 6 [(s.0 Td 04-12(0 Td [(S-36 S)4. S)4. S54.a(a)-2.8(p)-7.7,(a71 2(h)8(e p 6,.)d-3