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3 ROBERTS SUBSTITUTE FOR SB272
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8 SYNOPSIS: This bill would allow licensed physicians,
9 including osteopathic physicians, to practice
10 telemedicine in the state.

11 This bill would proscribe the duties and
12 responsibilities of a physician practicing
13 telemedicine.

14 This bill would provide that prescribers
15 practicing telemedicine may prescribe certain
16 medications without meeting a patient in person.

17 This bill would authorize the Board of
18 Medical Examiners and the Medical Licensure
19 Commission to adopt rules related to telehealth and
20 telemedicine.

21 This bill would repeal existing law relating
22 to the practice of medicine and osteopathy across
23 state lines.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to the practice of medicine; to repeal
3 Sections 34-24-500 through 34-24-508, Code of Alabama 1975,
4 relating to the licensing of the practice of medicine and
5 osteopathy across state lines; to add a new Article 12 to
6 Chapter 24 of Title 34, Code of Alabama 1975; to provide for
7 the practice of telemedicine in the state.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Article 12 is added to Chapter 24 of
10 Title 34, Code of Alabama 1975, to read as follows:

11 Article 12.

12 §34-24-700.

13 It is the intent of the Legislature to expand access
14 to safe, effective health care services for the residents of
15 this state through the use of various electronic devices and
16 technologies. The Legislature finds and declares the
17 following:

18 (1) Telehealth has proven to be a viable tool to
19 supplement traditional, in-person services and provides
20 additional ways for individuals to access medical care.

21 (2) Allowing physicians to utilize telehealth
22 medical services and other electronic devices to provide care
23 will positively impact residents of this state.

24 (3) Telehealth should be promoted as sound public
25 policy and should be available to every Alabama resident,
26 irrespective of their race, identity, age, income,
27 socioeconomic class, or geographic location.

1 §34-24-701.

2 For the purposes of this article, the following
3 terms shall have the following meanings:

4 (1) ASYNCHRONOUS. The electronic exchange of health
5 care documents, images, and information that does not occur in
6 real time, including, but not limited to, the collection and
7 transmission of medical records, clinical data, or laboratory
8 results.

9 (2) BOARD OF MEDICAL EXAMINERS. The Alabama Board of
10 Medical Examiners established pursuant to Section 34-24-53.

11 (3) CONTROLLED SUBSTANCE. The same meaning as
12 defined in Section 20-2-2. This term includes an immediate
13 precursor, as defined in Section 20-2-2.

14 (4) DIGITAL HEALTH. The delivery of health care
15 services, patient education communications, or public health
16 information via software applications, consumer devices, or
17 other digital media.

18 (5) DISTANT SITE. The physical location of a
19 physician at the time in which telehealth medical services are
20 provided.

21 (6) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY
22 ACT (HIPAA). The Health Insurance Portability and
23 Accountability Act of 1996, Public Law 104-191, §264, 110
24 Stat. 1936.

25 (7) LEGEND DRUG. Any drug, medicine, chemical, or
26 poison bearing on the label the words, "Caution, federal law
27 prohibits dispensing without prescription" or other similar

1 wording indicating that the drug, medicine, chemical, or
2 poison may be sold or dispensed only upon the prescription of
3 a licensed medical practitioner.

4 (8) MEDICAL LICENSURE COMMISSION. The Alabama
5 Medical Licensure Commission established pursuant to Section
6 34-24-310.

7 (9) MEDICAL SUPPLIES. Non-drug medical items,
8 including durable medical equipment, which may be sold or
9 dispensed only upon the prescription of a licensed medical
10 practitioner.

11 (10) ORIGINATING SITE. The physical location of a
12 patient at the time in which telehealth medical services are
13 provided.

14 (11) PHYSICIAN. Either a doctor of medicine who is
15 licensed to practice medicine or a doctor of osteopathy who is
16 licensed to practice osteopathy in a state, commonwealth,
17 district, or territory of the United States.

18 (12) PRESCRIBER. Any person who possesses an active
19 Alabama controlled substance certificate or a Qualified
20 Alabama Controlled Substances Registration Certificate issued
21 by the Board of Medical Examiners.

22 (13) SYNCHRONOUS. The real-time exchange of medical
23 information or provision of care between a patient and a
24 physician via audio/visual technologies, audio only
25 technologies, or other means.

26 (14) TELEHEALTH. The use of electronic and
27 telecommunications technologies, including devices used for

1 digital health, asynchronous and synchronous communications,
2 or other methods, to support a range of medical care and
3 public health services.

4 (15) TELEHEALTH MEDICAL SERVICES. Digital health,
5 telehealth, telemedicine, and the applicable technologies and
6 devices used in the delivery of telehealth. The term does not
7 include incidental communications between a patient and a
8 physician.

9 (16) TELEMEDICINE. A form of telehealth referring to
10 the provision of medical services by a physician at a distant
11 site to a patient at an originating site via asynchronous or
12 synchronous communications, or other devices that may
13 adequately facilitate and support the appropriate delivery of
14 care. The term includes digital health, but does not include
15 incidental communications between a patient and a physician.

16 §34-24-702.

17 (a) Physicians who engage in the provision of
18 telehealth medical services to any individual in this state
19 must possess a full and active license to practice medicine or
20 osteopathy issued by the Medical Licensure Commission.

21 (b) Notwithstanding subsection (a), a physician who
22 engages in the provision of telehealth medical services to any
23 individual in this state is not required to possess a license
24 issued by the Medical Licensure Commission, if either of the
25 following apply:

26 (1) The services are provided on an irregular or
27 infrequent basis. The term "irregular or infrequent" refers to

1 telehealth medical services occurring less than 10 days in a
2 calendar year or involving fewer than 10 patients in a
3 calendar year.

4 (2) The services are provided in consultation, as
5 further provided by Section 34-24-74, with a physician
6 licensed to practice medicine or osteopathy in this state.

7 (c) A violation of this article shall constitute the
8 unauthorized practice of medicine.

9 (d) Nothing in this article shall be interpreted to
10 limit or restrict the Board of Medical Examiners' or Medical
11 Licensure Commission's authority to regulate, revoke, suspend,
12 sanction, or otherwise discipline any physician licensed to
13 practice in this state who violates the provisions of this
14 chapter, the provisions relating to the regulation of
15 manufacture and distribution of controlled substances, as
16 provided by Sections 20-2-50 through 20-2-58, or the
17 administrative rules of the Board of Medical Examiners or the
18 Medical Licensure Commission while engaging in the practice of
19 medicine within this or any other state.

20 (e) Nothing in this article shall be construed to
21 apply to or to restrict the provision of health-related
22 services via telehealth by a health care provider other than a
23 physician, provided that those health-related services are
24 within the scope of practice of the health care professional
25 licensed in Alabama.

26 §34-24-703.

1 (a) A physician providing telehealth medical
2 services shall owe to the patient the same duty to exercise
3 reasonable care, diligence, and skill as would be applicable
4 if the service or procedure were provided in person.
5 Telehealth medical services shall be governed by the Medical
6 Liability Act of 1987, codified in Sections 6-5-540 through
7 6-5-552, and shall be subject to the exclusive jurisdiction
8 and venue of the circuit courts of the State of Alabama,
9 regardless of the citizenship of the parties.

10 (b) A physician practicing telemedicine shall do all
11 of the following, if such action would otherwise be required
12 in the provision of the same service if delivered in-person:

13 (1) Establish a diagnosis through the use of
14 acceptable medical practices, which may include, but not be
15 limited to, taking a patient history, a mental status
16 examination, a physical examination, disclosure and evaluation
17 of underlying conditions, and any diagnostic and laboratory
18 testing.

19 (2) Disclose any diagnosis and the evidence for the
20 diagnosis, and discuss the risks and benefits of treatment
21 options.

22 (3) Provide a visit summary to the patient and, if
23 needed, inform the patient of the availability of, or how to
24 obtain, appropriate follow-up and emergency care.

25 (c) The provision of telehealth medical services is
26 deemed to occur at the patient's originating site within this

1 state. A licensed physician providing telehealth medical
2 services may do so at any distant site.

3 (d) Telehealth medical services may only be provided
4 following the patient's initiation of a physician-patient
5 relationship, or pursuant to a referral made by a patient's
6 licensed physician with whom the patient has an established
7 physician-patient relationship, in the usual course of
8 treatment of the patient's existing health condition. The
9 physician-patient relationship may be formed without a prior
10 in-person examination.

11 (e) Prior to providing any telehealth medical
12 service, the physician, to the extent possible, shall do all
13 of the following:

14 (1) Verify the identity of the patient.

15 (2) Require the patient to identify his or her
16 physical location, including the city and state.

17 (3) Disclose to the patient the identity and
18 credentials of the physician and any other applicable
19 personnel.

20 (4) Obtain the patient's consent for the use of
21 telehealth as an acceptable mode of delivering health care
22 services, including, but not limited to, consent for the mode
23 of communication used and its limitations. Acknowledgment of
24 consent shall be documented in the patient's medical record.

25 (f) (1) If a physician or practice group provides
26 telehealth medical services more than four times in a 12-month
27 period to the same patient for the same medical condition

1 without resolution, the physician shall do either of the
2 following:

3 a. See the patient in person within a reasonable
4 amount of time, which shall not exceed 12 months.

5 b. Appropriately refer the patient to a physician
6 who can provide the in-person care within a reasonable amount
7 of time, which shall not exceed 12 months.

8 (2)a. For the purposes of this section, each
9 pregnancy for a woman shall be considered a separate or new
10 condition.

11 b. For the purposes of this subsection, the term
12 "practice group" shall mean, at a minimum, a group of
13 providers who have access to the same medical records.

14 c. The Board of Medical Examiners, by rule or
15 otherwise, may provide for exemptions to the requirement
16 contained in subdivision (1) that are no more restrictive than
17 the provisions of this article.

18 (3) The provision of telehealth medical services
19 that includes video communication to a patient at an
20 originating site with the in-person assistance of a person
21 licensed by the Board of Medical Examiners or by the Board of
22 Nursing pursuant to Chapter 21 of Title 34 of the Code of
23 Alabama 1975, shall constitute an in-person visit for the
24 purposes of this subsection.

25 (4) This section does not apply to the provision of
26 telehealth medical services provided by a physician in active

1 consultation with another physician who is providing in-person
2 care to a patient.

3 (5) This section shall not apply to the provision of
4 mental health services as defined in Section 22-50-1.

5 §34-24-704.

6 (a) A prescriber may prescribe a legend drug,
7 medical supplies, or a controlled substance to a patient as a
8 result of a telehealth medical service if the prescriber is
9 authorized to prescribe the drug, supplies, or substance under
10 applicable state and federal laws. To be valid, a prescription
11 must be issued for a legitimate medical purpose by a
12 prescriber acting in the usual course of his or her
13 professional practice.

14 (b) (1) A prescription for a controlled substance may
15 only be issued as a result of telehealth medical services if
16 each of the following apply:

17 a. The telehealth visit includes synchronous audio
18 or audio-visual communication using HIPAA compliant equipment
19 with the prescriber responsible for the prescription.

20 b. The prescriber has had at least one in-person
21 encounter with the patient within the preceding 12 months.

22 c. The prescriber has established a legitimate
23 medical purpose for issuing the prescription within the
24 preceding 12 months.

25 (2) This subsection shall not apply in an in-patient
26 setting.

1 (c) A physician shall be exempt from the
2 requirements of subsection (b) and may issue a prescription
3 for a controlled substance to a patient if the prescription is
4 for the treatment of a patient's medical emergency, as further
5 defined by rule by the Board of Medical Examiners and the
6 Medical Licensure Commission.

7 §34-24-705.

8 (a) A physician who provides a telehealth medical
9 service shall comply with all federal and state laws and
10 regulations applicable to the provision of telehealth medical
11 services, including the Health Insurance Portability and
12 Accountability Act (HIPAA), and shall use devices and
13 technologies in compliance with these laws, rules, and
14 regulations. A physician who provides telehealth medical
15 services shall also take reasonable precautions to protect the
16 privacy and security of all verbal, visual, written, and other
17 communications involved in the delivery of telehealth medical
18 services.

19 (b) A physician who provides a telehealth medical
20 service shall maintain complete and accurate medical records
21 in accordance with rules of the Board of Medical Examiners and
22 the Medical Licensure Commission, must have access to the
23 patient's medical records, and must be able to produce the
24 records upon demand by the patient, the Board of Medical
25 Examiners, or the Medical Licensure Commission.

26 (c) Rules adopted by the Board of Medical Examiners
27 and the Medical Licensure Commission shall set standards for

1 the creation, retention, and distribution of medical records
2 pursuant to the delivery of telehealth medical services.

3 §34-24-706.

4 (a) The Board of Medical Examiners and the Medical
5 Licensure Commission may adopt rules regulating the provision
6 of telehealth medical services by physicians in this state,
7 even if the rules displace competition.

8 (b) Rules adopted by the Board of Medical Examiners
9 and the Medical Licensure Commission shall promote quality
10 care, prevent fraud, waste, and abuse, and ensure that
11 physicians provide adequate supervision of health
12 professionals who aid in providing telehealth medical
13 services.

14 (c) Other than as set forth in this article, the
15 authority of the Board of Medical Examiners and the Medical
16 Licensure Commission to regulate physicians providing
17 telehealth medical services shall be the same as the authority
18 of the Board of Medical Examiners and the Medical Licensure
19 Commission to regulate physicians providing services in
20 person.

21 §34-24-707.

22 (a) This article, and the rules adopted by the Board
23 of Medical Examiners and the Medical Licensure Commission,
24 shall apply only to the provision of telehealth medical
25 services by physicians to individuals located in this state.

26 (b) The Board of Medical Examiners, the Medical
27 Licensure Commission, and its officers, agents,

1 representatives, employees, and directors thereof, shall be
2 considered to be acting pursuant to clearly expressed state
3 policy as established in this act and under the active
4 supervision of the state. The boards, agencies, and
5 individuals in this section shall not be subject to state or
6 federal antitrust laws while acting in the manner provided in
7 this section.

8 Section 2. Article 10, comprised of Sections
9 34-24-500 through 34-24-508, of Chapter 24 of Title 34, Code
10 of Alabama 1975, relating to the licensing of the practice of
11 medicine and osteopathy across state lines, is repealed.

12 Section 3. This act shall become effective 90 days
13 following its passage and approval by the Governor, or its
14 otherwise becoming law.