

1 SB272
2 219316-2
3 By Senators Roberts, Waggoner, Shelnuttt, Livingston and
4 Singleton
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 01-MAR-22

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the practice of medicine; to repeal
12 Sections 34-24-500 through 34-24-508, Code of Alabama 1975,
13 relating to the licensing of the practice of medicine and
14 osteopathy across state lines; to add a new Article 12 to
15 Chapter 24 of Title 34, Code of Alabama 1975; to provide for
16 the practice of telemedicine in the state.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 Article 12.

21 §34-24-700.

22 It is the intent of the Legislature to expand access
23 to safe, effective health care services for the residents of
24 this state through the use of various electronic devices and
25 technologies. The Legislature finds and declares the
26 following:

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

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

7 (3) Telehealth should be promoted as sound public
8 policy and should be available to every Alabama resident,
9 irrespective of their race, identity, age, income,
10 socioeconomic class, or geographic location.

11 §34-24-701.

12 For the purposes of this article, the following
13 terms shall have the following meanings:

14 (1) ASYNCHRONOUS. The electronic exchange of health
15 care documents, images, and information that does not occur in
16 real time, including, but not limited to, the collection and
17 transmission of medical records, clinical data, or laboratory
18 results.

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

21 (3) CONTROLLED SUBSTANCE. The same meaning as
22 defined in Section 20-2-2. This term includes an immediate
23 precursor, as defined in Section 20-2-2.

24 (4) DIGITAL HEALTH. The delivery of health care
25 services, patient education communications, or public health
26 information via software applications, consumer devices, or
27 other digital media.

1 (5) DISTANT SITE. The physical location of a
2 physician at the time in which telehealth medical services are
3 provided.

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

8 (7) LEGEND DRUG. Any drug, medicine, chemical, or
9 poison bearing on the label the words, "Caution, federal law
10 prohibits dispensing without prescription" or other similar
11 wording indicating that the drug, medicine, chemical, or
12 poison may be sold or dispensed only upon the prescription of
13 a licensed medical practitioner.

14 (8) MEDICAL LICENSURE COMMISSION. The Alabama
15 Medical Licensure Commission established pursuant to Section
16 34-24-310.

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

21 (10) ORIGINATING SITE. The physical location of a
22 patient at the time in which telehealth medical services are
23 provided.

24 (11) PHYSICIAN. Either a doctor of medicine who is
25 licensed to practice medicine or a doctor of osteopathy who is
26 licensed to practice osteopathy in a state, commonwealth,
27 district, or territory of the United States.

1 (12) PRESCRIBER. Any person who possesses an active
2 Alabama controlled substance certificate or a Qualified
3 Alabama Controlled Substances Registration Certificate issued
4 by the Board of Medical Examiners.

5 (13) SYNCHRONOUS. The real-time exchange of medical
6 information or provision of care between a patient and a
7 physician via audio/visual technologies, audio only
8 technologies, or other means.

9 (14) TELEHEALTH. The use of electronic and
10 telecommunications technologies, including devices used for
11 digital health, asynchronous and synchronous communications,
12 or other methods, to support a range of medical care and
13 public health services.

14 (15) TELEHEALTH MEDICAL SERVICES. Digital health,
15 telehealth, telemedicine, and the applicable technologies and
16 devices used in the delivery of telehealth. The term does not
17 include incidental communications between a patient and a
18 physician.

19 (16) TELEMEDICINE. A form of telehealth referring to
20 the provision of medical services by a physician at a distant
21 site to a patient at an originating site via asynchronous or
22 synchronous communications, or other devices that may
23 adequately facilitate and support the appropriate delivery of
24 care. The term includes digital health, but does not include
25 incidental communications between a patient and a physician.

26 §34-24-702.

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

5 (b) Notwithstanding subsection (a), a physician who
6 engages in the provision of telehealth medical services to any
7 individual in this state is not required to possess a license
8 issued by the Medical Licensure Commission, if either of the
9 following apply:

10 (1) The services are provided on an irregular or
11 infrequent basis. The term "irregular or infrequent" refers to
12 telehealth medical services occurring less than 10 days in a
13 calendar year or involving fewer than 10 patients in a
14 calendar year.

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

18 (c) A violation of this article shall constitute the
19 unauthorized practice of medicine.

20 (d) Nothing in this article shall be interpreted to
21 limit or restrict the Board of Medical Examiners' or Medical
22 Licensure Commission's authority to regulate, revoke, suspend,
23 sanction, or otherwise discipline any physician licensed to
24 practice in this state who violates the provisions of this
25 chapter, the provisions relating to the regulation of
26 manufacture and distribution of controlled substances, as
27 provided by Sections 20-2-50 through 20-2-58, or the

1 administrative rules of the Board of Medical Examiners or the
2 Medical Licensure Commission while engaging in the practice of
3 medicine within this or any other state.

4 (e) Nothing in this article shall be construed to
5 apply to or to restrict the provision of health-related
6 services via telehealth by a health care provider other than a
7 physician, provided that those health-related services are
8 within the scope of practice of the health care professional
9 licensed in Alabama.

10 §34-24-703.

11 (a) A physician providing telehealth medical
12 services shall owe to the patient the same duty to exercise
13 reasonable care, diligence, and skill as would be applicable
14 if the service or procedure were provided in person.

15 Telehealth medical services shall be governed by the Medical
16 Liability Act of 1987, codified in Sections 6-5-540 through
17 6-5-552, and shall be subject to the exclusive jurisdiction
18 and venue of the circuit courts of the State of Alabama,
19 regardless of the citizenship of the parties.

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

23 (1) Establish a diagnosis through the use of
24 acceptable medical practices, which may include, but not be
25 limited to, taking a patient history, a mental status
26 examination, a physical examination, disclosure and evaluation

1 of underlying conditions, and any diagnostic and laboratory
2 testing.

3 (2) Disclose any diagnosis and the evidence for the
4 diagnosis, and discuss the risks and benefits of treatment
5 options.

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

9 (c) The provision of telehealth medical services is
10 deemed to occur at the patient's originating site within this
11 state. A licensed physician providing telehealth medical
12 services may do so at any distant site.

13 (d) Telehealth medical services may only be provided
14 following the patient's initiation of a physician-patient
15 relationship, or pursuant to a referral made by a patient's
16 licensed physician with whom the patient has an established
17 physician-patient relationship, in the usual course of
18 treatment of the patient's existing health condition. The
19 physician-patient relationship may be formed without a prior
20 in-person examination.

21 (e) Prior to providing any telehealth medical
22 service, the physician, to the extent possible, shall do all
23 of the following:

24 (1) Verify the identity of the patient.

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

1 (3) Disclose to the patient the identity and
2 credentials of the physician and any other applicable
3 personnel.

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

9 (f) (1) If a physician or practice group provides
10 telehealth medical services more than four times in a 12-month
11 period to the same patient for the same medical condition
12 without resolution, the physician shall do either of the
13 following:

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

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

19 (2)a. For the purposes of this section, each
20 pregnancy for a woman shall be considered a separate or new
21 condition.

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

25 c. The Board of Medical Examiners, by rule or
26 otherwise, may provide for exemptions to the requirement

1 contained in subdivision (1) that are no more restrictive than
2 the provisions of this article.

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

10 (4) This section does not apply to the provision of
11 telehealth medical services provided by a physician in active
12 consultation with another physician who is providing in-person
13 care to a patient.

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

16 §34-24-704.

17 (a) A prescriber may prescribe a legend drug,
18 medical supplies, or a controlled substance to a patient as a
19 result of a telehealth medical service if the prescriber is
20 authorized to prescribe the drug, supplies, or substance under
21 applicable state and federal laws. To be valid, a prescription
22 must be issued for a legitimate medical purpose by a
23 prescriber acting in the usual course of his or her
24 professional practice.

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

1 a. The telehealth visit includes synchronous audio
2 or audio-visual communication using HIPAA compliant equipment
3 with the prescriber responsible for the prescription.

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

6 c. The prescriber has established a legitimate
7 medical purpose for issuing the prescription within the
8 preceding 12 months.

9 (2) This subsection shall not apply in an in-patient
10 setting.

11 (c) A physician shall be exempt from the
12 requirements of subsection (b) and may issue a prescription
13 for a controlled substance to a patient if the prescription is
14 for the treatment of a patient's medical emergency, as further
15 defined by rule by the Board of Medical Examiners and the
16 Medical Licensure Commission.

17 §34-24-705.

18 (a) A physician who provides a telehealth medical
19 service shall comply with all federal and state laws and
20 regulations applicable to the provision of telehealth medical
21 services, including the Health Insurance Portability and
22 Accountability Act (HIPAA), and shall use devices and
23 technologies in compliance with these laws, rules, and
24 regulations. A physician who provides telehealth medical
25 services shall also take reasonable precautions to protect the
26 privacy and security of all verbal, visual, written, and other

1 communications involved in the delivery of telehealth medical
2 services.

3 (b) A physician who provides a telehealth medical
4 service shall maintain complete and accurate medical records
5 in accordance with rules of the Board of Medical Examiners and
6 the Medical Licensure Commission, must have access to the
7 patient's medical records, and must be able to produce the
8 records upon demand by the patient, the Board of Medical
9 Examiners, or the Medical Licensure Commission.

10 (c) Rules adopted by the Board of Medical Examiners
11 and the Medical Licensure Commission shall set standards for
12 the creation, retention, and distribution of medical records
13 pursuant to the delivery of telehealth medical services.

14 §34-24-706.

15 (a) The Board of Medical Examiners and the Medical
16 Licensure Commission may adopt rules regulating the provision
17 of telehealth medical services by physicians in this state,
18 even if the rules displace competition.

19 (b) Rules adopted by the Board of Medical Examiners
20 and the Medical Licensure Commission shall promote quality
21 care, prevent fraud, waste, and abuse, and ensure that
22 physicians provide adequate supervision of health
23 professionals who aid in providing telehealth medical
24 services.

25 (c) Other than as set forth in this article, the
26 authority of the Board of Medical Examiners and the Medical
27 Licensure Commission to regulate physicians providing

1 telehealth medical services shall be the same as the authority
2 of the Board of Medical Examiners and the Medical Licensure
3 Commission to regulate physicians providing services in
4 person.

5 §34-24-707.

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

10 (b) The Board of Medical Examiners, the Medical
11 Licensure Commission, and its officers, agents,
12 representatives, employees, and directors thereof, shall be
13 considered to be acting pursuant to clearly expressed state
14 policy as established in this act and under the active
15 supervision of the state. The boards, agencies, and
16 individuals in this section shall not be subject to state or
17 federal antitrust laws while acting in the manner provided in
18 this section.

19 Section 2. Article 10, comprised of Sections
20 34-24-500 through 34-24-508, of Chapter 24 of Title 34, Code
21 of Alabama 1975, relating to the licensing of the practice of
22 medicine and osteopathy across state lines, is repealed.

23 Section 3. This act shall become effective 90 days
24 following its passage and approval by the Governor, or its
25 otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 01-MAR-22

Read for the second time and placed on the
calendar 1 amendment..... 02-MAR-22

Read for the third time and passed as amended 29-MAR-22

Yeas 33
Nays 0

Patrick Harris,
Secretary.