

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

1 SB272

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4 ENROLLED, An Act,

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

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 Article 12.

15 §34-24-700.

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

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

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

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

8           §34-24-701.

9           For the purposes of this article, the following  
10 terms shall have the following meanings:

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

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

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

21           (4) DIGITAL HEALTH. The delivery of health care  
22 services, patient education communications, or public health  
23 information via software applications, consumer devices, or  
24 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

1 licensed to practice osteopathy in a state, commonwealth,  
2 district, or territory of the United States.

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

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

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

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

21 (16) TELEMEDICINE. A form of telehealth referring to  
22 the provision of medical services by a physician at a distant  
23 site to a patient at an originating site via asynchronous or  
24 synchronous communications, or other devices that may  
25 adequately facilitate and support the appropriate delivery of

1 care. The term includes digital health, but does not include  
2 incidental communications between a patient and a physician.

3 §34-24-702.

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

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

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

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

21 (c) A violation of this article shall constitute the  
22 unauthorized practice of medicine.

23 (d) Nothing in this article shall be interpreted to  
24 limit or restrict the Board of Medical Examiners' or Medical  
25 Licensure Commission's authority to regulate, revoke, suspend,

1 sanction, or otherwise discipline any physician licensed to  
2 practice in this state who violates the provisions of this  
3 chapter, the provisions relating to the regulation of  
4 manufacture and distribution of controlled substances, as  
5 provided by Sections 20-2-50 through 20-2-58, or the  
6 administrative rules of the Board of Medical Examiners or the  
7 Medical Licensure Commission while engaging in the practice of  
8 medicine within this or any other state.

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

15 §34-24-703.

16 (a) A physician providing telehealth medical  
17 services shall owe to the patient the same duty to exercise  
18 reasonable care, diligence, and skill as would be applicable  
19 if the service or procedure were provided in person.  
20 Telehealth medical services shall be governed by the Medical  
21 Liability Act of 1987, codified in Sections 6-5-540 through  
22 6-5-552, and shall be subject to the exclusive jurisdiction  
23 and venue of the circuit courts of the State of Alabama,  
24 regardless of the citizenship of the parties.

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

4           (1) Establish a diagnosis through the use of  
5 acceptable medical practices, which may include, but not be  
6 limited to, taking a patient history, a mental status  
7 examination, a physical examination, disclosure and evaluation  
8 of underlying conditions, and any diagnostic and laboratory  
9 testing.

10          (2) Disclose any diagnosis and the evidence for the  
11 diagnosis, and discuss the risks and benefits of treatment  
12 options.

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

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

20          (d) Telehealth medical services may only be provided  
21 following the patient's initiation of a physician-patient  
22 relationship, or pursuant to a referral made by a patient's  
23 licensed physician with whom the patient has an established  
24 physician-patient relationship, in the usual course of  
25 treatment of the patient's existing health condition. The

1 physician-patient relationship may be formed without a prior  
2 in-person examination.

3 (e) Prior to providing any telehealth medical  
4 service, the physician, to the extent possible, shall do all  
5 of the following:

6 (1) Verify the identity of the patient.

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

9 (3) Disclose to the patient the identity and  
10 credentials of the physician and any other applicable  
11 personnel.

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

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

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

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

4           (2)a. For the purposes of this section, each  
5 pregnancy for a woman shall be considered a separate or new  
6 condition.

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

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

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

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

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

3           §34-24-704.

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

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

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

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

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

23           (2) This subsection shall not apply in an in-patient  
24 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.

1           (c) Rules adopted by the Board of Medical Examiners  
2 and the Medical Licensure Commission shall set standards for  
3 the creation, retention, and distribution of medical records  
4 pursuant to the delivery of telehealth medical services.

5           §34-24-706.

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

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

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

23           §34-24-707.

24           (a) This article, and the rules adopted by the Board  
25 of Medical Examiners and the Medical Licensure Commission,

1 shall apply only to the provision of telehealth medical  
2 services by physicians to individuals located in this state.

3 (b) The Board of Medical Examiners, the Medical  
4 Licensure Commission, and its officers, agents,  
5 representatives, employees, and directors thereof, shall be  
6 considered to be acting pursuant to clearly expressed state  
7 policy as established in this act and under the active  
8 supervision of the state. The boards, agencies, and  
9 individuals in this section shall not be subject to state or  
10 federal antitrust laws while acting in the manner provided in  
11 this section.

12 Section 2. Article 10, comprised of Sections  
13 34-24-500 through 34-24-508, of Chapter 24 of Title 34, Code  
14 of Alabama 1975, relating to the licensing of the practice of  
15 medicine and osteopathy across state lines, is repealed.

16 Section 3. This act shall become effective 90 days  
17 following its passage and approval by the Governor, or its  
18 otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB272

Senate 29-MAR-22

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,  
Secretary.

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House of Representatives  
Passed: 05-APR-22

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By: Senator Roberts