

1 SB272
2 218232-1
3 By Senators Roberts, Waggoner, Shelnuttt, Livingston and
4 Singleton
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 01-MAR-22

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 licensed
15 physicians practicing telemedicine may prescribe
16 certain medications without meeting a patient in
17 person.

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

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

26 A BILL
27 TO BE ENTITLED

1 AN ACT

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 Article 12.

13 §34-24-700.

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

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

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

25 (3) Telehealth should be promoted as sound public
26 policy and should be available to every Alabama resident,

1 irrespective of their race, identity, age, income,
2 socioeconomic class, or geographic location.

3 §34-24-701.

4 For the purposes of this article, the following
5 terms shall have the following meanings:

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

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

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

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

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

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

1 (7) LEGEND DRUG. Any drug, medicine, chemical, or
2 poison bearing on the label the words, "Caution, federal law
3 prohibits dispensing without prescription" or other similar
4 wording indicating that the drug, medicine, chemical, or
5 poison may be sold or dispensed only upon the prescription of
6 a licensed medical practitioner.

7 (8) MEDICAL LICENSURE COMMISSION. The Alabama
8 Medical Licensure Commission established pursuant to Section
9 34-24-310.

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

14 (10) ORIGINATING SITE. The physical location of a
15 patient at the time in which telehealth medical services are
16 provided.

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

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

25 (13) TELEHEALTH. The use of electronic and
26 telecommunications technologies, including devices used for
27 digital health, asynchronous and synchronous communications,

1 or other methods, to support a range of medical care and
2 public health services.

3 (14) TELEHEALTH MEDICAL SERVICES. Digital health,
4 telehealth, telemedicine, and the applicable technologies and
5 devices used in the delivery of telehealth.

6 (15) TELEMEDICINE. A form of telehealth referring to
7 the provision of medical services by a physician at a distant
8 site to a patient at an originating site via asynchronous or
9 synchronous communications, or other devices that may
10 adequately facilitate and support the appropriate delivery of
11 care.

12 §34-24-702.

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

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

22 (1) The services are provided on an irregular or
23 infrequent basis. The term "irregular or infrequent" refers to
24 telehealth medical services occurring less than 10 days in a
25 calendar year or involving fewer than 10 patients in a
26 calendar year.

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

4 (c) Any person who violates the provisions of this
5 article is subject to criminal prosecution for the unlicensed
6 practice of medicine or osteopathy, as provided by Section
7 34-24-51, or injunctive or other action authorized in this
8 state to prohibit or penalize continued practice without a
9 license, as provided by Section 34-24-52.

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

21 §34-24-703.

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

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) To reduce fraud, waste, and abuse in the
21 delivery of medical care to patients, telehealth medical
22 services may only be provided following the patient's
23 initiation of a physician-patient relationship, or pursuant to
24 a referral made by a patient's licensed physician with whom
25 the patient has an established physician-patient relationship,
26 in the usual course of treatment of the patient's existing

1 health condition. The physician-patient relationship may be
2 formed without a prior 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) Unless otherwise provided by rule of the Board
18 of Medical Examiners, a physician who provides telehealth
19 medical services to a patient four or more times per year
20 shall have at least one in-person visit with the patient every
21 12 months.

22 §34-24-704.

23 (a) A physician may prescribe a legend drug, medical
24 supplies, or a controlled substance to a patient as a result
25 of a telehealth medical service if the physician is authorized
26 to prescribe the drug, supplies, or substance under applicable
27 state and federal laws. To be valid, a prescription must be

1 issued for a legitimate medical purpose by a physician acting
2 in the usual course of his or her professional practice.

3 (b) A prescription for a controlled substance may
4 only be issued as a result of a telehealth medical service if
5 the physician or another physician in the same practice or
6 group, within the preceding 12 months, has had at least one
7 in-person encounter with the patient and established a
8 legitimate medical purpose for issuing the prescription.

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

15 (d) The Board of Medical Examiners and the Medical
16 Licensure Commission may adopt rules granting additional
17 exemptions or imposing additional requirements and limitations
18 on the issuance of prescriptions, including those for
19 controlled substances, through the use of telehealth.

20 §34-24-705.

21 (a) A physician who provides a telehealth medical
22 service shall comply with all federal and state laws and
23 regulations applicable to the provision of telehealth medical
24 services, including the Health Insurance Portability and
25 Accountability Act (HIPAA), and shall use devices and
26 technologies in compliance with these laws, rules, and
27 regulations. A physician who provides telehealth medical

1 services shall also take reasonable precautions to protect the
2 privacy and security of all verbal, visual, written, and other
3 communications involved in the delivery of telehealth medical
4 services.

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

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

16 §34-24-706.

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

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

26 (c) Rules adopted by the Board of Medical Examiners
27 and the Medical Licensure Commission may expand upon,

1 supplement, or clarify, but may not conflict with, the
2 definitions, standards, or other provisions of this article.

3 §34-24-707.

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

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

17 Section 2. Article 10, comprised of Sections
18 34-24-500 through 34-24-508, of Chapter 24 of Title 34, Code
19 of Alabama 1975, relating to the licensing of the practice of
20 medicine and osteopathy across state lines, are repealed.

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