HB423

218232-1

By Representatives Lee, Daniels, Blackshear, Marques, Isbell, Drummond, Warren, Rafferty, Sorrells, Collins, Stadthagen, Lipscomb, Paschal, Oliver, Lovvorn, Gray, Robertson, Hall, Kitchens and Brown (C)

RFD: Health

First Read: 01-MAR-22
SYNOPSIS: This bill would allow licensed physicians, including osteopathic physicians, to practice telemedicine in the state.

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

This bill would provide that licensed physicians practicing telemedicine may prescribe certain medications without meeting a patient in person.

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

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

A BILL

TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

Article 12.

§34-24-700.

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

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

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

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

§34-24-701.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§34-24-702.

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

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

(1) The services are provided on an irregular or infrequent basis. The term "irregular or infrequent" refers to telehealth medical services occurring less than 10 days in a calendar year or involving fewer than 10 patients in a calendar year.
(2) The services are provided in consultation, as further provided by Section 34-24-74, with a physician licensed to practice medicine or osteopathy in this state.

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

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

§34-24-703.

(a) A physician providing telehealth medical services shall owe to the patient the same duty to exercise reasonable care, diligence, and skill as would be applicable if the service or procedure were provided in person.
(b) A physician practicing telemedicine shall do all of the following, if such action would otherwise be required in the provision of the same service if delivered in-person:

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

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

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

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

(d) To reduce fraud, waste, and abuse in the delivery of medical care to patients, telehealth medical services may only be provided following the patient's initiation of a physician-patient relationship, or pursuant to a referral made by a patient's licensed physician with whom the patient has an established physician-patient relationship, in the usual course of treatment of the patient's existing
health condition. The physician-patient relationship may be formed without a prior in-person examination.

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

(1) Verify the identity of the patient.

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

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

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

(f) Unless otherwise provided by rule of the Board of Medical Examiners, a physician who provides telehealth medical services to a patient four or more times per year shall have at least one in-person visit with the patient every 12 months.

§34-24-704.

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

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

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

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

§34-24-705.

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

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

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

§34-24-706.

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

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

(c) Rules adopted by the Board of Medical Examiners and the Medical Licensure Commission may expand upon,
supplement, or clarify, but may not conflict with, the
definitions, standards, or other provisions of this article.
§34-24-707.

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

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

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

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