SB272
219316-3
By Senators Roberts, Waggoner, Shelnutt, Livingston and Singleton
RFD: Fiscal Responsibility and Economic Development
First Read: 01-MAR-22
ENROLLED, 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) PRESCRIBER. Any person who possesses an active
Alabama controlled substance certificate or a Qualified
Alabama Controlled Substances Registration Certificate issued
by the Board of Medical Examiners.

(13) 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.

(14) 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.

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

(16) 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. The term includes digital health, but does not include incidental communications between a patient and a physician.

§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) A violation of this article shall constitute the unauthorized practice of medicine.

(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.

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

§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.
Telehealth medical services shall be governed by the Medical
Liability Act of 1987, codified in Sections 6-5-540 through
6-5-552, and shall be subject to the exclusive jurisdiction
and venue of the circuit courts of the State of Alabama,
regardless of the citizenship of the parties.
(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) 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)(1) If a physician or practice group provides telehealth medical services more than four times in a 12-month period to the same patient for the same medical condition without resolution, the physician shall do either of the following:

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

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

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

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

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

(4) This section does not apply to the provision of telehealth medical services provided by a physician in active consultation with another physician who is providing in-person care to a patient.
(5) This section shall not apply to the provision of mental health services as defined in Section 22-50-1.

§34-24-704.

(a) A prescriber may prescribe a legend drug, medical supplies, or a controlled substance to a patient as a result of a telehealth medical service if the prescriber 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 prescriber acting in the usual course of his or her professional practice.

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

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

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

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

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

§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 that physicians provide adequate supervision of health professionals who aid in providing telehealth medical services.

(c) Other than as set forth in this article, the authority of the Board of Medical Examiners and the Medical Licensure Commission to regulate physicians providing telehealth medical services shall be the same as the authority of the Board of Medical Examiners and the Medical Licensure Commission to regulate physicians providing services in person. §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, is repealed.

Section 3. This act shall become effective 90 days following its passage and approval by the Governor, or its otherwise becoming law.
SB272

President and Presiding Officer of the Senate

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.

House of Representatives
Passed: 05-APR-22

By: Senator Roberts