



Effective July 11 Alabama Has New Telehealth Rules: What Physicians Need To Know

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Telehealth is not new, but during the pandemic, it has received renewed attention and support because of its ability to expand access to health care. On April 12, 2022, Governor Ivey signed Act 2022-302 that repealed existing law regarding the practice of medicine across state lines and implemented laws for the use of telehealth in Alabama. The Act takes effect on July 11, 2022. Prior to the passage of this Act, Alabama did not have any rules or regulations pertaining to telehealth or telemedicine for physicians.

Repeal of Practice Across State Lines

In 1997, the Alabama Legislature passed Act 97-166 addressing the practice of medicine across state lines. The legislature acknowledged that with technological advances “the practice of medicine or osteopathy is occurring with increasing frequency across state lines and that certain technological advances in the practice of medicine or osteopathy are in the public interest.” See Ala. Code § 34-24-500. The purpose of the Act at that time was to ensure that the state had the ability to discipline physicians who would otherwise not fall under its jurisdiction because he was not licensed in Alabama. These laws have been replaced with the new telehealth rules.

New Laws Governing Telehealth

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Under the new law, telehealth is defined as “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.” Ala. Code § 34-24-701(14). Synchronous refers to “real-time” exchange of information versus asynchronous communication that involves the exchange of health care documents that does not occur in real time such as the collection and transmission of medical records or laboratory results. Ala. Code § 34-24-701 (1), (13).

Licensure requirements

In order to provide telehealth services, a physician must possess a full and active license to practice medicine or osteopathy issued by the Alabama Medical Licensure Commission or must fall within one of two exceptions:

- Services are provided on an irregular or infrequent basis, i.e. less than 10 days or involving fewer than 10 patients in a calendar year; OR
- Services are provided in consultation, as defined by law, with an Alabama licensed.

The law specifically states that it is not intended to affect any other health care provider’s provision of telehealth services so long as those services are within the practitioner’s scope of practice.

Impact on the practice of medicine

The law does not change the duty owed by the physician to the patient, and the Act incorporates the Alabama Medical Liability Act (AMLA) so that the AMLA applies to any lawsuit asserted against a physician for services performed via telehealth. If a lawsuit is filed, Alabama courts have exclusive jurisdiction regardless of citizenship of the parties and services are considered rendered where the patient is located at the time of the telehealth visit. Ala. Code § 34-24-703. Additionally, a licensed physician can provide telehealth services from any physical location (distant site). Ala. Code 34-24-701.

When providing telehealth services, the physician would need to do the following (if it would otherwise be required):

- Establish a diagnosis through the use of acceptable medical practices, which may include taking a patient history, mental status examination, physical examination, disclosure and evaluation of underlying conditions, and any diagnostic and laboratory testing;
- Disclosure of any diagnosis and the evidence for the diagnosis as well as the risks and benefits of treatment options;
- 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.

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In addition to performing the above functions as part of the provision of telehealth services, a physician should do the following prior to providing the service:

- Verify the identity of the patient.
- Require the patient to identify his physical location, including city and state.
- Disclose the identity and credentials of the physician and any other personnel.
- Obtain the patient's consent for the use of telehealth as an acceptable mode of delivering health care, including consent to the mode of communication used and its limitations. Acknowledgment of this consent must be documented in the patient's medical record.

If a physician or practice group provides telehealth services more than four times in a 12-month period to the same patient for the same medical condition without resolution, the physician must either (1) see the patient in person within a reasonable amount of time, not to exceed 12 months, or (2) refer the patient to a physician who can provide in-person care within a reasonable time (not to exceed 12 months). A practice group is, at a minimum, a group of providers who have access to the same medical records. For purposes of the in-person follow-up, the telehealth services can be performed using video communications to a patient with in-person assistance of a person licensed by the Alabama Board of Medical Examiners or the Board of Nursing. Mental health services are excluded from this section of the law that relates to telehealth services on a repeat basis.

Prescribing drugs with telehealth

Any person who possesses an active Alabama controlled substance certificate or a Qualified Alabama Controlled Substances Registration Certificate may prescribe a legend drug, medical supplies or a controlled substance to a patient as a result of a telehealth service if the person is authorized under applicable state and federal law. The prescription must be issued for a legitimate medical purpose.

For controlled substances, the telehealth visit must include synchronous audio or audio-visual communication using HIPAA compliant equipment with the prescriber, and the prescriber must have had at least one in-person encounter with the patient in the preceding 12 months. The in-person requirement does not apply if the physician is treating a medical emergency.

Other laws to consider

Other federal laws also impact the practice of medicine via telehealth including HIPAA, DEA rules and reimbursement requirements. Physicians should review these rules in conjunction with Alabama's new law.

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