~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 23, 2016

**S. 1035**

Introduced by Senators Cleary and Hutto

S. Printed 2/23/16--S. [SEC 2/24/16 12:51 PM]

Read the first time January 28, 2016.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (S. 1035) to amend the Code of Laws of South Carolina, 1976, to enact the “South Carolina Telemedicine Act” by adding Section 40‑47‑37 so as to facilitate, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. This act may be cited as the “South Carolina Telemedicine Act”.

SECTION 2. Article 1, Chapter 47, Title 40 of the 1976 Code is amended by adding:

“Section 40‑47‑37. (A) A licensee who establishes a physician-patient relationship solely via telemedicine as defined in Section 40-47-20(52) shall adhere to the same standard of care as a licensee employing more traditional in-person medical care and be evaluated according to the standard of care applicable to the licensee’s area of specialty. A licensee shall not establish a physician-patient relationship by telemedicine pursuant to Section 40-47-113(B) for the purpose of prescribing medication when an in-person physical examination is necessary for diagnosis. The failure to conform to the appropriate standard of care is considered unprofessional conduct under Section 40-47-110(B)(9).

(B) A licensee who establishes a physician-patient relationship solely via telemedicine as defined in Section 40-47-20(52) shall generate and maintain medical records for each patient using such telemedicine services in compliance with any applicable state and federal laws, rules, and regulations, including this chapter, the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH). Such records shall be accessible to other practitioners and to the patient in a timely fashion when lawfully requested to do so by the patient or by a lawfully designated representative of the patient.

(C) In addition to those requirements set forth in subsections (A) and (B), a licensee who establishes a physician-patient relationship solely via telemedicine as defined in Section 40-47-20(52) shall:

(1) adhere to current standards for practice improvement and monitoring of outcomes and provide reports containing such information upon request of the board;

(2) provide an appropriate evaluation prior to diagnosing and/or treating the patient, which need not be done in-person if the licensee employs technology sufficient to accurately diagnose and treat the patient in conformity with the applicable standard of care; provided, that evaluations in which a licensee is at a distance from the patient, but a practitioner is able to provide various physical findings the licensee needs to complete an adequate assessment, is permitted; further, provided, that a simple questionnaire without an appropriate evaluation is prohibited;

(3) verify the identity and location of the patient and be prepared to inform the patient of the licensee’s name, location, and professional credentials;

(4) establish a diagnosis through the use of accepted medical practices, which may include patient history, mental status evaluation, physical examination, and appropriate diagnostic and laboratory testing in conformity with the applicable standard of care;

(5) ensure the availability of appropriate follow-up care and maintain a complete medical record that is available to the patient and other treating health care practitioners, to be distributed to other treating health care practitioners only with patient consent and in accordance with applicable law and regulation;

(6) prescribe within a practice setting fully in compliance with this section and during an encounter in which threshold information necessary to make an accurate diagnosis has been obtained in a medical history interview conducted by the prescribing licensee; provided, however, that Schedule II and Schedule III prescriptions are not permitted except for those Schedule II and Schedule III medications specifically authorized by the board, which may include, but not be limited to, Schedule II-nonnarcotic and Schedule III-nonnarcotic medications; further, provided, that licensees prescribing controlled substances by means of telemedicine must comply with all relevant federal and state laws including, but not limited to, participation in the South Carolina Prescription Monitoring Program set forth in Article 15, Chapter 53, Title 44 of the 1976 Code; further, provided, that prescribing of lifestyle medications including, but not limited to, hormone replacement therapies, birth control, or erectile dysfunction drugs are not permitted unless approved by the board;

(7) maintain a complete record of the patient’s care according to prevailing medical record standards that reflects an appropriate evaluation of the patient’s presenting symptoms; provided that relevant components of the telemedicine interaction be documented as with any other encounter;

(8) maintain the patient’s records confidentiality and disclose the records to the patient consistent with state and federal law; provided, that licensees practicing telemedicine shall be held to the same standards of professionalism concerning medical records transfer and communication with the primary care provider and medical home as licensees practicing via traditional means; further, provided, that if a patient has a primary care provider and a telemedicine provider for the same ailment, then the primary care provider’s medical record and the telemedicine provider’s record constitute one complete medical record;

(9) be licensed to practice medicine in South Carolina; provided, however, a licensee need not reside in South Carolina so long as he or she has a valid, current South Carolina medical license; further, provided, that a licensee residing in South Carolina who intends to practice medicine via telemedicine to treat or diagnose patients outside of South Carolina shall comply with other state licensing boards; and

(10) discuss with the patient the value of having a primary care medical home and, if the patient requests, provide assistance in identifying available options for a primary care medical home.

(C) A licensee, practitioner, or any other person involved in a telemedicine encounter must be trained in the use of the telemedicine equipment and competent in its operation.

(D) Notwithstanding any of the provisions of this section, the board shall retain all authority with respect to telemedicine practice as granted in Section 40-47-10(I) of this chapter.”

SECTION 3. Section 40‑47‑20(52) through (55) of the 1976 Code is amended to read:

“(52) ‘Telemedicine’ means the practice of medicine using electronic communications, information technology, or other means between a licensee in one location and a patient in another location with or without an intervening practitioner.

~~(52)~~(53) ‘Temporary license’ means a current, time‑limited document that authorizes practice at the level for which one is seeking licensure.

~~(53)~~(54) ‘Unprofessional conduct’ means acts or behavior that fail to meet the minimally acceptable standard expected of similarly situated professionals including, but not limited to, conduct that may be harmful to the health, safety, and welfare of the public, conduct that may reflect negatively on one’s fitness to practice, or conduct that may violate any provision of the code of ethics adopted by the board or a specialty.

~~(54)~~(55) ‘Voluntary surrender’ means forgoing the authorization to practice by the subject of an initial or formal complaint pending further order of the board. It anticipates other formal action by the board and allows any suspension subsequently imposed to include this time.

~~(55)~~(56) ‘Volunteer license’ means authorization of a retired practitioner to provide medical services to others through an identified charitable organization without remuneration.”

SECTION 4. Section 40‑47‑113(B) of the 1976 Code is amended to read:

“(B) Notwithstanding subsection (A), a licensee may prescribe for a patient whom the licensee has not personally examined under certain circumstances including, but not limited to, writing admission orders for a newly hospitalized patient, prescribing for a patient of another licensee for whom the prescriber is taking call, prescribing for a patient examined by a licensed advanced practice registered nurse, a physician assistant, or other physician extender authorized by law and supervised by the physician, ~~or~~ continuing medication on a short‑term basis for a new patient ~~prior to~~ before the patient’s first appointment, or prescribing for a patient for whom the licensee has established a physician‑patient relationship solely via telemedicine so long as the licensee complies with Section 40-47-37 of this act.”

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA TELEMEDICINE ACT” BY ADDING SECTION 40‑47‑37 SO AS TO FACILITATE THE USE OF TELEMEDICINE BY ESTABLISHING CERTAIN RECORDKEEPING REQUIREMENTS; TO AMEND SECTION 40‑47‑20, RELATING TO DEFINITIONS USED IN CHAPTER 47, TITLE 40, SO AS TO PROVIDE DEFINITIONS FOR “ASYNCHRONOUS STORE AND FORWARD TRANSFER” AND “TELEMEDICINE”; AND TO AMEND SECTION 40‑47‑113, RELATING TO THE REQUIREMENT OF A PHYSICIAN‑PATIENT RELATIONSHIP BEFORE A PHYSICIAN MAY PRESCRIBE DRUGS FOR A PATIENT, SO AS TO ALLOW THE PRESCRIPTION OF DRUGS WHEN THE PHYSICIAN‑PATIENT RELATIONSHIP IS ESTABLISHED BY TELEMEDICINE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Telemedicine Act”.

SECTION 2. Article 1, Chapter 47, Title 40 of the 1976 Code is amended by adding:

“Section 40‑47‑37. A physician who engages in telemedicine shall generate and maintain medical records for each patient using telemedicine services in compliance with any applicable state and federal laws, rules, and regulations, including this chapter, the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH). Records generated and maintained pursuant to this section must be accessible to other physicians and to the patient in accordance with Section 40‑47‑110(B)(23).”

SECTION 3. Section 40‑47‑20(7)‑(55) of the 1976 Code is amended to read:

“(7) ‘Asynchronous store and forward transfer’ means the transmission of a patient’s health care information from the location of a patient to a physician at another location over a secure connection that complies with state and federal security and privacy laws.

~~(7)~~(8) ‘Board’ means the State Board of Medical Examiners for South Carolina.

~~(8)~~(9) ‘Board‑approved credentialing organization’ means an organization that offers a certification examination in a specialty area of practice, establishes scope and standards of practice statements, and provides a mechanism approved by the board for evaluating continuing competency in a specialized area of practice.

~~(9)~~(10) ‘Business days’ means every day except Saturdays, Sundays, and legal holidays.

~~(10)~~(11) ‘Cancellation’ means the withdrawal or invalidation of an authorization to practice that was issued to an ineligible person either in error or based upon a false, fraudulent, or deceptive representation in the application process.

~~(11)~~(12) ‘Certification’ means approval by an established body, other than the board, but recognized by the board, that recognizes the unique, minimal requirements of specialized areas of practice. Certification requires completion of a recognized formal program of study and specialty board examination, if the specialty board exists, and certification of competence in practice by the certifying agency.

~~(12)~~(13) ‘Criminal history’ means a federal, state, or local criminal history of conviction or a pending charge or indictment of a crime, whether a misdemeanor or a felony, that bears upon a person’s fitness or suitability for an authorization to practice with responsibility for the safety and well‑being of others.

~~(13)~~(14) ‘Delegated medical acts’ means additional acts delegated by a physician or dentist to a physician assistant, respiratory care practitioner, anesthesiologist’s assistant, or other practitioner authorized by law under approved written scope of practice guidelines or approved written protocols as provided by law in accordance with the applicable scope of professional practice. Delegated medical acts must be performed under the supervision of a physician or dentist who must be readily or immediately available for consultation in accordance with the applicable scope of professional practice.

~~(14)~~(15) ‘Delegated medical acts to the APRN’ means additional acts delegated by a physician or dentist to the Advanced Practice Registered Nurse (NP, CNM, or CNS) which may include formulating a medical diagnosis and initiating, continuing, and modifying therapies, including prescribing drug therapy, under approved written protocols as provided in Section 40‑33‑34 and Section 40‑47‑195. Delegated medical acts to the APRN (NP, CNM, or CNS) must be agreed to jointly by both the Board of Nursing and the Board of Medical Examiners. Delegated medical acts to the APRN (NP, CNM, or CNS) must be performed under the general supervision of a physician or dentist who must be readily available for consultation.

~~(15)~~(16) ‘Dentist’ means a dentist licensed by the South Carolina Board of Dentistry.

~~(16)~~(17) ‘Disciplinary action’ means a final decision and sanction imposed at the conclusion of a disciplinary proceeding.

~~(17)~~(18) ‘Entity’ means a sole proprietorship, partnership, limited liability partnership, limited liability corporation, association, joint venture, cooperative, company, corporation, or other public or private legal entity authorized by law.

~~(18)~~(19) ‘Final decision’ means an order of the board that concludes a license application proceeding or formal disciplinary proceeding.

~~(19)~~(20) ‘Formal complaint’ means a formal written complaint charging misconduct by a respondent in violation of this chapter, Chapter 1 of Title 40, or any other provision of law.

~~(20)~~(21) ‘Immediately available’ for the purpose of supervising unlicensed personnel means being located within the office and ready for immediate utilization when needed.

~~(21)~~(22) ‘Inactive license’ means the official temporary retirement of a person’s authorization to practice upon the person’s notice to the board that the person does not wish to practice.

~~(22)~~(23) ‘Incompetence’ means the failure of a licensee to demonstrate and apply the knowledge, skill, and care that is ordinarily possessed and exercised by other practitioners of the same licensure status and required by the generally accepted standards of the profession. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions that extend over a period of time and that, taken as a whole, demonstrate incompetence. It is not necessary to show that actual harm resulted from the act or omission or series of acts or omissions if the conduct is such that harm could have resulted to the patient or to the public from the act or omission or series of acts or omissions.

~~(23)~~(24) ‘Independent credentials verification organization’ means an entity approved by the board to provide primary source verification of an applicant’s identity, medical education, postgraduate training, examination history, disciplinary history, and other core information required for licensure in this State.

~~(24)~~(25) ‘Initial complaint’ means a brief statement that alleges misconduct on the part of a licensee.

~~(25)~~(26) ‘Initial licensure’ means the first authorization to practice issued to a person by a licensing authority in this State or any other state.

~~(26)~~(27) ‘Lapsed license’ means an authorization to practice that no longer authorizes practice in this State due to the person’s failure to renew the authorization within the renewal period.

~~(27)~~(28) ‘Letter of caution or concern’ means a written caution or warning about past or future conduct issued when it is determined that no misconduct has been committed. The issuance of a letter of caution or concern is not a form of discipline and does not constitute a finding of misconduct. The fact that a letter of caution or concern has been issued must not be considered in a subsequent disciplinary proceeding against a person authorized to practice unless the caution or warning contained in the letter of caution or concern is relevant to the misconduct alleged in the proceedings.

~~(28)~~(29) ‘License’ means a current document authorizing a person to practice.

~~(29)~~(30) ‘Licensed in good standing’ means that one’s authorization to practice has not been revoked and there are no restrictions or limitations currently in effect. Public reprimands issued less than five years from the date an application is received by the board are considered restrictions upon practice.

~~(30)~~(31) ‘Limited license’ means a current time‑limited and practice‑limited document that authorizes practice at the level for which one is seeking licensure.

~~(31)~~(32) ‘Misconduct’ means violation of any of the provisions of this chapter or regulations promulgated by the board pursuant to this chapter or violation of any of the principles of ethics as adopted by the board or incompetence or unprofessional conduct.

~~(32)~~(33) ‘Osteopathic medicine’ means a complete school of medicine and surgery utilizing all methods of diagnosis and treatment in health and disease and placing special emphasis on the interrelationship of the musculo‑skeletal system to all other body systems.

~~(33)~~(34) ‘Pending disciplinary action’ means an action or proceeding initiated by a formal complaint.

~~(34)~~(35) ‘Person’ means a natural person, male or female.

~~(35)~~(36) ‘Physician’ means a doctor of medicine or doctor of osteopathic medicine licensed by the South Carolina Board of Medical Examiners.

~~(36)~~(37) ‘Practice of Medicine’ means:

(a) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this State;

(b) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;

(c) offering or undertaking to prevent or to diagnose, correct or treat in any manner, or by any means, methods, or devices, disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of a person, including the management or pregnancy and parturition;

(d) offering or undertaking to perform any surgical operation upon a person;

(e) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within this State by a physician located outside the State as a result of transmission of individual patient data by electronic or other means from within a state to such physician or his or her agent;

(f) rendering a determination of medical necessity or a decision affecting the diagnosis and/or treatment of a patient is the practice of medicine subject to all of the powers provided to the Board of Medical Examiners, except as provided in Section 38‑59‑25;

(g) using the designation Doctor, Doctor of Medicine, Doctor of Osteopathic Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D., D.O., or any combination of these in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless such a designation additionally contains the description of another branch of the healing arts for which one holds a valid license in this State that is applicable to the clinical setting; and

(h) testifying as a physician in an administrative, civil, or criminal proceeding in this State by expressing an expert medical opinion.

~~(37)~~(38) ‘Practitioner’ means a person who has been issued an authorization to practice in this State. The term does not include persons who have not been issued a license, registration, certification, or other authorization to practice in this State, except as provided by law for persons licensed in another state or jurisdiction.

~~(38)~~(39) ‘Presiding officer’ means the chairman of the hearing panel or a designee. When no chair of the hearing panel has been designated, the term includes the chairman or vice chairman of the board or a designee. A person designated to act on behalf of the chairman of the board or a hearing panel may not have been involved with the investigation or prosecution of the particular matter.

~~(39)~~(40) ‘Private reprimand’ means a statement by the board that misconduct was committed by a person authorized to practice which has been declared confidential and which is not subject to disclosure as a public document.

~~(40)~~(41) ‘Probation’ means the issuance of an authorization to practice conditioned upon compliance with terms and conditions imposed by a licensing board in this State or another state. The holder of the authorization to practice on probation may petition the board for reinstatement to full, unrestricted practice upon compliance with all terms and conditions imposed by the board.

~~(41)~~(42) ‘Public reprimand’ means a publicly available statement of the board that misconduct was committed by a person authorized to practice.

~~(42)~~(43) ‘Reactivation’ means the restoration to active status of an authorization from inactive status.

~~(43)~~(44) ‘Readily available’ means the physician must be in near proximity and is able to be contacted either in person or by telecommunications or other electronic means to provide consultation and advice to the practitioner performing delegated medical acts. When application is made for more than the equivalent of three full‑time NPs, CNMs, or CNSs to practice with one physician, or when a NP, CNM, or CNS is performing delegated medical acts in a practice site greater than forty‑five miles from the physician, the Board of Nursing and the Board of Medical Examiners shall review the application to determine if adequate supervision exists.

~~(44)~~(45) ‘Reinstatement’ means an action of the board in a disciplinary matter that authorizes the resumption of practice upon any terms or conditions ordered or agreed to by the board.

~~(45)~~(46) ‘Relinquish’ means to permanently cancel or invalidate an authorization instead of disciplinary proceedings or final decision by the board. A person whose authorization to practice has been relinquished to the board is permanently ineligible for a license or other authorization of any kind from the board. Relinquishment is irrevocable, an admission of any or all of the allegations of misconduct, and reported and treated as a permanent revocation.

~~(46)~~(47) ‘Respondent’ means a person charged with responding in a disciplinary or other administrative action.

~~(47)~~(48) ‘Revocation’ means the permanent cancellation or withdrawal of an authorization issued by the board. A person whose authorization has been permanently revoked by the board is permanently ineligible for an authorization of any kind from the board.

~~(48)~~(49) ‘Significant disciplinary action’ means a public decision in a disciplinary matter that involves substantial issues of professional or ethical competence or qualification to practice. The board may consider any actions taken by the original board or conduct considered relevant to the applicant’s fitness for licensure to practice in this State.

~~(49)~~(50) ‘State identification bureau’ means an authorized governmental agency responsible for receiving and screening the results of criminal history records checks in this State or another state.

~~(50)~~(51) ‘Supervision’ means the process of critically observing, directing, and evaluating another person’s performance, unless otherwise provided by law.

~~(51)~~(52) ‘Suspension’ means the temporary withdrawal of authorization to practice for either a definite or indefinite period of time ordered by the board. The holder of a suspended authorization to practice may petition the board for reinstatement to practice upon compliance with all terms and conditions imposed by the board.

(53) ‘Telemedicine’ means the practice of medicine using electronic communications, information technology, or other means including, but not limited to, secure videoconferencing or interactive audio using asynchronous store and forward transfer technology between a physician in one location and a patient in another location, with or without an intervening health care provider. Telemedicine does not include an audio‑only telephone conversation, email or instant messaging conversation, or facsimile.

~~(52)~~(54) ‘Temporary license’ means a current, time‑limited document that authorizes practice at the level for which one is seeking licensure.

~~(53)~~(55) ‘Unprofessional conduct’ means acts or behavior that fail to meet the minimally acceptable standard expected of similarly situated professionals including, but not limited to, conduct that may be harmful to the health, safety, and welfare of the public, conduct that may reflect negatively on one’s fitness to practice, or conduct that may violate any provision of the code of ethics adopted by the board or a specialty.

~~(54)~~(56) ‘Voluntary surrender’ means forgoing the authorization to practice by the subject of an initial or formal complaint pending further order of the board. It anticipates other formal action by the board and allows any suspension subsequently imposed to include this time.

~~(55)~~(57) ‘Volunteer license’ means authorization of a retired practitioner to provide medical services to others through an identified charitable organization without remuneration.”

SECTION 4. Section 40‑47‑113(B) and (C) of the 1976 Code is amended to read:

“(B) Notwithstanding subsection (A), a licensee may prescribe for a patient whom the licensee has not personally examined under certain circumstances including, but not limited to, writing admission orders for a newly hospitalized patient, prescribing for a patient of another licensee for whom the prescriber is taking ~~call~~ calls, prescribing for a patient examined by a licensed advanced practice registered nurse, a physician assistant, or other physician extender authorized by law and supervised by the physician, ~~or~~ continuing medication on a short‑term basis for a new patient ~~prior to~~ before the patient’s first appointment, or prescribing for a patient for whom the licensee has established a physician‑patient relationship by telemedicine.

(C) Prescribing drugs to individuals the licensee has never personally examined based solely on answers to a set of questions or an online questionnaire is unprofessional.”

SECTION 5. This act takes effect upon approval by the Governor.

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