**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 AUTHORIZE THE PRACTICE OF TELEMEDICINE AND TO ESTABLISH CERTAIN STANDARDS OF CARE, TRAINING, AND OTHER REQUIREMENTS WITH WHICH A PHYSICIAN MUST COMPLY TO PRACTICE TELEMEDICINE; TO AMEND SECTION 40‑47‑20, RELATING TO DEFINITIONS USED IN CHAPTER 47, TITLE 40, SO AS TO PROVIDE A DEFINITION FOR “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 PROVIDED THE PHYSICIAN COMPLIES WITH THE REQUIREMENTS OF SECTION 40‑47‑37.

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) 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 must 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 must 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 or treating the patient, which need not be done in‑person if the licensee employs technology sufficient to accurately diagnose or 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) if prescribing controlled substances:

(a) 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; however, a licensee may not prescribe:

(i) Schedule II and Schedule III prescriptions, except for 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;

(ii) lifestyle medications including, but not limited to, hormone replacement therapies, birth control, or erectile dysfunction drugs, unless approved by the board; or

(iii) abortion‑inducing drugs. As used in this item, an ‘abortion‑inducing drug’ means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child, including off‑label use of drugs known to have abortion‑inducing properties prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec) and methotrexate. An abortion induced by an abortion‑inducing drug also may be known as ‘medical’, ‘drug‑induced’, or ‘chemical abortion’. An abortion‑inducing drug does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications including, but not limited to, chemotherapeutic agents or diagnostic drugs; and

(b) 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;

(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 confidentiality of the patient’s records and disclose the records to the patient consistent with state and federal law. A licensee practicing telemedicine must 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. 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. A licensee is not required to reside in South Carolina as long as he has a valid, current South Carolina medical license. 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.

(D) 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.

(E) 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).”

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.”

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

‑‑‑‑XX‑‑‑‑