**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA TELEHEALTH AND TELEMEDICINE MODERNIZATION ACT” BY ADDING ARTICLE 23 TO CHAPTER 71, TITLE 38 SO AS TO DEFINE TERMS, ESTABLISH APPLICABILITY, AND TO PROHIBIT ACTIONS; TO AMEND SECTION 40‑47‑20, AS AMENDED, RELATING TO DEFINITIONS, SO AS TO DEFINE TELEHEALTH AND TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40‑47‑37, RELATING TO THE PRACTICE OF TELEMEDICINE, SO AS TO ALLOW FOR THE PRESCRIBING OF SCHEDULE II AND SCHEDULE III MEDICATIONS VIA TELEHEALTH IN SPECIFIC CIRCUMSTANCES; AND TO AMEND SECTION 40‑33‑34, AS AMENDED, RELATING TO THE PERFORMANCE OF MEDICAL ACTS, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Article 23

South Carolina Telehealth and Telemedicine Modernization Act

Section 38‑71‑2310. This article may be cited as the ‘South Carolina Telehealth and Telemedicine Modernization Act’.

Section 38‑71‑2320. For purposes of this article, unless the context clearly indicates otherwise:

(1) ‘Consulting provider’ means a practitioner authorized to practice in this State who is working within his scope of practice and is providing a health care service to a patient by means of telehealth, from a location that is remote from an originating site.

(2) ‘Distant site’ means the location of a physician or practitioner delivering a service at the time the service is provided via telehealth.

(3) ‘Health care services’ has the same meaning as Section 38‑33‑20(7).

(4) ‘Health insurance policy’ means benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer, except:

(a) coverage only for accident or disability income insurance or any combination of these;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers’ compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit‑only insurance;

(g) coverage for on‑site medical clinics;

(h) other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(i) if offered separately:

(i) limited scope dental or vision benefits;

(ii) benefits for long‑term care, nursing home care, home health care, community‑based care, or any combination of these;

(iii) other similar, limited benefits as are specified in regulations;

(j) if offered as independent, noncoordinated benefits:

(i) coverage only for a specified disease or illness;

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) Medicare supplemental health insurance, as defined under Section 1882(g)(1) of the Social Security Act;

(ii) coverage supplemental to the coverage provided under 10 U.S.C. Chapter 55; and

(iii) similar supplemental coverage under a group health plan.

(5) ‘Originating site’ means the location of a patient at the time he receives health care services by means of telehealth.

(6) ‘State Health Plan’ means the employee and retiree insurance program provided for in Article 5, Chapter 11, Title 1.

(7) ‘Telehealth’ has the same meaning as in Section 40‑47‑20(52).

(8) ‘Telemedicine’ has the same meaning as in Section 40‑47‑20(53).

Section 38‑71‑2330. This article applies to any health insurance policy that is offered, issued, amended, delivered, or renewed on or after July 1, 2022, in this State.

Section 38‑71‑2340. A health insurance policy must not:

(1) impose a deductible, copayment, or coinsurance for health care services provided by means of telehealth that exceed the deductible, copayment, or coinsurance that would be applicable if the same health care services were provided through face‑to‑face consultation;

(2) require additional prior authorization for services provided by means of telehealth or impose additional administrative requirements for telehealth providers in excess of the authorizations or requirements that would apply for the same services if provided on a face‑to‑face basis;

(3) require a provider to be physically present with a patient at the originating site unless the consulting provider deems it necessary;

(4) limit coverage of health care services provided by means of telehealth, based upon the location of the patient or, except as to the extent the limitation is otherwise required by law or necessary to ensure patient safety, the setting of the consulting provider; or

(5) require the use of telehealth if a patient chooses not to receive care by means of telehealth or a provider demonstrates that delivery of care by means of telehealth is not appropriate.

Section 38‑71‑2350. A consulting provider at a distant site who is authorized to provide care in this State and who furnishes a covered telehealth service may bill and receive payment for the service when it is delivered via telehealth.

Section 38‑71‑2360. The provision of health care services by means of telehealth must be provided in accordance with the requirements of Title 40.”

SECTION 2. Section 40‑47‑20(52)‑(56) of the 1976 Code is amended to read:

“(52) ‘Telehealth’ means the use of 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.

(53) ‘Telemedicine’ means the aspects of telehealth that relate specifically to 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~~.

~~(53)~~(54) ‘Temporary license’ means a current, time‑limited document that authorizes practice at the level for which one is seeking licensure.

~~(54)~~(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.

~~(55)~~(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.

~~(56)~~(57) ‘Volunteer license’ means authorization of a retired practitioner to provide medical services to others through an identified charitable organization without remuneration.”

SECTION 3. Section 40‑47‑37 of the 1976 Code is amended to read:

“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)~~(53) 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 utilized specifically for patients actively enrolled in certified Medically Assisted Therapy (MAT) programs with a provider who has established a bona fide practitioner‑patient relationship, or otherwise 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; ~~further, provided, that prescribing of lifestyle medications including, but not limited to, erectile dysfunction drugs is not permitted unless approved by the board;~~ further, provided, that prescribing abortion‑inducing drugs is not permitted; as used in this article ‘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. This includes off‑label use of drugs known to have abortion‑inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition 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. Use of such drugs to induce abortion is also known as ‘medical’, ‘drug‑induced’, and/or ‘chemical abortion’;

(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; and

(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~~.

(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) of this chapter.

(F) Providers who are acting within the scope of their respective licenses are allowed to provide health care services via telehealth as defined in this section.”

SECTION 4. Section 40‑33‑34(I)(1) of the 1976 Code is amended to read:

“(I)(1) For purposes of this subsection:

(a) ‘Telemedicine’ has the same meaning as provided in Section 40‑47‑20~~(52)~~(53).

(b) ‘Unprofessional conduct’ has the same meaning as provided in Section 40‑33‑20(64).”

SECTION 5. Nothing in this act is intended or may be construed to be in conflict with existing, relevant federal law.

SECTION 6. This act takes effect upon approval by the Governor.

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