

1 HB334
2 156106-2
3 By Representative McClendon
4 RFD: Boards, Agencies and Commissions
5 First Read: 22-JAN-14

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ENROLLED, An Act,

To amend Sections 34-22-80, 34-22-81, 34-22-82, 34-22-83, 34-22-84, 34-22-85, 34-22-86, and 34-22-87, Code of Alabama 1975, relating to the practice of optometry; to authorize the board to regulate the practice of optometry through telemedicine; to repeal Section 34-22-88, Code of Alabama 1975, as duplicative; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-22-80 to 34-22-87, inclusive, Code of Alabama 1975, are amended to read as follows:

"§34-22-80.

"The Legislature hereby finds and declares that, ~~because of technological advances and changing practice patterns,~~ are occurring in the practice of optometry is occurring with increasing frequency across state lines and certain, thereby changing the practice of optometry, and that those technological advances in the practice of optometry are in the public interest. The Legislature further finds and declares that the practice of optometry is a privilege and

1 that the licensure by this state of practitioners located
2 outside this state engaging in such optometric practice within
3 this state and the ability to discipline such practitioners
4 state's ability to regulate and monitor such technological
5 advances is necessary for the protection of the citizens of
6 this state and for the public interest, health, welfare, and
7 safety.

8 "§34-22-81.

9 "(a) ~~The practice of optometry across state lines~~
10 ~~means the practice of optometry as defined in Section~~
11 ~~34-22-1(4), as it applies to:~~

12 "(1) ~~The rendering of a written or otherwise~~
13 ~~documented professional opinion concerning the diagnosis or~~
14 ~~treatment of a patient located within this state by an~~
15 ~~optometrist located outside this state as a result of~~
16 ~~transmission of individual patient data by electronic or other~~
17 ~~means from within this state to such optometrist or his or her~~
18 ~~agent.~~

19 "(2) ~~The rendering of treatment to a patient located~~
20 ~~within this state by an optometrist located outside this state~~
21 ~~as a result of transmission of individual patient data by~~
22 ~~electronic or other means from this state to such optometrist~~
23 ~~or his or her agent.~~

24 "(3) ~~This definition is not intended to include an~~
25 ~~informal consultation between a licensed optometrist located~~

1 ~~in this state and an optometrist located outside this state~~
2 ~~provided that the consultation is conducted without~~
3 ~~compensation or the expectation of compensation to either~~
4 ~~optometrist and does not result in the formal rendering of a~~
5 ~~written or otherwise documented professional opinion~~
6 ~~concerning the diagnosis or treatment of a patient by the~~
7 ~~optometrist located outside the state.~~

8 "For the purposes of this article, the following
9 terms shall have the following meanings:

10 "(b) Board means the (1) BOARD. The Alabama Board of
11 Optometry created pursuant to Section 34-22-40.

12 "(2) DISTANT SITE PROVIDER. The provider providing
13 the telemedicine service from a site other than the patient's
14 current location. A distant site provider shall hold an active
15 Alabama license pursuant to Section 34-22-20 or Section
16 34-22-21.

17 "(3) ESTABLISHED TREATMENT SITE. A location where a
18 patient shall present to seek optometric care where there is
19 an optometrist present and sufficient technology and equipment
20 to allow for an adequate physical evaluation as appropriate
21 for the patient's presenting complaint. The term requires an
22 optometrist-patient relationship. A patient's private home is
23 not considered an established treatment site.

24 "(4) FACE-TO-FACE VISIT. An evaluation performed on
25 a patient where both the provider and patient are at the same

1 physical location or where the patient is at an established
2 treatment site.

3 "(5) IN-PERSON EVALUATION. A patient evaluation
4 conducted by a provider who is at the same physical location
5 as the location of the patient.

6 "(6) PROVIDER. An optometrist holding an active
7 Alabama license pursuant to Section 34-22-20 or Section
8 34-22-21.

9 "(7) TELEMEDICINE. A health service that is
10 delivered by a licensed optometrist acting within the scope of
11 his or her license and that requires the use of advanced
12 telecommunications technology, other than telephone or
13 facsimile technology, including all of the following:

14 "a. Compressed digital interactive video, audio, or
15 data transmission.

16 "b. Clinical data transmission using computer
17 imaging by way of still image capture and store and forward.

18 "c. Other technology that facilitates access to
19 health care services or optometric specialty expertise.

20 "§34-22-82.

21 ~~"(a) No person shall engage in the practice of~~
22 ~~optometry across state lines in this state, hold himself or~~
23 ~~herself out as qualified to practice optometry, or use any~~
24 ~~title, word, or abbreviation to indicate or induce others to~~
25 ~~believe that he or she is licensed in this state to practice~~

1 ~~optometry across state lines unless he or she has been issued~~
2 ~~a special purpose license to practice optometry across state~~
3 ~~lines in accordance with the provisions of this article;~~
4 ~~provided however, that no person who holds a full,~~
5 ~~unrestricted, and current license issued pursuant to Sections~~
6 ~~34-22-1 to 34-22-43, inclusive, shall be required to obtain a~~
7 ~~special purpose license to practice optometry across state~~
8 ~~lines.~~

9 ~~"(b) An individual shall submit an application for a~~
10 ~~certificate of qualification for a special purpose license to~~
11 ~~practice optometry across state lines on a form provided by~~
12 ~~the board and shall remit an application fee in an amount~~
13 ~~established by the board. The Alabama Board of Optometry shall~~
14 ~~issue a special purpose license to practice optometry across~~
15 ~~state lines upon presentation by an applicant of a certificate~~
16 ~~of qualification issued by the Alabama Board of Optometry in~~
17 ~~accordance with this section. The authority of the board to~~
18 ~~issue, revoke, or suspend the special purpose license to~~
19 ~~practice optometry across state lines shall be the same as the~~
20 ~~general authority granted to the board under Sections 34-22-5~~
21 ~~to 34-22-43, inclusive. The Alabama Board of Optometry shall~~
22 ~~issue a certificate of qualification certifying an applicant~~
23 ~~for a special purpose license to practice optometry across~~
24 ~~state lines who has met the following requirements:~~

1 ~~"(1) The applicant holds a full and unrestricted~~
2 ~~license to practice optometry in any and all states of the~~
3 ~~United States or in territories in which the individual is~~
4 ~~licensed.~~

5 ~~"(2) The applicant has not had any disciplinary~~
6 ~~action or other action taken against the applicant by any~~
7 ~~state or licensing jurisdiction.~~

8 ~~"(3) In the event of previous disciplinary or other~~
9 ~~action against the applicant, the board may issue a~~
10 ~~certificate of qualification if it finds that the previous~~
11 ~~disciplinary or other action does not indicate that the~~
12 ~~optometrist is a potential threat to the public.~~

13 ~~"(c) A special purpose license issued by the board~~
14 ~~to practice optometry across state lines limits the licensee~~
15 ~~solely to the practice of optometry across state lines as~~
16 ~~defined herein. The special purpose license is valid for a~~
17 ~~period of three years, shall expire on a renewal date~~
18 ~~established by the board in the third calendar year after its~~
19 ~~issuance, and may be renewed upon receipt of a renewal fee as~~
20 ~~established by the board. Failure to renew a license according~~
21 ~~to the renewal schedule established by the board shall result~~
22 ~~in the automatic revocation of the special purpose license to~~
23 ~~practice optometry across state lines. An applicant may~~
24 ~~reapply following automatic revocation for failure to renew.~~

1 "(a) A provider who uses telemedicine in his or her
2 practice shall adopt protocols to prevent fraud and abuse
3 through the use of telemedicine.

4 "(b) (1) Privacy practices.

5 "a. A provider that communicates with patients by
6 electronic communications other than telephone or facsimile
7 shall provide patients with written notification of the
8 provider's privacy practices before evaluation or treatment.

9 "b. The notice of privacy practices shall include
10 language that is consistent with federal standards under 45
11 CFR Parts 160 and 164 relating to privacy of individually
12 identifiable health information.

13 "c. A provider shall make a good faith effort to
14 obtain the patient's written acknowledgment of the notice.

15 "(2) Limitations of telemedicine. A provider who
16 uses telemedicine services, before providing services, shall
17 give each patient notice regarding telemedicine services,
18 including the risks and benefits of being treated via
19 telemedicine, and how to receive follow-up care or assistance
20 in the event of an adverse reaction to the treatment or in the
21 event of an inability to communicate as a result of a
22 technological or equipment failure. A signed and dated notice,
23 including an electronic acknowledgement by the patient,
24 establishes a presumption of notice.

1 "(3) Necessity of in-person evaluation. When, for
2 whatever reason, the telemedicine modality in use for a
3 particular patient encounter is unable to provide all
4 pertinent clinical information that a healthcare provider
5 exercising ordinary skill and care would deem reasonably
6 necessary for the practice of optometry at an acceptable level
7 of safety and quality in the context of that particular
8 encounter, then the distant site provider shall make this
9 known to the patient and advise and counsel the patient
10 regarding the need for the patient to obtain an additional
11 in-person evaluation reasonably able to meet the patient's
12 needs.

13 "§34-22-83.

14 ~~"(a) The issuance by the board of a special purpose~~
15 ~~license to practice optometry across state lines subjects the~~
16 ~~licensee to the jurisdiction of the board in all matters set~~
17 ~~forth in Sections 34-22-1 to 34-22-43, inclusive, and~~
18 ~~implementing rules and regulations of the board, including all~~
19 ~~matters related to discipline. It shall be the affirmative~~
20 ~~duty of every licensee to report to the Alabama Board of~~
21 ~~Optometry in writing within 15 days of the initiation of any~~
22 ~~disciplinary action against the licensee to practice optometry~~
23 ~~by any state or territory in which the licensee is licensed.~~
24 ~~In addition, the licensee agrees, by acceptance of the~~
25 ~~license, to produce patient records or materials as requested~~

1 by the board or to appear before the board or any of its
2 committees following receipt of a written notice issued by the
3 board. Such notice may be issued by the board pursuant to
4 Sections 34-22-1 to 34-22-43, inclusive.

5 "(b) The Alabama Board of Optometry is hereby
6 authorized to temporarily suspend a special purpose license to
7 practice optometry across state lines without a hearing on
8 either of the following grounds:-

9 "(1) The failure of the licensee to appear or
10 produce records or materials as requested by the board.

11 "(2) The initiation of a disciplinary action against
12 the licensee by any state or territorial licensing
13 jurisdiction in which the licensee holds a license to practice
14 optometry.

15 "(c) Notwithstanding any other provision of law,
16 including the Alabama Administrative Procedure Act, the
17 temporary suspension provided herein shall remain in effect
18 until either the licensee has complied with the request of the
19 board or the disciplinary action pending against the licensee
20 has been terminated in favor of the licensee and the temporary
21 suspension is terminated by a written order of the Alabama
22 Board of Optometry. A special purpose license to practice
23 optometry across state lines is subject to each of the grounds
24 for disciplinary action provided in Section 34-22-6, in

1 ~~accordance with the procedures of Section 34-22-8, and the~~
2 ~~Alabama Administrative Procedure Act.~~

3 "(a) Telemedicine services provided at an
4 established treatment site may be used for all patient visits,
5 including initial evaluations to establish a proper
6 doctor-patient relationship between a provider and a patient.

7 "(1) A provider shall be reasonably available onsite
8 at the established medical site to assist with the provision
9 of care.

10 "(2) A provider may delegate tasks and activities at
11 an established treatment site to an assistant who is properly
12 trained and supervised or directed.

13 "(b) A distant site provider who provides
14 telemedicine services to a patient that is not present at an
15 established treatment site shall ensure that a proper
16 provider-patient relationship is established, which at a
17 minimum includes all of the following:

18 "(1) Having had at least one face-to-face meeting at
19 an established treatment site before engaging in telemedicine
20 services. A face-to-face meeting is not required for new
21 conditions relating to an existing patient, unless the
22 provider deems that such a meeting is necessary to provide
23 adequate care.

24 "(2) Establishing that the person requesting the
25 treatment is in fact whom he or she claims to be.

1 "(c) Evaluation, treatment, and consultation
2 recommendations made in a telemedicine setting, including
3 issuing a prescription via electronic means, shall be held to
4 the same standards of appropriate practice as those in
5 traditional in-person clinical settings.

6 "(d) (1) Adequate security measures shall be
7 implemented to ensure that all patient communications,
8 recordings, and records remain confidential.

9 "(2)a. Written policies and procedures shall be
10 maintained when using electronic mail for provider-patient
11 communications. Policies shall be evaluated periodically to
12 make sure they are up to date. Policies and procedures shall
13 address all of the following:

14 "1. Privacy to assure confidentiality and integrity
15 of patient-identifiable information.

16 "2. Health care personnel, in addition to the
17 provider, who will process messages.

18 "3. Hours of operation and availability.

19 "4. Types of transactions that shall be permitted
20 electronically.

21 "5. Required patient information to be included in
22 the communication, such as the patient name, identification
23 number, and type of transaction.

24 "6. Archival and retrieval.

25 "7. Quality oversight mechanisms.

1 "b. All relevant provider-patient email, and other
2 patient-related electronic communications, shall be stored and
3 filed in the patient record.

4 "c. Patients shall be informed of alternative forms
5 of communication for urgent matters.

6 "§34-22-84.

7 ~~"Any licensee licensed pursuant to this article~~
8 ~~shall comply with all laws, rules, and regulations governing~~
9 ~~the maintenance of patient records, including patient~~
10 ~~confidentially requirements, regardless of the state where the~~
11 ~~records of any patient within this state are maintained.~~

12 "(a) Patient records shall be maintained for all
13 telemedicine services. The provider or distant site provider
14 shall maintain the records created at any site where treatment
15 or evaluation is provided.

16 "(b) Distant site providers shall obtain an adequate
17 and complete medical history for the patient before providing
18 treatment and shall document the medical history in the
19 patient record.

20 "(c) Patient records shall include copies of all
21 relevant patient-related electronic communications, including
22 relevant provider-patient email, prescriptions, laboratory and
23 test results, evaluations and consultations, records of past
24 care, and instructions. If possible, telemedicine encounters

1 that are recorded electronically shall also be included in the
2 patient record.

3 "§34-22-85.

4 ~~"(a) An optometrist who engages in the practice of~~
5 ~~optometry across state lines in an emergency, as defined by~~
6 ~~the board, is not subject to this article.~~

7 ~~"(b) An optometrist who engages in the practice of~~
8 ~~optometry across state lines on an irregular or infrequent~~
9 ~~basis is not subject to this article. The "irregular or~~
10 ~~infrequent" practice of optometry across state lines is~~
11 ~~considered to occur if the practice occurs less than 10 times~~
12 ~~in a calendar year or involves fewer than 10 patients in a~~
13 ~~calendar year, or comprises less than one percent of the~~
14 ~~optometrist's diagnostic or therapeutic practice.~~

15 "(a) A licensed optometrist, who is not licensed in
16 Alabama pursuant to Section 34-22-20 or Section 34-22-21, who
17 utilizes telemedicine across state lines in an emergency, as
18 defined by the board, is not subject to the requirements of
19 this article.

20 "(b) A provider that is contacted in an emergency is
21 not subject to the notice and security provisions of this
22 article, but is subject to those provisions should any
23 nonemergency care continue with the patient.

24 "§34-22-86.

1 ~~"(a)~~ Any person who violates this article is subject
2 to criminal prosecution for the unlicensed practice of
3 optometry under Section 34-22-6, or other action authorized in
4 this state to prohibit or penalize continued practice without
5 a license under Section 34-22-8.

6 ~~"(b) Nothing in this article shall be interpreted to~~
7 ~~limit or restrict the board's authority to discipline any~~
8 ~~optometrist licensed to practice in this state who violates~~
9 ~~Sections 34-22-6 to 34-22-8, inclusive, while engaging in the~~
10 ~~practice of optometry within this or any other state.~~

11 ~~"§34-22-87.~~

12 ~~"Notwithstanding any provision of this article, the~~
13 ~~board shall only issue a special purpose license to practice~~
14 ~~optometry across state lines to an applicant whose principal~~
15 ~~practice location and license to practice is located in a~~
16 ~~state or territory of the United States whose laws permit or~~
17 ~~allow for the issuance of a special purpose license to~~
18 ~~practice optometry across state lines or similar license to an~~
19 ~~optometrist whose principal practice location and license is~~
20 ~~located in another state. It is the stated intent of this~~
21 ~~article that optometrists who hold a full and current license~~
22 ~~in the State of Alabama be afforded the opportunity to obtain,~~
23 ~~on a reciprocal basis, a license to practice optometry across~~
24 ~~state lines in any state or territory of the United States as~~
25 ~~a precondition to the issuance of a special purpose license as~~

1 ~~authorized by this article to an optometrist licensed in such~~
2 ~~state or territory. The Alabama Board of Optometry shall~~
3 ~~determine which states or territories have reciprocal~~
4 ~~licensure requirements meeting the qualifications of this~~
5 ~~section.~~

6 "The Alabama Board of Optometry is vested with
7 authority to adopt and promulgate rules and regulations to
8 effect the purposes of this article."

9 Section 2. Although this bill would have as its
10 purpose or effect the requirement of a new or increased
11 expenditure of local funds, the bill is excluded from further
12 requirements and application under Amendment 621, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, because the
15 bill defines a new crime or amends the definition of an
16 existing crime.

17 Section 3. All laws or parts of laws which conflict
18 with this act are repealed, and specifically, Section
19 34-22-88, Code of Alabama 1975, relating to the authority of
20 the Board of Optometry to make rules, is repealed as
21 duplicative.

22 Section 4. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.

