

## 1 HOUSE BILL NO. 389

2 INTRODUCED BY K. WAGONER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REQUIREMENTS FOR THE PRACTICE OF  
5 TELEMEDICINE BY PHYSICIANS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY;  
6 AMENDING SECTIONS 37-3-102, 37-3-301, AND 37-3-303, MCA; AND PROVIDING AN IMMEDIATE  
7 EFFECTIVE DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Physician  
12 Telemedicine Practice Act".

13

14 NEW SECTION. **Section 2. Evaluation and treatment of patients by telemedicine.** (1) The standard  
15 of care and scope of practice applicable to physicians providing in-person services in the practice of medicine  
16 apply to the practice of telemedicine.

17 (2) A physician may not provide telemedicine services to a patient located in Montana in the absence  
18 of a physician-patient relationship.

19 (3) If a physician practicing telemedicine does not have an established physician-patient relationship with  
20 the person seeking treatment, the physician shall take appropriate steps to establish a physician-patient  
21 relationship by use of an in-person visit, two-way audio-visual interaction, or store-and-forward technology. The  
22 steps taken must meet the applicable standard of care.

23 (4) Nothing in this section prohibits electronic communications:

24 (a) between a physician and a patient with a preexisting physician-patient relationship;

25 (b) between a physician and another physician concerning a patient with whom the other physician has  
26 a physician-patient relationship;

27 (c) in an emergency situation that poses an imminent risk of a life-threatening condition or severe bodily  
28 harm; or

29 (d) between a physician and a patient when treatment is provided by:

30 (i) a physician who is licensed in Montana and available to physically attend to urgent and followup care

1 needs of a patient for whom the physician has temporarily assumed responsibility with the acknowledgment of  
2 the patient's primary provider of care; or

3 (ii) a physician who conducts a medical evaluation other than an in-person medical evaluation at the  
4 request of a physician who has conducted at least one in-person medical evaluation of the patient within the  
5 previous 12 months and who is temporarily unavailable to conduct the evaluation of the patient.

6 (5) (a) A physician practicing telemedicine shall take any of the following actions if the action would  
7 otherwise be required when providing the same service to a patient being seen in person:

8 (i) verify the location and, to the extent possible, identify the requesting patient;

9 (ii) disclose and validate the physician's identity and applicable credentials;

10 (iii) obtain appropriate consent from the patient after disclosing the delivery models and treatment  
11 methods or limitations, including informed consent regarding the use of telemedicine technologies;

12 (iv) establish a diagnosis through the use of acceptable medical practices, including patient history,  
13 review of medical records, mental status examination, physical examination, and appropriate diagnostic and  
14 laboratory testing;

15 (v) identify underlying conditions or contraindications, or both, to the treatment that is recommended or  
16 provided;

17 (vi) discuss with the patient the:

18 (A) diagnosis and the evidence for it; and

19 (B) the risks and benefits of various treatment options;

20 (vii) ensure the availability of appropriate followup care; and

21 (viii) provide the patient with a summary of the visit.

22 (b) The requirements of this subsection (5) do not apply to an e-mail or instant messaging conversation  
23 or a message sent by facsimile transmission as followup or continuing care.

24 (6) A physician practicing telemedicine shall make all reasonable efforts to coordinate care with the  
25 patient's treating physician or primary care provider, including identifying the patient's treating physician or  
26 primary care provider and, with the patient's consent, providing the physician or primary care provider with a copy  
27 of the patient's medical record or summary of the telemedicine visit. The physician shall encourage a telemedicine  
28 patient to establish an in-person relationship with a physician or local primary care provider.

29 (7) Treatment and consultation recommendations made in an online setting, including issuing a  
30 prescription through electronic means, must meet the same standards of care as treatment and recommendations

1 provided through in-person settings.

2 (8) A physician may not issue a prescription solely in response to a request submitted through electronic  
3 means unless the physician has a prior established physician-patient relationship. This subsection (8) applies  
4 to requests submitted through internet questionnaires, e-mail messages, a patient-generated medical history, an  
5 audio-only telephone consult, or any combination of those methods.

6 (9) Except as provided by the board by rule, a physician may not issue a prescription for a controlled  
7 substance designated in ~~Schedules II through V~~ SCHEDULE II as provided in Title 50, chapter 32, part 2, without  
8 an in-person relationship with the patient.

9

10 **NEW SECTION. Section 3. Requirements of physicians practicing telemedicine.** A physician  
11 practicing telemedicine shall follow all applicable state and federal laws and regulations relating to:

- 12 (1) informed consent;  
13 (2) patient privacy and the security of individually identifiable health information;  
14 (3) medical recordkeeping; and  
15 (4) fraud and abuse.

16

17 **NEW SECTION. Section 4. Location of treatment -- venue for legal action.** For the purposes of Title  
18 25, chapter 2, part 1, treatment of a patient in Montana by a physician practicing telemedicine occurs at the  
19 originating site.

20

21 **NEW SECTION. Section 5. Rulemaking authority.** The board may provide guidelines by  
22 administrative rule for the practice of telemedicine by physicians, including but not limited to rules establishing:

- 23 (1) security requirements for protecting individually identifiable health information; and  
24 (2) circumstances in which a physician may issue a prescription for a SCHEDULE II controlled substance  
25 without an in-person relationship with a patient.

26

27 **Section 6.** Section 37-3-102, MCA, is amended to read:

28 **"37-3-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
29 apply:

- 30 (1) "ACGME" means the accreditation council for graduate medical education.

1 (2) "AOA" means the American osteopathic association.

2 (3) "Approved internship" means an internship training program of at least 1 year in a program that either  
3 is approved for intern training by the AOA or conforms to the standards for intern training established by the  
4 ACGME or successors. However, the board may, upon investigation, approve any other internship.

5 (4) "Approved medical school" means a school that either is accredited by the AOA or conforms to the  
6 education standards established by the LCME or the world health organization or successors for medical schools  
7 that meet standards established by the board by rule.

8 (5) "Approved residency" means a residency training program conforming to the standards for residency  
9 training established by the ACGME or successors or approved for residency training by the AOA.

10 (6) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

11 (7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

12 (8) "Distant site" means a site at which a physician is located while practicing telemedicine.

13 ~~(8)~~(9) "ECP" means an emergency care provider licensed by the board, including but not limited to an  
14 emergency medical responder, an emergency medical technician, an advanced emergency medical technician,  
15 or a paramedic.

16 ~~(9)~~(10) "LCME" means the liaison committee on medical education.

17 ~~(10)~~(11) "Medical assistant" means an unlicensed allied health care worker who functions under the  
18 supervision of a physician or podiatrist in a physician's or podiatrist's office and who performs administrative and  
19 clinical tasks.

20 (12) "Originating site" means the site at which a patient is located when receiving telemedicine services.

21 ~~(11)~~(13) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy  
22 and who has a valid license to practice medicine or osteopathic medicine in this state.

23 (14) "Physician-patient relationship" means a relationship in which a patient agrees to be diagnosed or  
24 treated by the physician whether or not an in-person encounter has occurred between the physician and the  
25 patient.

26 ~~(12)~~(15) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the  
27 holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries,  
28 or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities, including  
29 electronic and technological means such as telemedicine. If a person who does not possess a license to practice  
30 medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter

1 performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter.

2 (16) "Store-and-forward technology" means the transmission of a patient's medical information from an  
3 originating site to a physician at a distant site for the practice of medicine. The term includes but is not limited to  
4 digital images, documents, and prerecorded video.

5 ~~(13) (a) "Telemedicine" means the practice of medicine using interactive electronic communications,~~  
6 ~~information technology, or other means between a licensee in one location and a patient in another location with~~  
7 ~~or without an intervening health care provider. Telemedicine typically involves the application of secure~~  
8 ~~videoconferencing or store-and-forward technology, as defined in 33-22-138.~~

9 ~~(b) The term does not mean an audio-only telephone conversation, an e-mail or instant messaging~~  
10 ~~conversation, or a message sent by facsimile transmission.~~

11 (17) "Telemedicine" means the provision of health care services through the use of technology by a  
12 physician engaged in the practice of medicine to a patient at another location."

13

14 **Section 7.** Section 37-3-301, MCA, is amended to read:

15 **"37-3-301. License required -- kinds of licenses.** (1) Before being issued a license, an applicant may  
16 not engage in the practice of medicine in this state.

17 (2) The department may issue two kinds of licenses under the board's seal, a physician's license and  
18 a resident license.

19 ~~(3) The board shall provide guidelines by administrative rule for the practice of telemedicine by~~  
20 ~~physicians.~~

21 (3) (a) A physician practicing telemedicine in this state may engage in the practice of medicine in  
22 Montana only upon obtaining a license issued by the board.

23 (b) A physician practicing telemedicine is subject to the provisions of [sections 1 through 5] and related  
24 administrative rules adopted by the board.

25 (c) This subsection (3) does not apply to:

26 (i) an informal consultation or second opinion offered at the request of a physician licensed to practice  
27 medicine in this state if the physician requesting the consultation or opinion retains authority and responsibility  
28 for the patient's care; or

29 (ii) furnishing of medical assistance by a physician in case of an emergency or disaster if the physician  
30 does not charge for the services provided.

1 (d) This subsection (3) may not be construed as altering the scope of practice of a physician or  
2 authorizing the delivery of health care services in a setting or manner not otherwise authorized by the laws of this  
3 state.

4 (4) A license issued by the board that has not expired prior to July 1, 2015, remains valid until renewal  
5 unless the licensee is otherwise subject to disciplinary proceedings."  
6

7 **Section 8.** Section 37-3-303, MCA, is amended to read:

8 **"37-3-303. Practice authorized by physician's license.** A physician's license authorizes the holder  
9 to perform one or more of the acts ~~embraced~~ encompassed in ~~37-3-102(12)~~ 37-3-102(15) in a manner consistent  
10 with the holder's training, skill, and experience."  
11

12 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 5] are intended to be codified  
13 as an integral part of Title 37, chapter 3, and the provisions of Title 37, chapter 3, apply to [sections 1 through 5].  
14

15 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are  
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
17 the part remains in effect in all valid applications that are severable from the invalid applications.  
18

19 NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.  
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