**South Carolina General Assembly**

125th Session, 2023-2024

**A120, R125, H4159**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Herbkersman, Davis, M.M. Smith, Erickson, W. Newton, Bradley, Ballentine, Hewitt and Blackwell

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Introduced in the House on March 15, 2023

Introduced in the Senate on May 9, 2023

Last Amended on January 24, 2024

Currently residing in the House

Governor's Action: March 11, 2024, Signed

Summary: Telehealth and Telemedicine Modernization Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/15/2023 House Introduced and read first time (House Journal‑page 9)

 3/15/2023 House Referred to Committee on **Medical, Military, Public and Municipal Affairs** (House Journal‑page 9)

 3/17/2023 Scrivener's error corrected

 5/3/2023 House Committee report: Favorable with amendment **Medical, Military, Public and Municipal Affairs** (House Journal‑page 58)

 5/4/2023 House Member(s) request name added as sponsor: Blackwell

 5/4/2023 House Amended (House Journal‑page 68)

 5/4/2023 House Read second time (House Journal‑page 68)

 5/4/2023 House Roll call Yeas-109 Nays-0 (House Journal‑page 68)

 5/4/2023 House Unanimous consent for third reading on next legislative day (House Journal‑page 71)

 5/5/2023 House Read third time and sent to Senate (House Journal‑page 4)

 5/9/2023 Senate Introduced and read first time (Senate Journal‑page 13)

 5/9/2023 Senate Referred to Committee on **Medical Affairs** (Senate Journal‑page 13)

 1/18/2024 Senate Committee report: Favorable with amendment **Medical Affairs** (Senate Journal‑page 9)

 1/19/2024 Scrivener's error corrected

 1/24/2024 Senate Committee Amendment Adopted (Senate Journal‑page 16)

 1/24/2024 Senate Read second time (Senate Journal‑page 16)

 1/25/2024 Senate Read third time and returned to House with amendments (Senate Journal‑page 9)

 1/25/2024 Senate Roll call Ayes-41 Nays-0 (Senate Journal‑page 9)

 1/31/2024 House Concurred in Senate amendment and enrolled (House Journal‑page 32)

 1/31/2024 House Roll call Yeas-109 Nays-0 (House Journal‑page 32)

 3/7/2024 Ratified R 125

 3/11/2024 Signed By Governor

 3/14/2024 Effective date 03/11/24

 3/14/2024 Act No. 120

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**VERSIONS OF THIS BILL**

[03/15/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4159_20230315.docx)

[03/17/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4159_20230317.docx)

[05/04/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4159_20230504.docx)

[05/04/2023-A](https://www.scstatehouse.gov/sess125_2023-2024/prever/4159_20230504a.docx)

[01/18/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4159_20240118.docx)

[01/19/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4159_20240119.docx)

[01/24/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4159_20240124.docx)

(A120, R125, H4159)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS by ENACTing THE “SOUTH CAROLINA TELEHEALTH AND TELEMEDICINE MODERNIZATION ACT” BY ADDING CHAPTER 42 TO TITLE 40 SO AS TO DEFINE NECESSARY TERMS AND PROVIDE REQUIREMENTS FOR CERTAIN REGULATED HEALTH CARE PROFESSIONALS WHO PROVIDE HEALTH CARE BY MEANS OF TELEHEALTH; BY AMENDING SECTION 40‑47‑20, RELATING TO DEFINITIONS IN THE MEDICAL PRACTICE ACT, SO AS TO DEFINE “TELEHEALTH”; BY AMENDING SECTION 40‑47‑37, RELATING TO THE PRACTICE OF TELEMEDICINE, SO AS TO REVISE REQUIREMENTS FOR THE PRACTICE OF TELEMEDICINE AND TO INCLUDE PROVISIONS CONCERNING TELEHEALTH; TO AMEND SECTION 40‑33‑34, RELATING TO THE AUTHORITY OF ADVANCED PRACTICE REGISTERED NURSES TO PRACTICE TELEMEDICINE, SO AS TO ALSO AUTHORIZE THE PRACTICE OF TELEHEALTH BY ADVANCED PRACTICE REGISTERED NURSES AND TO CLARIFY THAT LICENSURE TO PRACTICE MEDICINE IN THIS STATE IS NOT REQUIRED FOR ADVANCED PRACTICE REGISTERED NURSES TO PRACTICE TELEMEDICINE OR TELEHEALTH EXCEPT AS OTHERWISE REQUIRED; AND TO AMEND SECTION 40‑47‑935, RELATING TO THE AUTHORITY OF PHYSICIAN ASSISTANTS TO PRACTICE TELEMEDICINE, SO AS TO ALSO AUTHORIZE THE PRACTICE OF TELEHEALTH BY PHYSICIAN ASSISTANTS AND TO CLARIFY THAT LICENSURE TO PRACTICE MEDICINE IN THIS STATE IS NOT REQUIRED FOR PHYSICIAN ASSISTANTS TO PRACTICE TELEMEDICINE OR TELEHEALTH EXCEPT AS OTHERWISE REQUIRED.

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

Citation

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

Telehealth

SECTION 2. Title 40 of the S.C. Code is amended by adding:

 CHAPTER 42

 Telehealth

 Section 40‑42‑10. As used in this title unless the context requires a different meaning:

 (1) “Licensing board” means the licensing board that is responsible for licensing or disciplining an individual who provides health care pursuant to this title.

 (2) “Health care” means any care, treatment, service, assessment, counsel, education, or procedure to maintain, monitor, diagnose, or otherwise affect an individual’s physical or mental illness, injury, or condition.

 (3) “Licensee” means a professional licensed by a licensing board and authorized to practice health care pursuant to this title.

 (4) “Scope of practice” means the extent of a licensee’s authority to provide health care. The term includes a condition on authority imposed by the licensee’s practice act or licensing board, including but not limited to the requirement to perform telehealth pursuant to a practice agreement as defined in Section 40‑33‑20(45) or within written scope of practice guidelines under physician supervision pursuant to Section 40‑47‑935.

 (5) “Telehealth” means the use of electronic communications, information technology, or other means to deliver clinical health care, patient and professional health-related education, public health, or health administration between a licensee in one location and a patient in another location with or without an intervening licensee.

 (6) “Unprofessional conduct” means an act or behavior that fails 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 licensee’s respective board or a specialty.

 Section 40‑42‑20. (A) A licensee who provides health care via telehealth:

 (1) may only provide health care within his scope of practice;

 (2) shall adhere to the same standard of care as required for in‑person care and must be evaluated according to the standard of care applicable to the licensee’s area of specialty. The failure of a licensee to conform to the appropriate standard of care is considered unprofessional conduct and may be disciplined according to the licensee’s respective practice act and pursuant to Section 40‑42‑10(3);

 (3) shall generate and maintain confidentiality of a patient’s records and disclose the records to the patient consistent with state and federal laws, rules, and regulations; provided, that licensees 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 by traditional means;

 (4) shall, if authorized by the licensee’s respective practice act and within his scope of practice, prescribe in accordance with all applicable state and federal laws, including his respective practice act, rules and regulations, and standards required by such practice authorization;

 (5) must be licensed in this State; provided, however, a licensee need not reside or maintain a physical office in this State to be considered actively practicing medicine if he has a valid, current license issued by the applicable licensing board in this State; further provided that a licensee residing in this State who intends to practice via telehealth to treat or diagnose patients outside of this State shall comply with other state licensing boards; and

 (6) shall maintain a controlled substances registration with South Carolina’s Bureau of Drug Control if prescribing controlled substances.

 (B) Nothing in this section may be construed to prohibit electronic communications between a licensee and patient with a preexisting licensee‑patient relationship, between a licensee and another licensee concerning a patient with whom the other licensee has a licensee‑patient relationship, or between a licensee and a patient when treatment is provided pursuant to an on‑call situation or a cross‑coverage situation.

 (C) In addition to the provisions of subsection (A), a licensee who establishes or maintains a licensee‑patient relationship solely via telehealth shall:

 (1) adhere to current standards for practice improvement and monitoring of outcomes and provide reports containing this information upon request of his respective licensing board;

 (2) provide an appropriate evaluation before providing health care to the patient, which need not be done in person, if the licensee determines he is able to appropriately provide health care to the patient via telehealth in conformity with the same standard of care required for in‑person care;

 (3) ensure availability of appropriate follow‑up care;

 (4) verify the identity and location of the patient and inform the patient of the licensee’s name, location, and professional credentials; and

 (5) only prescribe:

 (a) if specifically authorized by his respective practice act;

 (b) within his scope of practice; and

 (c) in accordance with federal and state laws, rules, standards provided in the practice act and, if applicable, any practice agreement or scope of practice guidelines.

 (D) A licensee or any other person involved in a telehealth encounter must:

 (a) be trained in the use and operation of the telehealth equipment; and

 (b) demonstrate competence in the use and operation of telehealth equipment.

 (E) Notwithstanding any of the provisions of this section, a licensee’s respective licensing board retains all authority with respect to telehealth practice in accordance with the authorization provided to him by his respective practice act.

 Section 40‑42‑30. This article governs all licensees providing services via telehealth except for additional or more specific standards provided in the licensees’ respective practice act.

Medical Practice Act, definitions

SECTION 3. Section 40‑47‑20(52)‑(57) of the S.C. Code is amended to read:

 (52) “Telehealth” means the use of electronic communications, information technology, or other means to deliver health care, patient and professional health‑related education, public health, and health administration between a licensee in one location and a patient in another location with or without an intervening practitioner.

 (53) “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.

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

 (55) “Unprofessional conduct” means acts or behavior that fails 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.

 (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.

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

 (58) “Certified medical assistant” or “CMA” means a person who is a graduate of a post‑secondary medical assisting education program accredited by the National Healthcare Association, or its successor; by the Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor; by the Accrediting Bureau of Health Education Schools, or its successor; or by any accrediting agency recognized by the United States Department of Education. The accredited post‑secondary medical assisting education program must include courses in anatomy and physiology, medical terminology, pharmacology, medical laboratory techniques, and clinical experience. A certified medical assistant must maintain current certification from the certifying board of the American Association of Medical Assistants, the National Center for Competency Testing, the National Certification Medical Association, American Medical Technologists, or any other recognized certifying body approved by the Board of Medical Examiners.

  (59) “Unlicensed assistive personnel” or “UAP” means persons not currently licensed by the Board of Nursing as nurses, or persons who are not certified medical assistants as defined in Section 40‑47‑20(58), who perform routine nursing tasks that do not require a specialized knowledge base or the judgment or skill of a licensed nurse. Nursing tasks performed by unlicensed assistive personnel must be performed under the supervision of a physician, physician assistant, APRN, registered nurse, or licensed practical nurse. Unlicensed assistive personnel must not administer medications except as otherwise provided by law.

Physicians, telemedicine and telehealth services

SECTION 4. Section 40‑47‑37 of the S.C. Code is amended to read:

 Section 40‑47‑37. (A) A licensee who provides care, renders a diagnosis, or otherwise engages in the practice of medicine as defined in Section 40‑47‑20(36) via telemedicine as defined in Section 40‑47‑20(52) shall:

 (1) adhere to the same standard of care as in‑person medical care and be evaluated according to the standard of care applicable to the licensee’s area of specialty. The failure of a licensee to conform to the appropriate standard of care is considered unprofessional conduct under Section 40‑47‑110(B)(9);

 (2) generate and maintain medical records for 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 timely must be made accessible to other practitioners and to the patient when lawfully requested by the patient or his lawfully designated representative;

 (3) prescribe in accordance with Section 40‑47‑113;

 (4) be licensed to practice medicine in this State; provided, however, a licensee need not reside in this State if he has a valid, current South Carolina medical license; further, provided, that a licensee who resides in this State and intends to practice medicine via telemedicine to treat or diagnose patients outside of this State shall comply with other applicable state licensing boards; and

 (a) this requirement is not applicable to an informal consultation or second opinion, at the request of a physician licensed to practice medicine in this State, provided that the physician requesting the opinion retains the authority and responsibility for the patient’s care; and

 (b) where an in‑person physician‑patient relationship is established in another state for specialty care and treatment is ongoing by that out‑of‑state provider, care provided pursuant to an existing treatment plan via telehealth in this State by the out‑of‑state provider between in‑person visits is considered acts incidental to the care of the patient in another state and the out‑of‑state provider is not required to be licensed in this State. This exception may not be construed to apply to:

 (i) episodic care that is provided by an out‑of‑state provider;

 (ii) new health conditions that arise and are not connected to the condition being treated by the out‑of‑state provider; or

 (iii) care provided by an out‑of‑state provider for extended periods of time without intervening in‑person visits; and

 (c) for purposes of subitems (a) and (b), the care provided to the patient by the out‑of‑state provider is deemed to have occurred where the patient was located at the time health care services were provided to him by means of telehealth; and

 (d) shall maintain a controlled substances registration with South Carolina’s Bureau of Drug Control if prescribing controlled substances.

 (B) Nothing in this section may be construed to prohibit electronic communications between:

 (1) a physician and patient with a preexisting physician‑patient relationship;

 (2) a physician and another physician concerning a patient with whom the other physician has a physician‑patient relationship; or

 (3) a provider and a patient when treatment is provided pursuant to an on‑call situation or a cross‑coverage situation.

 (C) In addition to those requirements set forth in subsection (A), a licensee who establishes and/or maintains a physician‑patient relationship, provides care, renders a diagnosis, or otherwise engages in the practice of medicine as defined in Section 40‑47‑20(36) solely via telemedicine as defined in Section 40‑47‑20(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 considers that he is able to accurately diagnose and treat the patient in conformity with the applicable standard of care via telehealth; provided that evaluations in which a licensee is at a distant site, but a practitioner who is acting within his scope is able to provide various physical findings the licensee needs to complete an adequate assessment, is permitted;

 (3) ensure the availability of appropriate follow‑up care;

 (4) verify the identity and location of the patient and inform the patient of the licensee’s name, location, and professional credentials;

 (5) maintain the confidentiality of a patient’s records and disclose the records to the patient consistent with state and federal law; provided, that licensees 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;

 (6) if applicable, 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;

 (7) prescribe in compliance with all relevant federal and state laws including, but not limited to, participation in the South Carolina Prescription Monitoring Program in Article 15, Chapter 53, Title 44 and the Ryan Haight Act, within a practice setting fully compliant with this section, and subject to the following limitations:

 (a) at each encounter, threshold information necessary to make an accurate diagnosis must be obtained in a medical history interview conducted by the prescribing licensee;

 (b) Schedule II‑narcotic and Schedule III‑narcotic prescriptions are not permitted except in the following instances:

 (i) when the practice of telemedicine is being conducted while the patient is physically located in a hospital and being treated by a practitioner acting in the usual course of professional practice;

 (ii) those Schedule II and Schedule III medications used specifically for patients actively enrolled in a Medication‑Assisted Treatment (MAT) program with a provider who has an established physician‑patient relationship when buprenorphine is being prescribed as a medication for opioid use disorder;

 (iii) patients enrolled in palliative care or hospice; or

 (iv) any other programs specifically authorized by the board; and

 (c) prescribing abortion inducing drugs is not permitted; as used in this chapter “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 that 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”, or “chemical abortion”; and

 (8) be prohibited from establishing a physician‑patient relationship pursuant to Section 40‑47‑113(B) for the purpose of prescribing medication when an in‑person physical examination is necessary for diagnosis.

 (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.

Advanced practice registered nurses, telemedicine and telehealth services

SECTION 5. Section 40‑33‑34(I)(2) of the S.C. Code is amended to read:

 (2) An APRN may perform medical acts via telemedicine and telehealth pursuant to a practice agreement as defined in Section 40‑33‑20(45) without having to be licensed to practice medicine in this State as otherwise required in Section 40‑47‑37(A)(4).

Physician assistants, telemedicine and telehealth services

SECTION 6. Section 40‑47‑935(A)(3) of the S.C. Code is amended to read:

 (3) telemedicine and telehealth in accordance with the requirements of Section 40‑47‑37 including, but not limited to, Section 40‑47‑37(C)(6) requiring board authorization prior to prescribing Schedule II and Schedule III prescriptions; Section 40‑47‑113, approved written scope of practice guidelines, and pursuant to all physician supervisory requirements imposed by this chapter without having to be licensed to practice medicine in this State as otherwise required in Section 40‑47‑37(A)(4).

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 7th day of March, 2024.

Approved the 11th day of March, 2024.

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