

TELEMEDICINE LAW

Section 34-22-80

Legislative findings.

The Legislature hereby finds and declares that technological advances are occurring in the practice of optometry, thereby changing the practice of optometry, and that those technological advances are in the public interest. The Legislature further finds and declares that the practice of optometry is a privilege and that the state's ability to regulate and monitor such technological advances is necessary for the protection of the citizens of this state and for the public interest, health, welfare, and safety.

(Act 98-495, p. 956, §1; Act 2014-339, §1.)

Section 34-22-81

Definitions.

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

- (1) BOARD. The Alabama Board of Optometry created pursuant to Section 34-22-40.
- (2) DISTANT SITE PROVIDER. The provider providing the telemedicine service from a site other than the patient's current location. A distant site provider shall hold an active Alabama license pursuant to Section 34-22-20 or Section 34-22-21.
- (3) ESTABLISHED TREATMENT SITE. A location where a patient shall present to seek optometric care where there is an optometrist present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. The term requires an optometrist-patient relationship. A patient's private home is not considered an established treatment site.
- (4) FACE-TO-FACE VISIT. An evaluation performed on a patient where both the provider and patient are at the same physical location or where the patient is at an established treatment site.
- (5) IN-PERSON EVALUATION. A patient evaluation conducted by a provider who is at the same physical location as the location of the patient.
- (6) PROVIDER. An optometrist holding an active Alabama license pursuant to Section 34-22-20 or Section 34-22-21.
- (7) TELEMEDICINE. A health service that is delivered by a licensed optometrist acting within the scope of his or her license and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including all of the following:
 - a. Compressed digital interactive video, audio, or data transmission.

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

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

(Act 98-495, p. 956, §2; Act 2014-339, §1.)

Section 34-22-82

Telemedicine - Protocols; privacy practices.

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

(b)(1) Privacy practices.

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

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

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

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

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

(Act 98-495, p. 956, §3; Act 2014-339, §1.)

Section 34-22-83

Telemedicine - Services; provider-patient relationship; standards of practice; confidentiality.

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

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

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

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

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

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

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

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

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

1. Privacy to assure confidentiality and integrity of patient-identifiable information.
2. Health care personnel, in addition to the provider, who will process messages.
3. Hours of operation and availability.
4. Types of transactions that shall be permitted electronically.
5. Required patient information to be included in the communication, such as the patient name, identification number, and type of transaction.
6. Archival and retrieval.
7. Quality oversight mechanisms.

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

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

(Act 98-495, p. 956, §4; Act 2014-339, §1.)

Section 34-22-84

Maintenance of records.

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

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

(c) Patient records shall include copies of all relevant patient-related electronic communications, including relevant provider-patient email, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions. If possible, telemedicine encounters that are recorded electronically shall also be included in the patient record.

(Act 98-495, p. 956, §5; Act 2014-339, §1.)

Section 34-22-85

Exceptions.

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

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

(Act 98-495, p. 956, §6; Act 2014-339, §1.)

Section 34-22-86

Penalties.

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

(Act 98-495, p. 956, §7; Act 2014-339, §1.)

Section 34-22-87

Rulemaking authority.

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

(Act 98-495, p. 956, §8; Act 2014-339, §1.)

Section 34-22-88

Rules and regulations.

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

(Act 98-495, p. 956, §9.)