

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

SENATE BILL 726

By: Griffin

AS INTRODUCED

An Act relating to telemedicine; providing definitions; requiring certain adherence by physicians; providing certain limits; prohibiting certain disciplinary acts by certain licensing boards; permitting prescriptions using telemedicine; providing certain interpretation; requiring informed consent and confidentiality; directing promulgation of rules; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 651 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Board" means either:

- a. the State Board of Medical Licensure and Supervision,
- or
- b. the State Board of Osteopathic Examiners;

1 2. "Legally authorized representative" means a person who has
2 authority to make health care decisions for the patient under common
3 law;

4 3. "Medical record" means a record of health-related
5 information for an individual that can be created, gathered, managed
6 and consulted by authorized clinicians and staff within one or
7 several health care organizations;

8 4. "Medical history" means a medical record that conveys the
9 patient's history of present illness and other relevant history,
10 including: past medical history, drug history, family medical
11 history and social history. The information obtained in a medical
12 history for telemedicine medical services shall be equivalent to the
13 historical information traditionally gathered before initially
14 treating a patient in-person;

15 5. "Patient" means a person requesting or receiving medical
16 treatment or, where appropriate, the legally authorized
17 representative of such person;

18 6. "Physician" means an allopathic or osteopathic physician
19 licensed to practice in this state;

20 7. "Practicing medicine" means the practice of allopathic
21 medicine as provided by Section 492 of Title 59 of the Oklahoma
22 Statutes, and the practice of osteopathic medicine as provided by
23 Section 621 of Title 59 of the Oklahoma Statutes;

24 8. "Prohibited substance" means:

- a. a controlled dangerous substance as defined by Section 2-101 of Title 63 of the Oklahoma Statutes, or
- b. an abortion-inducing drug as defined by Section 1-729a of Title 63 of the Oklahoma Statutes;

9. "Qualifying telemedicine platform" a technology-enabled service, such as an internet-based website, that facilitates a real-time interaction between a patient seeking telemedicine medical services and a treating physician of appropriate medical specialty, provided that the service:

- a. takes the patient's medical history and creates a record of it,
- b. enables a patient to upload medical records to the service for review by a treating physician,
- c. establishes the patient's identity using procedures comparable to those in traditional in-office settings,
- d. requires the treating physician, prior to initiating contact with the patient, to review the medical history and any medical records provided by the patient,
- e. stores, uses and transmits all medical records in accordance with all requirements pertaining to privacy, confidentiality and record retentions of state and federal laws,

- f. provides treating physicians using the service with guidelines for evidence-based best practices in the delivery of telemedicine medical services, and systematically reviews their adherence to the guidelines,
- g. makes all patient medical records in its possession available to the patient for download—and, upon the patient's consent forwards them directly to the patient's other physicians,
- h. makes the identity and professional credentials of any of a patient's treating physicians available to the patient during and after the encounter,
- i. alerts appropriate emergency response personnel local to the patient in the event of a medical emergency,
- j. enables the patient to contact their treating physician for seventy-two (72) hours following the encounter with that treating physician, and
- k. advises patients without a primary care physician to contact one and, upon the patient's request, assists the patient with locating a primary care physician or other in-person medical assistance;

10. "Standard of care" means the legal duty enforced by Oklahoma courts in cases involving physician conduct;

1 11. "Telemedicine medical service" means the practicing of
2 medicine by a physician in one location consulting with a patient in
3 a different location while communicating in real-time using
4 telecommunications and/or information technology facilitated by a
5 qualifying telemedicine platform, provided that the treating
6 physician:

- 7 a. confirms with the patient the patient's identity and
8 physical location,
- 9 b. provides the patient with the treating physician's
10 identity and professional credentials,
- 11 c. discusses with the patient the treating physician's
12 diagnosis, the evidence for the diagnosis and the
13 risks and benefits of alternative treatment options,
14 including the advisability of seeking in-person care,
- 15 d. creates and maintains a medical record of the
16 encounter and requests the patient's consent to
17 forward the medical record to the patient's primary
18 care physician,
- 19 e. if the patient does not have a primary care
20 physician, advises the patient to obtain a primary
21 care physician and offers the assistance of the
22 qualifying telemedicine platform's resources to assist
23 the patient with locating a primary care physician,
24 and

1 f. advises the patient to seek in-person care if the
2 patient's medical condition has not resolved within
3 seventy-two (72) hours (or less, in the treating
4 physician's discretion) following the encounter; and

5 12. "Treating physician" means either an allopathic physician
6 or osteopathic physician who is licensed to practice medicine in
7 this state, referred a patient seeking telemedicine medical services
8 by a qualifying telemedicine platform and provides telemedicine
9 medical services to that patient.

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 652 of Title 59, unless there is
12 created a duplication in numbering, reads as follows:

13 A. A treating physician providing telemedicine medical services
14 shall adhere to the same standard of care as applicable to a
15 physician practicing medicine in a traditional in-person setting.
16 If telemedicine medical services would not be consistent with the
17 legally applicable standard of care, then the treating physician
18 shall direct the patient to seek in-person care.

19 B. The State Board of Medical Licensure and Supervision or the
20 State Board of Osteopathic Examiners shall not discipline, sanction
21 or otherwise punish any treating physician solely because the
22 treating physician did not conduct an in-person examination of a
23 patient before providing telemedicine medical services to the
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1 patient, unless satisfying the standard of care legally applicable
2 required an in-person examination.

3 C. A treating physician may prescribe medication, including
4 controlled dangerous substances, for a patient as part of providing
5 telemedicine medical services but shall not prescribe a prohibited
6 substance.

7 D. This act shall be interpreted to authorize telemedicine
8 medical services, as defined in this act and on the conditions set
9 forth in this act; provided, it shall not be interpreted to affect
10 the legality of other forms of practicing medicine that do not meet
11 the definition of telemedicine medical services provided herein.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 653 of Title 59, unless there is
14 created a duplication in numbering, reads as follows:

15 A. A physician providing telemedicine medical services shall
16 ensure that the informed consent of the patient is obtained before
17 telemedicine medical services are provided.

18 B. A treating physician who provides telemedicine medical
19 services shall ensure that the confidentiality of the patient's
20 medical information is maintained as required by state and federal
21 law.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 654 of Title 59, unless there is
24 created a duplication in numbering, reads as follows:

1 The State Board of Medical Licensure and Supervision and the
2 State Board of Osteopathic Examiners shall promulgate rules to
3 implement the provisions of this act.

4 SECTION 5. This act shall become effective November 1, 2017.

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