MISSISSIPPI LEGISLATURE
REGULAR SESSION 2016
By: Representatives Mims, Sykes, Campbell, Dixon
To: Public Health and Human Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1178

AN ACT TO AMEND SECTION 73-25-34, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF TELEMEDICINE SERVICES IN THE MEDICAL PRACTICE ACT AND PROVIDE STANDARDS FOR PHYSICIANS PROVIDING TREATMENT VIA TELEMEDICINE SERVICES; TO BRING FORWARD SECTION 41-3-15, MISSISSIPPI CODE OF 1972, FOR THE PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-25-34, Mississippi Code of 1972, is amended as follows:

73-25-34. ★ ★ ★ (1) As used in this section, the following terms shall be defined as provided in this subsection:

(a) "Telemedicine" is the practice of medicine using telemedicine services as defined in paragraph (b).

(b) "Telemedicine services" means the delivery of health care services such as diagnosis, consultation, or treatment by a physician located at a site other than the patient through the use of interactive audio, video, or other electronic media, and is not a separate form of medicine.

(2) The practice of medicine under this section is deemed to occur at the location of the patient.
(3) The physician-patient relationship is established when a physician agrees to undertake diagnosis and treatment of a patient through telemedicine services and the patient consents to being treated. The physician-patient relationship ends when either the patient terminates the physician-patient relationship; the patient no longer requires the care of the physician; the physician agreed to treat or diagnose only a specific condition or agreed to diagnose or treat only at a specific time or place and that condition diagnosis or treatment has ended; or the physician terminates the physician-patient relationship by notifying the patient in writing of withdrawal from care after a specific time that is stated in a letter.

(4) A patient must give informed consent for all telemedicine services. Informed consent shall be obtained in accordance with any applicable law; however, any such regulations shall be consistent with and no more restrictive than informed consent provisions for traditional face-to-face medical services.

(5) Before providing telemedicine services, the physician shall obtain and document a patient's relevant clinical history and current symptoms to diagnose, treat, consult, and identify underlying conditions, treatment, and contraindications, if any. Medical records must be maintained and accessible in accordance with applicable law. The content of medical records shall be maintained at or above the same standard as traditional face-to-face medical services.
(6) Sufficient privacy and security measures must be in place and documented to assure confidentiality and integrity of the health information of a patient. Any physician offering telemedicine services as part of his or her practice shall meet or exceed any applicable state and federal laws, rules and regulations, including the Health Insurance Portability and Accountability Act (HIPAA), P.L. 104-191 (1996), as amended, and the Health Information Technology for Economic and Clinical Health Act (HITECH), P.L. 111-115 (2009), as amended. Such records shall be accessible to other providers and to the patient in accordance with applicable laws, rules and regulations.

(7) Prescribing medications via telemedicine is at the professional discretion of the physician. The indication, appropriateness, and safety considerations for each prescription ordered via telemedicine must be evaluated by the physician in accordance with applicable regulations and standards of practice and consequently carry the same professional accountability as if prescribed in person. However, medication prescribed via telemedicine shall not be a controlled substance unless it is prescribed in compliance with Section 41-29-137 and 21 USC Section 802(54)(A).

(8) A physician who fails to comply with or violates this section is subject to discipline by the State Board of Medical Licensure.
(9) When a patient initiates a consultation with a company, organization or other entity providing telemedicine services, the company, organization or entity must have the ability and provide the option to offer telemedicine services to the patient through communication methods other than by telephone only. A company, organization or other entity providing telemedicine services must have the ability to offer multiple forms of telemedicine services and cannot be solely telephone services. The cost of telemedicine services must be the same to the patient regardless of which communication method is used to provide the services.

Telemedicine services in the state must be provided by a Mississippi licensed physician.

(10) The State Board of Health is authorized to promulgate rules and regulations relating to the provisions in this section regarding telemedicine, and the State Board of Health shall be the only state agency that is authorized to regulate telemedicine, except where the State Board of Medical Licensure is specifically given authority under this section. However, any such rules and regulations shall be consistent with and no more restrictive than the provisions contained in this section.

SECTION 2. Section 41-3-15, Mississippi Code of 1972, is brought forward as follows:

41-3-15. (1) (a) There shall be a State Department of Health.
(b) The State Board of Health shall have the following powers and duties:

(i) To formulate the policy of the State Department of Health regarding public health matters within the jurisdiction of the department;

(ii) To adopt, modify, repeal and promulgate, after due notice and hearing, and enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, and as the board may deem necessary;

(iii) To apply for, receive, accept and expend any federal or state funds or contributions, gifts, trusts, devises, bequests, grants, endowments or funds from any other source or transfers of property of any kind;

(iv) To enter into, and to authorize the executive officer to execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if it finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature;

(v) To appoint, upon recommendation of the Executive Officer of the State Department of Health, a Director of
Internal Audit who shall be either a Certified Public Accountant
or Certified Internal Auditor, and whose employment shall be
continued at the discretion of the board, and who shall report
directly to the board, or its designee; and

   (vi) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.

(c) The Executive Officer of the State Department of Health shall have the following powers and duties:

   (i) To administer the policies of the State Board of Health within the authority granted by the board;

   (ii) To supervise and direct all administrative and technical activities of the department, except that the department's internal auditor shall be subject to the sole supervision and direction of the board;

   (iii) To organize the administrative units of the department in accordance with the plan adopted by the board and, with board approval, alter the organizational plan and reassign responsibilities as he or she may deem necessary to carry out the policies of the board;

   (iv) To coordinate the activities of the various offices of the department;

   (v) To employ, subject to regulations of the State Personnel Board, qualified professional personnel in the subject matter or fields of each office, and such other technical and
clerical staff as may be required for the operation of the
department. The executive officer shall be the appointing
authority for the department, and shall have the power to delegate
the authority to appoint or dismiss employees to appropriate
subordinates, subject to the rules and regulations of the State
Personnel Board;

(vi) To recommend to the board such studies and
investigations as he or she may deem appropriate, and to carry out
the approved recommendations in conjunction with the various
offices;

(vii) To prepare and deliver to the Legislature
and the Governor on or before January 1 of each year, and at such
other times as may be required by the Legislature or Governor, a
full report of the work of the department and the offices thereof,
including a detailed statement of expenditures of the department
and any recommendations the board may have;

(viii) To prepare and deliver to the Chairmen of
the Public Health and Welfare/Human Services Committees of the
Senate and House on or before January 1 of each year, a plan for
monitoring infant mortality in Mississippi and a full report of
the work of the department on reducing Mississippi's infant
mortality and morbidity rates and improving the status of maternal
and infant health; and

(ix) To enter into contracts, grants and
cooperative agreements with any federal or state agency or
subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if he or she finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature. Each contract or agreement entered into by the executive officer shall be submitted to the board before its next meeting.

(2) The State Board of Health shall have the authority to establish an Office of Rural Health within the department. The duties and responsibilities of this office shall include the following:

(a) To collect and evaluate data on rural health conditions and needs;

(b) To engage in policy analysis, policy development and economic impact studies with regard to rural health issues;

(c) To develop and implement plans and provide technical assistance to enable community health systems to respond to various changes in their circumstances;

(d) To plan and assist in professional recruitment and retention of medical professionals and assistants; and

(e) To establish information clearinghouses to improve access to and sharing of rural health care information.
(3) The State Board of Health shall have general supervision of the health interests of the people of the state and to exercise the rights, powers and duties of those acts which it is authorized by law to enforce.

(4) The State Board of Health shall have authority:

(a) To make investigations and inquiries with respect to the causes of disease and death, and to investigate the effect of environment, including conditions of employment and other conditions that may affect health, and to make such other investigations as it may deem necessary for the preservation and improvement of health.

(b) To make such sanitary investigations as it may, from time to time, deem necessary for the protection and improvement of health and to investigate nuisance questions that affect the security of life and health within the state.

(c) To direct and control sanitary and quarantine measures for dealing with all diseases within the state possible to suppress same and prevent their spread.

(d) To obtain, collect and preserve such information relative to mortality, morbidity, disease and health as may be useful in the discharge of its duties or may contribute to the prevention of disease or the promotion of health in this state.

(e) To charge and collect reasonable fees for health services, including immunizations, inspections and related activities, and the board shall charge fees for those services;
provided, however, if it is determined that a person receiving
services is unable to pay the total fee, the board shall collect
any amount that the person is able to pay.

(f) (i) To establish standards for, issue permits and
exercise control over, any cafes, restaurants, food or drink
stands, sandwich manufacturing establishments, and all other
establishments, other than churches, church-related and private
schools, and other nonprofit or charitable organizations, where
food or drink is regularly prepared, handled and served for pay;
and

(ii) To require that a permit be obtained from the
Department of Health before those persons begin operation. If any
such person fails to obtain the permit required in this
subparagraph (ii), the State Board of Health, after due notice and
opportunity for a hearing, may impose a monetary penalty not to
exceed One Thousand Dollars ($1,000.00) for each violation.
However, the department is not authorized to impose a monetary
penalty against any person whose gross annual prepared food sales
are less than Five Thousand Dollars ($5,000.00). Money collected
by the board under this subparagraph (ii) shall be deposited to
the credit of the State General Fund of the State Treasury.

(g) To promulgate rules and regulations and exercise
control over the production and sale of milk pursuant to the
provisions of Sections 75-31-41 through 75-31-49.
(h) On presentation of proper authority, to enter into and inspect any public place or building where the State Health Officer or his representative deems it necessary and proper to enter for the discovery and suppression of disease and for the enforcement of any health or sanitary laws and regulations in the state.

(i) To conduct investigations, inquiries and hearings, and to issue subpoenas for the attendance of witnesses and the production of books and records at any hearing when authorized and required by statute to be conducted by the State Health Officer or the State Board of Health.

(j) To promulgate rules and regulations, and to collect data and information, on (i) the delivery of services through the practice of telemedicine; and (ii) the use of electronic records for the delivery of telemedicine services.

(k) To enforce and regulate domestic and imported fish as authorized under Section 69-7-601 et seq.

(5) (a) The State Board of Health shall have the authority, in its discretion, to establish programs to promote the public health, to be administered by the State Department of Health. Specifically, those programs may include, but shall not be limited to, programs in the following areas:

   (i) Maternal and child health;
   (ii) Family planning;
   (iii) Pediatric services;
(iv) Services to crippled and disabled children;
(v) Control of communicable and noncommunicable disease;
(vi) Chronic disease;
(vii) Accidental deaths and injuries;
(viii) Child care licensure;
(ix) Radiological health;
(x) Dental health;
(xi) Milk sanitation;
(xii) Occupational safety and health;
(xiii) Food, vector control and general sanitation;
(xiv) Protection of drinking water;
(xv) Sanitation in food handling establishments open to the public;
(xvi) Registration of births and deaths and other vital events;
(xvii) Such public health programs and services as may be assigned to the State Board of Health by the Legislature or by executive order; and
(xviii) Regulation of domestic and imported fish for human consumption.

(b) The State Board of Health and State Department of Health shall not be authorized to sell, transfer, alienate or otherwise dispose of any of the home health agencies owned and
operated by the department on January 1, 1995, and shall not be
authorized to sell, transfer, assign, alienate or otherwise
dispose of the license of any of those home health agencies,
except upon the specific authorization of the Legislature by an
amendment to this section. However, this paragraph (b) shall not
prevent the board or the department from closing or terminating
the operation of any home health agency owned and operated by the
department, or closing or terminating any office, branch office or
clinic of any such home health agency, or otherwise discontinuing
the providing of home health services through any such home health
agency, office, branch office or clinic, if the board first
demonstrates that there are other providers of home health
services in the area being served by the department's home health
agency, office, branch office or clinic that will be able to
provide adequate home health services to the residents of the area
if the department's home health agency, office, branch office or
clinic is closed or otherwise discontinues the providing of home
health services. This demonstration by the board that there are
other providers of adequate home health services in the area shall
be spread at length upon the minutes of the board at a regular or
special meeting of the board at least thirty (30) days before a
home health agency, office, branch office or clinic is proposed to
be closed or otherwise discontinue the providing of home health
services.
(c) The State Department of Health may undertake such technical programs and activities as may be required for the support and operation of those programs, including maintaining physical, chemical, bacteriological and radiological laboratories, and may make such diagnostic tests for diseases and tests for the evaluation of health hazards as may be deemed necessary for the protection of the people of the state.

(6) (a) The State Board of Health shall administer the local governments and rural water systems improvements loan program in accordance with the provisions of Section 41-3-16.

(b) The State Board of Health shall have authority:

(i) To enter into capitalization grant agreements with the United States Environmental Protection Agency, or any successor agency thereto;

(ii) To accept capitalization grant awards made under the federal Safe Drinking Water Act, as amended;

(iii) To provide annual reports and audits to the United States Environmental Protection Agency, as may be required by federal capitalization grant agreements; and

(iv) To establish and collect fees to defray the reasonable costs of administering the revolving fund or emergency fund if the State Board of Health determines that those costs will exceed the limitations established in the federal Safe Drinking Water Act, as amended. The administration fees may be included in loan amounts to loan recipients for the purpose of facilitating
payment to the board; however, those fees may not exceed five percent (5%) of the loan amount.

(7) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The department shall issue a license to Alexander Milne Home for Women, Inc., a 501(c)(3) nonprofit corporation, for the construction, conversion, expansion and operation of not more than forty-five (45) beds for developmentally disabled adults who have been displaced from New Orleans, Louisiana, with the beds to be located in a certified ICF-MR facility in the City of Laurel, Mississippi. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the license under this subsection (7). The license described in this subsection shall expire five (5) years from the date of its issue. The license authorized by this subsection shall be issued upon the initial payment by the licensee of an application fee of Sixty-seven Thousand Dollars ($67,000.00) and a monthly fee of Sixty-seven Thousand Dollars ($67,000.00) after the issuance of the license, to be paid as long as the licensee continues to operate. The initial and monthly licensing fees shall be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(8) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized to issue a
license to an existing home health agency for the transfer of a county from that agency to another existing home health agency, and to charge a fee for reviewing and making a determination on the application for such transfer not to exceed one-half (1/2) of the authorized fee assessed for the original application for the home health agency, with the revenue to be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(9) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: For the period beginning July 1, 2010, through July 1, 2017, the State Department of Health is authorized and empowered to assess a fee in addition to the fee prescribed in Section 41-7-188 for reviewing applications for certificates of need in an amount not to exceed twenty-five one-hundredths of one percent (.25 of 1%) of the amount of a proposed capital expenditure, but shall be not less than Two Hundred Fifty Dollars ($250.00) regardless of the amount of the proposed capital expenditure, and the maximum additional fee permitted shall not exceed Fifty Thousand Dollars ($50,000.00). Provided that the total assessments of fees for certificate of need applications under Section 41-7-188 and this section shall not exceed the actual cost of operating the certificate of need program.

(10) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific
powers: The State Department of Health is authorized to extend
and renew any certificate of need that has expired, and to charge
a fee for reviewing and making a determination on the application
for such action not to exceed one-half (1/2) of the authorized fee
assessed for the original application for the certificate of need,
with the revenue to be deposited by the State Department of Health
into the special fund created under Section 41-7-188.

(11) Notwithstanding any other provision to the contrary,
the State Department of Health shall have the following specific
powers: The State Department of Health is authorized and
empowered, to revoke, immediately, the license and require closure
of any institution for the aged or infirm, including any other
remedy less than closure to protect the health and safety of the
residents of said institution or the health and safety of the
general public.

(12) Notwithstanding any other provision to the contrary,
the State Department of Health shall have the following specific
powers: The State Department of Health is authorized and
empowered, to require the temporary detainment of individuals for
disease control purposes based upon violation of any order of the
State Health Officer, as provided in Section 41-23-5. For the
purpose of enforcing such orders of the State Health Officer,
persons employed by the department as investigators shall have
general arrest powers. All law enforcement officers are
authorized and directed to assist in the enforcement of such
orders of the State Health Officer.

SECTION 3. This act shall take effect and be in force from
and after July 1, 2016.