

ALABAMA BOARD OF MEDICAL EXAMINERS & MEDICAL LICENSURE COMMISSION

Prescribing Controlled Substances by Telehealth:  
Legal FAQs  
Wilson Hunter  
General Counsel  
Alabama Board of Medical Examiners

www.albme.gov



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### Key Laws

- Alabama's Telehealth laws are codified at: Section 34-24-700, et seq.
- Section 34-24-701 - Definitions
- Section 34-24-702 – Licensure Requirements
- Section 34-24-703 – Duties of the physician
- Section 34-24-704 – Issuance of Legend and Controlled Prescriptions
- Section 34-24-705 – Compliance with State and Federal Laws



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### BME Declaratory Rulings

- The Board has issued declaratory rulings since the passage of the state's telehealth laws interpreting its application to specific situations.
- April 27, 2023: Provision of Telehealth by Limited Licensees
- June 22, 2023: VA System Clinical Video Telehealth Protocol
- August 17, 2023: Contrast Injection under Remote Supervision



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Section 34-24-701 - Definitions

Originating site. The physical location of a patient at the time in which telehealth medical services are provided.

Distant site. The physical location of a physician at the time in which telehealth medical services are provided.

Telehealth. The use of electronic and telecommunications technologies, including devices used for digital health, asynchronous and synchronous communications, or other methods, to support a range of medical care and public health services

Telemedicine. A form of telehealth referring to the provision of medical services by a physician at a distant site to a patient at an originating site via asynchronous or synchronous communications, or other devices that may adequately facilitate and support the appropriate delivery of care. The term includes digital health, but does not include incidental communications between a patient and a physician



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Frequently Asked Questions #1

Is there a special license just for telehealth?

Answer: No



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Section 34-24-702 – Licensure Requirements

Physicians who engage in the provision of telehealth medical services to any individual in Alabama must possess a full and active license to practice medicine in Alabama. This is the same license that every physician is issued.

The provision of telehealth medical services is deemed to occur at the patient’s physical location (the “Originating Site”) within Alabama at the time telehealth medical services are provided.



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### Declaratory Ruling of April 27, 2023: Provision of Telehealth by Limited Licensees

**Question Presented:** Where a teaching physician licensed under Ala. Code § 34-24-75(a) engages in telehealth services exclusively on behalf of the employing academic medical center and does not receive reimbursement outside his or her employment with the academic medical center for the service, may the limited licensed teaching physician provide telehealth services to an outside health care facility that has contracted with the academic medical center for those services?



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### Declaratory Ruling of April 27, 2023: Provision of Telehealth by Limited Licensees

**Answer:** A teaching physician licensed under Ala. Code § 34-24-75(a) may provide telehealth services to an outside health care facility that has contracted with the teaching physician's employing academic medical center for those services if the physician is providing the telehealth services exclusively on behalf of the employing academic medical center and does not receive reimbursement outside of his or her employment with the academic medical center for the services.



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### Frequently Asked Questions #2

Are there exemptions to the licensure requirement?

Answer: Yes



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### Section 34-24-702 – Licensure Requirements

Telehealth services that may not require an Alabama license:

- (1) The physician is licensed in another state or D.C., and services are irregular or infrequent (telehealth medical services occurring fewer than ten days in a calendar year or involving fewer than ten patients in a calendar year); or
- (2) Services are provided in consultation with an Alabama licensed physician, limited to ten days in a calendar year, or necessary medical care is provided to a patient being transported into Alabama.

Practitioners should consult an attorney with additional questions about when a license is required.



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### Frequently Asked Questions # 3

If the entire practice is telehealth, does someone have to physically see the patient?

Answer: Yes



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### Declaratory Ruling of August 17, 2023: Contrast Injection under Remote Supervision

**Question Presented:** May a radiologic technologist who holds ARRT certification and registration administer contrast media via an intravenous injection to a patient in Alabama undergoing a Computed Tomography ("CT") or Magnetic Resonance Imaging ("MRI") diagnostic test pursuant to the order of a physician while (a) such radiologic technologist is under the remote supervision of an Alabama-licensed, board-certified radiologist who is virtually present in the office suite through audio/video ("AV") real-time communications technology that enables the radiologist to be immediately available to furnish assistance and direction throughout the performance of the procedure and (b) an Alabama-licensed Registered Nurse ("RN") is physically present at the facility to accept real-time instructions from the supervising radiologist in order to provide appropriate treatment to the patient in the event patient experiences an adverse reaction to the contrast media?



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### Declaratory Ruling of August 17, 2023: Contrast Injection under Remote Supervision

**Answer:** A radiologic technologist who holds ARRT certification and registration may administer contrast media via an intravenous injection to a patient at an originating site in Alabama undergoing a Computed Tomography ("CT") or Magnetic Resonance Imaging ("MRI") diagnostic test pursuant to the order of a physician only when (a) such radiologic technologist is under the real-time supervision of an Alabama-licensed, board-certified radiologist who is virtually present in the office suite utilizing synchronous audio and visual real-time communications technology that enables the radiologist to observe, direct, and furnish assistance and direction to the radiologic technologist throughout the performance of the procedure; (b) an Alabama-licensed Registered Nurse ("RN"), Certified Registered Nurse Practitioner ("CRNP"), Physician Assistant ("PA"), or non-radiologist physician who is appropriately trained to treat adverse reactions to contrast media is physically present at the originating site whenever contrast media is being administered by intravenous injection to a patient; (c) the originating site facility's policy and procedures includes a modality for the supervising radiologist to provide real-time instructions to the RN, CRNP, PA, or other physician assigned to treat contrast-media reactions; and (d) the originating site facility is equipped with the emergency supplies, equipment, and drugs necessary to treat a contrast media reaction.



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### Frequently Asked Questions # 4

Are in-person visits necessary?

Answer: Yes



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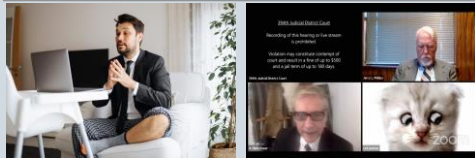
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Are in-person visits necessary?



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### Section 34-24-703 – Duties of the physician

A physician has the same duty to exercise reasonable care, diligence, and skill whether providing services in-person or via telehealth, including when appropriate, to:

- Establish a diagnosis.
- Disclose the diagnosis and evidence for it.
- Discuss the risks and benefits of treatment options.
- Provide a visit summary to the patient and information how to obtain appropriate follow-up and emergency care if needed.
- A physician-patient relationship must be established either at the initiation of the patient or referral by the patient's established physician.




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### Frequently Asked Questions # 5

What is the requirement for an in-person encounter for a patient experiencing a condition that has not abated?




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### Section 34-24-703 – Duties of the physician

#### In-Person Visit Requirement

If a physician or practice group provides telehealth services more than four times in a 12-month period to the same patient for the same medical condition without resolution, the physician shall either: See the patient in person within a reasonable amount of time, which shall not exceed 12 months; or

Appropriately refer the patient to a physician who can provide the in-person care within a reasonable amount of time, which shall not exceed 12 months.

The provision of telehealth services that includes video communication to a patient at an originating site with the in-person assistance of a licensed physician, physician assistant, certified registered nurse practitioner, certified nurse midwife, or other person licensed by the Alabama Board of Nursing shall constitute an in-person visit for this purpose. An LPC or LSW at the originating site does not meet this requirement. This requirement does not apply to the provision of mental health services as defined in state law (Ala. Code § 22-50-1).




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### Mental Health Exemption to the In-Person Req

However, this provision shall not apply to the provision of mental health services as defined in Section 22-50-1, Ala. Code § 34-24-703(f)(5).

#### Definition of Mental Health Services:

Diagnosis of, treatment of, rehabilitation for, follow-up care of, prevention of and research into the causes of all forms of mental or emotional illness, including, but not limited to, alcoholism, drug addiction, or epilepsy in combination with mental illness or an intellectual disability.



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### Frequently Asked Questions # 6

Can I initiate controlled substance prescribing via telehealth?

Answer: Yes



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### Section 34-24-703 – Duties of the physician

Before providing telehealth medical services, the physician must:

- Verify the patient's identity;
- Require the patient to identify his or her physical location, including city and state;
- Disclose the identity and credentials of the physician and any other personnel; and
- Obtain the patient's consent for the use of telehealth and document it in the patient's medical record.



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### Section 34-24-704 – Issuance of Legend and Controlled Prescriptions

A prescriber may prescribe a legend drug, medical supplies, or a controlled substance via telehealth if the prescriber is authorized to do so under state and federal law. A prescription for a controlled substance may only be issued via telehealth if: The telehealth visit includes synchronous audio or audio-visual communication using HIPAA-compliant equipment with the prescriber;

The prescriber has had at least one in-person encounter with the patient within the preceding 12 months; and

The prescriber has established a legitimate medical purpose for issuing the prescription within the preceding 12 months.

The in-person encounter may be satisfied by the in-person assistance of personnel licensed by the Board of Medical Examiners or Board of Nursing at the originating site when the prescriber is evaluating the patient from a distant site using video communication. An LPC or LSW at the originating site does not meet this requirement.



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### Frequently Asked Questions # 7

If there is a brick-and-mortar practice, can the patients see the patients once per year by telehealth to fulfill the in-person requirement?



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### Declaratory Ruling of June 22, 2023: VA System Clinical Video Telehealth Protocol

Question Presented: whether the Clinical Video Telehealth (CVT) protocol utilized by the Birmingham VA HealthCare System (BVAHCS) meets the "in-person" requirement found under Ala. Code § 34-24-704(b)(1)b. This provision governs when a controlled substance may be prescribed following a telehealth visit and requires, in pertinent part, the prescriber to have had "at least one in-person encounter with the patient within the preceding 12 months." Ala. Code § 34-24-704(b)(1)b.



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### Declaratory Ruling of June 22, 2023: VA System Clinical Video Telehealth Protocol

**Answer:** The "in-person" requirement found at Ala. Code § 34-24-704(b)(1)b may be satisfied by the in-person assistance of personnel licensed by the Board of Medical Examiners or the Board of Nursing at the originating site when the prescriber is evaluating the patient from a distant site using video communication. Therefore, the Board opines that the CVT protocol is an acceptable approach to meeting the requirement, as stated in Ala. Code § 34-24-704(b)(1)b, for an in-person encounter between a prescriber and the patient to whom a controlled substance is being prescribed if the staff member who is physically present with the patient for the appointment check-in and check-out is a licensee of the Board of Medical Examiners or the Board of Nursing.



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### Telehealth is a Modality, not a Different Standard of Care

**Question:** I write controlled substance prescriptions to my patient. Does Federal law require that I see the patient every 30 days?

**Answer:** No. Neither the CSA nor DEA regulations require a practitioner to see a patient every 30 days. Nonetheless, the CSA and DEA regulations do require that a prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. See 21 CFR 1306.04(a). As DEA has previously stated, "practitioners who prescribe controlled substances must see their patients in an appropriate time and manner so as to meet their obligation to prescribe only for a legitimate medical purpose in the usual course of professional practice and to thereby minimize the likelihood that patients will abuse, or become addicted to, the controlled substances." *Issuance of Multiple Prescriptions for Schedule II Controlled Substances*, 72 FR 64921, 64928 (2007). **EO-DEA093, June 23, 2020**



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### Telehealth is a Modality, not a Different Standard of Care

#### Ala. Code Section 34-24-703(a)

A physician providing telehealth medical services shall owe to the patient the same duty to exercise reasonable care, diligence, and skill as would be applicable if the service or procedure were provided in person. Telehealth medical services shall be governed by the Medical Liability Act of 1987, codified in Sections 6-5-540 through 6-5-552, and shall be subject to the exclusive jurisdiction and venue of the circuit courts of the State of Alabama, regardless of the citizenship of the parties.



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Frequently Asked Questions # 8

Can I prescribe controlled weight loss medications via telemedicine?

Answer: Probably Not.



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Ala. Admin. Code R. 540-X-17-.03

(2) A written prescription or a written order for any controlled substance for a patient for the purpose of weight reduction or treatment of obesity shall be signed by the prescribing physician on the date the medication is to be dispensed or the prescription is provided to the patient. If an electronic prescription is issued for any controlled substance for a patient for the purpose of weight reduction or treatment of obesity, the prescribing physician must sign and authorize the transmission of the electronic controlled substance prescription in accordance with federal law and must comply with all applicable requirements for Electronic Prescriptions for Controlled Substances (See 21 CFR Parts 1300, 1304, 1306 and 1311, as amended effective June 1, 2010). Such prescriptions or orders shall not be called in to a pharmacy by the physician or an agent of the physician.

(3) The prescribing/ordering physician shall be present at the facility when he or she prescribes, orders or dispenses a controlled substance for a patient for the purpose of weight reduction or treatment of obesity.



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Frequently Asked Questions # 9

Does the Federal DEA waiver permit an out of state physician to prescribe controlled substances to an Alabama patient without possessing an ACSC/QACSC/LPSP ?

Answer: No



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## Section 34-24-705 – Compliance with State and Federal Laws

(a) A physician who provides a telehealth medical service shall comply with all federal and state laws, rules, and regulations applicable to the provision of telehealth medical services, including the Health Insurance Portability and Accountability Act (HIPAA), and shall use devices and technologies in compliance with these laws, rules, and regulations. A physician who provides telehealth medical services shall also take reasonable precautions to protect the privacy and security of all verbal, visual, written, and other communications involved in the delivery of telehealth medical services.



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## Section 34-24-705 – Compliance with State and Federal Laws



FOR IMMEDIATE RELEASE

### Founder/CEO and Clinical President of Digital Health Company Arrested for \$100M Adderall Distribution and Health Care Fraud Scheme

PHOTO: JAMES HARRIS

For Immediate Release  
Office of Public Affairs

Justice Department's First Criminal Drug Distribution Prosecutions Related to a Digital Health Company That Distributed Controlled Substances Via Telemedicine

"As alleged in the indictment, the defendants provided easy access to Adderall and other stimulants by exploiting telemedicine and spending millions on deceptive advertisements on social media. They generated over \$100 million in revenue by arranging for the prescription of over 40 million pills," said Principal Deputy Assistant Attorney General Nicole M. Argenterii, head of the Justice Department's Criminal Division. "These charges are the Justice Department's first criminal drug distribution prosecutions related to telemedicine prescribing through a digital health company. As these charges make clear, corporate executives who put profit over the health and safety of patients—including by using technological innovation—will be held to account!"



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## Section 34-24-705 – Compliance with State and Federal Laws

### Medical Records

A physician who provides telehealth services must maintain complete and accurate medical records, must have access to the patient's medical records, and must be able to produce records upon demand by the patient, the Board of Medical Examiners, or the Medical Licensure Commission.

Medical Licensure Commission Rule 545-X-4-.08(2)(e);

(e) Retention and Access by Physicians Practicing Telemedicine. Physicians who practice medicine via telemedicine have the same duty as all other physicians to adhere to these rules relating to medical records. Physicians who provide care via telemedicine must retain access to the medical records which document their delivery of health care services via telemedicine. A physician who is unable to access and produce the medical records documenting his or her practice of medicine via telemedicine upon demand for inspection or review by the Board of Medical Examiners or Medical Licensure Commission shall be in violation of Code of Ala. 1975, §34-24-360(2) and (23).



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### Frequently Asked Questions # 10

Can I prescribe testosterone via telemedicine?  
Answer: Should you?



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### Frequently Asked Questions # 10

**PRISON RELEASE**  
**Justice Department Charges Dozens for \$1.2 Billion in Health Care Fraud**

November 14, 2023

The Inspectors General  
Office of Public Affairs

**Nationwide Coordinated Law Enforcement Action to Combat Telemedicine, Clinical Laboratory, and Durable Medical Equipment Fraud**  
The Department of Justice today announced criminal charges against 36 defendants in 10 federal districts across the United States for more than \$1.2 billion in alleged fraudulent telemedicine, endovascular and cancer genetic testing, and durable medical equipment (DME) schemes.

The coordinated federal investigations announced today primarily targeted alleged schemes involving the payment of illegal kickbacks and bribes by laboratory owners and operators in exchange for the referral of patients by medical professionals working with fraudulent telemedicine and digital medical technology companies. **Telemedicine schemes amount for more than \$1 billion of the total alleged intended losses associated with today's enforcement action.** These charges include some of the first prosecutions in the nation related to fraudulent cardiovascular genetic testing, a burgeoning scheme. As alleged in court documents, medical professionals made referrals for expensive and medically unnecessary cardiovascular and cancer genetic tests, as well as durable medical equipment. For example, cardiovascular genetic testing was not a method of diagnosing whether an individual presently had a cardiac condition and was not approved by Medicare for use as a general screening test for indicating an increased risk of developing cardiovascular conditions in the future.



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### Frequently Asked Questions # 10

**PRISON RELEASE**  
**National Health Care Fraud Enforcement Action Results in 193 Defendants Charged and Over \$2.75 Billion in False Claims**

The Inspectors General  
Office of Public Affairs

The Justice Department today announced the 2023 National Health Care Fraud Enforcement Action which resulted in criminal charges against 193 defendants, including 78 doctors, health care providers, and other health care professionals. 31 Grand Jurors in 10 federal districts across the United States, for their alleged participation in various health care fraud schemes totaling approximately \$2.75 billion in improper claims and \$1.6 billion in actual losses.

#### Telemedicine and Laboratory Fraud Cases

Thirty-six defendants were charged in connection with the submission of over \$1 billion in fraudulent claims to Medicare resulting from telemedicine schemes. For example, in separate cases involving similar schemes that were prosecuted by different criminal districts in the Southern District of Texas, Northern District of Texas, and District of New Jersey, clinical laboratory owners offered illegal kickbacks and bribes (including **undiscounted specimens**) in exchange for the referral of orders for unnecessary genetic testing. The results of these genetic tests – which were supposed to detect genetic mutations that could indicate an elevated risk of cancer, cardiovascular disease, Parkinson disease, and other serious illness – were not used in the patients' treatment. Other telemedicine schemes included the prescribing of a medication in the Eastern District of Virginia against a pharmacist who allegedly submitted fraudulent claims based on virtual patient interactions, including for tests that lasted between 10 to 20 seconds. The coordinated focus on prosecuting healthcare fraud schemes involving Medicare reflects the Department's commitment to rooting out these schemes, which have **caused Medicare to lose \$1.6 billion.**

#### Cases Involving the Illicit Prescription and Distribution of Opioids and Other Health Care Fraud Schemes

The other cases announced today charge 14 defendants with crimes related to the illegal prescription and distribution of opioids that resulted in injuries to data filings, including several charges against medical professionals and others who prescribed unnecessary opioids, substances, and other controlled substances.



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## Resources

Board Website: [www.albme.gov](http://www.albme.gov)

- Rules page: <https://www.albme.org/rules.html>
- [Practice Issues & Opinions | Alabama Board of Medical Examiners & Medical Licensure Commission \(albme.gov\)](#)
- [Investigations & Misconduct | Alabama Board of Medical Examiners & Medical Licensure Commission \(albme.gov\)](#)
- [Reporting | Alabama Board of Medical Examiners & Medical Licensure Commission \(albme.gov\)](#)

Twitter: Follow @AlaMedBd

- Receive alerts for new rules, agendas, newsletters, etc.
- We are also on Facebook and LinkedIn



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## Contact Information

**Edwin Rogers, Chief Investigator**  
Direct: (334) 833-0279

E-mail: [erogers@albme.gov](mailto:erogers@albme.gov)

**Robert Steelman, Investigator**  
Direct: (334) 833-0196

E-mail: [rsteelman@albme.gov](mailto:rsteelman@albme.gov)

**Wilson Hunter, General Counsel**  
Direct: (334) 833-0188

E-mail: [whunter@albme.gov](mailto:whunter@albme.gov)

**Effie Hawthorne, Associate General Counsel**  
Direct: (334) 833-0171

E-mail: [ehawthorne@albme.gov](mailto:ehawthorne@albme.gov)

**Alicia Harrison, Associate General Counsel**  
Direct: (334) 833-0167

E-mail: [aharrison@albme.gov](mailto:aharrison@albme.gov)



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