

1 State of Arkansas *As Engrossed: S3/3/15 S3/12/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

SENATE BILL 133

4

5 By: Senator Bledsoe

6 By: Representative D. Ferguson

7

8

For An Act To Be Entitled

9 AN ACT TO ENCOURAGE THE USE OF TELEMEDICINE; TO
10 REDUCE HEALTHCARE DISPARITIES; TO IMPROVE ACCESS TO
11 CARE; TO ADDRESS GEOGRAPHIC MALDISTRIBUTION OF
12 PRIMARY CARE AND SPECIALTY CARE; TO AUTHORIZE
13 REIMBURSEMENT AND REGULATION OF SERVICES PROVIDED
14 THROUGH TELEMEDICINE; TO DECLARE AN EMERGENCY; AND
15 FOR OTHER PURPOSES.

16

17

18

Subtitle

19 TO ENCOURAGE THE USE OF TELEMEDICINE; AND
20 TO DECLARE AN EMERGENCY.

21

22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24

25 SECTION 1. DO NOT CODIFY. Title.

26 This act shall be known and may be cited as the "Telemedicine Act".

27

28 SECTION 2. DO NOT CODIFY. Legislative findings.

29 The General Assembly finds and declares that:

30 (1) The advancements and continued development of medical and
31 communications technology have had a profound impact on the practice of
32 medicine and offer opportunities for improving the delivery and accessibility
33 of health care, particularly in the area of telemedicine;

34 (2) Geography, weather, availability of specialists,
35 transportation, and other factors can create barriers to accessing
36 appropriate health care, and a way to provide, ensure, or enhance access to



1 health care, given these barriers, is through the appropriate use of
2 technology to allow healthcare consumers access to qualified healthcare
3 professionals; and

4 (3) There is a need in this state to embrace efforts that will
5 encourage:

6 (A) Health insurers and healthcare professionals to
7 support the use of telemedicine; and

8 (B) All state agencies to evaluate and amend their
9 policies and rules to remove regulatory barriers prohibiting the use of
10 telemedicine.

11
12 SECTION 3. Arkansas Code Title 17, Chapter 80, Subchapter 1, is
13 amended to add an additional section to read as follows:

14 17-80-117. Telemedicine.

15 (a) As used in this section:

16 (1) "Distant site" means the location of the healthcare
17 professional delivering services through telemedicine at the time the
18 services are provided;

19 (2) "Healthcare professional" means a person who is licensed,
20 certified, or otherwise authorized by the laws of this state to administer
21 health care in the ordinary course of the practice of his or her profession;

22 (3) "Originating site" means:

23 (A) The offices of a healthcare professional or a licensed
24 healthcare entity where the patient is located at the time services are
25 provided by a healthcare professional through telemedicine; and

26 (B) The home of a patient in connection with treatment for
27 end-stage renal disease;

28 (4) "Professional relationship" means at minimum a relationship
29 established between a healthcare professional and a patient when:

30 (A) The healthcare professional has previously conducted
31 an in-person examination and is available to provide appropriate follow-up
32 care, when necessary, at medically necessary intervals;

33 (B) The healthcare professional personally knows the
34 patient and the patient's relevant health status through an ongoing personal
35 or professional relationship, and is available to provide appropriate follow-
36 up care, when necessary, at medically necessary intervals;

1 (C) The treatment is provided by a healthcare professional
2 in consultation with, or upon referral by, another healthcare professional
3 who has an ongoing relationship with the patient and who has agreed to
4 supervise the patient's treatment, including follow-up care;

5 (D) An on-call or cross-coverage arrangement exists with
6 the patient's regular treating healthcare professional;

7 (E) A relationship exists in other circumstances as
8 defined by rule of the Arkansas State Medical Board for healthcare
9 professionals under its jurisdiction and their patients; or

10 (F) A relationship exists in other circumstances as
11 defined by rule of a licensing or certification board for other healthcare
12 professionals under the jurisdiction of the appropriate board and their
13 patients if the rules are no less restrictive than the rules of the Arkansas
14 State Medical Board;

15 (5) "Store and forward technology" means the transmission of a
16 patient's medical information from an originating site to the provider at the
17 distant site without the patient being present; and

18 (6) "Telemedicine" means the medium of delivering clinical
19 healthcare services by means of real-time two-way electronic audio-visual
20 communications, including without limitation the application of secure video
21 conferencing, to provide or support healthcare delivery that facilitates the
22 assessment, diagnosis, consultation, or treatment of a patient's health care
23 while the patient is at an originating site and the healthcare professional
24 is at a distant site.

25 (b)(1) The standards of appropriate practice in traditional healthcare
26 professional-patient settings shall govern the licensed healthcare
27 professional's treatment recommendations made via electronic means, including
28 issuing a prescription via telemedicine.

29 (2) This section does not alter existing state law or rules
30 governing a healthcare professional's scope of practice.

31 (3) This section does not authorize drug-induced, chemical, or
32 surgical abortions performed through telemedicine.

33 (4)(A) Store and forward technology shall not be considered
34 telemedicine.

35 (B) This subchapter does not restrict the use of store and
36 forward technology.

1 (c) A healthcare professional shall follow applicable state and
2 federal law, rules, and regulations for:

3 (1) Informed consent;

4 (2) Privacy of individually identifiable health information;

5 (3) Medical recordkeeping and confidentiality; and

6 (4) Fraud and abuse.

7 (d)(1) A healthcare professional who is treating patients in Arkansas
8 through telemedicine shall be fully *licensed or certified* to practice in
9 Arkansas and is subject to the rules of the appropriate state *licensing or*
10 *certification* board.

11 (2) The requirement in subdivision (d)(1) of this section does
12 not apply to the acts of a healthcare professional located in another
13 jurisdiction who provides only episodic consultation services.

14 (e)(1) A healthcare professional at a distant site shall not utilize
15 telemedicine with respect to a patient located in Arkansas unless a
16 professional relationship exists between the healthcare professional and the
17 patient or the healthcare professional otherwise meets the requirements of
18 professional relationship as defined in § 17-80-117(a)(4).

19 (2) The existence of a professional relationship is not required
20 in the following circumstances:

21 (A) Emergency situations where the life or health of the
22 patient is in danger or imminent danger; or

23 (B) Simply providing information of a generic nature, not
24 meant to be specific to an individual patient.

25 (f) State licensing and certification boards for a healthcare
26 professional shall amend their rules where necessary to comply with this
27 section.

28
29 SECTION 4. Arkansas Code Title 23, Chapter 79, is amended to add an
30 additional subchapter to read as follows:

31
32 Subchapter 16 – Coverage for Services Provided Through Telemedicine

33
34 23-79-1601. Definitions.

35 As used in this subchapter:

36 (1) "Distant site" means the location of the healthcare

1 professional delivering healthcare services through telemedicine at the time
2 the services are provided;

3 (2)(A) "Health benefit plan" means:

4 (i) An individual, blanket, or group plan, policy,
5 or contract for healthcare services issued or delivered by an insurer, health
6 maintenance organization, hospital medical service corporation, or self-
7 insured governmental or church plan in this state; and

8 (ii) Any health benefit program receiving state or
9 federal appropriations from the State of Arkansas, including the Arkansas
10 Medicaid Program and the Health Care Independence Program, commonly referred
11 to as the "Private Option", or any successor program.

12 (B) "Health benefit plan" includes:

13 (i) Indemnity and managed care plans; and

14 (ii) Non-federal governmental plans as defined in 29
15 U.S.C. § 1002(32), as it existed on January 1, 2015.

16 (C) "Health benefit plan" does not include:

17 (i) Disability income plans;

18 (ii) Credit insurance plans;

19 (iii) Insurance coverage issued as a supplement to
20 liability insurance;

21 (iv) Medical payments under automobile or homeowners
22 insurance plans;

23 (v) Health benefit plans provided under Arkansas
24 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
25 seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

26 (vi) Plans that provide only indemnity for hospital
27 confinement;

28 (vii) Accident only plans;

29 (viii) Specified disease plans; or

30 (ix) Long-term care only plans;

31 (3) "Healthcare professional" means a person who is licensed,
32 certified, or otherwise authorized by the laws of this state to administer
33 health care in the ordinary course of the practice of his or her profession;

34 (4) "Originating site" means:

35 (A) The offices of a healthcare professional or a licensed
36 healthcare entity where the patient is located at the time services are

1 provided by a healthcare professional through telemedicine; and

2 (B) The home of a patient in connection with treatment for
3 end-stage renal disease; and

4 (5) "Telemedicine" means the medium of delivering clinical
5 healthcare services by means of real-time two-way electronic audio-visual
6 communications, including without limitation the application of secure video
7 conferencing, to provide or support healthcare delivery that facilitates the
8 assessment, diagnosis, consultation, or treatment of a patient's health care
9 while the patient is at an originating site and the healthcare professional
10 is at a distant site.

11
12 23-79-1602. Coverage for telemedicine.

13 (a)(1) This subchapter shall apply to all health benefit plans
14 delivered, issued for delivery, reissued, or extended in Arkansas on or after
15 January 1, 2016, or at any time when any term of the health benefit plan is
16 changed or any premium adjustment is made thereafter.

17 (2) Notwithstanding subdivision (a)(1) of this section, this
18 subchapter shall apply to the Arkansas Medicaid Program on and after July 1,
19 2016.

20 (b) A healthcare service provided through telemedicine shall comply
21 with the requirements of § 17-80-117.

22 (c)(1) A health benefit plan shall cover the services of a physician
23 who is licensed by the Arkansas State Medical Board for healthcare services
24 through telemedicine on the same basis as the health benefit plan provides
25 coverage for the same healthcare services provided by the physician in
26 person.

27 (2) Subject to subdivision (d)(1) of this section, a health
28 benefit plan shall reimburse a physician licensed by the board for healthcare
29 services provided through telemedicine on the same basis as the health
30 benefit plan reimburses a physician for the same healthcare services provided
31 in person.

32 (d)(1) The combined amount of reimbursement that a health benefit plan
33 allows for the compensation to the distant site physician and the originating
34 site shall not be less than the total amount allowed for healthcare services
35 provided in person.

36 (2) Payment for healthcare services provided through

1 telemedicine shall be provided to the distant site physician and the
2 originating site upon submission of the appropriate procedure codes.

3 (3) This section does not:

4 (A) Prohibit:

5 (i) A health benefit plan from reimbursing other
6 healthcare professionals; or

7 (ii) A health benefit plan from paying a facility
8 fee to a provider at the distant site in addition to a fee paid to the
9 healthcare professional; or

10 (B) Require an insurer to pay more for a healthcare
11 service provided through telemedicine than would have been paid if the
12 healthcare service was delivered in person.

13 (e) A health benefit plan shall not impose on coverage for healthcare
14 services provided through telemedicine:

15 (1) An annual or lifetime dollar maximum on coverage for
16 services provided through telemedicine other than an annual or lifetime
17 dollar maximum that applies to the aggregate of all items and services
18 covered;

19 (2) A deductible, copayment, coinsurance, benefit limitation, or
20 maximum benefit that is not equally imposed upon all healthcare services
21 covered under the health benefit plan; or

22 (3) A prior authorization requirement for services provided
23 through telemedicine that exceeds the prior authorization requirement for in-
24 person healthcare services under the health benefit plan.

25 (f) This subchapter does not prohibit a health benefit plan from:

26 (1) Limiting coverage of healthcare services provided through
27 telemedicine to medically necessary services, subject to the same terms and
28 conditions of the covered person's health benefit plan that apply to services
29 provided in person; or

30 (2)(A) Undertaking utilization review, including prior
31 authorization, to determine the appropriateness of healthcare services
32 provided through telemedicine, provided that:

33 (i) The determination of appropriateness is made in
34 the same manner as determinations are made for the treatment of any illness,
35 condition, or disorder covered by the health benefit plan whether the service
36 was provided in-person or through telemedicine; and

1 (ii) All adverse determinations are made by a
2 physician who possesses a current and valid unrestricted license to practice
3 medicine in Arkansas.

4 (B) Utilization review shall not require prior
5 authorization of emergent telemedicine services.

6 (g)(1) A health benefit plan may adopt policies to ensure that
7 healthcare services provided through telemedicine submitted for payment
8 comply with the same coding, documentation, and other requirements necessary
9 for payment an in-person service other than the in-person requirement.

10 (2) If deemed necessary, the State Insurance Department may
11 promulgate rules containing additional standards and procedures for the
12 utilization of telemedicine to provide healthcare service through health
13 benefit plans if the additional standards and procedures do not conflict with
14 this subchapter or § 17-80-117, and are applied uniformly by all health
15 benefit plans.

16
17 *SECTION 5. Arkansas Code Title 23, Chapter 86, Subchapter 1, is*
18 *amended to add an additional section to read as follows:*

19 23-86-123. Prior authorization by physician.

20 (a) As used in this section:

21 (1) "Prior authorization" means the process by which a health
22 carrier determines the medical necessity or eligibility for coverage of a
23 healthcare service before a covered person receives the healthcare service in
24 order to provide coverage and reimbursement for the healthcare service; and

25 (2) "Telemedicine" means the medium of delivering clinical
26 healthcare services by means of real-time two-way electronic audiovisual
27 communications, including without limitation the application of secure video
28 conferencing, to provide or support healthcare delivery that facilitates the
29 assessment, diagnosis, consultation, treatment, education, care management,
30 or self-management of a patient's health care while the patient is at an
31 originating site and the healthcare professional is at a distant site.

32 (b) When conducting prior authorization, whether for healthcare
33 services provided through telemedicine or provided in person, a physician who
34 possess a current and unrestricted license to practice medicine in the State
35 of Arkansas shall make all adverse determinations.

36

1 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
2 General Assembly of the State of Arkansas that Arkansas is experiencing a
3 healthcare professional maldistribution resulting in medically underserved
4 areas throughout the state; that allowing healthcare professionals to
5 provided healthcare services through telemedicine will ease the burden on
6 medically underserved areas; and that this act is immediately necessary
7 because the citizens of Arkansas and the healthcare professionals of Arkansas
8 need immediate direction about the law regarding healthcare services provided
9 through telemedicine. Therefore, an emergency is declared to exist, and this
10 act being immediately necessary for the preservation of the public peace,
11 health, and safety shall become effective on:
12 (1) The date of its approval by the Governor;
13 (2) If the bill is neither approved nor vetoed by the Governor,
14 the expiration of the period of time during which the Governor may veto the
15 bill; or
16 (3) If the bill is vetoed by the Governor and the veto is
17 overridden, the date the last house overrides the veto.

18
19 /s/Bledsoe

20
21
22 **APPROVED: 04/01/2015**

23
24
25
26
27
28
29
30
31
32
33
34
35
36