Stricken language would be deleted from and underlined language would be added to present law. Act 203 of the Regular Session

1	State of Arkansas As Engrossed: $82/2/17 \ S2/6/17 \ S2/9/17$ 91st General Assembly $As Engrossed: Bill$
2	91st General Assembly A B111
3	Regular Session, 2017 SENATE BILL 146
4	
5	By: Senator Bledsoe
6	By: Representative D. Ferguson
7	
8	For An Act To Be Entitled
9	AN ACT TO AMEND THE LAWS CONCERNING TELEMEDICINE; TO
10	CREATE THE TELEMEDICINE ACT; TO AMEND THE DEFINITION
11	OF TELEMEDICINE AND ORIGINATING SITE; TO ADDRESS
12	REQUIREMENTS OF A PROFESSIONAL RELATIONSHIP WHEN
13	USING TELEMEDICINE; TO ADD STANDARDS FOR THE
14	APPROPRIATE USE OF TELEMEDICINE; TO AMEND THE
15	ARKANSAS INTERNET PRESCRIPTION CONSUMER PROTECTION
16	ACT TO CONFORM WITH THE TELEMEDICINE ACT; TO ADDRESS
17	INSURANCE COVERAGE OF TELEMEDICINE; AND FOR OTHER
18	PURPOSES.
19	
20	
21	Subtitle
22	TO AMEND THE LAWS CONCERNING
23	TELEMEDICINE; AND TO CREATE THE
24	TELEMEDICINE ACT.
25	
26	
27	BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28	
29	SECTION 1. Arkansas Code § 17-80-118 is repealed.
30	17-80-118. Telemedicine.
31	(a) As used in this section:
32	(1) "Distant site" means the location of the healthcare
33	professional delivering services through telemedicine at the time the
34	services are provided;
35	(2) "Healthcare professional" means a person who is licensed,
36	certified, or otherwise authorized by the laws of this state to administer

1	health care in the ordinary course of the practice of his or her profession;
2	(3) "Originating site" means:
3	(A) The offices of a healthcare professional or a licensed
4	healthcare entity where the patient is located at the time services are
5	provided by a healthcare professional through telemedicine; and
6	(B) The home of a patient in connection with treatment for
7	end-stage renal disease;
8	(4) "Professional relationship" means at minimum a relationship
9	established between a healthcare professional and a patient when:
10	(A) The healthcare professional has previously conducted
11	an in-person examination and is available to provide appropriate follow-up
12	care, when necessary, at medically necessary intervals;
13	(B) The healthcare professional personally knows the
14	patient and the patient's relevant health status through an ongoing personal
15	or professional relationship and is available to provide appropriate follow-
16	up care, when necessary, at medically necessary intervals;
17	(C) The treatment is provided by a healthcare professional
18	in consultation with, or upon referral by, another healthcare professional
19	who has an ongoing relationship with the patient and who has agreed to
20	supervise the patient's treatment, including follow-up care;
21	(D) An on-call or cross-coverage arrangement exists with
22	the patient's regular treating healthcare professional;
23	(E) A relationship exists in other circumstances as
24	defined by rule of the Arkansas State Medical Board for healthcare
25	professionals under its jurisdiction and their patients; or
26	(F) A relationship exists in other circumstances as
27	defined by rule of a licensing or certification board for other healthcare
28	professionals under the jurisdiction of the appropriate board and their
29	patients if the rules are no less restrictive than the rules of the Λr kansas
30	State Medical Board;
31	(5) "Store and forward technology" means the transmission of a
32	patient's medical information from an originating site to the provider at the
33	distant site without the patient being present; and
34	(6) "Telemedicine" means the medium of delivering clinical
35	healthcare services by means of real-time two-way electronic audio-visual
36	communications, including without limitation the application of secure video

1	conferencing, to provide or support healthcare delivery that facilitates the
2	assessment, diagnosis, consultation, or treatment of a patient's health care
3	while the patient is at an originating site and the healthcare professional
4	is at a distant site.
5	(b)(1) The standards of appropriate practice in traditional healthcare
6	professional-patient settings shall govern the licensed healthcare
7	professional's treatment recommendations made via electronic means, including
8	issuing a prescription via telemedicine.
9	(2) This section does not alter existing state law or rules
10	governing a healthcare professional's scope of practice.
11	(3) This section does not authorize drug-induced, chemical, or
12	surgical abortions performed through telemedicine.
13	(4)(A) Store and forward technology shall not be considered
14	telemedicine.
15	(B) This subchapter does not restrict the use of store and
16	forward technology.
17	(c) A healthcare professional shall follow applicable state and
18	federal law, rules, and regulations for:
19	(1) Informed consent;
20	(2) Privacy of individually identifiable health information;
21	(3) Medical recordkeeping and confidentiality; and
22	(4) Fraud and abuse.
23	(d)(1) A healthcare professional who is treating patients in Arkansas
24	through telemedicine shall be fully licensed or certified to practice in
25	Arkansas and is subject to the rules of the appropriate state licensing or
26	certification board.
27	(2) The requirement in subdivision (d)(1) of this section does
28	not apply to the acts of a healthcare professional located in another
29	jurisdiction who provides only episodic consultation services.
30	(e)(1) A healthcare professional at a distant site shall not utilize
31	telemedicine with respect to a patient located in Arkansas unless a
32	professional relationship exists between the healthcare professional and the
33	patient or the healthcare professional otherwise meets the requirements of
34	professional relationship as defined in § 17-80-118(a)(4).
35	(2) The existence of a professional relationship is not required
36	in the following circumstances:

1	(A) Emergency situations where the life or health of the
2	patient is in danger or imminent danger; or
3	(B) Simply providing information of a generic nature, not
4	meant to be specific to an individual patient.
5	(f) State licensing and certification boards for a healthcare
6	professional shall amend their rules where necessary to comply with this
7	section.
8	
9	SECTION 2. Arkansas Code Title 17, Chapter 80, is amended to add an
10	additional subchapter to read as follows:
11	<u>Subchapter 4 - Telemedicine Act</u>
12	
13	17-80-401. Title.
14	This subchapter shall be known and may be cited as the "Telemedicine
15	Act".
16	
17	17-80-402. Definitions.
18	As used in this subchapter:
19	(1) "Distant site" means the location of the healthcare
20	professional delivering services through telemedicine at the time the
21	services are provided;
22	(2) "Healthcare professional" means a person who is licensed,
23	certified, or otherwise authorized by the laws of this state to administer
24	health care in the ordinary course of the practice of his or her profession;
25	(3) "Originating site" means a site at which a patient is
26	located at the time healthcare services are provided to him or her by means
27	of telemedicine;
28	(4)(A) "Professional relationship" means at minimum a
29	relationship established between a healthcare professional and a patient
30	when:
31	(i) The healthcare professional has previously
32	conducted an in-person examination and is available to provide appropriate
33	follow-up care, when necessary, at medically necessary intervals;
34	(ii) The healthcare professional personally knows
35	the patient and the patient's relevant health status through an ongoing
36	personal or professional relationship and is available to provide appropriate

1	follow-up care, when necessary, at medically necessary intervals;
2	(iii) The treatment is provided by a healthcare
3	professional in consultation with, or upon referral by, another healthcare
4	professional who has an ongoing relationship with the patient and who has
5	agreed to supervise the patient's treatment, including follow-up care;
6	(iv) An on-call or cross-coverage arrangement exists
7	with the patient's regular treating healthcare professional or another
8	healthcare professional who has established a professional relationship with
9	the patient;
10	(v) A relationship exists in other circumstances as
11	defined by rule of the Arkansas State Medical Board for healthcare
12	professionals under its jurisdiction and their patients; or
13	(vi) A relationship exists in other circumstances as
14	defined by rule of a licensing or certification board for other healthcare
15	professionals under the jurisdiction of the appropriate board and their
16	patients if the rules are no less restrictive than the rules of the Arkansas
17	State Medical Board;
18	(5) "Remote patient monitoring" means the use of synchronous or
19	asynchronous electronic information and communication technology to collect
20	personal health information and medical data from a patient at an originating
21	site that is transmitted to a healthcare professional at a distant site for
22	use in the treatment and management of medical conditions that require
23	<pre>frequent monitoring;</pre>
24	(6) "Store-and-forward technology" means the asynchronous
25	transmission of a patient's medical information from a healthcare
26	professional at an originating site to a healthcare professional at a distant
27	site; and
28	(7)(A) "Telemedicine" means the use of electronic information
29	and communication technology to deliver healthcare services, including
30	without limitation the assessment, diagnosis, consultation, treatment,
31	education, care management, and self-management of a patient.
32	(B) "Telemedicine" includes store-and-forward technology
33	and remote patient monitoring.
34	
35	17-80-403. Establishment of professional relationship.
36	(a)(l) A healthcare professional at a distant site shall not utilize

1	telemedicine with respect to a patient located in Arkansas unless a
2	professional relationship exists between the healthcare professional and the
3	patient or the healthcare professional otherwise meets the requirements of a
4	professional relationship as defined in § 17-80-402.
5	(2) The existence of a professional relationship is not required
6	in the following circumstances:
7	(A) Emergency situations where the life or health of the
8	patient is in danger or imminent danger; or
9	(B) Simply providing information of a generic nature, not
10	meant to be specific to an individual patient.
11	(b) If the establishment of the professional relationship is permitted
12	via telemedicine under § 17-80-402(4)(A)(v) or § 17-80-402(4)(A)(vi),
13	telemedicine may be used to establish the professional relationship only for
14	situations in which the standard of care does not require an in-person
15	encounter.
16	(c) "Professional relationship" does not include a relationship
17	between a healthcare professional and a patient established only by the
18	<pre>following:</pre>
19	(1) An internet questionnaire;
20	(2) An email message;
21	(3) Patient-generated medical history;
22	(4) Audio-only communication, including without limitation
23	interactive audio;
24	(5) Text messaging;
25	(6) A facsimile machine; or
26	(7) Any combination thereof;
27	
28	17-80-404. Appropriate use of telemedicine.
29	(a)(1) A professional relationship shall be established in compliance
30	with § 17-80-403 to provide healthcare services through telemedicine.
31	(2) Once a professional relationship is established, a
32	healthcare professional may provide healthcare services through telemedicine,
33	including interactive audio, if the healthcare services are within the scope
34	of practice for which the healthcare professional is licensed or certified
35	and the healthcare services otherwise meet the requirements of this
36	subchapter.

1	(3) A licensing or certification board shall not permit the use
2	of telemedicine in a manner that is less restrictive than the use of
3	telemedicine authorized by the Arkansas State Medical Board.
4	(b)(1) Regardless of whether the healthcare professional is
5	compensated for the healthcare services, if a healthcare professional seeks
6	to provide healthcare services to a minor through telemedicine in a school
7	setting and the minor is enrolled in the Arkansas Medicaid Program, the
8	healthcare professional shall:
9	(A) Be the designated primary care provider of the minor;
10	(B) Have a cross-coverage arrangement with the designated
11	primary care provider of the minor; or
12	(C) Have authorization from the designated primary care
13	provider of the minor.
14	(2) If the minor does not have a designated primary care
15	provider, subdivision (b)(l) of this section does not apply.
16	(3) If a minor is enrolled in a health benefit plan as defined
17	in § 23-79-1601 that is not part of the Arkansas Medicaid Program, the terms
18	and conditions of the health benefit plan shall control.
19	(4) The designation of a primary care provider for a minor
20	remains the right of a parent or legal guardian in accordance with § 20-9-601
21	<u>et seq.</u>
22	(c) Healthcare services provided by telemedicine, including without
23	limitation a prescription through telemedicine, shall be held to the same
24	standard of care as healthcare services provided in person.
25	(d)(1) A healthcare professional who is treating patients in Arkansas
26	through telemedicine shall be fully licensed or certified to practice in
27	Arkansas and is subject to the rules of the appropriate state licensing or
28	certification board.
29	(2) The requirement in subdivision (d)(1) of this section does
30	not apply to the acts of a healthcare professional located in another
31	
	jurisdiction who provides only episodic consultation services.
32	jurisdiction who provides only episodic consultation services. (e) A healthcare professional shall follow applicable state and
32 33	
	(e) A healthcare professional shall follow applicable state and
33	(e) A healthcare professional shall follow applicable state and federal law, rules, and regulations for:

1	(4) Fraud and abuse.
2	
3	17-80-405. Liability - Noncompliance.
4	(a) If a decision is made to provide healthcare services through
5	telemedicine, the healthcare professional accepts responsibility and
6	liability for the care of the patient.
7	(b) Noncompliance with this subchapter is a violation of the practice
8	act of the healthcare professional.
9	
10	<u>17-80-406. Rules.</u>
11	State licensing and certification boards for a healthcare professional
12	shall amend their rules where necessary to comply with this subchapter.
13	
14	17-80-407. Construction.
15	This subchapter does not:
16	(1) Alter existing state law or rules governing a healthcare
17	professional's scope of practice; or
18	(2) Authorize drug-induced, chemical, or surgical abortions
19	performed through telemedicine.
20	
21	SECTION 3. Arkansas Code § 17-92-1003(15), concerning the definition
22	of "proper practitioner-patient relationship" within the Arkansas Internet
23	Prescription Consumer Protection Act, is amended to read as follows:
24	(15) "Proper practitioner-patient relationship" means that
25	before the issuance of a prescription, a practitioner, physician, or other
26	prescribing health professional performs a history and in-person physical
27	examination of the patient adequate to establish a diagnosis and to identify
28	underlying conditions or contraindications to the treatment recommended or
29	provided unless:
30	(A) The prescribing practitioner is consulting at the
31	specific request of another practitioner who:
32	(i) Maintains an ongoing relationship with the
33	patient;
34	(ii) Has performed an in-person physical examination
35	of the patient; and
36	(iii) Has agreed to supervise the patient's ongoing

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     care and use of prescribed medications; or
 2
                       (B) The prescribing practitioner interacts with the
 3
     patient through an on-call or cross-coverage situation; or
 4
                       (C) The relationship is established through telemedicine
     pursuant to the Telemedicine Act, § 17-80-401 et seq.
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           SECTION 4. Effective January 1, 2018, Arkansas Code §§ 23-79-1601 and
8
     23-79-1602 are amended to read as follows:
           23-79-1601. Definitions.
9
10
           As used in this subchapter:
11
                 (1) "Distant site" means the location of the healthcare
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     professional delivering healthcare services through telemedicine at the time
13
     the services are provided;
14
                 (2)(A) "Health benefit plan" means:
15
                             (i) An individual, blanket, or group plan, policy,
16
     or contract for healthcare services issued or delivered by an insurer, health
17
     maintenance organization, hospital medical service corporation, or self-
     insured governmental or church plan in this state; and
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19
                             (ii) Any health benefit program receiving state or
20
     federal appropriations from the State of Arkansas, including the Arkansas
21
     Medicaid Program, and the Health Care Independence Program, commonly referred
22
     to as the "Private Option", and the Arkansas Works Program, or any successor
23
     program.
24
                       (B) "Health benefit plan" includes:
25
                             (i) Indemnity and managed care plans; and
26
                             (ii) Nonfederal governmental plans as defined in 29
27
     U.S.C. § 1002(32), as it existed on January 1, 2015.
28
                       (C) "Health benefit plan" does not include:
29
                             (i) Disability income plans;
30
                             (ii) Credit insurance plans;
31
                             (iii) Insurance coverage issued as a supplement to
32
     liability insurance;
33
                             (iv) Medical payments under automobile or homeowners
34
     insurance plans;
35
                             (v) Health benefit plans provided under Arkansas
36
     Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
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1
    seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;
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                             (vi) Plans that provide only indemnity for hospital
 3
    confinement:
 4
                             (vii) Accident only plans;
 5
                             (viii) Specified disease plans; or
 6
                             (ix) Long-term care only plans;
                 (3) "Healthcare professional" means a person who is licensed,
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    certified, or otherwise authorized by the laws of this state to administer
9
    health care in the ordinary course of the practice of his or her profession;
10
                (4) "Originating site" means:
11
                       (A) The offices of a healthcare professional or a licensed
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    healthcare entity where the patient is located at the time services are
13
    provided by a healthcare professional through telemedicine; and
14
                       (B) The home of a patient in connection with treatment for
15
    end-stage renal disease; and
16
                (5) "Telemedicine" means the medium of delivering clinical
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    healthcare services by means of real-time two-way electronic audio-visual
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    communications, including without limitation the application of secure video
19
    conferencing, to provide or support healthcare delivery that facilitates the
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    assessment, diagnosis, consultation, or treatment of a patient's health care
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    while the patient is at an originating site and the healthcare professional
22
    is at a distant site.
23
                (4) "Originating site" means a site at which a patient is
    located at the time healthcare services are provided to him or her by means
24
25
    of telemedicine;
26
                 (5) "Remote patient monitoring" means the use of synchronous or
27
    asynchronous electronic information and communication technology to collect
    personal health information and medical data from a patient at an originating
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    site that is transmitted to a healthcare professional at a distant site for
30
    use in the treatment and management of medical conditions that require
    frequent monitoring;
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32
                (6) "Store-and-forward technology" means the asynchronous
33
    transmission of a patient's medical information from a healthcare
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    professional at an originating site to a healthcare professional at the
35
    distant site; and
36
                 (7)(A) "Telemedicine" means the use of electronic information
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    without limitation the assessment, diagnosis, consultation, treatment,
 3
     education, care management, and self-management of a patient.
 4
                       (B) "Telemedicine" includes store-and-forward technology
 5
     and remote patient monitoring.
 6
                       (C) For the purposes of this subchapter, "telemedicine"
 7
     does not include the use of:
                             (i) Audio-only communication, including without
 8
9
     limitation interactive audio;
10
                             (ii) A facsimile machine;
11
                             (iii) Text messaging; or
12
                             (iv) Electronic mail systems.
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14
           23-79-1602. Coverage for telemedicine.
15
           (a)(1) This subchapter shall apply applies to all health benefit plans
     delivered, issued for delivery, reissued, or extended in Arkansas on or after
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17
     January 1, 2016, or at any time when any term of the health benefit plan is
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     changed or any premium adjustment is made thereafter.
19
                 (2) Notwithstanding subdivision (a)(1) of this section, this
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     subchapter shall apply applies to the Arkansas Medicaid Program on and after
     January 1, 2016.
21
22
           (b) A healthcare professional providing a healthcare service provided
23
     through telemedicine shall comply with the requirements of the Telemedicine
24
     Act, \S \frac{17-80-117}{17-80-401} et seq.
25
           (c)(1) A health benefit plan shall cover the services of a physician
     who is licensed by the Arkansas State Medical Board for healthcare services
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27
     through telemedicine on the same basis as the health benefit plan provides
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     coverage for the same healthcare services provided by the physician in person
29
     provide coverage and reimbursement for healthcare services provided through
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     telemedicine on the same basis as the health benefit plan provides coverage
     and reimbursement for health services provided in person, unless this
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32
     subchapter specifically provides otherwise.
33
                 (2) Subject to subdivision (d)(1) of this section, a health
     benefit plan shall reimburse a physician licensed by the board for healthcare
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     services provided through telemedicine on the same basis as the health
35
36
     benefit plan reimburses a physician for the same healthcare services provided
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and communication technology to deliver healthcare services, including

1 in person. A health benefit plan is not required to reimburse for a 2 healthcare service provided through telemedicine that is not comparable to 3 the same service provided in person. 4 (3) A health benefit plan may voluntarily reimburse for 5 healthcare services provided through means described in § 23-79-1601(7)(C). 6 (d)(1) A health benefit plan shall provide a reasonable facility fee 7 to an originating site operated by a healthcare professional or a licensed 8 healthcare entity if the healthcare professional or licensed healthcare 9 entity is authorized to bill the health benefit plan directly for healthcare 10 services. 11 (2) The combined amount of reimbursement that a health benefit 12 plan allows for the compensation to the distant site physician and the 13 originating site shall not be less than the total amount allowed for 14 healthcare services provided in person. 15 (2)(3) Payment for healthcare services provided through 16 telemedicine shall be provided to the distant site physician and the 17 originating site upon submission of the appropriate procedure codes. 18 (3)(4) This section does not: 19 (A) Prohibit: 20 (i) A health benefit plan from reimbursing other 21 healthcare professionals; or 22 (ii) A a health benefit plan from paying a facility 23 fee to a provider at the distant site in addition to a fee paid to the 24 healthcare professional; or 25 (B) Require an insurer a health benefit plan to pay more 26 for a healthcare service provided through telemedicine than would have been 27 paid if the healthcare service was delivered in person. 28 (e) A health benefit plan shall not impose on coverage for healthcare 29 services provided through telemedicine: 30 (1) An annual or lifetime dollar maximum on coverage for 31 services provided through telemedicine other than an annual or lifetime 32 dollar maximum that applies to the aggregate of all items and services 33 covered; 34 A deductible, copayment, coinsurance, benefit limitation, or 35 maximum benefit that is not equally imposed upon all healthcare services 36 covered under the health benefit plan; or

- 1 (3) A prior authorization requirement for services provided 2 through telemedicine that exceeds the prior authorization requirement for in-3 person healthcare services under the health benefit plan.
 - (f) This subchapter does not prohibit a health benefit plan from:
 - (1) Limiting coverage of healthcare services provided through telemedicine to medically necessary services, subject to the same terms and conditions of the covered person's health benefit plan that apply to services provided in person; or
- 9 (2)(A) Undertaking utilization review, including prior 10 authorization, to determine the appropriateness of healthcare services 11 provided through telemedicine, provided that:
 - (i) The determination of appropriateness is made in the same manner as determinations are made for the treatment of any illness, condition, or disorder covered by the health benefit plan whether the service was provided in-person or through telemedicine; and
- (ii) All adverse determinations <u>for healthcare</u>

 17 <u>services, medications, or equipment prescribed by a physician</u> are made by a

 18 physician who possesses a current and valid unrestricted license to practice

 19 medicine in Arkansas.
 - (B) Utilization review shall not require prior authorization of emergent telemedicine services.
 - (g)(1) A health benefit plan may adopt policies to ensure that healthcare services provided through telemedicine submitted for payment comply with the same coding, documentation, and other requirements necessary for payment as an in-person service other than the in-person requirement.
 - (2) If deemed necessary, the State Insurance Department may promulgate rules containing additional standards and procedures for the utilization of telemedicine to provide healthcare services through health benefit plans if the additional standards and procedures do not conflict with this subchapter or § 17-80-117 and are applied uniformly by all health benefit plans.
 - (h) A health benefit plan shall not prohibit a healthcare professional from charging a patient enrolled in a health benefit plan for healthcare services provided by audio-only communication that are not reimbursed under the health benefit plan.

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1	SECTION 5. Arkansas Code § 23-86-123 is amended to read as follows:
2	23-86-123. Prior authorization by physician $\underline{\text{Definitions}}$.
3	(a) As used in this section:
4	(1) "Prior authorization" means the process by which a health
5	carrier determines the medical necessity or eligibility for coverage of a
6	healthcare service before a covered person receives the healthcare service in
7	order to provide coverage and reimbursement for the healthcare service; and
8	(2) "Telemedicine" means the medium of delivering clinical
9	healthcare services by means of real-time two-way electronic audiovisual
10	communications, including without limitation the application of secure video
11	conferencing, to provide or support healthcare delivery that facilitates the
12	assessment, diagnosis, consultation, treatment, education, care management,
13	or self-management of a patient's health care while the patient is at an
14	originating site and the healthcare professional is at a distant site the
15	<u>same as defined in § 23-79-1601</u> .
16	(b) When conducting prior authorization, whether for healthcare
17	services provided through telemedicine or provided in person, a physician who
18	possesses a current and unrestricted license to practice medicine in the
19	State of Arkansas shall make all adverse determinations for healthcare
20	services, medications, or equipment prescribed by a physician.
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22	/s/Bledsoe
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25	APPROVED: 02/17/2017
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