

REGULATION RULE 2

8. **Requiring minimum standards for establishing Patient/Provider relationships. Provider is defined as a person licensed by the Arkansas State Medical Board. A Provider exhibits gross negligence if he provides and/or recommends any form of treatment, including prescribing legend drugs, without first establishing a proper Patient/Provider relationship.

A. For purposes of this regulation, a proper Patient/Provider relationship, at a minimum requires that:

1.A. The Provider performs a history and an “in person” physical examination of the patient adequate to establish a diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided, OR

~~B. The Provider performs a face to face examination using real time audio and visual telemedicine technology that provides information at least equal to such information as would have been obtained by an in person examination; OR The Provider has access to a patient’s personal health record, defined by ACA §17-80-401 et seq., as relevant clinical information required to treat a patient, that is maintained by a Provider and uses any technology deemed appropriate by the Provider, including the telephone, with a patient located in Arkansas to diagnose, treat, and if clinically appropriate, prescribe a noncontrolled drug to the patient.~~

~~1. A proper professional relationship does not include one established **only** by internet questionnaire, email message, patient-generated medical history, text message, facsimile, or any combination of these means.~~

C. The Provider personally knows the patient and the patient’s general health status through an “ongoing” personal or professional relationship;

1. Appropriate follow-up be provided or arranged, when necessary, at medically necessary intervals.

~~2. A health record may be created with the use of telemedicine and consists of relevant clinical information required to treat a patient, and is reviewed by the healthcare professional who meets the same standard of care for a telemedicine visit as an in-person visit.~~

B. For the purposes of this regulation, a proper Patient/Provider relationship is deemed to exist in the following situations:

1. When treatment is provided in consultation with, or upon referral by, another Provider who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including follow up care and the use of any prescribed medications.
2. On-call or cross-coverage situations arranged by the patient's treating Provider.

C. Exceptions -- Recognizing a Provider's duty to adhere to the applicable standard of care, the following situations are hereby excluded from the requirement of this regulation:

1. Emergency situations where the life or health of the patient is in danger or imminent danger.
2. Simply providing information of a generic nature not meant to be specific to an individual patient.
3. This Regulation does not apply to prescriptions written or medications issued for use in expedited heterosexual partner therapy for the sexually transmitted diseases of gonorrhea and/or chlamydia.
4. This Regulation does not apply to the administration of vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Tdap, Td, or TT) or inactive influenza vaccines.

1 State of Arkansas As Engrossed: H1/25/21 H2/8/21 H2/10/21 S3/9/21 S3/17/21 S4/6/21 S4/12/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1063

4

5 *By: Representatives Dotson, Pilkington*

6 *By: Senator Hester*

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For An Act To Be Entitled

9 AN ACT TO AMEND THE TELEMEDICINE ACT; TO AUTHORIZE
10 ADDITIONAL REIMBURSEMENT FOR TELEMEDICINE VIA
11 TELEPHONE; TO DECLARE AN EMERGENCY; AND FOR OTHER
12 PURPOSES.

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Subtitle

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*TO AMEND THE TELEMEDICINE ACT; TO
17 AUTHORIZE ADDITIONAL REIMBURSEMENT FOR
18 TELEMEDICINE VIA TELEPHONE; AND TO
19 DECLARE AN EMERGENCY.*

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22 *BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:*

23

24 SECTION 1. Arkansas Code § 17-80-402(4), concerning the definition of
25 a "professional relationship" as used under the Telemedicine Act, is amended
26 to read as follows:

27

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

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

33

34 (B) The healthcare professional personally knows the
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 professional relationship with the patient and who has
4 agreed to 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 or another healthcare
7 professional who has established a professional relationship with the
8 patient;

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

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

17 (G)(i) The healthcare professional who is licensed in
18 Arkansas has access to a patient's personal health record maintained by a
19 healthcare professional and uses any technology deemed appropriate by the
20 healthcare professional, including the telephone, with a patient located in
21 Arkansas to diagnose, treat, and if clinically appropriate, prescribe a
22 noncontrolled drug to the patient.

23 (ii) For purposes of this subchapter, a health
24 record may be created with the use of telemedicine and consists of relevant
25 clinical information required to treat a patient, and is reviewed by the
26 healthcare professional who meets the same standard of care for a
27 telemedicine visit as an in-person visit;

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29 SECTION 2. Arkansas Code § 17-80-403(c), concerning the establishment
30 of a professional relationship, is amended to read as follows:

31 (c) "Professional relationship" does not include a relationship
32 between a healthcare professional and a patient established only by the
33 following:

- 34 (1) An internet questionnaire;
35 (2) An email message;

- 1 (3) Patient-generated medical history;
2 (4) ~~Audio-only communication, including without limitation~~
3 ~~interactive audio;~~
4 ~~(5)~~ Text messaging;
5 ~~(6)~~(5) A facsimile machine; or
6 ~~(7)~~(6) Any combination thereof of means listed in subdivisions
7 (c)(1)-(5) of this section.
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10 SECTION 3. Arkansas Code § 23-79-1601(2)(C), concerning the definition
11 of "health benefit plan", is amended to read as follows:

- 12 (C) "Health benefit plan" does not include:
13 (i) Disability income plans;
14 (ii) Credit insurance plans;
15 (iii) Insurance coverage issued as a supplement to
16 liability insurance;
17 (iv) Medical payments under automobile or homeowners
18 insurance plans;
19 (v) Health benefit plans provided under Arkansas
20 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
21 seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;
- 22 (vi) Plans that provide only indemnity for hospital
23 confinement;
24 (vii) Accident-only plans;
25 (viii) Specified disease plans; ~~or~~
26 (ix) Long-term-care-only plans; or
27 (x) Stand-alone dental or vision benefit plans;
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29 SECTION 4. Arkansas Code § 23-79-1601(7), concerning the definition of
30 "telemedicine", is amended to read as follows:

31 (7)(A) "Telemedicine" means the use of electronic information
32 and communication technology to deliver healthcare services, including
33 without limitation the assessment, diagnosis, consultation, treatment,
34 education, care management, and self-management of a patient.

35 (B) "Telemedicine" includes store-and-forward technology

1 and remote patient monitoring.

2 (C) For the purposes of this subchapter, "telemedicine"
3 does not include the use of:

4 (i)(a) Audio-only communication, ~~including without~~
5 limitation interactive audio unless the audio-only communication is real-
6 time, interactive, and substantially meets the requirements for a healthcare
7 service that would otherwise be covered by the health benefit plan.

8 (b) As with other medical services covered by
9 a health benefit plan, documentation of the engagement between patient and
10 provider via audio-only communication shall be placed in the medical record
11 addressing the problem, content of conversation, medical decision-making, and
12 plan of care after the contact.

13 (c) The documentation described in subdivision
14 (7)(C)(i)(b) of this section is subject to the same audit and review process
15 required by payers and governmental agencies when requesting documentation of
16 other care delivery such as in-office or face-to-face visits;

17 (ii) A facsimile machine;

18 (iii) Text messaging; or

19 (iv) ~~Electronic mail systems~~ Email.

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21 SECTION 5. Arkansas Code § 23-79-1602(e), concerning prohibitions on
22 the coverage for telemedicine services, is amended to read as follows:

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

25 (1) An annual or lifetime dollar maximum on coverage for
26 services provided through telemedicine other than an annual or lifetime
27 dollar maximum that applies to the aggregate of all items and services
28 covered;

29 (2) A deductible, copayment, coinsurance, benefit limitation, or
30 maximum benefit that is not equally imposed upon all healthcare services
31 covered under the health benefit plan; ~~or~~

32 (3) A prior authorization requirement for services provided
33 through telemedicine that exceeds the prior authorization requirement for in-
34 person healthcare services under the health benefit plan;

35 (4) A requirement for a covered person to choose any commercial

1 telemedicine service provider or a restricted network of telemedicine-only
2 providers rather than the covered person's regular doctor or provider of
3 choice; or

4 (5) A copayment, coinsurance, or deductible that is not equally
5 imposed upon commercial telemedicine providers as those imposed on network
6 providers.

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8 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
9 General Assembly of the State of Arkansas that due to the coronavirus 2019
10 (COVID-19) pandemic, the Governor removed barriers to the use of telemedicine
11 in an attempt to combat the coronavirus 2019 (COVID-19) pandemic; that these
12 emergency actions will expire when the emergency proclamation expires, which
13 could occur quickly; that on February 26, 2021, the Governor announced that
14 the public health emergency was extended but that the Governor was going to
15 lift some regulations related to the pandemic; that removing barriers to the
16 use of telemedicine ensured that the citizens of Arkansas had the services
17 that they needed, and removing these emergency proclamations regarding
18 telemedicine would greatly disadvantage and harm the citizens of Arkansas who
19 are utilizing telemedicine for healthcare services; that this bill maintains
20 the policy changes allowed under the emergency proclamation, which would
21 allow the citizens of Arkansas greater access to the use of telemedicine for
22 healthcare services; and that this act is immediately necessary to ensure
23 that the citizens of Arkansas have access to healthcare services provided via
24 telemedicine. Therefore, an emergency is declared to exist, and this act
25 being immediately necessary for the preservation of the public peace, health,
26 and safety shall become effective on:

27 (1) The date of its approval by the Governor;

28 (2) If the bill is neither approved nor vetoed by the Governor,
29 the expiration of the period of time during which the Governor may veto the
30 bill; or

31 (3) If the bill is vetoed by the Governor and the veto is
32 overridden, the date the last house overrides the veto.

33
34 /s/Pilkington

35 **APPROVED: 4/21/21**