

TOC not required

105.190 Telemedicine

8-4-181-1-
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Telemedicine is defined as the use of electronic information and communication technology to deliver healthcare services including without limitation, the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient/client. Telemedicine includes store-and-forward technology and remote patient/client monitoring.

Store-and-forward technology is the transmission of a patient/client's medical information from a healthcare provider at an originating site to a healthcare provider at a distant site. An originating site includes the home of a client. Remote patient/client monitoring means the use of electronic information and communication technology to collect personal health information and medical data from a patient/client at an originating site that is transmitted to a healthcare provider at a distant site for use in the treatment and management of medical conditions that require frequent monitoring.

Arkansas Medicaid shall provide payment to a licensed or certified healthcare professional or a licensed or certified entity for services provided through telemedicine if the service provided through telemedicine is comparable to the same service provided in person. Payment will include a reasonable facility fee to the originating site operated by a licensed or certified healthcare professional or licensed or certified healthcare entity if the professional or entity is authorized to bill Arkansas Medicaid directly for healthcare services. There is no facility fee for the distant site. The professional or entity at the distant site must be an enrolled Arkansas Medicaid Provider. Any other originating sites are not eligible to bill a facility fee.

Coverage and reimbursement for services provided through telemedicine will be on the same basis as for services provided in person. While a distant site facility fee is not authorized under the Telemedicine Act, if reimbursement includes payment to an originating site (as outlined in the above paragraph), the combined amount of reimbursement to the originating and distant sites may not be less than the total amount allowed for healthcare services provided in person.

Professional Relationship

The distant site healthcare provider will not utilize telemedicine services with a patient/client unless a professional relationship exists between the provider and the patient/client. A professional relationship exists when, at a minimum:

1. The healthcare provider has previously conducted an in-person examination of the patient/client and is available to provide appropriate follow-up care;
2. The healthcare provider personally knows the patient/client and the patient/client's health status through an ongoing relationship and is available to provide follow-up care;
3. The treatment is provided by a healthcare provider in consultation with, or upon referral by, another healthcare provider who has an ongoing professional relationship with the patient/client and who has agreed to supervise the patient/client's treatment including follow-up care;
4. An on-call or cross-coverage arrangement exists with the patient/client's regular treating healthcare provider or another healthcare provider who has established a professional relationship with the patient/client; ~~or~~
5. A relationship exists in other circumstances as defined by the Arkansas State Medical Board (ASMB) or a licensing or certification board for other healthcare providers under the jurisdiction of the appropriate board if the rules are no less restrictive than the rules of the ASMB.
 - a. A professional relationship is established if 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. (See ASMB Regulation 2.8);~~or~~

- b. If the establishment of a professional relationship is permitted via telemedicine under the guidelines outlined in ASMB regulations, telemedicine may be used to establish the professional relationship only for situations in which the standard of care does not require an in-person encounter and only under the safeguards established by the healthcare professional's licensing board (See ASMB Regulation 38 for these safeguards including the standards of care);~~or~~

6. The healthcare professional who is licensed in Arkansas has access to a client's personal health record maintained by a healthcare professional and uses any technology deemed appropriate by the healthcare professional, including the telephone, with a client located in Arkansas to diagnose, treat, and if clinically appropriate, prescribe a noncontrolled drug to the client.

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

A professional relationship does not include a relationship between a healthcare provider and a patient/client established only by the following:

1. An internet questionnaire;
2. An email message;
3. A patient/client-generated medical history;
- ~~4. Audio only communication, including without limitation interactive audio;~~
- ~~45.~~ Text messaging;
- ~~56.~~ A facsimile machine (Fax) and EFax;~~or~~
- ~~67.~~ Any combination of the above;~~or~~
- ~~78.~~ Any future technology that does not meet the criteria outlined in this section.

The existence of a professional relationship is not required when:

1. An emergency situation exists; or
2. The transaction involves providing information of a generic nature not meant to be specific to an individual patient/client.

Once a professional relationship is established, the healthcare provider may provide healthcare services through telemedicine, including interactive audio, if the healthcare services are within the scope of practice for which the healthcare provider is licensed or certified and in accordance with the safeguards established by the healthcare professionals licensing board.~~The use of interactive audio is not reimbursable under Arkansas Medicaid.~~

Telemedicine with a Minor Client

Regardless of whether the individual-provider is compensated for healthcare services, if a healthcare provider seeks to provide telemedicine services to a minor in a school setting and the minor client is enrolled in Arkansas Medicaid, the healthcare provider shall:

1. Be the designated Primary Care Provider (PCP) for the minor client;
2. Have a cross-coverage arrangement with the designated PCP of the minor client; or
3. Have a referral from the designated PCP of the minor client.

If the minor client does not have a designated PCP, this section does not apply. Only the parent or legal guardian of the minor client may designate a PCP for a minor client.

Telemedicine Standard of Care

Healthcare services provided by telemedicine, including without limitation a prescription through telemedicine, shall be held to the same standard of care as healthcare services provided in person. A healthcare provider providing telemedicine services within Arkansas shall follow applicable state and federal laws, rules and regulations regarding:

1. Informed consent;
2. Privacy of individually identifiable health information;
3. Medical record keeping and confidentiality, and
4. Fraud and abuse.

A healthcare provider treating ~~patient~~client in Arkansas through telemedicine shall be fully licensed or certified to practice in Arkansas and is subject to the rules of the appropriate state licensing or certification board. This requirement does not apply to the acts of a healthcare provider located in another jurisdiction who provides only episodic consultation services.

Telemedicine Exclusions

Telemedicine does not include the use of:

1. Audio-only communication unless the audio-only communication is in real-time, is interactive, and substantially meets the requirements for a health care service that would otherwise be covered by the health benefit plan:
 - a. Documentation of the engagement between patient and provider via audio-only communication shall be placed in the medical record addressing the problem, content of the conversation, medical decision-making, and plan of care after the contact;
 - b. Medical documentation is subject to the same audit and review process required by payers and governmental agencies when requesting documentation of other care delivery such as in-office or face-to-face visits;
2. A facsimile machine;
3. Text messaging; or
4. Email.

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/31/21

A Bill

HOUSE BILL 1068

5 By: Representative Pilkington
6

For An Act To Be Entitled

8 AN ACT TO CLARIFY THE TELEMEDICINE ACT; TO SPECIFY
9 THAT THE HOME OF A PATIENT MAY BE AN ORIGINATING SITE
10 FOR TELEMEDICINE AND THAT GROUP MEETINGS MAY BE
11 PERFORMED VIA TELEMEDICINE; TO CLARIFY REIMBURSEMENT
12 OF TELEMEDICINE SERVICES; AND FOR OTHER PURPOSES.
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Subtitle

15 TO CLARIFY THE TELEMEDICINE ACT; TO
16 SPECIFY THAT THE HOME OF A PATIENT MAY BE
17 AN ORIGINATING SITE FOR TELEMEDICINE AND
18 THAT GROUP MEETINGS MAY BE PERFORMED VIA
19 TELEMEDICINE; AND TO CLARIFY
20 REIMBURSEMENT OF TELEMEDICINE SERVICES.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25 SECTION 1. Arkansas Code § 17-80-402(3), concerning the definition of
26 "originating site" within the Telemedicine Act, is amended to read as
27 follows:

28 (3)(A) "Originating site" means a site at which a patient is
29 located at the time healthcare services are provided to him or her by means
30 of telemedicine.

31 (B) "Originating site" includes the home of a patient;
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33 SECTION 2. Arkansas Code § 17-80-404, concerning the appropriate use
34 of telemedicine, is amended to add an additional subsection to read as
35 follows:

36 (f)(1) A healthcare professional may use telemedicine to perform group



1 meetings for healthcare services, including group therapy.

2 (2) Telemedicine for group therapy provided to adults who are
3 participants in a program or plan authorized and funded under 42 U.S.C. §
4 1396a, as approved by the United States Secretary of Health and Human
5 Services, may only be permitted if the Centers for Medicare and Medicaid
6 Services allows telemedicine for group therapy provided to adults.

7 (3) Telemedicine shall not be used for group therapy provided to
8 a child who is eighteen (18) years of age or younger.

9
10 SECTION 3. Arkansas Code § 23-79-1601(4), concerning the definition of
11 "originating site" regarding coverage for services provided through
12 telemedicine, is amended to read as follows:

13 (4)(A) "Originating site" means a site at which a patient is
14 located at the time healthcare services are provided to him or her by means
15 of telemedicine.

16 (B) "Originating site" includes the home of a patient;

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19 /s/Pilkington

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22 **APPROVED: 4/19/21**

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

16

*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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21

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

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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.

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34 /s/Pilkington

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