

1 State of Arkansas *As Engrossed: S2/2/17 S2/6/17 S2/9/17*

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A Bill

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SENATE BILL 146

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5 By: Senator Bledsoe

6 By: Representative D. Ferguson

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For An Act To Be Entitled

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Subtitle

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

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SECTION 1. Arkansas Code § 17-80-118 is repealed.

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~~17-80-118. Telemedicine.~~

31

~~(a) As used in this section:~~

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

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~~(2) "Healthcare professional" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer~~



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 ~~(e) 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 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 frequent monitoring;

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)(1) A healthcare professional at a distant site shall not utilize

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)(1) 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 et seq.

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 (e) A healthcare professional shall follow applicable state and
33 federal law, rules, and regulations for:

34 (1) Informed consent;

35 (2) Privacy of individually identifiable health information;

36 (3) Medical recordkeeping and confidentiality; and

1 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
5 pursuant to the Telemedicine Act, § 17-80-401 et seq.

6
7 SECTION 4. Effective January 1, 2018, Arkansas Code §§ 23-79-1601 and
8 23-79-1602 are amended to read as follows:

9 23-79-1601. Definitions.

10 As used in this subchapter:

11 (1) "Distant site" means the location of the healthcare
12 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-
18 insured governmental or church plan in this state; and

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

1 and communication technology to deliver healthcare services, including
2 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:

8 (i) Audio-only communication, including without
9 limitation interactive audio;

10 (ii) A facsimile machine;

11 (iii) Text messaging; or

12 (iv) Electronic mail systems.

13
14 23-79-1602. Coverage for telemedicine.

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

19 (2) Notwithstanding subdivision (a)(1) of this section, this
20 subchapter ~~shall apply~~ applies to the Arkansas Medicaid Program on and after
21 January 1, 2016.

22 (b) A healthcare professional providing a healthcare service provided
23 through telemedicine shall comply with the requirements of the Telemedicine
24 Act, § ~~17-80-117~~ 17-80-401 et seq.

25 (c)(1) A health benefit plan ~~shall cover the services of a physician~~
26 ~~who is licensed by the Arkansas State Medical Board for healthcare services~~
27 ~~through telemedicine on the same basis as the health benefit plan provides~~
28 ~~coverage for the same healthcare services provided by the physician in person~~
29 provide coverage and reimbursement for healthcare services provided through
30 telemedicine on the same basis as the health benefit plan provides coverage
31 and reimbursement for health services provided in person, unless this
32 subchapter specifically provides otherwise.

33 (2) ~~Subject to subdivision (d)(1) of this section, a health~~
34 ~~benefit plan shall reimburse a physician licensed by the board for healthcare~~
35 ~~services provided through telemedicine on the same basis as the health~~
36 ~~benefit plan reimburses a physician for the same healthcare services provided~~

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.

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

5 (1) Limiting coverage of healthcare services provided through
6 telemedicine to medically necessary services, subject to the same terms and
7 conditions of the covered person's health benefit plan that apply to services
8 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:

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

16 (ii) All adverse determinations for healthcare
17 services, medications, or equipment prescribed by a physician are made by a
18 physician who possesses a current and valid unrestricted license to practice
19 medicine in Arkansas.

20 (B) Utilization review shall not require prior
21 authorization of emergent telemedicine services.

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

26 (2) If deemed necessary, the State Insurance Department may
27 promulgate rules containing additional standards and procedures for the
28 utilization of telemedicine to provide healthcare ~~service~~ services through
29 health benefit plans if the additional standards and procedures do not
30 conflict with this subchapter or § 17-80-117 and are applied uniformly by all
31 health benefit plans.

32 (h) A health benefit plan shall not prohibit a healthcare professional
33 from charging a patient enrolled in a health benefit plan for healthcare
34 services provided by audio-only communication that are not reimbursed under
35 the health benefit plan.

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