

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

# A Bill

SENATE BILL 133

5 By: Senator Bledsoe  
6 By: Representative D. Ferguson  
7

## 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

## Subtitle

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18 TO ENCOURAGE THE USE OF TELEMEDICINE; AND  
19 TO DECLARE AN EMERGENCY.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. DO NOT CODIFY. Title.

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

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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 the office of a healthcare  
23 professional or a licensed healthcare entity where the patient is located at  
24 the time that services are provided by a healthcare professional through  
25 telemedicine;

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

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

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

35 (C) The treatment is provided by a healthcare professional  
36 in consultation with, or upon referral by, another healthcare professional

1 who has an ongoing relationship with the patient and who has agreed to  
 2 supervise the patient’s treatment, including follow-up care; or

3 (D) An on-call or cross-coverage arrangement exists with  
 4 the patient’s regular treating healthcare professional;

5 (5) "Store and forward telemedicine" means the transmission of a  
 6 patient’s medical information from an originating site to the provider at the  
 7 distant site without the patient being present; and

8 (6) “Telemedicine” means the medium of delivering clinical  
 9 healthcare services by means of real-time two-way electronic audio-visual  
 10 communications, including without limitation the application of secure video  
 11 conferencing, to provide or support healthcare delivery, including prior  
 12 authorization, that facilitates the assessment, diagnosis, consultation,  
 13 treatment, education, care management, and self-management of a patient’s  
 14 health care while the patient is at an originating site and the healthcare  
 15 professional is at a distant site.

16 (b)(1) The standards of appropriate practice in traditional healthcare  
 17 professional-patient settings shall govern the licensed healthcare  
 18 professional’s treatment recommendations made via electronic means, including  
 19 issuing a prescription via telemedicine.

20 (2) This section does not alter existing state law or rules  
 21 governing a healthcare professional’s scope of practice.

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

24 (4) This section does not prohibit the performance of store and  
 25 forward telemedicine as allowed by Arkansas State Medicine Board.

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

- 28 (1) Informed consent;
- 29 (2) Privacy of individually identifiable health information;
- 30 (3) Medical recordkeeping and confidentiality; and
- 31 (4) Fraud and abuse.

32 (d)(1) A healthcare professional who is treating patients in Arkansas  
 33 through telemedicine shall be fully licensed to practice in Arkansas and is  
 34 subject to the rules of the appropriate state licensing board.

35 (2) The requirement in subdivision (d)(1) of this section does  
 36 not apply to the acts of a healthcare professional located in another

1 jurisdiction who provides only episodic consultation services.

2 (3) A healthcare professional who is treating patients in  
 3 Arkansas through telemedicine at the distant site shall be fully licensed to  
 4 practice medicine in Arkansas and is subject to the rules of the Arkansas  
 5 State Medical Board.

6 (e)(1) A healthcare professional at a distant site shall not utilize  
 7 telemedicine with respect to a patient located in Arkansas unless a  
 8 professional relationship exists between the healthcare professional and the  
 9 patient.

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

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

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

16 (f)(1) State licensing and certification boards for a healthcare  
 17 professional shall amend their rules where necessary to comply with this  
 18 section.

19 (2) However, this section does not preclude rules that define a  
 20 professional relationship more stringently than this section or that impose  
 21 other restrictions on certain professional services through telemedicine as  
 22 justified by professional standards.

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

26  
 27 Subchapter 16 – Coverage for Services Provided Through Telemedicine

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 29 23-79-1601. Definitions.

30 As used in this subchapter:

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

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

35 (i) An individual, blanket, or group plan, policy,  
 36 or contract for healthcare services issued or delivered by an insurer, health

1 maintenance organization, hospital medical service corporation, or self-  
 2 insured governmental or church plan in this state; and

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

7 (B) "Health benefit plan" includes:

8 (i) Indemnity and managed care plans; and

9 (ii) Governmental plans as defined in 29 U.S.C. §  
 10 1002(32), as it existed on January 1, 2015.

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

12 (i) Disability income plans;

13 (ii) Credit insurance plans;

14 (iii) Insurance coverage issued as a supplement to  
 15 liability insurance;

16 (iv) Medical payments under automobile or homeowners  
 17 insurance plans;

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

21 (vi) Plans that provide only indemnity for hospital  
 22 confinement;

23 (vii) Accident only plans; or

24 (viii) Specified disease plans;

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

28 (4) "Originating site" means the office of a healthcare  
 29 professional or a licensed healthcare entity where the patient is located at  
 30 the time that healthcare services are provided by a healthcare professional  
 31 through telemedicine; and

32 (5) "Telemedicine" means the medium of delivering clinical  
 33 healthcare services by means of real-time two-way electronic audio-visual  
 34 communications, including without limitation the application of secure video  
 35 conferencing, to provide or support healthcare delivery, including prior  
 36 authorization, that facilitates the assessment, diagnosis, consultation,

1 treatment, education, care management, and self-management of a patient's  
2 health care while the patient is at an originating site and the healthcare  
3 professional is at a distant site.

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5 23-79-1602. Coverage for telemedicine.

6 (a) This subchapter shall apply to all health benefit plans delivered,  
7 issued for delivery, reissued, or extended in Arkansas on or after January 1,  
8 2016, or at any time when any term of the health benefit plan is changed or  
9 any premium adjustment is made.

10 (b) A health benefit plan shall provide coverage for healthcare  
11 services provided through telemedicine on the same basis that the health  
12 benefit plan provides coverage for the same healthcare services provided in  
13 person.

14 (c) Subject to subsection (d) of this section, a health benefit plan  
15 shall reimburse a physician for healthcare services provided through  
16 telemedicine on the same basis as the health benefit plan reimburses a  
17 physician for the same healthcare services provided in person.

18 (d)(1) On the effective date of this subchapter, the State Insurance  
19 Department shall convene a task force of physicians and health benefit plan  
20 administrators and insurers, including the Arkansas Medicaid Program, to  
21 develop a methodology for reimbursing to originating sites a reasonable fee  
22 to cover the costs of transmission related to healthcare services provided  
23 through telemedicine.

24 (2) The State Insurance Department and Department of Human  
25 Services shall promulgate rules to implement the payment methodology for  
26 transmission fees within one hundred twenty (120) days of the effective date  
27 of this subchapter.

28 (3) The combined amount of reimbursement that a health benefit  
29 plan pays for the compensation to the distant site physician and the  
30 transmission fee shall not be less than the total amount paid for in-person  
31 services.

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

34 (1) An annual or lifetime dollar maximum on coverage for  
35 services provided through telemedicine other than an annual or lifetime  
36 dollar maximum that applies to the aggregate of all items and services

1 covered;

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

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

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

9 (1) Limiting coverage of healthcare services provided through  
10 telemedicine to medically necessary services, subject to the same terms and  
11 conditions of the covered person’s health benefit plan that apply to services  
12 provided in person; or

13 (2)(A) Undertaking utilization review, including prior  
14 authorization, to determine the appropriateness of healthcare services  
15 provided through telemedicine, provided that:

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

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

23 (B) Utilization review shall not require prior  
24 authorization of emergent telemedicine services.

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

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30 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
31 General Assembly of the State of Arkansas that Arkansas is experiencing a  
32 healthcare professional maldistribution resulting in medically underserved  
33 areas throughout the state; that allowing healthcare professionals to  
34 provided healthcare services through telemedicine will ease the burden on  
35 medically underserved areas; and that this act is immediately necessary  
36 because the citizens of Arkansas and the healthcare professionals of Arkansas

1 need immediate direction about the law regarding healthcare services provided  
2 through telemedicine. Therefore, an emergency is declared to exist, and this  
3 act being immediately necessary for the preservation of the public peace,  
4 health, and safety shall become effective on:

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

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

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

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