

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

As Engrossed: S3/3/15
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
17

Subtitle

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 location of the patient at the
23 time healthcare services are delivered through telemedicine;

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

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

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

33 (C) The treatment is provided by a healthcare professional
34 in consultation with, or upon referral by, another healthcare professional
35 who has an ongoing relationship with the patient and who has agreed to
36 supervise the patient's treatment, including follow-up care;

1 (D) An on-call or cross-coverage arrangement exists with
2 the patient's regular treating healthcare professional;

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

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

11 (5) "Store and forward technology" means the transmission of a
12 patient's medical information from an originating site to the provider at the
13 distant site without the patient being present; and

14 (6) "Telemedicine" means the medium of delivering clinical
15 healthcare services by means of real-time two-way electronic audio-visual
16 communications, including without limitation the application of secure video
17 conferencing, to provide or support healthcare delivery that facilitates the
18 assessment, diagnosis, consultation, treatment, education, care management,
19 or self-management of a patient's health care while the patient is at an
20 originating site and the healthcare professional is at a distant site.

21 (b)(1) The standards of appropriate practice in traditional healthcare
22 professional-patient settings shall govern the licensed healthcare
23 professional's treatment recommendations made via electronic means, including
24 issuing a prescription via telemedicine.

25 (2) This section does not alter existing state law or rules
26 governing a healthcare professional's scope of practice.

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

29 (4)(A) Store and forward technology shall not be considered
30 telemedicine.

31 (B) This subchapter does not restrict the use of store and
32 forward technology.

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

35 (1) Informed consent;

36 (2) Privacy of individually identifiable health information;

1 (3) Medical recordkeeping and confidentiality; and

2 (4) Fraud and abuse.

3 (d)(1) A healthcare professional who is treating patients in Arkansas
4 through telemedicine shall be fully *licensed or certified* to practice in
5 Arkansas and is subject to the rules of the appropriate state *licensing or*
6 *certification* board.

7 (2) The requirement in subdivision (d)(1) of this section does
8 not apply to the acts of a healthcare professional located in another
9 jurisdiction who provides only episodic consultation services.

10 (e)(1) A healthcare professional at a distant site shall not utilize
11 telemedicine with respect to a patient located in Arkansas unless a
12 professional relationship exists between the healthcare professional and the
13 patient or the healthcare professional otherwise meets the requirements of
14 professional relationship as defined in § 17-80-117(a)(4).

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

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

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

21 (f) State licensing and certification boards for a healthcare
22 professional shall amend their rules where necessary to comply with this
23 section.

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

27
28 Subchapter 16 – Coverage for Services Provided Through Telemedicine

29
30 23-79-1601. Definitions.

31 As used in this subchapter:

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

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

36 (i) An individual, blanket, or group plan, policy,

1 or contract for healthcare services issued or delivered by an insurer, health
2 maintenance organization, hospital medical service corporation, or self-
3 insured governmental or church plan in this state; and

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

8 (B) "Health benefit plan" includes:

9 (i) Indemnity and managed care plans; and

10 (ii) Governmental plans as defined in 29 U.S.C. §
11 1002(32), as it existed on January 1, 2015.

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;

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

30 (4) "Originating site" means the location of the patient at the
31 time healthcare services are delivered 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 that facilitates the
36 assessment, diagnosis, consultation, treatment, education, care management,

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

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4 23-79-1602. Coverage for telemedicine.

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

9 (2) Notwithstanding subdivision (a)(1) of this section, this
10 subchapter shall apply to the Arkansas Medicaid Program on and after July 1,
11 2016.

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

16 (c) A healthcare service provided through telemedicine shall comply
17 with the requirements of § 17-80-117.

18 (d) Subject to subdivision (e)(1) of this section, a health benefit
19 plan shall reimburse a physician licensed by the Arkansas State Medical Board
20 for healthcare services provided through telemedicine on the same basis as
21 the health benefit plan reimburses a physician for the same healthcare
22 services provided in person.

23 (e)(1) The combined amount of reimbursement that a health benefit plan
24 allows for the compensation to the distant site physician and the originating
25 site shall not be less than the total amount allowed for healthcare services
26 provided in person.

27 (2) Payment for healthcare services provided through
28 telemedicine shall be provided to the distant site physician and the
29 originating site upon submission of the appropriate procedure codes.

30 (3) This section does not:

31 (A) Prohibit:

32 (i) Reimbursement by a health benefit plan to other
33 healthcare professionals; or

34 (ii) A health benefit plan from paying a facility
35 fee to a provider at the distant site in addition to a fee paid to the
36 healthcare professional; or

1 (B) Require an insurer to pay more for a healthcare
2 service provided through telemedicine than would have been paid if the
3 healthcare service was delivered in person.

4 (f) A health benefit plan shall not impose on coverage for healthcare
5 services provided through telemedicine:

6 (1) An annual or lifetime dollar maximum on coverage for
7 services provided through telemedicine other than an annual or lifetime
8 dollar maximum that applies to the aggregate of all items and services
9 covered;

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

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

16 (g) This subchapter does not prohibit a health benefit plan from:

17 (1) Limiting coverage of healthcare services provided through
18 telemedicine to medically necessary services, subject to the same terms and
19 conditions of the covered person's health benefit plan that apply to services
20 provided in person; or

21 (2)(A) Undertaking utilization review, including prior
22 authorization, to determine the appropriateness of healthcare services
23 provided through telemedicine, provided that:

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

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

31 (B) Utilization review shall not require prior
32 authorization of emergent telemedicine services.

33 (h)(1) A health benefit plan may adopt policies to ensure that
34 healthcare services provided through telemedicine submitted for payment
35 comply with the same coding, documentation, and other requirements necessary
36 for payment an in-person service other than the in-person requirement.

1 (2) If deemed necessary, the State Insurance Department may
2 promulgate rules containing additional standards and procedures for the
3 utilization of telemedicine to provide healthcare service through health
4 benefit plans if the additional standards and procedures do not conflict with
5 this subchapter or § 17-80-117, and are applied uniformly by all health
6 benefit plans.

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8 SECTION 5. Arkansas Code Title 23, Chapter 86, Subchapter 1, is
9 amended to add an additional section to read as follows:

10 23-86-123. Prior authorization by physician.

11 (a) As used in this section:

12 (1) "Prior authorization" means the process by which a health
13 carrier determines the medical necessity or eligibility for coverage of a
14 healthcare service before a covered person receives the healthcare service in
15 order to provide coverage and reimbursement for the healthcare service; and

16 (2) "Telemedicine" means the medium of delivering clinical
17 healthcare services by means of real-time two-way electronic audiovisual
18 communications, including without limitation the application of secure video
19 conferencing, to provide or support healthcare delivery that facilitates the
20 assessment, diagnosis, consultation, treatment, education, care management,
21 or self-management of a patient's health care while the patient is at an
22 originating site and the healthcare professional is at a distant site.

23 (b) When conducting prior authorization, whether for healthcare
24 services provided through telemedicine or provided in person, a physician who
25 possess a current and unrestricted license to practice medicine in the State
26 of Arkansas shall make all adverse determinations.

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28 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
29 General Assembly of the State of Arkansas that Arkansas is experiencing a
30 healthcare professional maldistribution resulting in medically underserved
31 areas throughout the state; that allowing healthcare professionals to
32 provided healthcare services through telemedicine will ease the burden on
33 medically underserved areas; and that this act is immediately necessary
34 because the citizens of Arkansas and the healthcare professionals of Arkansas
35 need immediate direction about the law regarding healthcare services provided
36 through telemedicine. Therefore, an emergency is declared to exist, and this

1 act being immediately necessary for the preservation of the public peace,
2 health, and safety shall become effective on:

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

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

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

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/s/Bledsoe

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