1	State of Arkansas	A Bill	
2	91st General Assembly	A DIII	
3	Regular Session, 2017		HOUSE BILL 1437
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5	By: Representative D. Ferg	juson	
6	By: Senator Bledsoe		
7 8		For An Act To Be Entitled	
9	ለክ ለርጥ ጥ	O AMEND THE LAWS CONCERNING TELEMEDICIN	ε. ΨΟ
9 10		THE TELEMEDICINE ACT; TO AMEND THE DEFINITION	
10		EDICINE AND ORIGINATING SITE; TO ADDRESS	
12		EDICINE AND ORIGINATING SITE, TO ADDRESS ENTS OF A PROFESSIONAL RELATIONSHIP WHEN	
12	·	LEMEDICINE; TO ADD STANDARDS FOR THE	•
14		ATE USE OF TELEMEDICINE; TO AMEND THE	
15		INTERNET PRESCRIPTION CONSUMER PROTECT	ION
16		CONFORM WITH THE TELEMEDICINE ACT; TO ADI	
17		E COVERAGE OF TELEMEDICINE; AND FOR OTH	
18	PURPOSES		
19			
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21		Subtitle	
22	ТО	AMEND THE LAWS CONCERNING	
23	TEI	LEMEDICINE; AND TO CREATE THE	
24	TEI	LEMEDICINE ACT.	
25			
26			
27	BE IT ENACTED BY THE	GENERAL ASSEMBLY OF THE STATE OF ARKANS	SAS:
28			
29	SECTION 1. Ar	kansas Code § 17-80-118 is repealed.	
30	17-80-118. Tel	.emedicine.	
31	(a) As used i	n this section:	
32	(1) "Di	stant site" means the location of the he	althcare
33	professional deliver	ing services through telemedicine at the	> time the
34	services are provide		
35		althcare professional" means a person wh	
36	certified, or otherw	vise authorized by the laws of this state	e to administer



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1	health care in the ordinary course of the practice of his or her profession;
2	(3) "Originating site" means:
3	(A) The offices of a healthcare professional or a licensed
4	healthcare entity where the patient is located at the time services are
5	provided by a healthcare professional through telemedicine; and
6	(B) The home of a patient in connection with treatment for
7	end-stage renal disease;
8	(4) "Professional relationship" means at minimum a relationship
9	established between a healthcare professional and a patient when:
10	(A) The healthcare professional has previously conducted
11	an in-person examination and is available to provide appropriate follow-up
12	care, when necessary, at medically necessary intervals;
13	(B) The healthcare professional personally knows the
14	patient and the patient's relevant health status through an ongoing personal
15	or professional relationship and is available to provide appropriate follow-
16	up care, when necessary, at medically necessary intervals;
17	(C) The treatment is provided by a healthcare professional
18	in consultation with, or upon referral by, another healthcare professional
19	who has an ongoing relationship with the patient and who has agreed to
20	supervise the patient's treatment, including follow-up care;
21	(D) An on-call or cross-coverage arrangement exists with
22	the patient's regular treating healthcare professional;
23	(E) A relationship exists in other circumstances as
24	defined by rule of the Arkansas State Medical Board for healthcare
25	professionals under its jurisdiction and their patients; or
26	(F) A relationship exists in other circumstances as
27	defined by rule of a licensing or certification board for other healthcare
28	professionals under the jurisdiction of the appropriate board and their
29	patients if the rules are no less restrictive than the rules of the Arkansas
30	State Medical Board;
31	(5) "Store and forward technology" means the transmission of a
32	patient's medical information from an originating site to the provider at the
33	distant site without the patient being present; and
34	(6) "Telemedicine" means the medium of delivering clinical
35	healthcare services by means of real-time two-way electronic audio-visual
36	communications, including without limitation the application of secure video

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 healtheare 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	(c) 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)(l) 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)(l) 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:

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1	(A) Emergency situations where the life or health of the
2	patient is in danger or imminent danger; or
3	(B) Simply providing information of a generic nature, not
4	meant to be specific to an individual patient.
5	(f) State licensing and certification boards for a healthcare
6	professional shall amend their rules where necessary to comply with this
7	section.
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9	SECTION 2. Arkansas Code Title 17, Chapter 80, is amended to add an
10	additional subchapter to read as follows:
11	<u>Subchapter 4 - Telemedicine Act</u>
12	
13	<u>17-80-401. Title.</u>
14	This subchapter shall be known and may be cited as the "Telemedicine
15	<u>Act".</u>
16	
17	<u>17-80-402. Definitions.</u>
18	As used in this subchapter:
19	(1) "Distant site" means the location of the healthcare
20	professional delivering services through telemedicine at the time the
21	services are provided;
22	(2) "Healthcare professional" means a person who is licensed,
23	certified, or otherwise authorized by the laws of this state to administer
24	health care in the ordinary course of the practice of his or her profession;
25	(3) "Originating site" means a site at which a patient is
26	located at the time healthcare services are provided to him or her by means
27	of telemedicine;
28	(4) "Professional relationship" means at minimum a relationship
29	established between a healthcare professional and a patient when:
30	(A) The healthcare professional has previously conducted
31	an in-person examination and is available to provide appropriate follow-up
32	care, when necessary, at medically necessary intervals;
33	(B) The healthcare professional personally knows the
34	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;

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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 relationship with the patient and who has agreed to
4	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	<u>State Medical Board;</u>
17	(5) "Remote patient monitoring" means the use of synchronous or
18	asynchronous electronic information and communication technology to collect
19	personal health information and medical data from a patient at an originating
20	site that is transmitted to a healthcare professional at a distant site for
21	use in the treatment and management of medical conditions that require
22	frequent monitoring;
23	(6) "Store-and-forward technology" means the asynchronous
24	transmission of a patient's medical information from a healthcare
25	professional at an originating site to a healthcare professional at a distant
26	site; and
27	(7)(A) "Telemedicine" means the use of electronic information
28	and communication technology to deliver healthcare services, including
29	without limitation the assessment, diagnosis, consultation, treatment,
30	education, care management, and self-management of a patient.
31	(B) "Telemedicine" includes store-and-forward technology
32	and remote patient monitoring.
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34	17-80-403. Establishment of professional relationship.
35	(a)(l) A healthcare professional at a distant site shall not utilize
36	telemedicine with respect to a patient located in Arkansas unless a

1	professional relationship exists between the healthcare professional and the
2	patient or the healthcare professional otherwise meets the requirements of a
3	professional relationship as defined in § 17-80-402.
4	(2) The existence of a professional relationship is not required
5	in the following circumstances:
6	(A) Emergency situations where the life or health of the
7	patient is in danger or imminent danger; or
8	(B) Simply providing information of a generic nature, not
9	meant to be specific to an individual patient.
10	(b) If the establishment of the professional relationship is permitted
11	via telemedicine under § 17-80-402(4)(E) or § 17-80-402(4)(F), telemedicine
12	may be used to establish the professional relationship only for situations in
13	which the standard of care does not require an in-person encounter.
14	(c) "Professional relationship" does not include a relationship
15	between a healthcare professional and a patient established only by the
16	following:
17	(1) An internet questionnaire;
18	(2) An email message;
19	(3) Patient-generated medical history;
20	(4) Audio-only communication, including without limitation
21	interactive audio;
22	(5) Text messaging;
23	(6) A facsimile machine; or
24	(7) Any combination thereof.
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26	<u>17-80-404. Appropriate use of telemedicine.</u>
27	(a)(1) A professional relationship shall be established in compliance
28	with § 17-80-403 to provide healthcare services through telemedicine.
29	(2) Once a professional relationship is established, a
30	healthcare professional may provide healthcare services through telemedicine,
31	including interactive audio, if the healthcare services are within the scope
32	of practice for which the healthcare professional is licensed or certified
33	and the healthcare services otherwise meet the requirements of this
34	subchapter.
35	(3) A licensing or certification board shall not permit the use
36	of telemedicine in a manner that is less restrictive than the use of

1	telemedicine authorized by the Arkansas State Medical Board.
2	(b)(1) If a healthcare professional seeks to provide healthcare
3	services to a minor through telemedicine in a school setting, the healthcare
4	professional shall:
5	(A) Be the regular pediatrician or other primary care
6	physician of the minor;
7	(B) Have a cross-coverage arrangement with the regular
8	pediatrician or other primary care physician of the minor; or
9	(C) Have authorization from the regular pediatrician or
10	other primary care physician of the minor.
11	(2) If the minor does not have a regular pediatrician or primary
12	care physician, subdivision (b)(l) of this section does not apply.
13	(3) The designation of a regular pediatrician or other primary
14	care physician for a minor remains the right of a parent or legal guardian in
15	accordance with § 20-9-601 et seq.
16	(c) Healthcare services provided by telemedicine, including without
17	limitation a prescription through telemedicine, shall be held to the same
18	standard of care as healthcare services provided in person.
19	(d)(l) A healthcare professional who is treating patients in Arkansas
20	through telemedicine shall be fully licensed or certified to practice in
21	Arkansas and is subject to the rules of the appropriate state licensing or
22	certification board.
23	(2) The requirement in subdivision (d)(1) of this section does
24	not apply to the acts of a healthcare professional located in another
25	jurisdiction who provides only episodic consultation services.
26	(e) 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	
33	<u>17-80-405. Liability — Noncompliance.</u>
34	(a) If a decision is made to provide healthcare services through
35	telemedicine, the healthcare professional accepts responsibility and
36	liability for the care of the patient.

1	(b) Noncompliance with this subchapter is a violation of the practice
2	act of the healthcare professional.
3	
4	<u>17-80-406. Rules.</u>
5	State licensing and certification boards for a healthcare professional
6	shall amend their rules where necessary to comply with this subchapter.
7	
8	17-80-407. Construction.
9	This subchapter does not:
10	(1) Alter existing state law or rules governing a healthcare
11	professional's scope of practice; or
12	(2) Authorize drug-induced, chemical, or surgical abortions
13	performed through telemedicine.
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15	SECTION 3. Arkansas Code § 17-92-1003(15), concerning the definition
16	of "proper practitioner-patient relationship" within the Arkansas Internet
17	Prescription Consumer Protection Act, is amended to read as follows:
18	(15) "Proper practitioner-patient relationship" means that
19	before the issuance of a prescription, a practitioner, physician, or other
20	prescribing health professional performs a history and in-person physical
21	examination of the patient adequate to establish a diagnosis and to identify
22	underlying conditions or contraindications to the treatment recommended or
23	provided unless:
24	(A) The prescribing practitioner is consulting at the
25	specific request of another practitioner who:
26	(i) Maintains an ongoing relationship with the
27	patient;
28	(ii) Has performed an in-person physical examination
29	of the patient; and
30	(iii) Has agreed to supervise the patient's ongoing
31	care and use of prescribed medications; or
32	(B) The prescribing practitioner interacts with the
33	patient through an on-call or cross-coverage situation <u>; or</u>
34	(C) The relationship is established through telemedicine
35	pursuant to the Telemedicine Act, § 17-80-401 et seq.
36	

1 SECTION 4. Effective January 1, 2018, Arkansas Code §§ 23-79-1601 and 2 23-79-1602 are amended to read as follows: 23-79-1601. Definitions. 3 4 As used in this subchapter: 5 (1) "Distant site" means the location of the healthcare 6 professional delivering healthcare services through telemedicine at the time 7 the services are provided; 8 (2)(A) "Health benefit plan" means: 9 (i) An individual, blanket, or group plan, policy, 10 or contract for healthcare services issued or delivered by an insurer, health 11 maintenance organization, hospital medical service corporation, or self-12 insured governmental or church plan in this state; and 13 (ii) Any health benefit program receiving state or 14 federal appropriations from the State of Arkansas, including the Arkansas 15 Medicaid Program, and the Health Care Independence Program, commonly referred 16 to as the "Private Option", and the Arkansas Works Program, or any successor 17 program. 18 (B) "Health benefit plan" includes: 19 (i) Indemnity and managed care plans; and 20 (ii) Nonfederal governmental plans as defined in 29 21 U.S.C. § 1002(32), as it existed on January 1, 2015. 22 (C) "Health benefit plan" does not include: 23 (i) Disability income plans; 24 (ii) Credit insurance plans; 25 (iii) Insurance coverage issued as a supplement to 26 liability insurance; 27 Medical payments under automobile or homeowners (iv) 28 insurance plans; 29 (v) Health benefit plans provided under Arkansas 30 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et 31 seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.; 32 (vi) Plans that provide only indemnity for hospital 33 confinement; 34 (vii) Accident only plans; 35 (viii) Specified disease plans; or 36 (ix) Long-term care only plans;

1 (3) "Healthcare professional" means a person who is licensed, 2 certified, or otherwise authorized by the laws of this state to administer 3 health care in the ordinary course of the practice of his or her profession; 4 (4) "Originating site" means: 5 (Λ) The offices of a healthcare professional or a licensed 6 healthcare entity where the patient is located at the time services are 7 provided by a healthcare professional through telemedicine; and 8 (B) The home of a patient in connection with treatment for 9 end-stage renal disease; and 10 (5) "Telemedicine" means the medium of delivering clinical 11 healthcare services by means of real-time two-way electronic audio-visual 12 communications, including without limitation the application of secure video 13 conferencing, to provide or support healthcare delivery that facilitates the 14 assessment, diagnosis, consultation, or treatment of a patient's health care 15 while the patient is at an originating site and the healthcare professional 16 is at a distant site. 17 (4) "Originating site" means a site at which a patient is 18 located at the time healthcare services are provided to him or her by means 19 of telemedicine; 20 (5) "Remote patient monitoring" means the use of synchronous or asynchronous electronic information and communication technology to collect 21 22 personal health information and medical data from a patient at an originating 23 site that is transmitted to a healthcare professional at a distant site for 24 use in the treatment and management of medical conditions that require 25 frequent monitoring; 26 (6) "Store-and-forward technology" means the asynchronous 27 transmission of a patient's medical information from a healthcare professional at an originating site to a healthcare professional at the 28 29 distant site; and 30 (7)(A) "Telemedicine" means the use of electronic information and communication technology to deliver healthcare services, including 31 32 without limitation the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient. 33 34 (B) "Telemedicine" includes store-and-forward technology 35 and remote patient monitoring. 36 (C) For the purposes of this subchapter, "telemedicine"

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1	does not include the use of:
2	(i) Audio-only communication, including without
3	limitation interactive audio;
4	(ii) A facsimile machine;
5	(iii) Text messaging; or
6	(iv) Electronic mail systems.
7	
8	23-79-1602. Coverage for telemedicine.
9	(a)(l) This subchapter shall apply <u>applies</u> to all health benefit plans
10	delivered, issued for delivery, reissued, or extended in Arkansas on or after
11	January 1, 2016, or at any time when any term of the health benefit plan is
12	changed or any premium adjustment is made thereafter.
13	(2) Notwithstanding subdivision (a)(1) of this section, this
14	subchapter shall apply <u>applies</u> to the Arkansas Medicaid Program on and after
15	January 1, 2016.
16	(b) A <u>healthcare professional providing a</u> healthcare service provided
17	through telemedicine shall comply with the requirements of the Telemedicine
18	<u>Act, § 17-80-117 17-80-401 et seq</u> .
19	(c)(l) A health benefit plan shall cover the services of a physician
20	who is licensed by the Arkansas State Medical Board for healtheare services
21	through telemedicine on the same basis as the health benefit plan provides
22	coverage for the same healthcare services provided by the physician in person
23	provide coverage and reimbursement for healthcare services provided through
24	telemedicine on the same basis as the health benefit plan provides coverage
25	and reimbursement for health services provided in person, unless this
26	subchapter specifically provides otherwise.
27	(2) Subject to subdivision (d)(1) of this section, a health
28	benefit plan shall reimburse a physician licensed by the board for healthcare
29	services provided through telemedicine on the same basis as the health
30	benefit plan reimburses a physician for the same healthcare services provided
31	in person. A health benefit plan is not required to reimburse for a
32	healthcare service provided through telemedicine that is not comparable to
33	the same service provided in person.
34	(3) A health benefit plan may voluntarily reimburse for
35	healthcare services provided through means described in § 23-79-1601(7)(C).
36	(d)(l) <u>A health benefit plan shall provide a reasonable facility fee</u>

1 to an originating site operated by a healthcare professional or a licensed 2 healthcare entity if the healthcare professional or licensed healthcare 3 entity is authorized to bill the health benefit plan directly for healthcare 4 services. 5 (2) The combined amount of reimbursement that a health benefit 6 plan allows for the compensation to the distant site physician and the 7 originating site shall not be less than the total amount allowed for 8 healthcare services provided in person. 9 (2)(3) Payment for healthcare services provided through 10 telemedicine shall be provided to the distant site physician and the 11 originating site upon submission of the appropriate procedure codes. 12 (3)(4) This section does not: 13 (A) Prohibit: 14 (i) A health benefit plan from reimbursing other 15 healthcare professionals; or 16 (ii) A a health benefit plan from paying a facility 17 fee to a provider at the distant site in addition to a fee paid to the 18 healthcare professional; or 19 (B) Require an insurer a health benefit plan to pay more 20 for a healthcare service provided through telemedicine than would have been 21 paid if the healthcare service was delivered in person. 22 (e) A health benefit plan shall not impose on coverage for healthcare 23 services provided through telemedicine: 24 (1) An annual or lifetime dollar maximum on coverage for 25 services provided through telemedicine other than an annual or lifetime 26 dollar maximum that applies to the aggregate of all items and services 27 covered; 28 (2) A deductible, copayment, coinsurance, benefit limitation, or maximum benefit that is not equally imposed upon all healthcare services 29 30 covered under the health benefit plan; or 31 (3) A prior authorization requirement for services provided 32 through telemedicine that exceeds the prior authorization requirement for inperson healthcare services under the health benefit plan. 33 34 This subchapter does not prohibit a health benefit plan from: (f) 35 (1) Limiting coverage of healthcare services provided through 36 telemedicine to medically necessary services, subject to the same terms and

1 conditions of the covered person's health benefit plan that apply to services 2 provided in person; or 3 (2)(A) Undertaking utilization review, including prior 4 authorization, to determine the appropriateness of healthcare services 5 provided through telemedicine, provided that: 6 (i) The determination of appropriateness is made in 7 the same manner as determinations are made for the treatment of any illness, 8 condition, or disorder covered by the health benefit plan whether the service 9 was provided in-person or through telemedicine; and 10 (ii) All adverse determinations for healthcare 11 services, medications, or equipment prescribed by a physician are made by a 12 physician who possesses a current and valid unrestricted license to practice medicine in Arkansas. 13 14 (B) Utilization review shall not require prior 15 authorization of emergent telemedicine services. 16 (g)(1) A health benefit plan may adopt policies to ensure that 17 healthcare services provided through telemedicine submitted for payment 18 comply with the same coding, documentation, and other requirements necessary 19 for payment as an in-person service other than the in-person requirement. 20 (2) If deemed necessary, the State Insurance Department may 21 promulgate rules containing additional standards and procedures for the 22 utilization of telemedicine to provide healthcare service services through 23 health benefit plans if the additional standards and procedures do not 24 conflict with this subchapter or § 17-80-117 and are applied uniformly by all 25 health benefit plans. 26 (h) A health benefit plan shall not prohibit a healthcare professional 27 from charging a patient enrolled in a health benefit plan for healthcare services provided by audio-only communication that are not reimbursed under 28 29 the health benefit plan. 30 31 SECTION 5. Arkansas Code § 23-86-123 is amended to read as follows: 32 23-86-123. Prior authorization by physician - Definitions. (a) As used in this section: 33 34 (1) "Prior authorization" means the process by which a health 35 carrier determines the medical necessity or eligibility for coverage of a 36 healthcare service before a covered person receives the healthcare service in

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1	order to provide coverage and reimbursement for the healthcare service; and
2	(2) "Telemedicine" means the medium of delivering clinical
3	healthcare services by means of real-time two-way electronic audiovisual
4	communications, including without limitation the application of secure video
5	conferencing, to provide or support healthcare delivery that facilitates the
6	assessment, diagnosis, consultation, treatment, education, care management,
7	or self-management of a patient's health care while the patient is at an
8	originating site and the healthcare professional is at a distant site \underline{the}
9	same as defined in § 23-79-1601.
10	(b) When conducting prior authorization, whether for healthcare
11	services provided through telemedicine or provided in person, a physician who
12	possesses a current and unrestricted license to practice medicine in the
13	State of Arkansas shall make all adverse determinations for healthcare
14	services, medications, or equipment prescribed by a physician.
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