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4

As Engrossed: S2/2/17

A Bill

SENATE BILL 146

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

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS CONCERNING TELEMEDICINE; TO
10 CREATE THE TELEMEDICINE ACT; TO AMEND THE DEFINITION
11 OF TELEMEDICINE AND ORIGINATING SITE; TO ADDRESS
12 REQUIREMENTS OF A PROFESSIONAL RELATIONSHIP WHEN
13 USING TELEMEDICINE; TO ADD STANDARDS FOR THE
14 APPROPRIATE USE OF TELEMEDICINE; TO AMEND THE
15 ARKANSAS INTERNET PRESCRIPTION CONSUMER PROTECTION
16 ACT TO CONFORM WITH THE TELEMEDICINE ACT; TO ADDRESS
17 INSURANCE COVERAGE OF TELEMEDICINE; AND FOR OTHER
18 PURPOSES.

Subtitle

21 TO AMEND THE LAWS CONCERNING
22 TELEMEDICINE; AND TO CREATE THE
23 TELEMEDICINE ACT.
24

25
26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

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 Arkansas Code § 17-80-118 is repealed.

30 ~~17-80-118. Telemedicine.~~

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

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

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



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 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 (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)(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 ~~(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.~~

8
9 SECTION 2. Arkansas Code Title 17, Chapter 80, is amended to add an
10 additional subchapter to read as follows:

11 Subchapter 4 – Telemedicine Act

12
13 17-80-401. Title.

14 This subchapter shall be known and may be cited as the "Telemedicine
15 Act".

16
17 17-80-402. Definitions.

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)(A) "Professional relationship" means at minimum a
29 relationship established between a healthcare professional and a patient
30 when:

31 (i) The healthcare professional has previously
32 conducted an in-person examination and is available to provide appropriate
33 follow-up care, when necessary, at medically necessary intervals;

34 (ii) The healthcare professional personally knows
35 the patient and the patient's relevant health status through an ongoing
36 personal or professional relationship and is available to provide appropriate

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 telemedicine with respect to a patient located in Arkansas unless a
2 professional relationship exists between the healthcare professional and the
3 patient or the healthcare professional otherwise meets the requirements of a
4 professional relationship as defined in § 17-80-402.

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

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

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

11 (b) If the establishment of the professional relationship is permitted
12 via telemedicine under § 17-80-402(4)(A)(v) or § 17-80-402(4)(A)(vi),
13 telemedicine may be used to establish the professional relationship only for
14 situations in which the standard of care does not require an in-person
15 encounter.

16 (c) "Professional relationship" does not include a relationship
17 between a healthcare professional and a patient established only by the
18 following:

19 (1) An internet questionnaire;

20 (2) An email message;

21 (3) Patient-generated medical history;

22 (4) Audio-only communication, including without limitation
23 interactive audio;

24 (5) Text messaging;

25 (6) A facsimile machine; or

26 (7) Any combination thereof;

27
28 17-80-404. Appropriate use of telemedicine.

29 (a)(1) A professional relationship shall be established in compliance
30 with § 17-80-403 to provide healthcare services through telemedicine.

31 (2) Once a professional relationship is established, a
32 healthcare professional may provide healthcare services through telemedicine,
33 including interactive audio, if the healthcare services are within the scope
34 of practice for which the healthcare professional is licensed or certified
35 and the healthcare services otherwise meet the requirements of this
36 subchapter.

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) If a healthcare professional seeks to provide healthcare
5 services to a minor through telemedicine in a school setting, the healthcare
6 professional shall:

7 (A) Be the regular pediatrician or other primary care
8 physician of the minor;

9 (B) Have a cross-coverage arrangement with the regular
10 pEDIatrician or other primary care physician of the minor; or

11 (C) Have authorization from the regular pediatrician or
12 other primary care physician of the minor.

13 (2) If the minor does not have a regular pediatrician or primary
14 care physician, subdivision (b)(1) of this section does not apply.

15 (c) Healthcare services provided by telemedicine, including without
16 limitation a prescription through telemedicine, shall be held to the same
17 standard of care as healthcare services provided in person.

18 (d)(1) A healthcare professional who is treating patients in Arkansas
19 through telemedicine shall be fully licensed or certified to practice in
20 Arkansas and is subject to the rules of the appropriate state licensing or
21 certification board.

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

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

27 (1) Informed consent;

28 (2) Privacy of individually identifiable health information;

29 (3) Medical recordkeeping and confidentiality; and

30 (4) Fraud and abuse.

31
32 17-80-405. Liability – Noncompliance.

33 (a) If a decision is made to provide healthcare services through
34 telemedicine, the healthcare professional accepts responsibility and
35 liability for the care of the patient.

36 (b) Noncompliance with this subchapter is a violation of the practice

1 act of the healthcare professional.

2
3 17-80-406. Rules.

4 State licensing and certification boards for a healthcare professional
5 shall amend their rules where necessary to comply with this subchapter.

6
7 17-80-407. Construction.

8 This subchapter does not:

9 (1) Alter existing state law or rules governing a healthcare
10 professional's scope of practice; or

11 (2) Authorize drug-induced, chemical, or surgical abortions
12 performed through telemedicine.

13
14 SECTION 3. Arkansas Code § 17-92-1003(15), concerning the definition
15 of "proper practitioner-patient relationship" within the Arkansas Internet
16 Prescription Consumer Protection Act, is amended to read as follows:

17 (15) "Proper practitioner-patient relationship" means that
18 before the issuance of a prescription, a practitioner, physician, or other
19 prescribing health professional performs a history and in-person physical
20 examination of the patient adequate to establish a diagnosis and to identify
21 underlying conditions or contraindications to the treatment recommended or
22 provided unless:

23 (A) The prescribing practitioner is consulting at the
24 specific request of another practitioner who:

25 (i) Maintains an ongoing relationship with the
26 patient;

27 (ii) Has performed an in-person physical examination
28 of the patient; and

29 (iii) Has agreed to supervise the patient's ongoing
30 care and use of prescribed medications; ~~or~~

31 (B) The prescribing practitioner interacts with the
32 patient through an on-call or cross-coverage situation; or

33 (C) The relationship is established through telemedicine
34 pursuant to the Telemedicine Act, § 17-80-401 et seq.

35
36 SECTION 4. Effective January 1, 2018, Arkansas Code §§ 23-79-1601 and

1 23-79-1602 are amended to read as follows:

2 23-79-1601. Definitions.

3 As used in this subchapter:

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

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

8 (i) An individual, blanket, or group plan, policy,
9 or contract for healthcare services issued or delivered by an insurer, health
10 maintenance organization, hospital medical service corporation, or self-
11 insured governmental or church plan in this state; and

12 (ii) Any health benefit program receiving state or
13 federal appropriations from the State of Arkansas, including the Arkansas
14 Medicaid Program, ~~and~~ the Health Care Independence Program, commonly referred
15 to as the "Private Option", and the Arkansas Works Program, or any successor
16 program.

17 (B) "Health benefit plan" includes:

18 (i) Indemnity and managed care plans; and

19 (ii) Nonfederal governmental plans as defined in 29
20 U.S.C. § 1002(32), as it existed on January 1, 2015.

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

22 (i) Disability income plans;

23 (ii) Credit insurance plans;

24 (iii) Insurance coverage issued as a supplement to
25 liability insurance;

26 (iv) Medical payments under automobile or homeowners
27 insurance plans;

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

31 (vi) Plans that provide only indemnity for hospital
32 confinement;

33 (vii) Accident only plans;

34 (viii) Specified disease plans; or

35 (ix) Long-term care only plans;

36 (3) "Healthcare professional" means a person who is licensed,

1 certified, or otherwise authorized by the laws of this state to administer
2 health care in the ordinary course of the practice of his or her profession;

3 ~~(4) "Originating site" means:~~

4 ~~(A) The offices of a healthcare professional or a licensed~~
5 ~~healthcare entity where the patient is located at the time services are~~
6 ~~provided by a healthcare professional through telemedicine; and~~

7 ~~(B) The home of a patient in connection with treatment for~~
8 ~~end-stage renal disease; and~~

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

16 (4) "Originating site" means a site at which a patient is
17 located at the time healthcare services are provided to him or her by means
18 of telemedicine;

19 (5) "Remote patient monitoring" means the use of synchronous or
20 asynchronous electronic information and communication technology to collect
21 personal health information and medical data from a patient at an originating
22 site that is transmitted to a healthcare professional at a distant site for
23 use in the treatment and management of medical conditions that require
24 frequent monitoring;

25 (6) "Store-and-forward technology" means the asynchronous
26 transmission of a patient's medical information from a healthcare
27 professional at an originating site to a healthcare professional at the
28 distant site; and

29 (7)(A) "Telemedicine" means the use of electronic information
30 and communication technology to deliver healthcare services, including
31 without limitation the assessment, diagnosis, consultation, treatment,
32 education, care management, and self-management of a patient.

33 (B) "Telemedicine" includes store-and-forward technology
34 and remote patient monitoring.

35 (C) For the purposes of this subchapter, "telemedicine"
36 does not include the use of:

- 1 (i) Audio-only communication, including without
2 limitation interactive audio;
3 (ii) A facsimile machine;
4 (iii) Text messaging; or
5 (iv) Electronic mail systems.
6

7 23-79-1602. Coverage for telemedicine.

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

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

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

18 (c)(1) A health benefit plan shall ~~cover the services of a physician~~
19 ~~who is licensed by the Arkansas State Medical Board for healthcare services~~
20 ~~through telemedicine on the same basis as the health benefit plan provides~~
21 ~~coverage for the same healthcare services provided by the physician in person~~
22 provide coverage and reimbursement for healthcare services provided through
23 telemedicine on the same basis as the health benefit plan provides coverage
24 and reimbursement for health services provided in person, unless this
25 subchapter specifically provides otherwise.

26 (2) ~~Subject to subdivision (d)(1) of this section, a health~~
27 ~~benefit plan shall reimburse a physician licensed by the board for healthcare~~
28 ~~services provided through telemedicine on the same basis as the health~~
29 ~~benefit plan reimburses a physician for the same healthcare services provided~~
30 ~~in person. A health benefit plan is not required to reimburse for a~~
31 healthcare service provided through telemedicine that is not comparable to
32 the same service provided in person.

33 (3) A health benefit plan may voluntarily reimburse for
34 healthcare services provided through means described in § 23-79-1601(7)(C).

35 (d)(1) A health benefit plan shall provide a reasonable facility fee
36 to an originating site operated by a healthcare professional or a licensed

1 healthcare entity if the healthcare professional or licensed healthcare
2 entity is authorized to bill the health benefit plan directly for healthcare
3 services.

4 (2) The combined amount of reimbursement that a health benefit
5 plan allows for the compensation to the distant site ~~physician~~ and the
6 originating site shall not be less than the total amount allowed for
7 healthcare services provided in person.

8 ~~(2)~~(3) Payment for healthcare services provided through
9 telemedicine shall be provided to the distant site ~~physician~~ and the
10 originating site upon submission of the appropriate procedure codes.

11 ~~(3)~~(4) This section does not:

12 (A) Prohibit+

13 ~~(i) A health benefit plan from reimbursing other~~
14 ~~healthcare professionals; or~~

15 ~~(ii) A a health benefit plan from paying a facility~~
16 ~~fee to a provider at the distant site in addition to a fee paid to the~~
17 ~~healthcare professional; or~~

18 (B) Require ~~an insurer~~ a health benefit plan to pay more
19 for a healthcare service provided through telemedicine than would have been
20 paid if the healthcare service was delivered in person.

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

23 (1) An annual or lifetime dollar maximum on coverage for
24 services provided through telemedicine other than an annual or lifetime
25 dollar maximum that applies to the aggregate of all items and services
26 covered;

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

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

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

34 (1) Limiting coverage of healthcare services provided through
35 telemedicine to medically necessary services, subject to the same terms and
36 conditions of the covered person's health benefit plan that apply to services

1 provided in person; or

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

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

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

13 (B) Utilization review shall not require prior
14 authorization of emergent telemedicine services.

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

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

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

29

30 SECTION 5. Arkansas Code § 23-86-123 is amended to read as follows:
31 23-86-123. Prior authorization by physician - Definitions.

32 (a) As used in this section:

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

