1	State of Arkansas As Engrossed: \$2/2/1/\$2/6/1/	
2	91st General Assembly A Bill	
3	Regular Session, 2017 SENATE BILL 1	46
4		
5	By: Senator Bledsoe	
6	By: Representative D. Ferguson	
7		
8	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.	
19		
20		
21	Subtitle	
22	TO AMEND THE LAWS CONCERNING	
23	TELEMEDICINE; AND TO CREATE THE	
24	TELEMEDICINE ACT.	
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 Arkansas Code § 17-80-118 is repealed.	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 $\Delta r kansas$
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	<u>Subchapter 4 - Telemedicine Act</u>
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	<pre>frequent monitoring;</pre>
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)(l) 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	<pre>following:</pre>
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	<u>subchapter.</u>

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)(l) 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)(l) of this section does not apply.
15	(3) The designation of a regular pediatrician or other primary
16	care physician for a minor remains the right of a parent or legal guardian in
17	accordance with § 20-9-601 et seq.
18	(c) Healthcare services provided by telemedicine, including without
19	limitation a prescription through telemedicine, shall be held to the same
20	standard of care as healthcare services provided in person.
21	(d)(l) A healthcare professional who is treating patients in Arkansas
22	through telemedicine shall be fully licensed or certified to practice in
23	Arkansas and is subject to the rules of the appropriate state licensing or
24	certification board.
25	(2) The requirement in subdivision (d)(1) of this section does
26	not apply to the acts of a healthcare professional located in another
27	jurisdiction who provides only episodic consultation services.
28	(e) A healthcare professional shall follow applicable state and
29	federal law, rules, and regulations for:
30	(1) Informed consent;
31	(2) Privacy of individually identifiable health information;
32	(3) Medical recordkeeping and confidentiality; and
33	(4) Fraud and abuse.
34	
35	17-80-405. Liability - Noncompliance.
36	(a) If a decision is made to provide healthcare services through

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

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1
     pursuant to the Telemedicine Act, § 17-80-401 et seq.
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 3
           SECTION 4. Effective January 1, 2018, Arkansas Code §§ 23-79-1601 and
 4
     23-79-1602 are amended to read as follows:
           23-79-1601. Definitions.
 5
 6
           As used in this subchapter:
 7
                 (1) "Distant site" means the location of the healthcare
8
     professional delivering healthcare services through telemedicine at the time
9
     the services are provided;
                         "Health benefit plan" means:
10
                 (2)(A)
11
                             (i) An individual, blanket, or group plan, policy,
12
     or contract for healthcare services issued or delivered by an insurer, health
13
     maintenance organization, hospital medical service corporation, or self-
     insured governmental or church plan in this state; and
14
15
                             (ii) Any health benefit program receiving state or
16
     federal appropriations from the State of Arkansas, including the Arkansas
17
     Medicaid Program, and the Health Care Independence Program, commonly referred
18
     to as the "Private Option", and the Arkansas Works Program, or any successor
19
     program.
20
                       (B) "Health benefit plan" includes:
21
                             (i) Indemnity and managed care plans; and
22
                             (ii) Nonfederal governmental plans as defined in 29
23
     U.S.C. § 1002(32), as it existed on January 1, 2015.
24
                       (C) "Health benefit plan" does not include:
25
                             (i) Disability income plans;
26
                             (ii) Credit insurance plans;
27
                             (iii) Insurance coverage issued as a supplement to
28
     liability insurance;
29
                             (iv) Medical payments under automobile or homeowners
30
     insurance plans;
31
                             (v) Health benefit plans provided under Arkansas
     Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
32
     seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;
33
34
                             (vi) Plans that provide only indemnity for hospital
35
     confinement;
36
                             (vii) Accident only plans;
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1	(VIII) Specified disease plans; or
2	(ix) Long-term care only plans;
3	(3) "Healthcare professional" means a person who is licensed,
4	certified, or otherwise authorized by the laws of this state to administer
5	health care in the ordinary course of the practice of his or her profession;
6	(4) "Originating site" means:
7	(A) The offices of a healthcare professional or a licensed
8	healthcare entity where the patient is located at the time services are
9	provided by a healthcare professional through telemedicine; and
10	(B) The home of a patient in connection with treatment for
11	end-stage renal disease; and
12	(5) "Telemedicine" means the medium of delivering clinical
13	healthcare services by means of real-time two-way electronic audio-visual
14	communications, including without limitation the application of secure video
15	conferencing, to provide or support healthcare delivery that facilitates the
16	assessment, diagnosis, consultation, or treatment of a patient's health care
17	while the patient is at an originating site and the healthcare professional
18	is at a distant site.
19	(4) "Originating site" means a site at which a patient is
20	located at the time healthcare services are provided to him or her by means
21	of telemedicine;
22	(5) "Remote patient monitoring" means the use of synchronous or
23	asynchronous electronic information and communication technology to collect
24	personal health information and medical data from a patient at an originating
25	site that is transmitted to a healthcare professional at a distant site for
26	use in the treatment and management of medical conditions that require
27	<pre>frequent monitoring;</pre>
28	(6) "Store-and-forward technology" means the asynchronous
29	transmission of a patient's medical information from a healthcare
30	professional at an originating site to a healthcare professional at the
31	distant site; and
32	(7)(A) "Telemedicine" means the use of electronic information
33	and communication technology to deliver healthcare services, including
34	without limitation the assessment, diagnosis, consultation, treatment,
35	education, care management, and self-management of a patient.
36	(B) "Telemedicine" includes store-and-forward technology

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

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

- 1 (1) Limiting coverage of healthcare services provided through 2 telemedicine to medically necessary services, subject to the same terms and 3 conditions of the covered person's health benefit plan that apply to services 4 provided in person; or
- 5 (2)(A) Undertaking utilization review, including prior 6 authorization, to determine the appropriateness of healthcare services 7 provided through telemedicine, provided that:
- 8 (i) The determination of appropriateness is made in 9 the same manner as determinations are made for the treatment of any illness, 10 condition, or disorder covered by the health benefit plan whether the service 11 was provided in-person or through telemedicine; and
- (ii) All adverse determinations <u>for healthcare</u>

  services, <u>medications</u>, <u>or equipment prescribed by a physician</u> are made by a

  physician who possesses a current and valid unrestricted license to practice

  medicine in Arkansas.
- (B) Utilization review shall not require priorauthorization of emergent telemedicine services.
  - (g)(1) A health benefit plan may adopt policies to ensure that healthcare services provided through telemedicine submitted for payment comply with the same coding, documentation, and other requirements necessary for payment as an in-person service other than the in-person requirement.
  - promulgate rules containing additional standards and procedures for the utilization of telemedicine to provide healthcare service services through health benefit plans if the additional standards and procedures do not conflict with this subchapter or § 17-80-117 and are applied uniformly by all health benefit plans.
  - (h) A health benefit plan shall not prohibit a healthcare professional from charging a patient enrolled in a health benefit plan for healthcare services provided by audio-only communication that are not reimbursed under the health benefit plan.
- SECTION 5. Arkansas Code § 23-86-123 is amended to read as follows: 23-86-123. Prior authorization by physician <u>Definitions</u>.
- 35 (a) As used in this section:

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(1) "Prior authorization" means the process by which a health

carrier determines the medical necessity or eligibility for coverage of a healthcare service before a covered person receives the healthcare service in order to provide coverage and reimbursement for the healthcare service; and (2) "Telemedicine" means the medium of delivering clinical healthcare services by means of real-time two-way electronic audiovisual communications, including without limitation the application of secure video conferencing, to provide or support healthcare delivery that facilitates the assessment, diagnosis, consultation, treatment, education, care management,

or self-management of a patient's health care while the patient is at an

originating site and the healthcare professional is at a distant site the 

same as defined in § 23-79-1601.

(b) When conducting prior authorization, whether for healthcare services provided through telemedicine or provided in person, a physician who possesses a current and unrestricted license to practice medicine in the State of Arkansas shall make all adverse determinations for healthcare services, medications, or equipment prescribed by a physician.

/s/Bledsoe