

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/3/15 S3/12/15
A Bill

SENATE BILL 133

By: Senator Bledsoe
By: Representative D. Ferguson

For An Act To Be Entitled

AN ACT TO ENCOURAGE THE USE OF TELEMEDICINE; TO
REDUCE HEALTHCARE DISPARITIES; TO IMPROVE ACCESS TO
CARE; TO ADDRESS GEOGRAPHIC MALDISTRIBUTION OF
PRIMARY CARE AND SPECIALTY CARE; TO AUTHORIZE
REIMBURSEMENT AND REGULATION OF SERVICES PROVIDED
THROUGH TELEMEDICINE; TO DECLARE AN EMERGENCY; AND
FOR OTHER PURPOSES.

Subtitle

TO ENCOURAGE THE USE OF TELEMEDICINE; AND
TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

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

SECTION 2. DO NOT CODIFY. Legislative findings.

The General Assembly finds and declares that:

(1) The advancements and continued development of medical and communications technology have had a profound impact on the practice of medicine and offer opportunities for improving the delivery and accessibility of health care, particularly in the area of telemedicine;

(2) Geography, weather, availability of specialists, transportation, and other factors can create barriers to accessing appropriate health care, and a way to provide, ensure, or enhance access to



health care, given these barriers, is through the appropriate use of technology to allow healthcare consumers access to qualified healthcare professionals; and

(3) There is a need in this state to embrace efforts that will encourage:

(A) Health insurers and healthcare professionals to support the use of telemedicine; and

(B) All state agencies to evaluate and amend their policies and rules to remove regulatory barriers prohibiting the use of telemedicine.

SECTION 3. Arkansas Code Title 17, Chapter 80, Subchapter 1, is amended to add an additional section to read as follows:

17-80-117. Telemedicine.

(a) As used in this section:

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

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

(3) "Originating site" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter 16 – Coverage for Services Provided Through Telemedicine

23-79-1601. Definitions.

As used in this subchapter:

- (1) "Distant site" means the location of the healthcare

professional delivering healthcare services through telemedicine at the time the services are provided;

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

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

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

(B) "Health benefit plan" includes:

(i) Indemnity and managed care plans; and

(ii) Non-federal governmental plans as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2015.

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

(i) Disability income plans;

(ii) Credit insurance plans;

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

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

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

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

(vii) Accident only plans;

(viii) Specified disease plans; or

(ix) Long-term care only plans;

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

(4) "Originating site" means:

(A) The offices of a healthcare professional or a licensed healthcare entity where the patient is located at the time services are

provided by a healthcare professional through telemedicine; and

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

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

23-79-1602. Coverage for telemedicine.

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

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

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

(c)(1) A health benefit plan shall cover the services of a physician who is licensed by the Arkansas State Medical Board for healthcare services through telemedicine on the same basis as the health benefit plan provides coverage for the same healthcare services provided by the physician in person.

(2) Subject to subdivision (d)(1) of this section, a health benefit plan shall reimburse a physician licensed by the board for healthcare services provided through telemedicine on the same basis as the health benefit plan reimburses a physician for the same healthcare services provided in person.

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

(2) Payment for healthcare services provided through

telemedicine shall be provided to the distant site physician and the originating site upon submission of the appropriate procedure codes.

(3) This section does not:

(A) Prohibit:

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

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

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

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

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

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

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

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

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

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

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

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

(B) Utilization review shall not require prior authorization 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 an in-person service other than the in-person requirement.

(2) If deemed necessary, the State Insurance Department may promulgate rules containing additional standards and procedures for the utilization of telemedicine to provide healthcare service 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.

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

23-86-123. Prior authorization by physician.

(a) As used in this section:

(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.

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

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that Arkansas is experiencing a healthcare professional maldistribution resulting in medically underserved areas throughout the state; that allowing healthcare professionals to provided healthcare services through telemedicine will ease the burden on medically underserved areas; and that this act is immediately necessary because the citizens of Arkansas and the healthcare professionals of Arkansas need immediate direction about the law regarding healthcare services provided through telemedicine. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

/s/Bledsoe