

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

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: H2/10/17  
**A Bill**

HOUSE BILL 1437

By: Representative D. Ferguson

By: Senator Bledsoe

### **For An Act To Be Entitled**

AN ACT TO AMEND THE LAWS CONCERNING TELEMEDICINE; TO CREATE THE TELEMEDICINE ACT; TO AMEND THE DEFINITION OF TELEMEDICINE AND ORIGINATING SITE; TO ADDRESS REQUIREMENTS OF A PROFESSIONAL RELATIONSHIP WHEN USING TELEMEDICINE; TO ADD STANDARDS FOR THE APPROPRIATE USE OF TELEMEDICINE; TO AMEND THE ARKANSAS INTERNET PRESCRIPTION CONSUMER PROTECTION ACT TO CONFORM WITH THE TELEMEDICINE ACT; TO ADDRESS INSURANCE COVERAGE OF TELEMEDICINE; AND FOR OTHER PURPOSES.

### **Subtitle**

TO AMEND THE LAWS CONCERNING  
TELEMEDICINE; AND TO CREATE THE  
TELEMEDICINE ACT.

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

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 Arkansas Code § 17-80-118 is repealed.

~~17-80-118. 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 § 17-80-118(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 2. Arkansas Code Title 17, Chapter 80, is amended to add an additional subchapter to read as follows:

Subchapter 4 – Telemedicine Act

17-80-401. Title.

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

17-80-402. Definitions.

As used in this subchapter:

(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 site at which a patient is located at the time healthcare services are provided to him or her by means of telemedicine;

(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 or another healthcare professional who has established a professional relationship with the patient;

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

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

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

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

17-80-403. Establishment of professional relationship.

(a)(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 a professional relationship as defined in § 17-80-402.

(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.

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

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

(1) An internet questionnaire;

(2) An email message;

(3) Patient-generated medical history;

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

(5) Text messaging;

(6) A facsimile machine; or

(7) Any combination thereof.

17-80-404. Appropriate use of telemedicine.

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

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

(3) A licensing or certification board shall not permit the use of telemedicine in a manner that is less restrictive than the use of

telemedicine authorized by the Arkansas State Medical Board.

(b)(1) Regardless of whether the healthcare professional is compensated for the healthcare services, if a healthcare professional seeks to provide healthcare services to a minor through telemedicine in a school setting and the minor is enrolled in the Arkansas Medicaid Program, the healthcare professional shall:

(A) Be the designated primary care provider of the minor;

(B) Have a cross-coverage arrangement with the designated primary care provider of the minor; or

(C) Have authorization from the designated primary care provider of the minor.

(2) If the minor does not have a designated primary care provider, subdivision (b)(1) of this section does not apply.

(3) If a minor is enrolled in a health benefit plan as defined in § 23-79-1601 that is not part of the Arkansas Medicaid Program, the terms and conditions of the health benefit plan shall control.

(4) The designation of a primary care provider for a minor remains the right of a parent or legal guardian in accordance with § 20-9-601 et seq.

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

(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) 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.

17-80-405. Liability – Noncompliance.

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

(b) Noncompliance with this subchapter is a violation of the practice act of the healthcare professional.

17-80-406. Rules.

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

17-80-407. Construction.

This subchapter does not:

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

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

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

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

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

(i) Maintains an ongoing relationship with the patient;

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

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

(B) The prescribing practitioner interacts with the

patient through an on-call or cross-coverage situation; or

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

SECTION 4. Effective January 1, 2018, Arkansas Code §§ 23-79-1601 and 23-79-1602 are amended to read as follows:

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", and the Arkansas Works Program, or any successor program.

(B) "Health benefit plan" includes:

(i) Indemnity and managed care plans; and

(ii) Nonfederal 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.~~

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

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

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

(7)(A) "Telemedicine" means the use of electronic information and communication technology to deliver healthcare services, including without limitation the assessment, diagnosis, consultation, treatment,

education, care management, and self-management of a patient.

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

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

(i) Audio-only communication, including without limitation interactive audio;

(ii) A facsimile machine;

(iii) Text messaging; or

(iv) Electronic mail systems.

23-79-1602. Coverage for telemedicine.

(a)(1) This subchapter ~~shall apply~~ applies 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~~ applies to the Arkansas Medicaid Program on and after January 1, 2016.

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

(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~~ provide coverage and reimbursement for healthcare services provided through telemedicine on the same basis as the health benefit plan provides coverage and reimbursement for health services provided in person, unless this subchapter specifically provides otherwise.

(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.~~ A health benefit plan is not required to reimburse for a healthcare service provided through telemedicine that is not comparable to

the same service provided in person.

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

(d)(1) A health benefit plan shall provide a reasonable facility fee to an originating site operated by a healthcare professional or a licensed healthcare entity if the healthcare professional or licensed healthcare entity is authorized to bill the health benefit plan directly for healthcare services.

(2) 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)~~(3) 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)~~(4) This section does not:

(A) Prohibit+

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

~~(ii) A 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~~ a health benefit plan 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 for healthcare services, medications, or equipment prescribed by a physician 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 as 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~~ 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 - Definitions.

(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~~ 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/D. Ferguson*