

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

State of Arkansas As Engrossed: H1/25/21 H2/8/21 H2/10/21 S3/9/21 S3/17/21 S4/6/21 S4/12/21

93rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1063

By: Representatives Dotson, Pilkington

By: Senator Hester

For An Act To Be Entitled

AN ACT TO AMEND THE TELEMEDICINE ACT; TO AUTHORIZE
ADDITIONAL REIMBURSEMENT FOR TELEMEDICINE VIA
TELEPHONE; TO DECLARE AN EMERGENCY; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE TELEMEDICINE ACT; TO
AUTHORIZE ADDITIONAL REIMBURSEMENT FOR
TELEMEDICINE VIA TELEPHONE; AND TO
DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 17-80-402(4), concerning the definition of a "professional relationship" as used under the Telemedicine Act, is amended to read as follows:

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

(A) The healthcare professional has previously conducted an in-person examination of the patient 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 professional 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; or

(G)(i) The healthcare professional who is licensed in Arkansas has access to a patient's personal health record maintained by a healthcare professional and uses any technology deemed appropriate by the healthcare professional, including the telephone, with a patient located in Arkansas to diagnose, treat, and if clinically appropriate, prescribe a noncontrolled drug to the patient.

(ii) For purposes of this subchapter, a health record may be created with the use of telemedicine and consists of relevant clinical information required to treat a patient, and is reviewed by the healthcare professional who meets the same standard of care for a telemedicine visit as an in-person visit;

SECTION 2. Arkansas Code § 17-80-403(c), concerning the establishment of a professional relationship, is amended to read as follows:

(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)~~(5) A facsimile machine; or
- ~~(7)~~(6) Any combination thereof of means listed in subdivisions (c)(1)-(5) of this section.

SECTION 3. Arkansas Code § 23-79-1601(2)(C), concerning the definition of "health benefit plan", is amended to read as follows:

- (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; or
 - (x) Stand-alone dental or vision benefit plans;

SECTION 4. Arkansas Code § 23-79-1601(7), concerning the definition of "telemedicine", is amended to read as follows:

(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)(a) Audio-only communication, ~~including without limitation interactive audio~~ unless the audio-only communication is real-time, interactive, and substantially meets the requirements for a healthcare service that would otherwise be covered by the health benefit plan.

(b) As with other medical services covered by a health benefit plan, documentation of the engagement between patient and provider via audio-only communication shall be placed in the medical record addressing the problem, content of conversation, medical decision-making, and plan of care after the contact.

(c) The documentation described in subdivision (7)(C)(i)(b) of this section is subject to the same audit and review process required by payers and governmental agencies when requesting documentation of other care delivery such as in-office or face-to-face visits;

(ii) A facsimile machine;

(iii) Text messaging; or

(iv) ~~Electronic mail systems~~ Email.

SECTION 5. Arkansas Code § 23-79-1602(e), concerning prohibitions on the coverage for telemedicine services, is amended to read as follows:

(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;

(4) A requirement for a covered person to choose any commercial

telemedicine service provider or a restricted network of telemedicine-only providers rather than the covered person's regular doctor or provider of choice; or

(5) A copayment, coinsurance, or deductible that is not equally imposed upon commercial telemedicine providers as those imposed on network providers.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that due to the coronavirus 2019 (COVID-19) pandemic, the Governor removed barriers to the use of telemedicine in an attempt to combat the coronavirus 2019 (COVID-19) pandemic; that these emergency actions will expire when the emergency proclamation expires, which could occur quickly; that on February 26, 2021, the Governor announced that the public health emergency was extended but that the Governor was going to lift some regulations related to the pandemic; that removing barriers to the use of telemedicine ensured that the citizens of Arkansas had the services that they needed, and removing these emergency proclamations regarding telemedicine would greatly disadvantage and harm the citizens of Arkansas who are utilizing telemedicine for healthcare services; that this bill maintains the policy changes allowed under the emergency proclamation, which would allow the citizens of Arkansas greater access to the use of telemedicine for healthcare services; and that this act is immediately necessary to ensure that the citizens of Arkansas have access to healthcare services provided via 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/Pilkington

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