

Regular Session, 2014

HOUSE BILL NO. 1280 (Substitute for House Bill No. 903 by Representative Simon)

BY REPRESENTATIVES SIMON, CONNICK, DOVE, GISCLAIR, ORTEGO, POPE,
STOKES, AND PATRICK WILLIAMS

HEALTH SERVICES: Provides for the Louisiana Telehealth Access Act

1 AN ACT

2 To amend and reenact R.S. 37:1262(B)(2) and to enact R.S. 37:1271(B)(3) through (5) and
3 Part LXXV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, to be
4 comprised of R.S. 40:1300.381 through 1300.384, relative to telehealth services; to
5 provide for definitions; to provide for the delivery of healthcare services through
6 telemedicine; to authorize state agencies and licensing boards and commissions to
7 promulgate rules governing healthcare services provided by telehealth; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 37:1271(B)(2) is hereby amended and reenacted and R.S.
11 37:1271(B)(3) through (5) are hereby enacted to read as follows:

12 §1271. License to practice medicine or telemedicine required

13 * * *

14 B.

15 * * *

16 (2) ~~Any person authorized by the board to practice~~ Except as provided in
17 R.S. 37:1276.1, all of the following shall apply to any physician practicing
18 telemedicine as defined in this Part; ~~shall ensure that a licensed health care~~
19 ~~professional who can adequately and accurately assist with any of the requirements~~
20 ~~listed in R.S. 37:1276.1(B)(2) is in the examination room with the patient at the time~~

1 ~~such patient is receiving telemedicine services. The board shall promulgate rules in~~
2 ~~accordance with the Administrative Procedure Act to establish what type of health~~
3 ~~care professional is necessary and appropriate under the circumstances.~~

4 (a) The physician practicing telemedicine shall use the same standard of care
5 as if the healthcare services were provided in person.

6 (b) The physician practicing telemedicine shall not be required to conduct
7 an in-person patient history or physical examination of the patient before engaging
8 in a telemedicine encounter if the physician satisfies all of the following conditions:

9 (i) Holds an unrestricted license to practice medicine in Louisiana.

10 (ii) Has access to the patient's medical records upon consent of the patient.

11 (iii) Maintains a physical practice location within the state of Louisiana or
12 executes an affirmation with the board that the physician has an arrangement with
13 another physician who maintains a physical practice location in Louisiana to provide
14 for referrals and follow-up care which may be necessary.

15 (3) Except as authorized by rule promulgated by the board, no physician
16 practicing telemedicine pursuant to this Subsection shall prescribe any controlled
17 dangerous substance prior to conducting an appropriate in-person patient history or
18 physical examination of the patient as determined by the board.

19 (4) A patient receiving telemedicine services may be in any location at the
20 time that the telemedicine services are rendered. A physician practicing
21 telemedicine may be in any location when providing telemedicine services to a
22 patient.

23 (5) A physician practicing telemedicine shall document the telemedicine
24 services rendered in the patient's medical records according to the same standard as
25 that required for nontelemedicine services. Medical records including but not
26 limited to video, audio, electronic, or other records generated as a result of providing
27 telemedicine services shall be considered as confidential and shall be subject to all
28 applicable state and federal laws and regulations relative to the privacy of health
29 information.

1 Section 2. Part LXXV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of
2 1950, comprised of R.S. 40:1300.381 through 1300.384, is hereby enacted to read as
3 follows:

4 PART LXXV. LOUISIANA TELEHEALTH ACCESS ACT

5 §1300.381. Short title

6 This Part shall be known and may be cited as the "Louisiana Telehealth
7 Access Act".

8 §1300.382. Legislative findings

9 The legislature hereby finds and declares the following:

10 (1) As an innovative form of health care, telehealth is extremely valuable
11 because it enhances access to care, particularly in rural locations and other medically
12 underserved areas; makes delivery of care more cost-effective; and distributes
13 limited provider resources more efficiently.

14 (2) Many patients with limited access to traditional health care can be
15 diagnosed and treated sooner through telehealth than they would be otherwise,
16 resulting in improved outcomes and less costly treatments due to early detection and
17 prevention.

18 (3) Telehealth services could potentially address a great unmet need for
19 health care by persons who have limited access to both traditional healthcare settings
20 and to telemedicine as currently defined in Louisiana law.

21 (4) If this state is to achieve much needed improvement in health outcomes,
22 a prudent and responsible policy for doing so would be to balance patient safety and
23 access to care through expanding access to telehealth services for the people of
24 Louisiana.

25 §1300.383. Definitions

26 (1) "Asynchronous store and forward transfer" means the transmission of a
27 patient's medical information from an originating site to the provider at the distant
28 site without the patient being present.

1 (2) "Distant site" means the site at which the healthcare provider delivering
2 the service is located at the time the service is provided via a telecommunications
3 system.

4 (3) "Healthcare provider" means a person, partnership, limited liability
5 partnership, limited liability company, corporation, facility, or institution licensed
6 or certified by this state to provide health care or professional services as a physician
7 assistant, hospital, nursing home, dentist, registered nurse, advanced practice
8 registered nurse, licensed practical nurse, certified nurse assistant, offshore health
9 service provider, ambulance service, licensed midwife, pharmacist, speech-language
10 pathologist, audiologist, optometrist, podiatrist, chiropractor, physical therapist,
11 occupational therapist, certified or licensed athletic trainer, psychologist, medical
12 psychologist, social worker, licensed professional counselor, licensed perfusionist,
13 licensed respiratory therapist, licensed radiologic technologist, or licensed clinical
14 laboratory scientist.

15 (4) "Originating site" means the location of the patient at the time the service
16 is furnished via a telecommunications system or when the asynchronous store and
17 forward transfer occurs.

18 (5) "Synchronous interaction" means communication through interactive
19 technology that enables a healthcare provider and a patient at two locations separated
20 by distance to interact via two-way video and audio transmissions simultaneously.

21 (6) "Telehealth" means a mode of delivering healthcare services that utilizes
22 information and communication technologies to enable the diagnosis, consultation,
23 treatment, education, care management, and self-management of patients at a
24 distance from healthcare providers. Telehealth allows services to be accessed when
25 providers are in a distant site and patients are in the originating site. Telehealth
26 facilitates patient self-management and caregiver support for patients and includes
27 synchronous interactions and asynchronous store and forward transfers.

1 §1300.384. Telehealth; rulemaking required

2 A. Each state agency or professional or occupational licensing board or
3 commission that regulates the practice of a healthcare provider, as defined in this
4 Part, may promulgate, in accordance with the Administrative Procedure Act, any
5 rules necessary to provide for, promote, and regulate the use of telehealth in the
6 delivery of healthcare services within the scope of practice regulated by the licensing
7 entity.

8 B. The rules shall, at a minimum, provide for all of the following:

9 (1) Application of all laws regarding the confidentiality of healthcare
10 information and the patient's rights to the patient's medical information created
11 during telehealth interactions.

12 (2) Application of the same standard of care by a healthcare provider as if
13 the healthcare services were provided in person.

14 (3)(a) Licensing or registration of out-of-state healthcare providers who seek
15 to furnish healthcare services via telehealth to persons at originating sites in
16 Louisiana. The rules shall ensure that any such healthcare provider possesses, at a
17 minimum, an unrestricted and unencumbered license in good standing to perform the
18 healthcare service in the state in which the healthcare provider is located, and that
19 the license is comparable to its corresponding license in Louisiana as determined by
20 the respective Louisiana licensing agency, board, or commission.

21 (b) Each state agency and professional or occupational licensing board or
22 commission is authorized to provide by rule for a reasonable fee for the license or
23 registration provided for in this Subsection.

24 (4) Exemption from the telehealth license or registration required by this
25 Subsection for the consultation of a healthcare professional licensed by this state
26 with an out-of-state peer professional.

27 C. Nothing in this Part shall be construed to authorize a state agency or
28 professional or occupational licensing board or commission to expand, diminish, or
29 alter the scope of practice of any healthcare provider.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Simon

HB No. 1280

Abstract: Provides for greater access to telehealth services by authorizing licensing boards and commissions to promulgate rules to provide for, promote, and regulate the use of telehealth in the delivery of healthcare services within the scope of practice regulated by the licensing entity.

Present law requires any person authorized by the La. State Board of Medical Examiners (LSBME) to practice telemedicine to ensure that a licensed healthcare professional who can adequately and accurately assist is in the examination room with the patient at the time such patient is receiving telemedicine services.

Proposed law repeals present law and requires any physician practicing telemedicine as defined in present law, except for those physicians practicing pursuant to a telemedicine license, to use the same standard of care as if the healthcare services were provided in person.

Proposed law further provides that a telemedicine provider, except for those physicians practicing pursuant to a telemedicine license, shall not be required to conduct an in-person patient history or physical examination of the patient before engaging in a telemedicine encounter if all of the following conditions are met:

- (1) The physician practicing telemedicine holds an unrestricted license to practice medicine in La.
- (2) The physician practicing telemedicine has access to the patient's medical records upon consent of the patient.
- (3) The physician practicing telemedicine maintains a physical practice location within the state of La. or executes an affirmation with the LSBME that the physician has an arrangement with another physician who maintains a physical practice location in Louisiana to provide for referrals and follow up care which may be necessary.

Proposed law prohibits, unless authorized by the LSBME, a physician practicing telemedicine pursuant to proposed law from prescribing any controlled dangerous substance prior to conducting an appropriate in-person patient history or physical examination of the patient as determined by the LSBME.

Proposed law provides that a patient receiving telemedicine services may be in any location at the time that the telemedicine services are rendered and a telemedicine provider may be in any location when providing telemedicine services to a patient.

Proposed law requires a telemedicine provider to document the telemedicine services rendered in the patient's medical records according to the same standard as that required for nontelemedicine services. Medical records, including video, audio, electronic, or other records generated as a result of providing telemedicine services shall be considered as confidential and shall be subject to all applicable state and federal laws and regulations relative to the privacy of health information.

Proposed law defines "telehealth" as a mode of delivering healthcare services that utilizes information and communication technologies to enable the diagnosis, consultation,

treatment, education, care management, and self-management of patients at a distance from healthcare providers and which allows services to be accessed when providers are in a distant site and patients are in the originating site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

Proposed law authorizes each state agency or professional or occupational licensing board or commission that regulates the practice of a healthcare provider to promulgate any rules necessary to provide for, promote, and regulate the use of telehealth in the delivery of healthcare services within the scope of practice regulated by the licensing entity.

Proposed law requires that the rules shall, at a minimum, provide for all of the following:

- (1) Application of all laws regarding the confidentiality of healthcare information and the patient's rights to the patient's medical information to telehealth interactions.
- (2) Application of the same standard of care by a healthcare provider as if the healthcare services were provided in person.
- (3)(a) Licensing or registration of out-of-state healthcare providers who seek to furnish healthcare services via telehealth to persons at originating sites in La. The rules shall ensure that any such healthcare provider possesses, at a minimum, an unrestricted and unencumbered license in good standing to perform the healthcare service in the state in which the healthcare provider is located, and that the license is comparable to its corresponding license in La. as determined by the respective La. licensing agency, board, or commission.
- (b) Each state agency and professional or occupational licensing board or commission is authorized to provide by rule for a reasonable fee for the license or registration.
- (4) Exemption from the telehealth license or registration requirement for the consultation of a healthcare professional licensed by this state with an out-of-state peer professional.

Nothing in proposed law shall be construed to authorize a state agency or licensing board or commission to expand, diminish, or alter the scope of practice of any healthcare provider.

(Amends R.S. 37:1271(B)(2); Adds R.S. 37:1271(B)(3)-(5) and R.S. 40:1300.381-1300.384)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Made technical changes.
2. Removed physician from the definition of healthcare provider and added speech-language pathologist, audiologist, certified or licensed athletic trainer, and medical psychologist.
3. Changed the rulemaking provisions from mandatory to permissive.
4. Deleted all provisions regarding insurance coverage for telemedicine or telehealth services.