

Regular Session, 2014

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

BY REPRESENTATIVE SIMON

HEALTH SERVICES: Provides for the Louisiana Telehealth Access Act

1 AN ACT

2 To amend and reenact R.S. 22:1821(F) and R.S. 37:1262(B)(2) and to enact R.S.
3 37:1271(B)(3) through (5) and Part LXXV of Chapter 5 of Title 40 of the Louisiana
4 Revised Statutes of 1950, to be comprised of R.S. 40:1300.381 through 1300.385,
5 relative to telehealth services; to provide for definitions; to provide for the delivery
6 of healthcare services through telemedicine; to require state agencies and licensing
7 boards and commissions to promulgate rules governing healthcare services provided
8 by telehealth; to provide for insurance coverage for telehealth services; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 22:1821(F) is hereby amended and reenacted to read as follows:

12 §1821. Payment of claims; health and accident policies; prospective review;
13 penalties; self-insurers; telemedicine reimbursement by insurers

14 * * *

15 F.(1) ~~Notwithstanding any provision of any policy or contract of insurance~~
16 ~~or health benefits issued, whenever such policy provides for payment, benefit, or~~
17 ~~reimbursement for any health care service, including but not limited to diagnostic~~
18 ~~testing, treatment, referral, or consultation, and such health care service is performed~~
19 ~~via transmitted electronic imaging or telemedicine, such a payment, benefit, or~~
20 ~~reimbursement under such policy or contract shall not be denied to a licensed~~

1 ~~physician conducting or participating in the transmission at the originating health~~
2 ~~care facility or terminus who is physically present with the individual who is the~~
3 ~~subject of such electronic imaging transmission and is contemporaneously~~
4 ~~communicating and interacting with a licensed physician at the receiving terminus~~
5 ~~of the transmission. The payment, benefit, or reimbursement to such a licensed~~
6 ~~physician at the originating facility or terminus shall not be less than seventy-five~~
7 ~~percent of the reasonable and customary amount of payment, benefit, or~~
8 ~~reimbursement which that licensed physician receives for an intermediate office~~
9 ~~visit.~~

10 Any health insurance issuer that covers healthcare services provided via
11 telemedicine, as defined in R.S. 37:1262(4), or healthcare services provided via
12 telehealth, as defined in R.S. 40:1300.383, shall provide such coverage in accordance
13 with the provisions of the insurance plan or contract. For any issuer that covers
14 telemedicine, the plan or contract shall include coverage of both healthcare providers
15 in cases when the telemedicine encounter requires a healthcare provider to be present
16 at both the originating site and the distant site.

17 (2)(a) ~~Any health care service proposed to be performed or performed via~~
18 ~~transmitted electronic imaging or telemedicine under this Subsection shall be subject~~
19 ~~to the applicable utilization review criteria and requirements of the insurer.~~
20 Terminology in a health and accident insurance policy or contract that either
21 discriminates against or prohibits ~~such a method of transmitted electronic imaging~~
22 ~~or the use of telemedicine or the delivery of healthcare services via telehealth~~ shall
23 be void as against public policy of providing the highest quality health care to the
24 citizens of the state.

25 (b) The provisions of this Paragraph shall not apply to language in a health
26 or accident insurance policy or contract that excludes the use of telemedicine or the
27 delivery of healthcare services via telehealth from coverage under the policy or
28 contract.

1 (3) The provisions of this Subsection shall not apply to limited benefit health
2 insurance policies or contracts authorized to be issued in the state.

3 Section 2. R.S. 37:1271(B)(2) is hereby amended and reenacted and R.S.
4 37:1271(B)(3) through (5) are hereby enacted to read as follows:

5 §1271. License to practice medicine or telemedicine required

6 * * *

7 B.

8 * * *

9 (2) ~~Any person authorized by the board to practice~~ Except as provided in
10 R.S. 37:1276.1, all of the following shall apply to any physician practicing
11 telemedicine as defined in this Part; shall ensure that a licensed health care
12 professional who can adequately and accurately assist with any of the requirements
13 listed in R.S. 37:1276.1(B)(2) is in the examination room with the patient at the time
14 such patient is receiving telemedicine services. The board shall promulgate rules in
15 accordance with the Administrative Procedure Act to establish what type of health
16 care professional is necessary and appropriate under the circumstances

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

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

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

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

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

28 (3) Except as authorized by rule promulgated by the board, no physician
29 practicing telemedicine pursuant to this Subsection shall prescribe any controlled

1 dangerous substance prior to conducting an appropriate in person patient history or
2 physical examination of the patient as determined by the board.

3 (4) A patient receiving telemedicine services may be in any location at the
4 time that the telemedicine services are rendered. A physician practicing
5 telemedicine may be in any location when providing telemedicine services to a
6 patient.

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

14 Section 3. Part LXXV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of
15 1950, comprised of R.S. 40:1300.381 through 1300.385, is hereby enacted to read as
16 follows:

17 PART LXXV. LOUISIANA TELEHEALTH ACCESS ACT

18 §1300.381. Short title

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

21 §1300.382. Legislative findings

22 The legislature hereby finds and declares the following:

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

27 (2) Many patients with limited access to traditional health care can be
28 diagnosed and treated sooner through telehealth than they would be otherwise.

1 resulting in improved outcomes and less costly treatments due to early detection and
2 prevention.

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

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

10 §1300.383. Definitions

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

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

17 (3) "Healthcare provider" means a person, partnership, limited liability
18 partnership, limited liability company, corporation, facility, or institution licensed
19 or certified by this state to provide health care or professional services as a physician,
20 physician assistant, hospital, nursing home, dentist, registered nurse, advanced
21 practice registered nurse, licensed practical nurse, certified nurse assistant, offshore
22 health service provider, ambulance service, licensed midwife, pharmacist,
23 optometrist, podiatrist, chiropractor, physical therapist, occupational therapist,
24 psychologist, social worker, licensed professional counselor, licensed perfusionist,
25 licensed respiratory therapist, licensed radiologic technologist, or licensed clinical
26 laboratory scientist.

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

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

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

11 §1300.384. Telehealth; rulemaking required

12 A. Each state agency or professional or occupational licensing board or
13 commission that regulates the practice of a healthcare provider, as defined in this
14 Part, shall promulgate, in accordance with the Administrative Procedure Act, any
15 rules necessary to provide for, promote, and regulate the use of telehealth in the
16 delivery of healthcare services within the scope of practice regulated by the licensing
17 entity.

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

19 (1) Application of all laws regarding the confidentiality of healthcare
20 information and the patient's rights to the patient's medical information to telehealth
21 interactions.

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

24 (3)(a) Licensing or registration of out-of-state healthcare providers who seek
25 to furnish healthcare services via telehealth to persons at originating sites in
26 Louisiana. The rules shall ensure that any such healthcare provider possesses, at a
27 minimum, an unrestricted and unencumbered license in good standing to perform the
28 healthcare service in the state in which the healthcare provider is located, and that

1 the license is comparable to its corresponding license in Louisiana as determined by
2 the respective Louisiana licensing agency, board, or commission.

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

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

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

12 §1300.385. Coverage for telehealth; health insurance; medical assistance program

13 A. Any health insurance issuer that covers healthcare services provided via
14 telemedicine, as defined in R.S. 37:1262(4), or healthcare services provided via
15 telehealth, as defined in R.S. 40:1300.383, shall provide such coverage in accordance
16 with the provisions of the insurance plan or contract. For any issuer that covers
17 telemedicine, the plan or contract shall include coverage of both healthcare providers
18 in cases when the telemedicine encounter requires a healthcare provider to be present
19 at both the originating site and the distant site.

20 B. Any medical assistance program administered by the Department of
21 Health and Hospitals that covers healthcare services provided via telemedicine, as
22 defined in R.S. 37:1262(4), or healthcare services provided via telehealth, as defined
23 in R.S. 40:1300.383, shall provide such coverage in accordance with the provisions
24 of that program.

25 C. The provisions of this Subsection shall not apply to limited benefit health
26 insurance policies or contracts authorized to be issued in the state.

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 requiring 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 requires 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 further 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.

Present law requires that, if any contract or policy that provides for payment, benefit, or reimbursement for any health care service, including but not limited to diagnostic testing, treatment, referral, or consultation and the health care service is performed via transmitted electronic imaging or telemedicine, the payment, benefit, or reimbursement under the policy or contract shall not be denied to a licensed physician conducting or participating in the transmission at the originating health care facility or terminus who is physically present with the individual who is the subject of such electronic imaging transmission and is contemporaneously communicating and interacting with a licensed physician at the receiving terminus of the transmission. Present law requires the payment, benefit, or reimbursement to be at least 75% percent of the reasonable and customary amount of payment, benefit, or reimbursement which that licensed physician receives for an intermediate office visit.

Proposed law repeals present law and requires any health insurance issuer that covers healthcare services provided via telemedicine or healthcare services provided via telehealth to provide such coverage in accordance with the provisions of the insurance plan or contract. Proposed law further requires coverage of both healthcare providers in cases when the telemedicine encounter requires a healthcare provider to be present at both the originating site and the distant site.

Present law provides that any health care service proposed to be performed or performed via transmitted electronic imaging or telemedicine shall be subject to the applicable utilization review criteria and requirements of the insurer.

Proposed law repeals present law.

Present law deems terminology in a health and accident insurance policy or contract that either discriminates against or prohibits such a method of transmitted electronic imaging or telemedicine as void and against public policy of providing the highest quality health care to the citizens of the state.

Proposed law deems terminology in a health and accident insurance policy or contract that either discriminates against or prohibits the use of telemedicine or the delivery of healthcare services via telehealth as void and against public policy of providing the highest quality health care to the citizens of the state.

Proposed law does not apply to language in a health or accident insurance policy or contract that excludes the use of telemedicine or the delivery of healthcare services via telehealth from coverage under the policy or contract.

Present law and proposed law do not apply to limited benefit health insurance policies or contracts authorized to be issued in the state.

Proposed law requires any medical assistance program administered by the Dept. of Health and Hospitals that covers healthcare services provided via telemedicine or healthcare services provided via telehealth to provide such coverage in accordance with the provisions of that program.

(Amends R.S. 22:1821(F) and R.S. 37:1271(B)(2); Adds R.S. 37:1271(B)(3)-(5) and R.S. 40:1300.381-1300.385)