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Arkansas is at it Again! Telemedicine Regulation in Arkansas Undergoes Additional Change

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Arkansas currently has one of the most restrictive telemedicine environments in the country, and was one of the last states to require an in-person examination to form a provider-patient relationship. Prior to September 2016, Arkansas telemedicine laws required an initial in-person encounter to establish a valid physician-patient relationship. In September 2016, the state expanded the formation of a provider-patient relationship to include a face-to-face examination using both real time audio and visual telemedicine technology that provides information at least equivalent to the information that would have been obtained through an in-person examination.

Then, early last month, Arkansas Senate's Public Health, Welfare and Labor Committee approved Senate Bill 146, which was signed by the Governor and became Arkansas Act 203 on February 20th, which further amended the state's telemedicine laws to, among other things, enable patients to access telemedicine services from their home or other remote locations. The Act modified the "originating site" location requirement, redefining "originating site" to permit services to be provided wherever the patient is located at the time of the consult. While this change has the potential to expand the use of telemedicine in Arkansas, the Act added more to its restriction on the formation of a professional relationship through telemedicine, as it states that a professional relationship cannot be formed through an internet questionnaire, email message, patient-generated medical history, audio-only communication, text messaging, fax machine or any combination of these technologies. This provision reaffirms that a patient relationship can only be formed in Arkansas with an Arkansas-licensed provider utilizing both real time audio and visual technology.

Notably, the Act also has implications for school-based telemedicine programs, which are increasing in popularity across the country. Arkansas requires school-based telemedicine programs that treat Medicaid recipients to utilize either the minor's regular pediatrician or other primary care physician; a physician with a cross-coverage arrangement with the regular pediatrician or primary care physician; or have authorization from the regular pediatrician or other primary care physician of the minor. (In most cases, school-based telemedicine programs require a parent's consent for telemedicine

services, and a child's pediatrician or other primary care provider is notified after the child treated via telemedicine.) This specific provision is particularly protective of the role of treating physicians, but does not include the requirement that a parent or guardian have the power to consent to the formation of a physician-patient relationship with a minor, which is ordinarily expected.

In sum, while the law will not make Arkansas a leader in expanded access to telemedicine, it will help bring Arkansas into line with the rest of the US.

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