

Regular Session, 2014

HOUSE BILL NO. 903

BY REPRESENTATIVE SIMON

HEALTH SERVICES: Provides for the Louisiana Telehealth Access Act

1 AN ACT

2 To amend and reenact R.S. 37:1262(4), 1271(B)(2), and 1276.1(2)(a) and to enact R.S.
3 36:259(Y), R.S. 37:1271(B)(3) through (5), and Part LXXV of Chapter 5 of Title 40
4 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1300.381
5 through 1300.3829, relative telehealth services; to define telehealth services; to
6 provide for telemedicine; to require insurance coverage for telehealth services; to
7 require the medical assistance program to cover telehealth services; to create the
8 Louisiana Commission on Telehealth Access within the Department of Health and
9 Hospitals; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 36:259(Y) is hereby enacted to read as follows:

12 §259. Transfer of agencies and functions to Department of Health and Hospitals

13 * * *

14 Y. The Louisiana Commission on Telehealth Access (R.S. 40:1300.389) is
15 placed within the Department of Health and Hospitals and shall exercise and perform
16 its powers, duties, functions, and responsibilities as provided by law.

17 * * *

18 Section 2. R.S. 37:1262(4), 1271(B)(2), and 1276.1(2)(a) are hereby amended and
19 reenacted and R.S. 37:1271(B)(3) through (5) are hereby enacted to read as follows:

1 §1262. Definition

2 As used in this Part the following words and phrases shall have the meanings
3 ascribed to them:

4 * * *

5 (4) "Telemedicine" means the practice of ~~health care delivery, diagnosis,~~
6 ~~consultation, treatment,~~ medicine and transfer of medical data using interactive
7 telecommunication technology that enables a ~~health care practitioner~~ physician and
8 a patient at two locations separated by distance to interact via two-way video and
9 audio transmissions simultaneously or through the use of asynchronous store-and-
10 forward technology. Neither a telephone conversation nor an electronic mail
11 message between a ~~health care practitioner~~ physician and patient, or a ~~true~~
12 ~~consultation~~ an informal consultation or second opinion as may be defined by rules
13 promulgated by the board pursuant to the Administrative Procedure Act, constitutes
14 telemedicine for the purposes of this Part.

15 * * *

16 §1271. License to practice medicine or telemedicine required

17 * * *

18 B.

19 * * *

20 (2) Any person authorized by the board to practice telemedicine as defined
21 in this Part shall ~~ensure that a licensed health care professional who can adequately~~
22 ~~and accurately assist with any of the requirements listed in R.S. 37:1276.1(B)(2) is~~
23 ~~in the examination room with the patient at the time such patient is receiving~~
24 ~~telemedicine services. The board shall promulgate rules in accordance with the~~
25 ~~Administrative Procedure Act to establish what type of health care professional is~~
26 ~~necessary and appropriate under the circumstances~~ use the same standard of care as
27 if the healthcare services were provided in person. The telemedicine provider is not
28 required to conduct a patient history or physical examination of the patient before
29 engaging in a telemedicine encounter if the telemedicine provider conducts a patient

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 evaluation sufficient to meet the community standard of care for the service
2 provided. The patient evaluation may be performed using telemedicine.

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

6 (4) A telemedicine provider shall document the telemedicine services
7 rendered in the patient's medical records according to the same standard as that
8 required for nontelemedicine services. Medical records including but not limited to
9 video, audio, electronic, or other records generated as a result of providing
10 telemedicine services are considered as confidential.

11 (5) Nothing in this Section shall be construed to prevent a physician from
12 practicing telehealth pursuant to R.S. 40:1300.381 et seq.

13 * * *

14 §1276.1. Telemedicine license

15 * * *

16 B. The board shall establish by rule in accordance with the Administrative
17 Procedure Act the requirements for licensure under this Section provided the rules
18 include the following:

19 * * *

20 (2) The physician, when examining a patient by telemedicine, shall establish
21 a bona fide physician-patient relationship by:

22 (a)(i) Conducting an appropriate examination of the patient as determined
23 by the board.

24 (ii) An examination conducted pursuant to this Paragraph shall not require
25 that the physician or other healthcare professional be present with the patient but
26 may include but not be limited to review of any relevant history, examination by
27 electronic means using a secure video line, laboratory or diagnostic studies, review
28 of diagnoses, or other information deemed pertinent by the physician.

29 * * *

1 Section 3. Part LXXV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of
2 1950, comprised of R.S. 40:1300.381 through 1300.3829, 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 find 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 telemedicine 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 health care
20 settings and to telemedicine as currently defined in Louisiana law.

21 (4) If our 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 by Louisianians to telehealth services.

24 §1300.383. Definitions

25 (1) "Asynchronous store and forward transfer" means the transmission of a
26 patient's medical information from an originating site to the provider at the distant
27 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 hospital, nursing home, community blood center, tissue bank, dentist, registered or
8 licensed practical nurse or certified nurse assistant, offshore health service provider,
9 ambulance service, certified registered nurse anesthetist, nurse midwife, licensed
10 midwife, nurse practitioner, clinical nurse specialist, pharmacist, optometrist,
11 podiatrist, chiropractor, physical therapist, occupational therapist, psychologist,
12 social worker, licensed professional counselor, licensed perfusionist, licensed
13 respiratory therapist, licensed radiologic technologist, licensed clinical laboratory
14 scientist, or any nonprofit facility considered tax-exempt under Section 501(c)(3),
15 Internal Revenue Code, pursuant to 26 U.S.C. 501(c)(3), for the diagnosis and
16 treatment of cancer or cancer-related diseases, whether or not such a facility is
17 required to be licensed by this state, or any professional corporation a healthcare
18 provider is authorized to form under the provisions of Title 12 of the Louisiana
19 Revised Statutes of 1950, or any partnership, limited liability partnership, limited
20 liability company, management company, or corporation whose business is
21 conducted principally by healthcare providers, or an officer, employee, partner,
22 member, shareholder, or agent thereof acting in the course and scope of his
23 employment.

24 (4) "Originating site" means the location of the patient at the time the service
25 is furnished via a telecommunications where the asynchronous store and forward
26 transfer occurs.

27 (5) "Telehealth" means a mode of delivering healthcare services, including
28 but not limited to telemedicine, and public health that utilizes information and
29 communication technologies to enable the diagnosis, consultation, treatment,

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

6 (6) "Telemedicine" means the practice of medicine as defined in R.S.
7 37:1262.

8 §1300.384. Scope of practice not affected

9 Nothing in this Part shall be construed to expand, diminish, or alter the scope
10 of practice of any healthcare provider.

11 §1300.385. Confidentiality

12 All laws regarding the confidentiality of healthcare information and the
13 patient's rights to the patient's medical information shall apply to telehealth
14 interactions.

15 §1300.386. Coverage required for telehealth

16 A. No healthcare service plan shall require that in-person contact occur
17 between a healthcare provider and a patient before payment is made for the covered
18 services provided, and every healthcare service plan shall adopt payment policies
19 consistent with this Section to compensate healthcare providers who provide covered
20 healthcare services through telehealth.

21 B. Payment for telehealth interactions shall include reasonable compensation
22 to the originating site for the transmission cost incurred during the delivery of
23 healthcare services.

24 C. Healthcare service plans shall pay for covered healthcare services when
25 provided by information and communication technologies including but not limited
26 to telephone or Internet technologies and for asynchronous store and forward
27 services.

28 D. Payment for covered services provided by telehealth shall be the lower
29 of the usual and customary rate charged for that service or the contract amount the

1 healthcare service plan pays for the same service when provided in an in-person
2 encounter with the patient.

3 E. The healthcare service plan shall not limit the type of setting where
4 services are provided for the patient or the provider and shall pay providers at both
5 the distant site and the originating site.

6 F. The requirements of this Section shall also be operative for healthcare
7 service plan contracts with the medical assistance program administered by the
8 Department of Health and Hospitals pursuant to the authority provided in R.S.
9 36:254.

10 §1300.387. Coverage required for telehealth; medical assistance program

11 A. In-person contact between a healthcare provider and a patient shall not
12 be required under the medical assistance program, administered by the Department
13 of Health and Hospitals pursuant to the authority provided in R.S. 36:254, for any
14 service otherwise covered by the program when the service is provided by telehealth,
15 including but not limited to services provided via telephone or Internet technologies
16 and services provided by asynchronous store and forward transfer.

17 B. The Department of Health and Hospitals shall not require any provider
18 to document a barrier to an in-person visit for coverage of services provided via
19 telehealth.

20 C. Payment for covered services provided by telehealth shall be the lower
21 of the usual and customary rate charged for that service or the fee schedule amount
22 the program pays for the same service when provided in an in-person encounter with
23 the patient.

24 D. The department shall not limit the type of setting where services are
25 provided for the patient or the provider when paying the providers at both the distant
26 site and the originating site.

27 E. Payment for telehealth interactions shall include reasonable compensation
28 to the originating site for the transmission cost incurred during the delivery of
29 healthcare services.

1 F. The department may promulgate, in accordance with the Administrative
2 Procedure Act, any rules or regulations necessary for the administration of this
3 Section.

4 §1300.388. Telemedicine

5 The practice of telemedicine by a physician shall be subject to the
6 requirements of R.S. 37:1261 et seq.

7 §1300.389. Louisiana Commission on Telehealth Access

8 A. There is hereby established within the Department of Health and
9 Hospitals the Louisiana Commission on Telehealth Access, composed of thirteen
10 members as follows:

11 (1) The secretary of the Department of Health and Hospitals or his designee.

12 (2) The executive director of the Louisiana State Board of Medical
13 Examiners or his designee.

14 (3) A representative of the Louisiana State University Health Sciences
15 Center at New Orleans.

16 (4) A representative of the Louisiana State University Health Sciences
17 Center at Shreveport.

18 (5) A representative of the Tulane University School of Medicine.

19 (6) A representative of the Louisiana State Medical Society.

20 (7) A representative of the Louisiana Primary Care Association.

21 (8) A representative of the Louisiana Health Care Quality Forum.

22 (9) A representative of the HomeCare Association of Louisiana.

23 (10) A representative of the Louisiana Hospital Association.

24 (11) A representative of the Louisiana Association of Health Plans.

25 (12) A representative of the Louisiana Cable and Telecommunications
26 Association.

27 (13) A representative of the TexLa Telehealth Resource Center.

1 B. The secretary of the Department of Health and Hospitals shall take such
2 actions as are necessary to ensure that the initial convening of the commission occurs
3 no later than October 1, 2014.

4 C. A chairman of the commission shall be elected annually by the
5 commission members and shall serve as chairman without salary.

6 D. Commission members shall serve without compensation, except per diem
7 or expense reimbursement to which they may be individually entitled by their
8 respective employer organizations.

9 E. The commission shall hold at least two regular meetings each year at a
10 place designated by the chairman.

11 F. The functions of the commission shall be to:

12 (1) Serve as an advisory body to the legislature and the Department of Health
13 and Hospitals on policies and practices that expand access to telehealth services in
14 a manner that ensures quality of care and patient safety.

15 (2) Serve as a coordinating forum on telehealth related matters between and
16 among state agencies, local government, and other nongovernmental groups.

17 (3) On a regular basis, research and review state regulations, guidelines,
18 policies, and procedures that pertain in any way to telehealth and make
19 recommendations to the governor, the legislature, and the secretary of the
20 Department of Health and Hospitals as deemed necessary and appropriate by the
21 chairman.

22 G. On or before January 1, 2015, and semiannually thereafter, the
23 commission shall prepare and submit to the governor and the legislature a report on
24 the status of telehealth access in Louisiana.

25 H. The commission may request administrative and technical support from
26 the Department of Health and Hospitals, office of the secretary, and the office of
27 public health to carry out the functions and responsibilities provided in this Section.

28 I. The commission shall terminate on September 1, 2018.

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. 903

Abstract: Provides for greater access to telehealth services by providing for standards of care, confidentiality, and insurance coverage; expands the definition of telemedicine; creates the La. Commission on Telehealth Access.

Present law defines "telemedicine" as the practice of healthcare delivery, diagnosis, consultation, treatment, and transfer of medical data using interactive telecommunication technology that enables a healthcare practitioner a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation nor an electronic mail message between a healthcare practitioner physician and patient, or a true consultation as may be defined by rules promulgated by the Louisiana State Board Medical Examiners (LSBME).

Proposed law defines "telemedicine" as the practice of medicine and transfer of medical data using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously or through the use of asynchronous store-and-forward technology. Neither a telephone conversation nor an electronic mail message between a physician and patient, or an informal consultation or second opinion as may be defined by rules promulgated by the LSBME.

Present law requires any person authorized by 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 person authorized by LSMBE to use the same standard of care as if the healthcare services were provided in person. Proposed law further provides that the telemedicine provider is not required to conduct a patient history or physical examination of the patient before engaging in a telemedicine encounter if the telemedicine provider conducts a patient evaluation sufficient to meet the community standard of care for the service provided. The patient evaluation may be performed using telemedicine.

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 are considered as confidential.

Present law requires LSBME to establish by rule the requirements for licensure and requires the rules to require the physician, when examining a patient by telemedicine, to establish a bona fide physician-patient relationship by conducting an appropriate examination of the patient as determined by the board.

Proposed law retains present law and further provides that the examination shall not require that the physician or other healthcare professional be present with the patient but may

include but not be limited to review of any relevant history, examination by electronic means using a secure video line, laboratory or diagnostic studies, review of diagnoses, or other information deemed pertinent by the physician.

Proposed law defines "telehealth" as a mode of delivering healthcare services, including but not limited to telemedicine, and public health 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. Telehealth 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.

Nothing in proposed law shall be construed to expand, diminish, or alter the scope of practice of any healthcare provider.

Proposed law requires all laws regarding the confidentiality of healthcare information and the patient's right to the patient's medical information to apply to telehealth interactions.

Proposed law prohibits a healthcare service plan from requiring that in-person contact occur between a healthcare provider and a patient before payment is made for the covered services provided, and requires every healthcare service plan to adopt payment policies to compensate healthcare providers who provide covered healthcare services through telehealth.

Proposed law requires payment for telehealth interactions to include reasonable compensation to the originating site for the transmission cost incurred during the delivery of healthcare services.

Proposed law requires healthcare service plans to pay for covered healthcare services when provided by information and communication technologies including but not limited to telephone or Internet technologies and for asynchronous store and forward services.

Proposed law requires payment for covered services provided by telehealth to be the lower of the usual and customary rate charged for that service or the contract amount the healthcare service plan pays for the same service when provided in an in-person encounter with the patient.

Proposed law prohibits a healthcare service plan from limiting the type of setting where services are provided for the patient or the provider and requires the healthcare service plan to pay providers at both the distant site and the originating site.

Proposed law shall also be operative for healthcare service plan contracts with the medical assistance program administered by the Dept. of Health and Hospitals (DHH).

Proposed law establishes the La. Commission on Telehealth Access, composed of 13 members as follows:

- (1) The secretary of the Dept. of Health and Hospitals or his designee.
- (2) The executive director of the La. State Board of Medical Examiners or his designee.
- (3) A representative of the LSU Health Sciences Center at New Orleans.
- (4) A representative of the LSU Health Sciences Center at Shreveport.
- (5) A representative of the Tulane University School of Medicine.
- (6) A representative of the La. State Medical Society.

- (7) A representative of the La. Primary Care Association.
- (8) A representative of the La. Health Care Quality Forum.
- (9) A representative of the HomeCare Association of La.
- (10) A representative of the La. Hospital Association.
- (11) A representative of the La. Association of Health Plans.
- (12) A representative of the La. Cable and Telecommunications Association.
- (13) A representative of the TexLa Telehealth Resource Center.

Proposed law provides for the officers, compensation, and meetings of the commission.

Proposed law provides that the functions of the commission are the following:

- (1) Serve as an advisory body to the legislature and DHH on policies and practices that expand access to telehealth services in a manner that ensures quality of care and patient safety.
- (2) Serve as a coordinating forum on telehealth related matters between and among state agencies, local government, and other nongovernmental groups.
- (3) On a regular basis, research and review state regulations, guidelines, policies, and procedures that pertain in any way to telehealth and make recommendations to the governor, the legislature, and the secretary of DHH as deemed necessary and appropriate by the chairman.

Proposed law requires the commission to prepare and submit to the governor and the legislature, on a semiannual basis, a report on the status of telehealth access in La.

Proposed law provides that the commission shall terminate on Sept. 1, 2018.

(Amends R.S. 37:1262(4), 1271(B)(2), and 1276.1(2)(a); Adds R.S. 36:259(Y), R.S. 37:1271(B)(3)-(5), and R.S. 40:1300.381-1300.389)