

2015 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 4

BY REPRESENTATIVE SIMON

HEALTH SERVICES: Expresses the intent of the legislature regarding the standard of care prescribed by law for the practice of telemedicine

1 A CONCURRENT RESOLUTION

2 To express the intent of the legislature regarding the standard of care that physicians are
3 required to use in the practice of telemedicine pursuant to the provisions of Act No.
4 442 of the 2014 Regular Session of the Legislature of Louisiana.

5 WHEREAS, R.S. 24:177(B)(2) provides, in pertinent part, that the legislature may
6 express the intended meaning of a law in a duly adopted concurrent resolution; and

7 WHEREAS, recognizing the need to update state law relative to telemedicine in
8 order to accommodate advancing technology and innovations in the practice of medicine,
9 the legislature passed House Bill No. 1280 of the 2014 Regular Session, which became Acts
10 2014, No. 442, referred to hereafter as "Act No. 442"; and

11 WHEREAS, a key provision of Act No. 442, now codified as R.S. 37:1271(B)(2)(a),
12 reads as follows: "The physician practicing telemedicine shall use the same standard of care
13 as if the healthcare services were provided in person"; and

14 WHEREAS, as embodied in the requirement that an equivalent standard of care be
15 used in telemedicine as in the provision of in-person medical services, the intent of Act No.
16 442 is to ensure patient safety and quality of care while lifting unnecessary restrictions on
17 the delivery of healthcare services through telemedicine; and

18 WHEREAS, R.S. 37:1262 defines telemedicine as the practice of medicine through
19 interactive telecommunication technology that enables a physician and a patient at two
20 locations separated by distance to interact via two-way video and audio transmissions
21 simultaneously; and

1 WHEREAS, because telemedicine is simply the practice of "traditional" medicine
2 through technologically advanced methods, it is important as a matter of health policy to
3 combat the misconception that telemedicine is somehow separate and apart from the practice
4 of medicine generally; and

5 WHEREAS, pursuant to the enactment of Act No. 442, the Louisiana State Board
6 of Medical Examiners, referred to hereafter as "the board", published a notice of intent in
7 the October, 2014 Louisiana Register proposing administrative rules to regulate the practice
8 of telemedicine; and

9 WHEREAS, these proposed rules exceed the scope of legislative authority delegated
10 to the board as they include specific restrictions on the practice of telemedicine that are not
11 contemplated or authorized in law; and

12 WHEREAS, notable among the unauthorized restrictions in the proposed rules are
13 those on prescribing of controlled substances; and

14 WHEREAS, with respect to such prescribing, R.S. 37:1271(B)(3), as enacted by Act
15 No. 442, prohibits a physician from prescribing any controlled dangerous substance through
16 telemedicine prior to conducting an appropriate in-person patient history or physical
17 examination of the patient, except as authorized in rules promulgated by the board; and

18 WHEREAS, the intent of the exception in R.S. 37:1271(B)(3) is not to authorize
19 restrictions on prescribing that are more strict than the conditions in law relative to
20 conducting an in-person patient history or physical examination, but rather to allow the
21 board to expand physicians' authority to prescribe controlled substances only if the board
22 deems such expanded authority to be in the interest of public health, safety, and welfare; and

23 WHEREAS, because prescribing of controlled substances when a physician, in his
24 independent medical judgment, sees fit to do so is a legitimate function within the practice
25 of medicine, rules proposing to establish a standard of care in telemedicine that differs in any
26 way from the standard specified in law are inconsistent with the intent of the legislature; and

27 WHEREAS, with respect to a specific standard of medical care which would apply
28 in a given situation, the Louisiana State Board of Medical Examiners lacks the authority to
29 specify practices or actions which constitute an appropriate standard of care, as the statutes
30 delineating what does and does not constitute an appropriate standard of care are not those

1 providing for the powers of the board (R.S. 37:1261 et seq.), but rather are those which
2 define medical malpractice (R.S. 9:2794 and R.S. 40:1299.39(B) and 1299.41(A)(22)); and

3 WHEREAS, the provisions of Act No. 442 now codified in R.S. 37:1271(B)(2)(a)
4 and (3) are unambiguous, respectively, in the requirement that a physician who practices
5 telemedicine use the same standard of care as if the healthcare services were provided in
6 person, and in the authorization for a physician to prescribe a controlled substance through
7 telemedicine after he has conducted an appropriate in-person patient history or physical
8 examination of the patient; and

9 WHEREAS, R.S. 24:177(B)(1) provides that the text of a law is the best evidence
10 of legislative intent.

11 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
12 express its intent that the provisions of law codified in R.S. 37:1271(B)(2)(a) and (3)
13 establish the standard of care that physicians are required to use in the practice of
14 telemedicine, and does hereby declare that any administrative rules proposing to establish
15 a standard of care that differs in any way from the standard specified in law are inconsistent
16 with the intent of the legislature.

17 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
18 members and the executive director of the Louisiana State Board of Medical Examiners.

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)]

HCR 4 Engrossed

2015 Regular Session

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Present law, R.S. 24:117(B)(2), authorizes the legislature to express the intended meaning of a law in a duly adopted concurrent resolution.

Present law, R.S. 37:1271(B)(2)(a) and (3), requires that a physician who practices telemedicine use the same standard of care as if the healthcare services were provided in person, and authorizes a physician to prescribe a controlled substance through telemedicine after he has conducted an appropriate in-person patient history or physical examination of the patient.

Proposed resolution expresses the intent of the legislature that present law establishes the standard of care that physicians are required to use in the practice of telemedicine, and declares that any administrative rules proposing to establish a standard of care that differs from the standard specified in law are inconsistent with the intent of the legislature.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original resolution:

1. Delete a reference to a provision of present law.
2. Indicate that with respect to a specific standard of medical care which would apply in a given situation, the La. State Board of Medical Examiners lacks the authority to specify practices or actions which constitute an appropriate standard of care, as the statutes delineating what does and does not constitute an appropriate standard of care are not those providing for the powers of the board, but rather are those which define medical malpractice.