

Amendment to SB 647-FN

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to telemedicine and substance use disorder.
4

5 Amend the bill by replacing all after the enacting clause with the following:
6

7 1 Statement of Intent.

8 I. The general court hereby recognizes that:

9 (a) Recent medical research indicates that substance use treatment can be safely done
10 utilizing telemedicine (Rubin R., Using Telemedicine to Treat Opioid Use Disorder in Rural Areas.
11 JAMA. Published online August 28, 2019); and

12 (b) Recent court decisions (*Smith v. Aroostook County*, No. 19-1340 (1st Cir. 2019))
13 require the increased availability of substance use treatment in correctional facilities; and

14 (c) Recent changes in federal law allow the registration of certain individuals to
15 prescribe opioid drugs to be used in substance use disorder without first conducting an in person
16 examination (21 U.S.C. section 831(h)), which registration regulations are pending.

17 II. Therefore, the general court hereby enacts the following legislation.

18 2 Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d, II(c)-(e) to read as follows:

19 (c) ***"Doorways" means the statewide points of entry for the delivery of substance***
20 ***use services.***

21 (d) "Originating site" means the location of the patient, whether or not accompanied by
22 a health care provider, at the time services are provided by a health care provider through
23 telemedicine, including, but not limited to, a health care provider's office, a hospital, or a health care
24 facility, or the patient's home or another nonmedical environment such as a school-based health
25 center, a university-based health center, or the patient's workplace.

26 [(d)] (e) "Remote patient monitoring" means the use of electronic technology to remotely
27 monitor a patient's health status through the collection and interpretation of clinical data while the
28 patient remains at an originating site. Remote patient monitoring may or may not take place in real
29 time. Remote patient monitoring shall include assessment, observation, education and virtual visits
30 provided by all covered providers including licensed home health care providers.

31 [(e)] (f) "Store and forward," as it pertains to telemedicine and as an exception to 42
32 C.F.R. section 410.78, means the use of asynchronous electronic communications between a patient

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1 at an originating site and a health care service provider at a distant site for the purpose of diagnostic
2 and therapeutic assistance in the care of patients. This includes the forwarding and/or transfer of
3 stored medical data from the originating site to the distant site through the use of any electronic
4 device that records data in its own storage and forwards its data to the distant site via
5 telecommunication for the purpose of diagnostic and therapeutic assistance.

6 3 Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d, III(a)(2) to read as follows:

7 (2) By which telemedicine services for primary care, remote patient monitoring, and
8 substance use disorder services shall only be covered in the event that the patient has already
9 established care at an originating site via face-to-face in-person service. ***A provider shall not be***
10 ***required to establish care via face-to-face in-person service when:***

11 (A) ***The provider is a Department of Veterans Affairs (VA) practitioner or***
12 ***VA-contracted practitioner not required to obtain a special registration pursuant to 21***
13 ***U.S.C. section 831(h);***

14 (B) ***The patient is being treated by, and is physically located in a***
15 ***correctional facility administered by the state of New Hampshire or a New Hampshire***
16 ***county;***

17 (C) ***The patient is being treated by, and is physically located in a***
18 ***doorway as defined in RSA 167:4-d, II(c);***

19 (D) ***The patient is being treated by and is physically located in a state***
20 ***designated community mental health center pursuant to RSA 135; or***

21 (E) ***The patient is being treated by, and physically located in, a hospital***
22 ***or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f); and***

23 4 New Paragraph; Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d by inserting
24 after paragraph V the following new paragraph:

25 VI. With written consent of the patient receiving medication assisted treatment through
26 telehealth services provided under this section, the health care provider shall provide notification of
27 the patient's medication assisted treatment to the doorway, as defined in RSA 167:4-d, II(c), within
28 the region where the patient resides.

29 5 Controlled Drug Act; Prohibited Acts. Amend RSA 318-B:2, XVI to read as follows:

30 XVI.(a)(I) The prescribing of a non-opioid controlled drug classified in schedule II through
31 IV by means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA
32 326-B:2, XII(a), who are treating a patient with whom the prescriber has an in-person practitioner-
33 patient relationship, for purposes of monitoring or follow-up care~~[- or who are treating patients at a~~
34 ~~state designated community mental health center pursuant to RSA 135-C or at a Substance Abuse~~
35 ~~and Mental Health Services Administration (SAMHSA)-certified state opioid treatment program,~~
36 ~~and shall require an initial in-person exam by a practitioner licensed to prescribe the drug].~~ ***A***
37 ***provider shall not be required to establish care via face-to-face in-person service when:***

1 (A) *The provider is a Department of Veterans Affairs (VA) practitioner*
2 *or VA-contracted practitioner not required to obtain a special registration pursuant to*
3 *21 U.S.C. section 831(h);*

4 (B) *The patient is being treated by, and is physically located in a*
5 *correctional facility administered by the state of New Hampshire or a New Hampshire*
6 *county;*

7 (C) *The patient is being treated by, and is physically located in a*
8 *doorway as defined in RSA 167:4-d, II(c);*

9 (D) *The patient is being treated by and is physically located in a state*
10 *designated community mental health center pursuant to RSA 135; or*

11 (E) *The patient is being treated by, and physically located in, a*
12 *hospital or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).*

13 (2) Subsequent in-person exams shall be by a practitioner licensed to prescribe the
14 drug at intervals appropriate for the patient, medical condition, and drug, but not less than
15 annually.

16 (b)(1) The prescribing of an opioid controlled drug classified in schedule II through IV by
17 means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA 326-B:2,
18 XII(a)[~~who are treating patients at a SAMHSA-certified state opioid treatment program. Such~~
19 ~~prescription authority shall require an initial in-person exam by a practitioner licensed to prescribe~~
20 ~~the drug and].~~ *A provider shall not be required to establish care via face-to-face in-person*
21 *service when:*

22 (A) *The provider is a Department of Veterans Affairs (VA) practitioner*
23 *or VA-contracted practitioner not required to obtain a special registration pursuant to*
24 *21 U.S.C. section 831(h);*

25 (B) *The patient is being treated by, and is physically located in a*
26 *correctional facility administered by the state of New Hampshire or a New Hampshire*
27 *county;*

28 (C) *The patient is being treated by, and is physically located in a*
29 *Doorway as defined in RSA 167:4-d, II(c);*

30 (D) *The patient is being treated by and is physically located in a state*
31 *designated community mental health center pursuant to RSA 135; or*

32 (E) *The patient is being treated by, and physically located in, a*
33 *hospital or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).*

34 (2) Subsequent in-person exams shall be by a practitioner licensed to prescribe the
35 drug at intervals appropriate for the patient, medical condition, and opioid, but not less than
36 annually.

37 6 New Paragraph; Nurse Practice Act; Rulemaking Added. Amend RSA 326-B:9 by inserting

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1 after paragraph XII the following new paragraph:

2 XIII. A process for registering practitioners who have been granted a special registration to
3 prescribe controlled substances via telemedicine pursuant to 21 U.S.C. section 831(h).

4 7 Physicians and Surgeons; Telemedicine. Amend RSA 329:1-d, III and IV to read as follows:

5 III. It shall be unlawful for any person to prescribe by means of telemedicine a controlled
6 drug classified in schedule II through IV, ***except substance use disorder (SUD) treatment as***
7 ***permitted in locations enumerated in paragraph IV. Methadone hydrochloride, as defined***
8 ***in RSA 318-B:10, VII(d)(2) shall not be included in the exemption.***

9 IV.(a)(1) The prescribing of a non-opioid controlled drug classified in schedule II through IV
10 by means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA 326-
11 B:2, XII(a), who are treating a patient with whom the prescriber has an in-person practitioner-
12 patient relationship, for purposes of monitoring or follow-up care~~[- or who are treating patients at a~~
13 ~~state designated community mental health center pursuant to RSA 135-C or at a Substance Abuse~~
14 ~~and Mental Health Services Administration (SAMHSA) certified state opioid treatment program,~~
15 ~~and shall require an initial in-person exam by a practitioner licensed to prescribe the drug].~~ ***A***
16 ***provider shall not be required to establish care via face-to-face in-person service when:***

17 (A) ***The provider is a Department of Veterans Affairs (VA) practitioner***
18 ***or VA-contracted practitioner not required to obtain a special registration pursuant to***
19 ***21 U.S.C. section 831(h);***

20 (B) ***The patient is being treated by, and is physically located in a***
21 ***correctional facility administered by the state of New Hampshire or a New Hampshire***
22 ***county;***

23 (C) ***The patient is being treated by, and is physically located in a***
24 ***Doorway as defined in RSA 167:4-d, II(c);***

25 (D) ***The patient is being treated by and is physically located in a state***
26 ***designated community mental health center pursuant to RSA 135; or***

27 (E) ***The patient is being treated by, and is physically located in, a hospital***
28 ***or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).***

29 (2) Subsequent in-person exams shall be by a practitioner licensed to prescribe the
30 drug at intervals appropriate for the patient, medical condition, and drug, but not less than
31 annually.

32 (b)(1) The prescribing of an opioid controlled drug classified in schedule II through IV by
33 means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA 326-B:2,
34 XII(a)~~[- who are treating patients at a SAMHSA-certified state opioid treatment program. Such~~
35 ~~prescription authority shall require an initial in-person exam by a practitioner licensed to prescribe~~
36 ~~the drug and].~~ ***A provider shall not be required to establish care via face-to-face in-person***
37 ***service when:***

1 (A) *The provider is a Department of Veterans Affairs (VA) practitioner*
2 *or VA-contracted practitioner not required to obtain a special registration pursuant to*
3 *21 U.S.C. section 831(h);*

4 (B) *The patient is being treated by, and is physically located in a*
5 *correctional facility administered by the state of New Hampshire or a New Hampshire*
6 *county;*

7 (C) *The patient is being treated by, and is physically located in a*
8 *Doorway as defined in RSA 167:4-d, II(c);*

9 (D) *The patient is being treated by and is physically located in a state*
10 *designated community mental health center pursuant to RSA 135; or*

11 (E) *The patient is being treated by, and physically located in, a*
12 *hospital or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).*

13 (2) Subsequent in-person exams shall be by a practitioner licensed to prescribe the
14 drug at intervals appropriate for the patient, medical condition, and opioid, but not less than
15 annually.

16 8 New Paragraph; Physicians and Surgeons; Rulemaking. Amend RSA 329:9 by inserting after
17 paragraph XX the following new paragraph:

18 XXI. A process for registering practitioners who have been granted a special registration to
19 prescribe controlled substances via telemedicine pursuant to 21 U.S.C. section 831(h).

20 9 Contingency. If HB 1623-FN of the 2020 regular legislative session becomes law, sections 1-8
21 of this act shall not take effect. If HB 1623-FN does not become law, then sections 1-8 of this act
22 shall take effect upon its passage.

23 10 Effective Date.

24 I. Sections 1-8 of this act shall take effect as provided in section 9 of this act.

25 II. The remainder of this act shall take effect upon its passage.

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2020-0609s

AMENDED ANALYSIS

This bill clarifies prescribing certain drugs via telemedicine.