Amendment to HB 1623-FN

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

1 Statement of Intent.

I. The general court hereby recognizes that:

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

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

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

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

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

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

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

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

(f) "Store and forward," as it pertains to telemedicine and as an exception to 42 C.F.R. section 410.78, means the use of asynchronous electronic communications between a patient at an originating site and a health care service provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients. This includes the forwarding and/or transfer of stored medical data from the originating site to the distant site through the use of any electronic
device that records data in its own storage and forwards its data to the distant site via
telecommunication for the purpose of diagnostic and therapeutic assistance.

3 Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d, III(a)(2) to read as follows:
   (2) By which telemedicine services for primary care, remote patient monitoring, and
   substance use disorder services shall only be covered in the event that the patient has already
   established care at an originating site via face-to-face in-person service. A provider shall not be
   required to establish care via face-to-face in-person service when:
   (A) The provider is a Department of Veteran Affairs (VA) practitioner or
   VA-contracted practitioner not required to obtain a special registration pursuant to 21
   U.S.C. section 831(h);
   (B) The patient is being treated by, and is physically located in a
   correctional facility administered by the state of New Hampshire or a New Hampshire
   county;
   (C) The patient is being treated by, and is physically located in a
   doorway as defined in RSA 167:4-d, II(c);
   (D) The patient is being treated by and is physically located in a state
   designated community mental health center pursuant to RSA 135; or
   E) The patient is being treated by, and physically located in, a hospital
   or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f); and

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

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

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

XVI.(a)(I) The prescribing of a non-opioid controlled drug classified in schedule II through
IV by means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA
326-B:2, XII(a), who are treating a patient with whom the prescriber has an in-person practitioner-
patient relationship, for purposes of monitoring or follow-up care[, or who are treating patients at a
state designated community mental health center pursuant to RSA 135-C or at a Substance Abuse
and Mental Health Services Administration (SAMHSA) certified state opioid treatment program,
and shall require an initial in-person exam by a practitioner licensed to prescribe the drug]. A
provider shall not be required to establish care via face-to-face in-person service when:
   (A) The provider is a Department of Veteran Affairs (VA) practitioner
   or VA-contracted practitioner not required to obtain a special registration pursuant to
   21 U.S.C. section 831(h);
(B) The patient is being treated by, and is physically located in a correctional facility administered by the state of New Hampshire or a New Hampshire county;

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

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

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

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

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

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

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

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

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

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

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

6 New Paragraph; Nurse Practice Act; Rulemaking Added. Amend RSA 326-B:9 by inserting after paragraph XII the following new paragraph:

XIII. A process for registering practitioners who have been granted a special registration to prescribe controlled substances via telemedicine pursuant to 21 U.S.C. section 831(h).
Physicians and Surgeons; Telemedicine. Amend RSA 329:1-d, III and IV to read as follows:

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

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

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

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

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

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

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

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

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

(A) The provider is a Department of Veteran Affairs (VA) practitioner or VA-contracted practitioner not required to obtain a special registration pursuant to 21 U.S.C. section 831(h);
(B) The patient is being treated by, and is physically located in a correctional facility administered by the state of New Hampshire or a New Hampshire county;

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

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

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

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

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

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

9 Effective Date. This act shall take effect upon its passage.