

Key Takeaways From Indiana's New Telemedicine Law



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Indiana Gov. Mike Pence (R) signed into law, on March 21, 2016, a new bill (House Act No. 1263) implementing a variety of telemedicine practice standards and remote prescribing rules in the Hoosier State. Effective July 1, 2016, the new law replaces the old Indiana Telehealth Pilot Program, which is set to self-expire on that same date. The success of Indiana's Telehealth Pilot Program led to the enactment of the new statute, which passed the House and Senate near unanimously, reflecting strong bi-partisan support for telemedicine in Indiana. The new statute may potentially require the Board of Medicine to rewrite some of its current telemedicine regulations to the extent the prior regulations conflict with the controlling provisions of the statute.



The bill creates a new chapter in the Indiana Code (IC 25-1-9.5). Interested telemedicine companies and health care providers looking to offer telemedicine services in Indiana should review the new statute and adjust your policies and processes accordingly.

- **Telemedicine.** Telemedicine is defined as the delivery of health care services using electronic communications and information technology between a provider in one location and a patient in another location, including: 1) secure videoconferencing; 2) interactive audio-using store and forward technology; or 3) remote patient monitoring technology. Telemedicine does not include the use of the following: 1) audio-only communication; 2) a telephone call; 3) electronic mail; 4) an instant messaging conversation; 5) facsimile; 6) internet questionnaire; 7) telephone consultation; or 8) internet consultation.
- **Physician-Patient Relationship.** Physicians utilizing telemedicine must

establish a proper physician-patient relationship by, among other things, conducting an appropriate examination. The examination does not require an in-person visit. However, the examination must at a minimum include the following eight elements:

- Obtain the patient's name and contact information and: 1) a verbal statement or other data from the patient identifying the patient's location; and 2) to the extent reasonably possible, the identity of the requesting patient.
 - Disclose the provider's name and disclose whether the provider is a physician, physician assistant, advanced practice nurse, or optometrist.
 - Obtain informed consent from the patient.
 - Obtain the patient's medical history and other information necessary to establish a diagnosis.
 - Discuss with the patient the: 1) diagnosis; 2) evidence for the diagnosis; and 3) risks and benefits of various treatment options, including when it is advisable to seek in-person care.
 - Create and maintain a medical record for the patient and, subject to the consent of the patient, notify the patient's primary care provider of any prescriptions the provider has written for the patient if the primary care provider's contact information is provided by the patient. (This requirement does not apply when the provider is using an electronic health record system that the patient's primary care provider is authorized to access.)
 - Issue proper instructions for appropriate follow-up care.
 - Provide a telemedicine visit summary to the patient, including information that indicates any prescription that is being prescribed.
- **Standard of Care.** A provider who provides health care services through telemedicine is held to the same standards of appropriate practice as those in traditional in-person settings.
 - **Remote Prescribing.** Remote prescribing is permitted, subject to certain conditions. A provider may issue a prescription to a patient who is receiving services via telemedicine without any prior in-person exam if the following five conditions are met:
 - The provider has satisfied the applicable standard of care in the treatment of the patient.
 - The issuance of the prescription by the provider is within the provider's scope of practice and certification.
 - The prescription is not for a controlled substance (defined in IC 35-48-1-9).
 - The prescription is not for an abortion inducing drug (defined in IC 16-18-2-1.6).
 - The prescription is not for an ophthalmic device, including: 1) glasses; 2)

contact lenses; or 3) low vision devices.

- **Informed Consent.** Informed consent to telemedicine services is required.
- **Patient Records.** A patient record must be created for every telemedicine visit. The maintenance and confidentiality of the records must be consistent with state and federal law. Subject to the consent of the patient, the telemedicine provider must notify the patient's primary care provider of any prescriptions the provider has written for the patient if the primary care provider's contact information is provided by the patient.
- **Other Health Care Professionals** In addition to physicians, the law empowers the following Indiana licensed professionals to provide services via telemedicine: physician assistants, advanced practice nurses, and optometrists.

Certification Requirement for Telemedicine Providers Physically Located Outside Indiana

The new law also imposes a peculiar certification requirement for telemedicine providers physically located outside Indiana. The language suggests it may be targeted at telehealth companies (per the reference to the provider's employer or contractor), rather than individual providers, but it remains unclear absent a review of the legislative history behind this particular provision. The intent seems to formally bring such providers and companies under the State's jurisdiction for enforcement oversight and negligence claims. It may be well-intended, but the requirement to have each provider complete and file a separate certification form with the Board might be considered form over function and an unnecessary administrative burden. We may see further clarity when the Board promulgates underlying regulations, but until then, the statute provides as follows:

- A provider who is physically located outside Indiana is engaged in the provision of health care services in Indiana when he or she: 1) establishes a provider-patient relationship via telemedicine with; or 2) determines whether to issue a prescription via telemedicine for; an individual who is located in Indiana.
- Such a provider may not establish a provider-patient relationship via telemedicine or issue a prescription for an individual located in Indiana unless the provider and the provider's employer or the provider's contractor have certified in writing to the Indiana professional licensing agency (e.g., the Board of Medicine), in a manner specified by that agency, that the provider and the provider's employer or provider's contractor agree to be subject to: 1) the jurisdiction of the courts of law of Indiana; and 2) Indiana substantive and procedural laws; concerning any claim asserted against the provider, the provider's employer, or the provider's contractor arising from the provision of health care services via telemedicine to an individual located in Indiana at the time the services were provided.

- The filing of the certification constitutes a voluntary waiver by the provider, the provider's employer, or the provider's contractor of any respective right to avail themselves of the jurisdiction or laws other than those in Indiana concerning the claim.
- Note, however, a provider that practices predominately in Indiana is not required to file the certification. The statute does not define what it means to practice predominately in Indiana.
- A provider shall renew the certification at the time the provider renews his or her license. A provider's employer or contractor is required to file the certification only at the time of initial certification.
- A provider who violates these rules is subject to disciplinary action, and a provider's employer or contractor that violates these rules commits a Class B infraction for each act in which a certification is not filed as required.

Commercial Insurance Coverage of Telehealth Services

Indiana enacted a telehealth commercial insurance coverage law in 2015, requiring health plans to cover services provided via telehealth to the extent the service is covered in an in-person setting. The law does not include payment parity, nor does it mandate coverage for remote patient monitoring or asynchronous services. Indiana is among the 29 states plus DC that have enacted a commercial insurance coverage law for telehealth services.

A number of Indiana hospitals and health care providers already offer telehealth services, and patients have been able to access virtual care as part of these health care delivery models. Surveys indicate health care executives are optimistic on the benefits offered by telehealth. The new law serves as express guidance to inform telehealth practitioners on how to operate within Indiana and provide virtual care services to patients in the state.

For more information on telemedicine, telehealth, virtual care and other health innovations, including the team, publications, and other materials, visit [Foley's Telemedicine Practice](#).

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