

First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1337

AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-15-5-11, AS ADDED BY P.L.204-2013, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. (a) As used in this section, "telehealth services" means the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across a distance.

(b) As used in this section, "telemedicine services" ~~means a specific method of delivery of services; including medical exams and consultations and behavioral health evaluations and treatment; including those for substance abuse; using videoconferencing equipment to allow a provider to render an examination or other service to a patient at a distant location. The term does not include the use of the following: has the meaning set forth for "telemedicine" in IC 25-1-9.5-6.~~

(1) ~~A telephone transmitter for transtelephonic monitoring.~~

(2) ~~A telephone or any other means of communication for the consultation from one (1) provider to another provider.~~

(c) The office shall reimburse a Medicaid provider who is licensed as a home health agency under IC 16-27-1 for telehealth services.

(d) The office shall reimburse the following Medicaid providers for **medically necessary** telemedicine services:

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(1) A federally qualified health center (as defined in 42 U.S.C. 1396d(l)(2)(B)).

(2) A rural health clinic (as defined in 42 U.S.C. 1396d(l)(1)).

(e) The office shall reimburse the following Medicaid providers for telemedicine services regardless of the distance between the provider and the patient:

(1) A federally qualified health center (as defined in 42 U.S.C. 1396d(l)(2)(B)).

(2) A rural health clinic (as defined in 42 U.S.C. 1396d(l)(1)).

(3) A community mental health center certified under IC 12-21-2-3(5)(C).

(4) A critical access hospital that meets the criteria under 42 CFR 485.601 et seq.

(5) A provider, as determined by the office to be eligible, providing a covered telemedicine service.

(f) The office shall, not later than December 1, 2013, file any Medicaid state plan amendment with the United States Department of Health and Human Services necessary to implement and administer this section including an amendment to eliminate the current twenty (20) mile distance restriction.

(e) The office may not impose any distance restrictions on providers of telehealth services or telemedicine services. Before December 31, 2017, the office shall do the following:

(1) Submit a Medicaid state plan amendment with the United States Department of Health and Human Services that eliminates distance restrictions for telehealth services or telemedicine services in the state Medicaid plan.

(2) Issue a notice of intent to adopt a rule to amend any administrative rules that include distance restrictions for the provision of telehealth services or telemedicine services.

(g) (f) The office shall implement any part of this section that is approved by the United States Department of Health and Human Services.

(h) (g) The office may adopt rules under IC 4-22-2 necessary to implement and administer this section.

SECTION 2. IC 25-1-9.5-1, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) This chapter does not prohibit a provider, **prescriber**, insurer, or patient from agreeing to an alternative location of the patient, **or** provider, **or prescriber** to conduct telemedicine.

(b) This chapter does not supersede any other statute concerning a provider **or prescriber** who provides health care to a patient.



SECTION 3. IC 25-1-9.5-2, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. As used in this chapter, "distant site" means a site at which a **provider prescriber** is located while providing health care services through telemedicine.

SECTION 4. IC 25-1-9.5-4, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. As used in this chapter, "**provider**" "**prescriber**" means any of the following:

- (1) A physician licensed under IC 25-22.5.
- (2) A physician assistant licensed under IC 25-27.5 and granted the authority to prescribe by the physician assistant's supervisory physician in accordance with IC 25-27.5-5-4.
- (3) An advanced practice nurse licensed and granted the authority to prescribe drugs under IC 25-23.
- (4) An optometrist licensed under IC 25-24.
- (5) A podiatrist licensed under IC 25-29.**

SECTION 5. IC 25-1-9.5-5, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. As used in this chapter, "store and forward" means the transmission of a patient's medical information from an originating site to the **provider prescriber** at a distant site without the patient being present.

SECTION 6. IC 25-1-9.5-7, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. (a) A **provider prescriber** who provides health care services through telemedicine shall be held to the same standards of appropriate practice as those standards for health care services provided at an in-person setting.

(b) A **provider prescriber** may not use telemedicine, including issuing a prescription, for an individual who is located in Indiana unless a provider-patient relationship between the **provider prescriber** and the individual has been established. A **provider prescriber** who uses telemedicine shall, if such action would otherwise be required in the provision of the same health care services in a manner other than telemedicine, ensure that a proper provider-patient relationship is established. The provider-patient relationship by a **provider prescriber** who uses telemedicine must at a minimum include the following:

- (1) Obtain the patient's name and contact information and:
 - (A) a verbal statement or other data from the patient identifying the patient's location; and
 - (B) to the extent reasonably possible, the identity of the



requesting patient.

- (2) Disclose the ~~provider's~~ **prescriber's** name and disclose whether the ~~provider~~ **prescriber** is a physician, physician assistant, advanced practice nurse, ~~or~~ optometrist, ~~or~~ **podiatrist**.
- (3) Obtain informed consent from the patient.
- (4) Obtain the patient's medical history and other information necessary to establish a diagnosis.
- (5) Discuss with the patient the:
 - (A) diagnosis;
 - (B) evidence for the diagnosis; and
 - (C) risks and benefits of various treatment options, including when it is advisable to seek in-person care.
- (6) 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~~ **prescriber** has ~~written~~ **issued** for the patient if the primary care provider's contact information is provided by the patient. The requirements in this subdivision do not apply when **any of the following are met**:
 - (A) The ~~provider~~ **prescriber** is using an electronic health record system that the patient's primary care provider is authorized to access.
 - (B) **The prescriber has established an ongoing provider-patient relationship with the patient by providing care to the patient at least two (2) consecutive times through the use of telemedicine services. If the conditions of this clause are met, the prescriber shall maintain a medical record for the patient and shall notify the patient's primary care provider of any issued prescriptions.**
- (7) Issue proper instructions for appropriate follow-up care.
- (8) Provide a telemedicine visit summary to the patient, including information that indicates any prescription that is being prescribed.

SECTION 7. IC 25-1-9.5-8, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) A ~~provider~~ **prescriber** may issue a prescription to a patient who is receiving services through the use of telemedicine ~~even~~ if the patient has not been ~~seen~~ **examined** previously by the ~~provider~~ **prescriber** in person if the following conditions are met:

- (1) The ~~provider~~ **prescriber** has satisfied the applicable standard of care in the treatment of the patient.
- (2) The issuance of the prescription by the ~~provider~~ **prescriber** is

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within the ~~provider's~~ **prescriber's** scope of practice and certification.

(3) The prescription:

(A) meets the requirements of subsection (b); and

(B) is not for a controlled substance (as defined in IC 35-48-1-9); an opioid. However, an opioid may be prescribed if the opioid is a partial agonist that is used to treat or manage opioid dependence.

(4) The prescription is not for an abortion inducing drug (as defined in IC 16-18-2-1.6).

(5) The prescription is not for an ophthalmic device, including:

(A) glasses;

(B) contact lenses; or

(C) low vision devices.

(b) Except as provided in subsection (a), a prescriber may issue a prescription for a controlled substance (as defined in IC 35-48-1-9) to a patient who is receiving services through the use of telemedicine, even if the patient has not been examined previously by the prescriber in person, if the following conditions are met:

(1) The prescriber maintains a valid controlled substance registration under IC 35-48-3.

(2) The prescriber meets the conditions set forth in 21 U.S.C. 829 et seq.

(3) The patient has been examined in person by a licensed Indiana health care provider and the licensed health care provider has established a treatment plan to assist the prescriber in the diagnosis of the patient.

(4) The prescriber has reviewed and approved the treatment plan described in subdivision (3) and is prescribing for the patient pursuant to the treatment plan.

(5) The prescriber complies with the requirements of the INSPECT program (IC 35-48-7).

(c) A prescription for a controlled substance under this section must be prescribed and dispensed in accordance with IC 35-48-7.

SECTION 8. IC 25-1-9.5-9, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 9. (a) A ~~provider~~ **prescriber** who is physically located outside Indiana is engaged in the provision of health care services in Indiana when the ~~provider:~~ **prescriber:**

(1) establishes a provider-patient relationship under this chapter with; or



(2) determines whether to issue a prescription under this chapter for;
 an individual who is located in Indiana.

(b) A **provider prescriber** described in subsection (a) may not establish a provider-patient relationship under this chapter with or issue a prescription under this chapter for an individual who is located in Indiana unless the **provider prescriber** and the **provider's prescriber's** employer or the **provider's prescriber's** contractor, for purposes of providing health care services under this chapter, have certified in writing to the Indiana professional licensing agency, in a manner specified by the Indiana professional licensing agency, that the **provider prescriber** and the **provider's prescriber's** employer or **provider's prescriber'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, prescriber, the provider's prescriber's** employer, or the **provider's prescriber's** contractor arising from the provision of health care services under this chapter to an individual who is located in Indiana at the time the health care services were provided. The filing of the certification under this subsection shall constitute a voluntary waiver by the **provider, prescriber, the provider's prescriber's** employer, or the **provider's prescriber's** contractor of any respective right to avail themselves of the jurisdiction or laws other than those specified in this subsection concerning the claim. However, a **provider prescriber** that practices predominately in Indiana is not required to file the certification required by this subsection.

(c) A **provider prescriber** shall renew the certification required under subsection (b) at the time the **provider prescriber** renews the **provider's prescriber's** license.

(d) A **provider's prescriber's** employer or a **provider's prescriber's** contractor is required to file the certification required by this section only at the time of initial certification.

SECTION 9. IC 25-1-9.5-10, AS ADDED BY P.L.78-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. (a) A **provider prescriber** who violates this chapter is subject to disciplinary action under IC 25-1-9.

(b) A **provider's prescriber's** employer or a **provider's prescriber's** contractor that violates this section commits a Class B infraction for each act in which a certification is not filed as required by section 9 of this chapter.

SECTION 10. IC 25-1-9.5-11, AS ADDED BY P.L.78-2016,



SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. A pharmacy does not violate this chapter if the pharmacy fills a prescription for ~~a controlled substance~~ **an opioid** and the pharmacy is unaware that the prescription was written by a ~~provider~~ **prescriber** providing telemedicine services under this chapter.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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