DIGEST

Citations Affected:  IC 12-15-5-11; IC 25-1-9.5; IC 27-8-34-6; IC 27-13-7-22.

Synopsis:  Telemedicine. Prohibits the Medicaid program from specifying originating sites and distant sites for purposes of Medicaid reimbursement and voids administrative rules with these requirements. Specifies certain activities that are considered to be health care services for purposes of the telemedicine laws. Expands the application of the telemedicine statute to additional licensed practitioners instead of applying only to prescribers. Amends the definition of "telemedicine". Requires that the medical records under telemedicine be created and maintained under the same standards of appropriate practice for medical records for patients in an in-person setting. Specifies that a patient waives confidentiality of medical information concerning individuals in the vicinity when the patient is using telemedicine. Prohibits certain insurance policies and individual and group contracts from mandating the use of certain technology applications in the provision of telemedicine services.

Effective:  July 1, 2021.
A BILL FOR 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 AMENDED BY P.L.150-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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" has the meaning set forth for "telemedicine" in IC 25-1-9.5-6.

(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:

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.

(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.

(f) Subject to federal law, the office may not impose any requirements concerning the originating site or distant site in which a telemedicine service is provided to a Medicaid recipient. 405 IAC 5-38 is void effective July 1, 2021.

(g) A Medicaid recipient waives confidentiality of any medical information discussed by the health care provider that is:
   (1) provided during a telemedicine visit; and
   (2) heard by another individual in the vicinity of the Medicaid recipient during a health care service or consultation.

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

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

SECTION 2. IC 25-1-9.5-2, AS AMENDED BY P.L.150-2017, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. As used in this chapter, "distant site" means a site at which a prescriber practitioner is located while providing health care services through telemedicine.

SECTION 3. IC 25-1-9.5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2.5. As used in this chapter, "health care services" includes the following:
   (1) Assessment, diagnosis, evaluation, consultation, treatment, and monitoring of a patient.
   (2) Transfer of medical data.
   (3) Patient health related education.
   (4) Public health services and health administration.

SECTION 4. IC 25-1-9.5-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3.5. As used in this chapter, "practitioner" means an individual who holds:
   (1) an unlimited license, certificate, or registration;
   (2) a limited or probationary license, certificate, or registration;
   (3) a temporary license, certificate, registration, or permit;
   (4) an intern permit; or
   (5) a provisional license;

issued by the board regulating the profession in question, including a certificate of registration issued under IC 25-20, and who provides health care services under this chapter that are within the individual's scope of practice.

SECTION 5. IC 25-1-9.5-5, AS AMENDED BY P.L.150-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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 prescriber practitioner at a distant site without
the patient being present.

SECTION 6. IC 25-1-9.5-6, AS ADDED BY P.L.78-2016,
SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2021]: Sec. 6. (a) As used in this chapter, "telemicine"
means the delivery of health care services using interactive electronic
communications and information technology, including:
(1) secure videoconferencing;
(2) interactive audio using store and forward technology; or
(3) remote patient monitoring technology;
between a provider in one (1) location and a patient in another location.
(b) The term 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.

SECTION 7. IC 25-1-9.5-7, AS AMENDED BY P.L.129-2018,
SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2021]: Sec. 7. (a) A prescriber practitioner 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 prescriber practitioner may not use telemedicine, including
a prescriber issuing a prescription, for an individual who is located in
Indiana unless a provider-patient relationship between the prescriber
practitioner and the individual has been established. A prescriber
practitioner 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 prescriber practitioner 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 prescriber's practitioner's name and disclose
whether the prescriber is a physician; physician assistant;
advanced practice registered nurse; optometrist, or podiatrist; the
practitioner's licensure, certification, or registration.
(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; If a prescription is issued for the patient, and subject to the consent of the patient, the prescriber shall notify the patient's primary care provider of any prescriptions the prescriber has 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 prescriber practitioner is using an electronic health record system that the patient's primary care provider is authorized to access.
   (B) The prescriber practitioner 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 practitioner 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.
(c) The medical records under subsection (b)(6) must be created and maintained by the practitioner under the same standards of appropriate practice for medical records for patients in an in-person setting.
(d) A patient waives confidentiality of any medical information discussed by the practitioner that is:
   (1) provided during a telemedicine visit; and
   (2) heard by another individual in the vicinity of the patient during a health care service or consultation.

SECTION 8. IC 25-1-9.5-9, AS AMENDED BY P.L.150-2017, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 9. (a) A prescriber practitioner who is physically located outside Indiana is engaged in the provision of health care services in Indiana when the prescriber practitioner:
   (1) establishes a provider-patient relationship under this chapter with; or
   (2) determines whether to issue a prescription under this chapter
an individual who is located in Indiana.

(b) A prescriber practitioner 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 prescriber practitioner and the prescriber's practitioner's employer or the prescriber's practitioner'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 prescriber practitioner and the prescriber's practitioner's employer or prescriber's practitioner'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 prescriber practitioner, the prescriber's practitioner's employer, or the prescriber's practitioner'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 prescriber practitioner, the prescriber's practitioner's employer, or the prescriber's practitioner'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 prescriber practitioner that practices predominately in Indiana is not required to file the certification required by this subsection.

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

(d) A prescriber's practitioner's employer or a prescriber's practitioner'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 AMENDED BY P.L.150-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 10. (a) A prescriber practitioner who violates this chapter is subject to disciplinary action under IC 25-1-9.

(b) A prescriber's practitioner's employer or a prescriber's practitioner'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 27-8-34-6, AS ADDED BY P.L.185-2015, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. (a) A policy must provide coverage for telemedicine services in accordance with the same clinical criteria as the policy provides coverage for the same health care services delivered in person.
(b) Coverage for telemedicine services required by subsection (a) may not be subject to a dollar limit, deductible, or coinsurance requirement that is less favorable to a covered individual than the dollar limit, deductible, or coinsurance requirement that applies to the same health care services delivered to a covered individual in person.

(c) Any annual or lifetime dollar limit that applies to telemedicine services must be the same annual or lifetime dollar limit that applies in the aggregate to all items and services covered under the policy.

(d) A separate consent for telemedicine services may not be required.

(e) A policy may not require that telemedicine services be provided using a specific technology application.

SECTION 11. IC 27-13-7-22, AS ADDED BY P.L.185-2015, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 22. (a) An individual contract or a group contract must provide coverage for telemedicine services in accordance with the same clinical criteria as the individual contract or the group contract provides coverage for the same health care services delivered to an enrollee in person.

(b) Coverage for telemedicine services required by subsection (a) may not be subject to a dollar limit, copayment, or coinsurance requirement that is less favorable to an enrollee than the dollar limit, copayment, or coinsurance requirement that applies to the same health care services delivered to an enrollee in person.

(c) Any annual or lifetime dollar limit that applies to telemedicine services must be the same annual or lifetime dollar limit that applies in the aggregate to all items and services covered under the individual contract or the group contract.

(d) This section does not do any of the following:

(1) Require an individual contract or a group contract to provide coverage for a telemedicine service that is not a covered health care service under the individual contract or group contract.

(2) Require the use of telemedicine services when the treating provider has determined that telemedicine services are inappropriate.

(3) Prevent the use of utilization review concerning coverage for telemedicine services in the same manner as utilization review is used concerning coverage for the same health care services delivered to an enrollee in person.

(e) A separate consent for telemedicine services may not be required.

(f) An individual contract or group contract may not require that telemedicine services be provided using a specific technology application.