

June 7, 2021

IHA Detailed Summary of Telehealth Legislation– HB 3308

On May 30 and 31, groundbreaking telehealth legislation ([House Bill 3308](#)) passed unanimously in the Illinois Senate and the House respectively, and will be sent to the Governor, who is expected to sign the bill into law. This legislation enhances existing law by codifying telehealth coverage and payment parity with in-person services for state-regulated individual and group commercial health insurance policies, while ensuring strong patient and provider protections. Leading the [Coalition to Protect Telehealth](#), comprised of 36 healthcare and patient advocacy organizations, IHA coordinated the negotiations with legislators, the insurance industry and other stakeholders that resulted in the final legislation. For background on the negotiations and an executive summary of the bill, [click here](#). The information below provides a detailed overview of HB3308, which takes effect upon the Governor's signature.

Illinois Insurance Code: Commercial Payer Provisions

- *Applicability:* Amends the Illinois Insurance Code (215 ILCS 5/356z.22) section on coverage of telehealth services. This section is also applicable to required health benefits in the following statutes:
 - State Employees Group Insurance Act of 1971 (5 ILCS 375/6.11);
 - Counties Code (55 ILCS 5/5-1069.3);
 - Illinois Municipal Code (65 ILCS 5/10-4-2.3);
 - School Code (105 ILCS 5/10-22.3f);
 - Health Maintenance Organization Act (215 ILCS 125/5-3);
 - Limited Health Service Organization Act (215 ILCS 130/4003); and
 - Voluntary Health Services Plans Act (215 ILCS 165/10).
- *Definitions:* Most terms in the Insurance Code are given the same meaning as new definitions in the Telehealth Act (225 ILCS 150/5), including asynchronous store and forward system, distant site, e-visit, healthcare professional, interactive telecommunications system (excluding virtual check-ins), originating site, telehealth services (excluding modalities other than an interactive telecommunications system), and virtual check-in. All defined terms are new to the Insurance Code, except for distant site and telehealth services, which have been updated. The definition of “facility” is different in the Insurance Code than in the Telehealth Act to encompass sites typically reimbursed by commercial payers. For purposes of the Insurance Code, a “facility” includes a licensed hospital, federally qualified health center, community mental health center, behavioral health clinic, licensed substance use disorder treatment program, or other building, place, or institution that is owned or operated by a person that is licensed or otherwise authorized to deliver healthcare services.

- *Coverage Mandate:*
 - Commercial insurers must cover clinically appropriate, medically necessary telehealth services (real-time audio or audio/video interactions), e-visits (patient portal communications) and virtual check-ins (5-10-minute “live” conversations to prevent an in-person visit) rendered by a healthcare professional in the same manner as any other benefits covered under the policy.
 - Policies that do not distinguish between in-network and out-of-network healthcare professionals and facilities (i.e., an indemnity policies) are subject to the coverage requirements as though all professionals and facilities are in-network.
 - Insurers may provide reimbursement to a facility that serves as an originating site, traditionally known as a facility fee.
 - Insurers may provide coverage of remote patient monitoring. Coverage for remote patient monitoring is not required under the [Executive Order 2020-09](#) during the public health emergency.
 - An existing, optional coverage provision is strengthened to require insurers to cover telehealth services for licensed dietitian nutritionists and certified diabetes educators who counsel diabetes patients in the patients' homes (previously limited to seniors).

- *Reimbursement Mandate:*
 - Insurers must reimburse in-network healthcare professionals and facilities, including those in tiered networks, on the same basis, in the same manner, and at the same reimbursement rate that would apply to in-person services.
 - Applies to telehealth services provided through an interactive telecommunications system (real-time audio/video or audio-only) that meet the same criteria required to bill in-person care;
 - Does not preclude insurers and providers from voluntarily negotiating alternate reimbursement rates for telehealth services, as long as any agreed upon rates account for ongoing provider investments in telehealth platforms, such as continuous maintenance, upgrades or integration of technology that is integrated with a patient’s electronic medical record;
 - Includes a 5-year sunset clause of the reimbursement mandate only (mental health and substance use disorder telehealth services are excluded from the sunset); and
 - Subject to appropriation, the Department of Insurance (DOI) and the Department of Public Health must commission an in-state medical college to carry out a report that studies the efficacy of the coverage and reimbursement parity mandates. The Departments must submit the report to the General Assembly one year prior to the reimbursement parity sunset date. Specifically, the report must determine whether the telehealth policies improve access to care, reduce health disparities, promote health equity, have an impact on utilization and cost-avoidance, including direct or indirect cost savings to the

patient, and provide any recommendations for telehealth access expansion in the future. Commercial insurers are required to provide necessary data, and the medical college executing the report may use subject matter expertise to carry out any actuarial analyses.

- *Patient and Provider Protections:* Existing patient and provider protections for telehealth services were clarified and broadened. Specifically, insurers are prohibited from:
 - Requiring in-person contact between a healthcare professional and a patient prior to the provision of a telehealth service (excludes e-visits and virtual check-ins to align with Current Procedural Terminology code requirements of an established patient relationship);
 - Requiring patients, healthcare professionals or facilities to demonstrate or document a hardship or access barrier to an in-person consultation;
 - Requiring use of telehealth services when a patient's healthcare professional has determined it is not appropriate or when a patient chooses in-person care;
 - Requiring a healthcare professional to be physically present in the same room as a patient receiving the telehealth service, unless deemed medically necessary by the professional delivering the service;
 - Creating geographic or facility restrictions for telehealth services;
 - Requiring patients to use a separate panel of healthcare professionals or facilities for telehealth services, or requiring healthcare professionals or facilities to use telehealth services;
 - Imposing utilization review requirements that are unnecessary, duplicative or unwarranted, or imposing treatment limitations, prior authorization, documentation, or recordkeeping requirements that are more stringent than those required for in-person services (except procedure code modifiers commonly required for documentation);
 - Imposing deductibles, copayments, co-insurance, or any other cost-sharing that exceed those required for in-person services; and
 - Restricting the patient location (originating site) during a telehealth service, other than requiring the service to be medically necessary and clinically appropriate. Healthcare professionals and facilities determine the appropriateness of specific sites, technology platforms and technology vendors for a telehealth service, as long as the services adhere to privacy laws, rules and regulations.

- *Billing Guidance:* Insurers must notify healthcare professionals and facilities of any instructions necessary to facilitate billing for telehealth services.

- *Rulemaking:* Amends the Illinois Insurance Code and the Illinois Administrative Procedure Act (5 ILCS 100/5-45.8) to allow DOI to promulgate rules, including emergency rules before January 1, 2022.

- Amends the Telehealth Act (225 ILCS 150/5) to expand upon definitions and use of telehealth services.
- *Definitions:* The statute now defines a broader set of telehealth terminology, largely cross-referenced in Insurance Code mandates on commercial insurers for consistency across statutes. New definitions include asynchronous store and forward system, distant site, established patient, e-visit, facility, interactive telecommunications system (previously referenced in “telehealth services”, but undefined), originating site, remote patient monitoring, and virtual check-in. Definitions for healthcare professional and telehealth services are expanded.
 - Healthcare professional now includes licensed certified substance use disorder treatment providers and clinicians, early intervention providers, dietitian nutritionists, and healthcare professionals associated with a facility. A healthcare professional must be licensed or authorized to practice in Illinois.
 - Telehealth services clarifies the explicit inclusion of mental health and substance use disorder treatment and services as healthcare services, regardless of patient location, that may be provided via an interactive telecommunications system. An asynchronous store and forward system, remote patient monitoring technologies, e-visits and virtual check-ins are also encompassed as modalities of telehealth. This definition differs from the Insurance Code, which only encompasses telehealth services provided via an interactive telecommunications system.
- *Use of Telehealth Services:* Language was added to clarify that telehealth services are subject to all federal and State privacy, security and confidentiality laws, rules or regulations.

Early Intervention Services System Act: Notification Requirements

Amends the Early Intervention Services System Act (325 ILCS 20/3). Early intervention providers are permitted to deliver telehealth services, within their scope of practice and consistent with the standards of care for in-person services. An existing parental notification requirement was expanded upon to include the availability of early intervention services via telehealth. Parents may choose whether any accepted services are delivered in-person or via telehealth.

Medicaid Telehealth Provisions

The Department of Healthcare and Family Services (HFS) has committed to the continuation of currently existing Medicaid telehealth coverage and reimbursement requirements for the Medicaid fee-for-service and managed care programs after the COVID-19 public health emergency ends, as permitted by [89 Ill. Adm. Code 140.403\(e\)](#). HFS also committed to meeting with IHA and other stakeholders to consider whether any Medicaid coverage or reimbursement provisions should be codified in state statute.

Please [contact IHA](#) with questions or for additional information.