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TELEMEDICINE LAWS AND RECENT LEGISLATION IN NEARBY STATES

This memorandum discusses telemedicine (or telehealth, used interchangeably) laws in Arkansas, Colorado, Illinois, Iowa, Missouri, Nebraska, Oklahoma, and Texas, as well as 2017 legislation in Arkansas, Illinois, Oklahoma, and Texas.

Telemedicine Laws in Nearby States

Information on telemedicine and telehealth definitions, establishing a physician-patient relationship through telemedicine, and insurance coverage provided through telemedicine is detailed below.

Definition of Telemedicine or Telehealth in State Law

Arkansas	“Telemedicine” means the use of electronic information and communication technology to deliver healthcare services, including without limitation the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient. “Telemedicine” includes store and forward technology and remote patient monitoring (Ark. Code Ann. § 17-80-402, updated by 2017 SB 146, effective August 1, 2017).
Colorado	“Telemedicine” means the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication (Colo. Rev. Stat. Ann. § 12-36-102.5). “Telehealth” means a mode of delivery of health care services through telecommunications systems, including information, electronic, and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a covered person’s health care while the covered person is located at an originating site and the provider is located at a distant site. The term includes: (A) synchronous interactions; (B) store-and-forward transfers; and (C) services provided through HIPAA-compliant interactive audio-visual communication or the use of a HIPAA-compliant application via a cellular telephone. “Telehealth” does not include the delivery of health care services via: (A) voice-only telephone communication or text messaging; (B) facsimile machine; or (C) electronic mail systems (Colo. Rev. Stat. Ann. § 10-16-123).
Illinois	“Telehealth” means the evaluation, diagnosis, or interpretation of electronically transmitted patient-specific data between a remote location and a licensed health care professional that generates interaction or treatment recommendations. “Telehealth” includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system, as defined in subsection (a) of Section 356z.22

	of the Illinois Insurance Code (Ill. Legis. Serv. P.A. 100-317, SB 1811, effective January 1, 2018). "Telehealth services" means the delivery of covered health care services by way of an interactive telecommunications system (215 Ill. Comp. Stat. Ann. 5/356z.22).
Iowa	Telemedicine means use of a telecommunications system for diagnostic, clinical, consultative, data, and educational services for the delivery of health care services or related health care activities by licensed health care professionals, licensed medical professionals, and staff who function under the direction of a physician, a licensed health care professional, or hospital, for the purpose of developing a comprehensive, statewide telemedicine network or education (IA Admin. Code, 751 7.1(8D), not found in Iowa statutes).
Missouri	"Telehealth" or "telemedicine", the delivery of health care services by means of information and communication technologies which facilitate the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while such patient is at the originating site and the health care provider is at the distant site. "Telehealth" or "telemedicine" shall also include the use of asynchronous store-and-forward technology (Mo. Ann. Stat. § 191.1145).
Nebraska	<p>"Telehealth" means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care practitioner in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care practitioner at another site for medical evaluation, and telemonitoring (Neb. Rev. Stat. Ann. § 71-8503).</p> <p>"Telehealth consultation" means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth (Neb. Rev. Stat. Ann. § 71-8503).</p> <p>"Telemonitoring" means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care practitioner for analysis and storage (Neb. Rev. Stat. Ann. § 71-8503).</p>
Oklahoma	<p>"Telemedicine" means the practice of health care delivery, diagnosis, consultation, evaluation and treatment, transfer of medical data or exchange of medical education information by means of a two-way, real-time interactive communication, not to exclude store and forward technologies, between a patient and a physician with access to and reviewing the patient's relevant clinical information prior to the telemedicine visit (2017 SB 726, creates new sections of Sections 478 and 478.1 of Title 59, effective November 1, 2017).</p> <p>"Telemedicine" and "store and forward technologies" shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference or facsimile machine (2017 SB 726, creates new sections of Sections 478 and 478.1 of Title 59, effective November 1, 2017).</p>
Texas	"Telehealth service" means a health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology (Tex. Occ. Code Ann. § 111.001 (updated by 2017 SB 1107, effective May 27, 2017).

	<p>“Telemedicine medical service” means a health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician’s or health professional’s license to a patient at a different physical location than the physician or health professional using telecommunications or information technology (Tex. Occ. Code Ann. § 111.001 (updated by 2017 SB 1107, effective May 27, 2017).</p>
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Establishing the Professional Relationship Through Telemedicine

Arkansas	<p>“Healthcare professional” means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession (Ark. Code Ann. § 17-80-402).</p> <p>“Professional relationship” means at minimum a relationship established between a healthcare professional and a patient when: (i) The healthcare professional has previously conducted an in-person examination and is available to provide appropriate follow-up care, when necessary, at medically necessary intervals; (ii) The healthcare professional personally knows the patient and the patient’s relevant health status through an ongoing personal or professional relationship and is available to provide appropriate follow-up care, when necessary, at medically necessary intervals; (iii) The treatment is provided by a healthcare professional in consultation with, or upon referral by, another healthcare professional who has an ongoing relationship with the patient and who has agreed to supervise the patient’s treatment, including follow-up care; (iv) An on-call or cross-coverage arrangement exists with the patient’s regular treating healthcare professional or another healthcare professional who has established a professional relationship with the patient; (v) A relationship exists in other circumstances as defined by rule of the Arkansas State Medical Board for healthcare professionals under its jurisdiction and their patients; or (vi) A relationship exists in other circumstances as defined by rule of a licensing or certification board for other healthcare professionals under the jurisdiction of the appropriate board and their patients if the rules are no less restrictive than the rules of the Arkansas State Medical Board (Ark. Code Ann. § 17-80-402, updated by 2017 SB 146, effective August 1, 2017).</p> <p>(a)(1) A healthcare professional at a distant site shall not utilize telemedicine with respect to a patient located in Arkansas unless a professional relationship exists between the healthcare professional and the patient or the healthcare professional otherwise meets the requirements of a professional relationship as defined in § 17-80-402.</p> <p>(2) The existence of a professional relationship is not required in the following circumstances: (A) Emergency situations where the life or health of the patient is in danger or imminent danger; or (B) Simply providing information of a generic nature, not meant to be specific to an individual patient.</p> <p>(b) If the establishment of the professional relationship is permitted <i>via</i> telemedicine under § 17-80-402(4)(A)(v) or § 17-80-402(4)(A)(vi), telemedicine may be used to establish the professional relationship only for situations in which the standard of care does not require an in-person encounter.</p> <p>(c) “Professional relationship” does not include a relationship between a healthcare professional and a patient established only by the following: (1) An internet questionnaire; (2) An email message; (3) Patient-generated medical history; (4) Audio-only communication, including without limitation interactive audio; (5) Text messaging; (6) A facsimile machine; or (7) Any combination thereof (Ark. Code Ann. § 17-80-403).</p>
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Colorado	<p>The physician-patient/psychologist-patient relationship needs to be established.</p> <p>(a) This relationship is established through assessment, diagnosis and treatment of the patient. Two way live audio / video services is acceptable to 'establish' a patient relationship.</p> <p>(b) Physicians / psychologists need to meet standard of care.</p> <p>(c) The patient is required to provide the appropriate consent for treatment.</p> <p>Source: 7 CCR 1101-3 (Rule 18) – specific to the Department of Labor and Employment, workers' compensation.</p>
Illinois	<p>Practice authority. A health care professional treating a patient located in this State through telehealth must be licensed or authorized to practice in Illinois.</p> <p>Use of telehealth. A health care professional may engage in the practice of telehealth in Illinois to the extent of his or her scope of practice as established in his or her respective licensing act consistent with the standards of care for in-person services. This Act shall not be construed to alter the scope of practice of any health care professional or authorize the delivery of health care services in a setting or in a manner not otherwise authorized by the laws of this State.</p> <p>Source: 2017 Ill. Legis. Serv. P.A. 100-317,S.B. 1811. <i>Note:</i> the physician-patient relationship is not specifically described in the Illinois telemedicine statutes.</p>
Iowa	<p><i>Physician-patient relationship</i></p> <p>a. A licensee who uses telemedicine shall establish a valid physician-patient relationship with the person who receives telemedicine services. The physician-patient relationship begins when: (1) The person with a health-related matter seeks assistance from a licensee; (2) The licensee agrees to undertake diagnosis and treatment of the person; and (3) The person agrees to be treated by the licensee whether or not there has been an in-person encounter between the physician and the person.</p> <p>b. A valid physician-patient relationship may be established by: (1) In-person encounter. Through an in-person medical interview and physical examination where the standard of care would require an in-person encounter; (2) Consultation with another licensee. Through consultation with another licensee (or other health care provider) who has an established relationship with the patient and who agrees to participate in, or supervise, the patient's care; or (3) Telemedicine encounter. Through telemedicine, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.</p> <p>Source: Iowa Admin. Code r. 653-13.11(147,148,272C).</p>
Missouri	<p>Physicians licensed under chapter 334 who use telemedicine shall ensure that a properly established physician-patient relationship exists with the person who receives the telemedicine services. The physician-patient relationship may be established by: (1) An in-person encounter through a medical interview and physical examination; (2) Consultation with another physician, or that physician's delegate, who has an established relationship with the patient and an agreement with the physician to participate in the patient's care; or (3) A telemedicine encounter, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine (Mo. Ann. Stat. § 191.1146).</p> <p>In order to establish a physician-patient relationship through telemedicine: (1) The</p>

	<p>technology utilized shall be sufficient to establish an informed diagnosis as though the medical interview and physical examination has been performed in person; and (2) Prior to providing treatment, including issuing prescriptions, a physician who uses telemedicine shall interview the patient, collect or review relevant medical history, and perform an examination sufficient for the diagnosis and treatment of the patient. A questionnaire completed by the patient, whether via the internet or telephone, does not constitute an acceptable medical interview and examination for the provision of treatment by telehealth (Mo. Ann. Stat. § 191.1146).</p>
Nebraska	<p>The Nebraska Telehealth Act does not: (1) Alter the scope of practice of any health care practitioner; (2) authorize the delivery of health care services in a setting or manner not otherwise authorized by law; or (3) limit a patient's right to choose in-person contact with a health care practitioner for the delivery of health care services for which telehealth is available (Neb. Rev. Stat. Ann. § 71-8504).</p> <p><i>Note:</i> The Nebraska Telehealth Act requires certain disclosures but does not address how to establish the physician-patient relationship.</p>
Oklahoma	<p>A. Unless otherwise prohibited by law, a valid physician-patient relationship may be established by an allopathic or osteopathic physician with a patient located in this state through telemedicine, provided that the physician: 1. Holds a license to practice medicine in this state; 2. Confirms with the patient the patient's identity and physical location; and 3. Provides the patient with the treating physician's identity and professional credentials.</p> <p>D. A physician-patient relationship shall not be created solely based on the receipt of patient health information by a physician. The duties and obligations created by a physician-patient relationship shall not apply until the physician affirmatively: 1. Undertakes to diagnose and treat the patient; or 2. Participates in the diagnosis and treatment of the patient.</p> <p>Source: 2017 SB 726, creates new sections of Sections 478 and 478.1 of Title 59, effective November 1, 2017.</p>
Texas	<p>(a) For purposes of Section 562.056, a valid practitioner-patient relationship is present between a practitioner providing a telemedicine medical service and a patient receiving the telemedicine medical service as long as the practitioner complies with the standard of care described in Section 111.007 and the practitioner: (1) has a preexisting practitioner-patient relationship with the patient established in accordance with rules adopted under Section 111.006; (2) communicates, regardless of the method of communication, with the patient pursuant to a call coverage agreement established in accordance with Texas Medical Board rules with a physician requesting coverage of medical care for the patient; or (3) provides the telemedicine medical services through the use of one of the following methods, as long as the practitioner complies with the follow-up requirements in Subsection (b), and the method allows the practitioner to have access to, and the practitioner uses, the relevant clinical information that would be required in accordance with the standard of care described in Section 111.007: (A) synchronous audiovisual interaction between the practitioner and the patient in another location; (B) asynchronous store and forward technology, including asynchronous store and forward technology in conjunction with synchronous audio interaction between the practitioner and the patient in another location, as long as the practitioner uses clinical information from: (i) clinically relevant photographic or video images, including diagnostic images; or (ii) the patient's relevant medical records, such as the relevant medical history, laboratory and pathology results, and prescriptive histories; or C) another form of audiovisual telecommunication technology that allows the practitioner to comply with the standard of care described in Section 111.007.</p> <p>(b) A practitioner who provides telemedicine medical services to a patient as described in Subsection (a)(3) shall: (1) provide the patient with guidance on appropriate follow-</p>

	<p>up care; and (2) if the patient consents and the patient has a primary care physician, provide to the patient's primary care physician within 72 hours after the practitioner provides the services to the patient a medical record or other report containing an explanation of the treatment provided by the practitioner to the patient and the practitioner's evaluation, analysis, or diagnosis, as appropriate, of the patient's condition.</p> <p>(c) Notwithstanding any other provision of this section, a practitioner-patient relationship is not present if a practitioner prescribes an abortifacient or any other drug or device that terminates a pregnancy.</p> <p>Source: Tex. Occ. Code Ann. § 111.005, updated by Acts 2017, 85th Leg., ch. 205, SB 1107, § 3, effective May 27, 2017.</p>
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Coverage for Services Provided Through Telemedicine

Arkansas	<p>(c)(1) A health benefit plan shall provide coverage and reimbursement for healthcare services provided through telemedicine on the same basis as the health benefit plan provides coverage and reimbursement for health services provided in person, unless this subchapter specifically provides otherwise.</p> <p>(2) A health benefit plan is not required to reimburse for a healthcare service provided through telemedicine that is not comparable to the same service provided in person.</p> <p>(3) A health benefit plan may voluntarily reimburse for healthcare services provided through means described in § 23-79-1601(7)(C).</p> <p>Source: Ark. Code Ann. § 23-79-1602, updated by 2017 SB 146, effective January 1, 2018.</p>
Colorado	<p>(1) It is the intent of the general assembly to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a provider without in-person contact with the provider.</p> <p>(2)(a) On or after January 1, 2017, a health benefit plan that is issued, amended, or renewed in this state shall not require in-person contact between a provider and a covered person for services appropriately provided through telehealth, subject to all terms and conditions of the health benefit plan. Nothing in this section requires the use of telehealth when a provider determines that delivery of care through telehealth is not appropriate or when a covered person chooses not to receive care through telehealth. A provider is not obligated to document or demonstrate that a barrier to in-person care exists to trigger coverage under a health benefit plan for services provided through telehealth.</p> <p>(b)(I) Subject to all terms and conditions of the health benefit plan, a carrier shall reimburse the treating participating provider or the consulting participating provider for the diagnosis, consultation, or treatment of the covered person delivered through telehealth on the same basis that the carrier is responsible for reimbursing that provider for the provision of the same service through in-person consultation or contact by that provider.</p> <p>Source: Colo. Rev. Stat. Ann. § 10-16-123.</p>
Illinois	<p>(b) If an individual or group policy of accident or health insurance provides coverage for telehealth services, then it must comply with the following:</p> <p>(1) An individual or group policy of accident or health insurance providing telehealth services may not: (A) require that in-person contact occur between a health care provider and a patient; (B) require the health care provider to document a barrier to an in-person consultation for coverage of services to be provided through telehealth; (C)</p>

	<p>require the use of telehealth when the health care provider has determined that it is not appropriate; or (D) require the use of telehealth when a patient chooses an in-person consultation.</p> <p>(2) Deductibles, copayments, or coinsurance applicable to services provided through telehealth shall not exceed the deductibles, copayments, or coinsurance required by the individual or group policy of accident or health insurance for the same services provided through in-person consultation.</p> <p>(c) Nothing in this Section shall be deemed as precluding a health insurer from providing benefits for other services, including, but not limited to, remote monitoring services, other monitoring services, or oral communications otherwise covered under the policy.</p> <p>Source: 215 Ill. Comp. Stat. Ann. 5/356z.22.</p>
Iowa	Not specified in state law; only mandates parity within Medicaid without extending the mandate to private payers. ¹
Missouri	Each health carrier or health benefit plan that offers or issues health benefit plans which are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2014, shall not deny coverage for a health care service on the basis that the health care service is provided through telehealth if the same service would be covered if provided through face-to-face diagnosis, consultation, or treatment (Mo. Ann. Stat. § 376.1900).
Nebraska	<p>(2) Any insurer offering (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state, (b) any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, or (c) any self-funded employee benefit plan to the extent not preempted by federal law, shall provide upon request to a policyholder, certificate holder, or health care provider a description of the telehealth and telemonitoring services covered under the relevant policy, certificate, contract, or plan.</p> <p>(3) The description shall include: (a) A description of services included in telehealth and telemonitoring coverage, including, but not limited to, any coverage for transmission costs; (b) Exclusions or limitations for telehealth and telemonitoring coverage, including, but not limited to, any limitation on coverage for transmission costs; (c) Requirements for the licensing status of health care providers providing telehealth and telemonitoring services; and (d) Requirements for demonstrating compliance with the signed written statement requirement in section 71-8505.</p> <p>Source: Neb. Rev. Stat. Ann. § 44-312.</p>
Oklahoma	<p>A. For services that a health care practitioner determines to be appropriately provided by means of telemedicine, health care service plans, disability insurer programs, workers' compensation programs, or state Medicaid managed care program contracts issued, amended, or renewed on or after January 1, 1998, shall not require person-to-person contact between a health care practitioner and a patient.</p> <p>B. Subsection A of this section shall apply to health care service plan contracts with the state Medicaid managed care program only to the extent that both of the following apply: 1. Telemedicine services are covered by, and reimbursed under, the fee-for-service provisions of the state Medicaid managed care program; and 2. State Medicaid managed care program contracts with health care service plans are amended to add</p>

1 Thompson, Theresa, Implementation of Private Payer Parity Laws for Telehealth Services, July 19, 2017. <http://www.techhealthperspectives.com/2017/07/19/implementation-of-private-payer-parity-laws-for-telehealth-services/>

	<p>coverage of telemedicine services and make any appropriate capitation rate adjustments.</p> <p>Source: Okla. Stat. Ann. Tit. 36, § 6803.</p>
Texas	<p>(a) A health benefit plan may not exclude from coverage a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service or a telehealth service solely because the covered health care service or procedure is not provided through an in-person consultation.</p> <p>(b) A health benefit plan may require a deductible, a copayment, or coinsurance for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service or a telehealth service. The amount of the deductible, copayment, or coinsurance may not exceed the amount of the deductible, copayment, or coinsurance required for the covered health care service or procedure provided through an in-person consultation.</p> <p>(c) Notwithstanding Subsection (a), a health benefit plan is not required to provide coverage for a telemedicine medical service or a telehealth service provided by only synchronous or asynchronous audio interaction, including: (1) an audio-only telephone consultation; (2) a text-only e-mail message; or (3) a facsimile transmission.</p> <p>Source: Tex. Ins. Code Ann. § 1455.004, effective January 1, 2018 (2017 SB 1107).</p>

Recent Telehealth-related Legislation

In 2017, 44 states introduced more than 200 pieces of telehealth-related legislation.² Arkansas, Illinois, Oklahoma, and Texas updated or created telemedicine law during their 2017 legislative sessions.

Arkansas

SB 146 (2017) was enacted to amend the laws concerning telemedicine by creating the Telemedicine Act and modifying the definitions of “telemedicine” and “originating site,” amending the Arkansas Internet Prescription Consumer Protection Act to conform with the Telemedicine Act, addressing requirements of a professional relationship when using telemedicine, adding standards for the appropriate use of telemedicine, and addressing insurance coverage of telemedicine.³

Illinois

Public Act 100-0317 (2017 SB 1811) created the Telehealth Act (Act). The bill defines “health care professional” and “telehealth,” provides that a health care professional treating a patient located in Illinois through telehealth must be licensed in the state, provides that a health care professional may engage in the practice of telehealth in Illinois to the extent of his or her scope of practice as established in his or her respective licensing act consistent with the standards of care for in-person services, provides that the Act does not alter the scope of

2 Center for Connected Health Policy, State Telehealth Laws and Reimbursement Policies: A Comprehensive Scan of the 50 States and the District of Columbia, April 2017. <http://cchpca.org>

3 Bureau of Legislative Research, Summary of General Legislation – 91st General Assembly of the State of Arkansas, May 2017.

practice of any health care professional or authorize the delivery of health care services not authorized by Illinois law, amends the Medical Practice Act of 1987, makes changes to provisions concerning telemedicine, and provides that “telemedicine” does not include health care services provided to an existing patient while the person licensed under the Act or the patient is traveling.⁴

Oklahoma

SB 726 (2017) establishes new telemedicine practice standards in Oklahoma. Specifically, the bill defines “store and forward technologies” and “telemedicine,” and outlines the physician-patient relationship through telemedicine. The law takes effect November 1, 2017.

Texas

SB 1107 (2017) defines “store and forward technology” and redefines “telehealth service” and “telemedicine medical service,” and establishes the components of a valid practitioner-patient relationship for telemedicine medical services, effective May 27, 2017. Additionally, the bill revises requirements for the coverage of telemedicine medical services or a telehealth service under a health benefit plan, effective January 1, 2018.⁵

4 Illinois General Assembly, Telehealth Act, Bill Status of SB 1811, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1811&GAID=14&DocTypeID=SB&LegId=104905&SessionID=91&GA=100> (accessed October 17, 2017).

5 Senate Research Center, Bill Analysis, <http://www.legis.texas.gov/billlookup/text.aspx?legsess=85R&bill=SB1107> (accessed October 16, 2017).