HOUSE BILL No. 1347

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-27-1-16; IC 25-1-9.5-8; IC 25-23-1-19.4; IC 25-26.

Synopsis: Telemedicine. Expands the list of medical professionals from which home health agencies may accept written orders. Changes the requirements for the issuance of a prescription via telemedicine. Provides that advanced practice registered nurses may operate in multiple locations in collaboration with a physician. Increases the number of pharmacy technicians that a single licensed pharmacist may supervise. Provides that pharmacy technicians may perform certain work remotely without the direct supervision of a licensed pharmacist.

Effective: July 1, 2021.

Lindauer, Lehman, Davisson, Vermilion

January 14, 2021, read first time and referred to Committee on Public Health.

Introduced

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1347

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 16-27-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 16. (a) A licensed home health agency may accept written orders for home health services from a **licensed** physician, **an advanced practice registered nurse, a physician assistant,** a dentist, a chiropractor, a podiatrist, or an optometrist licensed in Indiana or any other state. If the **licensed** physician, **advanced practice registered nurse, physician assistant,** dentist, chiropractor, podiatrist, or optometrist is licensed in a state other than Indiana, the home health agency shall take reasonable immediate steps to determine that:

(1) the order complies with the laws of the state where the order originated; and

(2) the individual who issued the order examined the patient and is licensed to practice in that state.

(b) All orders issued by a **licensed** physician, **an advanced practice registered nurse, a physician assistant,** a dentist, a chiropractor, a podiatrist, or an optometrist for home health services:

(1) must meet the same requirements whether the order originates in Indiana or another state; and

(2) from another state may not exceed the authority allowed under orders from the same profession in Indiana under IC 25.

SECTION 2. IC 25-1-9.5-8, AS AMENDED BY P.L.52-2020, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) A prescriber may issue a prescription to a patient who is receiving services through the use of telemedicine if the patient has not been examined previously by the prescriber in person if the following conditions are met:

(1) The prescriber has satisfied the applicable standard of care in the treatment of the patient.

(2) The issuance of the prescription by the prescriber is within the prescriber's scope of practice and certification.

(3) The prescription:

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

(B) is not for 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) If the prescription is for a medical device, including an ophthalmic device, the prescriber must use telemedicine technology that is sufficient to allow the provider to make an informed diagnosis and treatment plan that includes the medical device being prescribed. However, a prescription for an ophthalmic device is also subject to the conditions in section 13 of this chapter.

(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.~~ **A practitioner acting in the usual course of the practitioner's professional practices issues the**

prescription for a legitimate medical purpose.

(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.~~ **The telemedicine communication is conducted using an audiovisual, real time, two-way interactive communication system.**

(5) The prescriber complies with the requirements of the INSPECT program (IC 25-26-24).

(6) All other applicable federal and state laws are followed.

(c) A prescription for a controlled substance under this section must be prescribed and dispensed in accordance with IC 25-1-9.3 and IC 25-26-24.

SECTION 3. IC 25-23-1-19.4, AS AMENDED BY P.L.127-2020, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 19.4. (a) This section does not apply to certified registered nurse anesthetists.

(b) As used in this section, "practitioner" has the meaning set forth in IC 16-42-19-5. However, the term does not include the following:

(1) A veterinarian.

(2) An advanced practice registered nurse.

(3) A physician assistant.

(c) An advanced practice registered nurse shall operate:

(1) in collaboration with a licensed practitioner **at any number of locations permitted by the licensed practitioner** as evidenced by a practice agreement;

(2) by privileges granted by the governing board of a hospital licensed under IC 16-21 with the advice of the medical staff of the hospital that sets forth the manner in which an advanced practice registered nurse and a licensed practitioner will cooperate, coordinate, and consult with each other in the provision of health care to their patients; or

(3) by privileges granted by the governing body of a hospital operated under IC 12-24-1 that sets forth the manner in which an advanced practice registered nurse and a licensed practitioner will cooperate, coordinate, and consult with each other in the provision of health care to their patients.

(d) This subsection applies for purposes of the Medicaid program to an advanced practice registered nurse who:

(1) is licensed pursuant to IC 25-23-1-19.5; and

(2) has been educated and trained to work with patients with addiction and mental health needs.

An advanced practice registered nurse who meets the requirements of

this subsection has all of the supervisory rights and responsibilities, including prior authorization, that are available to a licensed physician or a health service provider in psychology (HSPP) operating in a community mental health center certified under IC 12-21-2-3(5)(C).

(e) Before January 1, 2021, the office of the secretary shall apply to the United States Department of Health and Human Services for any state plan amendment necessary to implement subsection (d).

SECTION 4. IC 25-26-13-18.5, AS AMENDED BY P.L.202-2017, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 18.5. (a) As used in this section, "immediate and personal supervision" means within reasonable visual and vocal distance of the pharmacist.

(b) Except as provided in subsection (d), licensed pharmacy technicians or pharmacy technicians in training who are:

(1) licensed or certified under IC 25-26-19; and

(2) practicing at a pharmacy;

must practice under a licensed pharmacist's immediate and personal supervision at all times.

(c) A pharmacist may not supervise more than ~~six (6)~~ **eight (8)** pharmacy interns, pharmacy technicians, or pharmacy technicians in training at any time. Not more than ~~three (3)~~ **four (4)** of the ~~six (6)~~ **eight (8)** individuals being supervised by a pharmacist may be pharmacy technicians in training.

(d) A licensed pharmacy technician employed at a remote dispensing facility (as defined in IC 25-26-13.5-3) may be under the supervision of a pharmacist through the use of a computer link, a video link, and an audio link.

SECTION 5. IC 25-26-13-25, AS AMENDED BY P.L.247-2019, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 25. (a) All original prescriptions, whether in written or electronic format, shall be numbered and maintained in numerical and chronological order, or in a manner approved by the board and accessible for at least two (2) years in the pharmacy. A prescription transmitted from a practitioner by means of communication other than writing must immediately be reduced to writing or recorded in an electronic format by the pharmacist. The files shall be open for inspection to any member of the board or the board's duly authorized agent or representative.

(b) A prescription may be electronically transmitted from the practitioner by computer or another electronic device to a pharmacy that is licensed under this article or any other state or territory. An electronic data intermediary that is approved by the board:

(1) may transmit the prescription information between the prescribing practitioner and the pharmacy;

(2) may archive copies of the electronic information related to the transmissions as necessary for auditing and security purposes; and

(3) must maintain patient privacy and confidentiality of all archived information as required by applicable state and federal laws.

(c) Except as provided in subsection (d), a prescription for any drug, the label of which bears either the legend, "Caution: Federal law prohibits dispensing without prescription" or "Rx Only", may not be refilled without written, electronically transmitted, or oral authorization of a licensed practitioner.

(d) A prescription for any drug, the label of which bears either the legend, "Caution: Federal law prohibits dispensing without prescription" or "Rx Only", may be refilled by a pharmacist without the written, electronically transmitted, or oral authorization of a licensed practitioner if all of the following conditions are met:

(1) The pharmacist has made every reasonable effort to contact the original prescribing practitioner or the practitioner's designee for consultation and authorization of the prescription refill.

(2) The pharmacist believes that, under the circumstances, failure to provide a refill would be seriously detrimental to the patient's health.

(3) The original prescription authorized a refill but a refill would otherwise be invalid for either of the following reasons:

(A) All of the authorized refills have been dispensed.

(B) The prescription has expired under subsection (h).

(4) The prescription for which the patient requests the refill was:

(A) originally filled at the pharmacy where the request for a refill is received and the prescription has not been transferred for refills to another pharmacy at any time; or

(B) filled at or transferred to another location of the same pharmacy or its affiliate owned by the same parent corporation if the pharmacy filling the prescription has full access to prescription and patient profile information that is simultaneously and continuously updated on the parent corporation's information system.

(5) The drug is prescribed for continuous and uninterrupted use and the pharmacist determines that the drug is being taken properly in accordance with IC 25-26-16.

(6) The pharmacist shall document the following information regarding the refill:

(A) The information required for any refill dispensed under subsection (e).

(B) The dates and times that the pharmacist attempted to contact the prescribing practitioner or the practitioner's designee for consultation and authorization of the prescription refill.

(C) The fact that the pharmacist dispensed the refill without the authorization of a licensed practitioner.

(7) The pharmacist notifies the original prescribing practitioner of the refill and the reason for the refill by the practitioner's next business day after the refill has been made by the pharmacist.

(8) Any pharmacist initiated refill under this subsection may not be for more than ~~the quantity on the most recent fill or a thirty (30) day supply, whichever is less.~~ **a one (1) time ninety (90) day emergency refill.**

(9) Not more than one (1) pharmacist initiated refill is dispensed under this subsection for a single prescription in a six (6) month period.

(10) The drug prescribed is not a controlled substance.

A pharmacist may not refill a prescription under this subsection if the practitioner has designated on the prescription form the words "No Emergency Refill".

(e) When refilling a prescription, the refill record shall include:

(1) the date of the refill;

(2) the quantity dispensed if other than the original quantity; and

(3) the dispenser's identity on:

(A) the original prescription form; or

(B) another board approved, uniformly maintained, readily retrievable record.

(f) The original prescription form or the other board approved record described in subsection (e) must indicate by the number of the original prescription the following information:

(1) The name and dosage form of the drug.

(2) The date of each refill.

(3) The quantity dispensed.

(4) The identity of the pharmacist who dispensed the refill.

(5) The total number of refills for that prescription.

(g) This subsection does not apply:

(1) unless a patient requests a prescription drug supply of more than thirty (30) days;

(2) to the dispensing of a controlled substance (as defined in IC 35-48-1-9); or

(3) if a prescriber indicates on the prescription that the quantity of the prescription may not be changed.

A pharmacist may dispense, upon request of the patient, personal or legal representative of the patient, or guardian of the patient, not more than a ninety (90) day supply of medication if the patient has completed an initial thirty (30) day supply of the drug therapy and the prescription, including any refills, allows a pharmacist to dispense at least a ninety (90) day supply of the medication. However, a pharmacist shall comply with state and federal laws and regulations concerning the dispensing limitations concerning a prescription drug. The pharmacist shall inform the customer concerning whether the additional supply of the prescription will be covered under the patient's insurance, if applicable.

(h) A prescription is valid for not more than one (1) year after the original date of issue.

(i) A pharmacist may not knowingly dispense a prescription after the demise of the practitioner, unless in the pharmacist's professional judgment it is in the best interest of the patient's health.

(j) A pharmacist may not knowingly dispense a prescription after the demise of the patient.

(k) A pharmacist or a pharmacy shall not resell, reuse, or redistribute a medication that is returned to the pharmacy after being dispensed unless the medication:

(1) was dispensed to an individual:

(A) residing in an institutional facility (as defined in 856 IAC 1-28.1-1(6));

(B) in a hospice program under IC 16-25; or

(C) in a county jail or department of correction facility;

(2) was properly stored and securely maintained according to sound pharmacy practices;

(3) is returned unopened and:

(A) was dispensed in the manufacturer's original:

(i) bulk, multiple dose container with an unbroken tamper resistant seal; or

(ii) unit dose package; or

(B) was packaged by the dispensing pharmacy in a:

(i) multiple dose blister container; or

(ii) unit dose package;

(4) was dispensed by the same pharmacy as the pharmacy accepting the return;

(5) is not expired; and

(6) is not a controlled substance (as defined in IC 35-48-1-9),

unless the pharmacy holds a Category II permit (as described in section 17 of this chapter).

(l) A pharmacist or a pharmacy shall not resell, reuse, or redistribute medical devices or medical supplies used for prescription drug therapy that have been returned to the pharmacy after being dispensed unless the medical devices or medical supplies:

(1) were dispensed to an individual in a county jail or department of correction facility;

(2) are not expired; and

(3) are returned unopened and in the original sealed packaging.

(m) A pharmacist may use the pharmacist's professional judgment as to whether to accept medication for return under this section.

(n) This subsection does not apply to a controlled substance, compounded drug, or biological product, or if the prescriber has indicated adaptation of a prescription is not permitted. A pharmacist, acting in good faith, exercising reasonable care, and obtaining patient consent, may do the following:

(1) Change the quantity of a medication prescribed if:

(A) the prescribed quantity or package size is not commercially available;

(B) the change in quantity is related to a change in dosage form; or

(C) the change in quantity reflects the intended day supply.

(2) Change the dosage form of the prescription if it is in the best interest of patient care, if the prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as prescribed.

(3) Complete missing information on a prescription if there is sufficient evidence to support the change.

(4) Extend a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program.

A pharmacist who adapts a prescription in accordance with this subsection must document the adaptation in the patient's record.

(o) A pharmacist who violates subsection (d) commits a Class A infraction.

SECTION 6. IC 25-26-19-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 7.5. A pharmacy technician may work remotely and not be under the direct supervision of a pharmacist as described in section 2 of this chapter only for the limited purposes of:**

(1) data entry;

(2) insurance processing; and

(3) other ministerial nondispensing tasks.