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Governor Eric Holcomb
200 W. Washington St.
Indianapolis, IN 46202

Dear Governor Holcomb,

On behalf of our 8,500 physician members on the front lines of the COVID-19 pandemic, we are writing to follow up on the letter sent to you on March 18, 2020. Thank you for the response that has already taken place regarding these requests, including action in Executive Order 20-05 regarding licensure portability, COVID-19 testing, and child care for health care workers (which we understand is being discussed with the Department of Education and the Family and Social Services Administration (FSSA)), as well as the stay-at-home directive issued in Executive Order 20-08.

We are also grateful for the portion of Executive Order 20-05 that provides telemedicine flexibility for physicians treating Indiana Medicaid and Medicaid managed care program patients. After further review of Indiana's telemedicine statute (Indiana Code 25-1-9.5, et. seq.) and hearing from our members that confusion still exists, we believe additional action is necessary to clarify how telemedicine visits may occur during this public health emergency.

Fortunately, FSSA has confirmed it is interpreting Section 2(D) of Executive Order 20-05 to temporarily waive or supersede Indiana's telemedicine statute, thus confirming that telephone calls and audio-only communications are now temporarily a permissible form of telemedicine in Indiana for Medicaid and Medicaid managed care program patients (see the definition of "telemedicine" at Indiana Code 25-1-9.5-6). However, a significant lack of clarity still exists as to whether telephone calls are permitted for patients who do not have this type of coverage. The Centers for Medicare and Medicaid Services (CMS) and some private insurance carriers, such as Anthem, have issued guidance expressly stating that telephone and audio-only visits are billable patient encounters. However, the narrow Indiana statutory definition of "telemedicine" continues to be a barrier to our physicians' ability to provide telemedicine through all available modalities. Although secure videoconferencing technology is an option (ISMA recently partnered with a telemedicine technology platform to make this modality more accessible and cost-effective for our members), many older Hoosiers do not possess the technology needed to communicate in this manner. Because these are the Hoosiers most at-risk for serious complications from COVID-19, further clarity on the use of telephone and audio-only communications as a form of telemedicine is required.

Furthermore, Indiana Code section 25-1-9.5-8 limits the ability of physicians to prescribe controlled substances and opioids via telemedicine. As stated in our March 18 letter, the federal Drug Enforcement Administration (DEA) has confirmed that the “public health emergency” exception under the federal Controlled Substances Act is now in effect, making it possible under federal law for physicians to prescribe controlled substances through telemedicine without a prior in-person visit. State law still applies, however, and face-to-face encounters are still required under Indiana law in many circumstances.

As you know, our physicians are committed to caring for their patients in the safest way possible during this public health emergency. Flexibility in the modalities permitted for telemedicine services is an integral part of our members’ response to COVID-19, and we are concerned that the inconsistencies outlined above are preventing Hoosier physicians from protecting all patients from exposure to COVID-19. Therefore, we respectfully request that the Governor’s office: (1) take additional action to temporarily suspend the requirements set forth in Indiana’s telemedicine statute to address the issues outlined above and thereby provide flexibility on telemedicine services to the extent permitted under federal law and guidance; and (2) direct the Medical Licensing Board of Indiana to issue any necessary guidance regarding the issues outlined above.

Finally, we have also attached and wanted to make you aware of a letter sent to the Indiana Board of Pharmacy by the ISMA and the Indiana Pharmacists Association. This letter includes requests specific to Indiana Board of Pharmacy administrative rules.

As always, our members and staff stand ready to assist with this effort. Thank you for your consideration.

Sincerely,



Lisa Hatcher, MD
President
Indiana State Medical Association



Julie Reed, JD
Executive Vice President
Indiana State Medical Association