



INSTITUTE FOR JUSTICE

April 22, 2020

VIA UPS NEXT-DAY DELIVERY

Honorable J.B. Pritzker
Governor of the State of Illinois
207 State House
Springfield, IL 62706

Dr. Craig Niederberger
Chairperson, State Medical Licensing Board
100 West Randolph, 9th Floor
Chicago, IL 60601

Re: State restrictions on the use of telehealth services during COVID-19 pandemic.

To Governor Pritzker and Dr. Niederberger:

The Institute for Justice (IJ) has learned that Illinois is barring residents from seeking telehealth services from providers licensed outside the state. As the COVID-19 pandemic continues, Illinoisans need access to more healthcare providers, not fewer. As such, IJ respectfully requests that you expand Executive Order 2020-09 to allow Illinois residents to utilize telehealth services from providers licensed anywhere in the United States.

IJ is a national nonprofit organization that has worked to reduce and remove unreasonable occupational licensing requirements for nearly three decades, including in the medical professions.¹ For example, IJ has sued several states regarding laws that unreasonably restrict access to telehealth services.² In addition, IJ drafts model legislation and advises legislatures throughout the country on licensing and other regulatory matters.³ IJ does these things to support and protect the right of entrepreneurs

¹ *E.g.*, Plaintiffs' Amended Complaint, *Tiwari v. Friedlander*, No. 3:19-cv-00884-JRA. (W.D. Ky. filed Jan. 17, 2020); *Garrett v. Tex. State Bd. or Pharmacy*, No. D-1-GN-19-003686 (Tex. Dist. Ct. Travis Cty. 98th Jud. Dist. filed June 27, 2019).

² *E.g.*, *Opternative, Inc. v. S.C. Bd. of Med. Exam'rs*, Civil Action No. 2016-CP-40-06276 (S.C. 5th Jud. Cir. filed Oct. 20, 2016); *Hines v. Quillivan*, No. 1:18-cv-00155 (S.D. Tex. filed Oct. 2, 2018).

³ See <https://ij.org/activism/legislation/model-legislation/>

to earn an honest living. Most recently, IJ created an online directory of local businesses in Chicago that remain dedicated to serving their neighbors who are sheltering in place.⁴

We understand that you recently approved several measures to increase access to healthcare. For example, under your direction, the Department of Financial and Professional Regulation has made it simple for retired physicians, nurses, and even out-of-state healthcare workers to work in Illinois.⁵ As a result, more than 1,100 retired healthcare workers have heeded that call and come back to work.⁶ These measures are extremely welcome and demonstrate the state's ability to act quickly in an emergency. However, there is still more to be done.

Telehealth services are safe and effective—as states across the country have recognized over the past decade—and expanding access to these services will further Illinois' ongoing efforts to combat the pandemic in two important ways. First, increasing access to telehealth services will allow residents to continue to do their part by sheltering in place. Second, access to out-of-state telehealth services will make Illinois medical professionals available to be allocated where they are needed most in person. Without greater access to telehealth services, healthy individuals will be forced to make the unenviable choice between leaving their homes to visit a doctor's office or hospital or foregoing medical treatment altogether. But this problem has a simple solution.

Indeed, the evidence suggests there is no reason to restrict telehealth visits to in-state providers in the first instance. Doing so does not increase the quality or safety of services, but instead protects Illinois physicians from competition and reduces patient access to care. But economic protectionism of this sort is harmful, especially during the pandemic, and several federal courts have held that licensing laws that exist solely to protect one group from competition are unconstitutional. *See, e.g., St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir 2002); *Merryfield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008); *Burner v. Zawicki*, 997 F. Supp. 2d 691 (E.D. Ky. 2014).

Several states, including New York, Colorado, Florida, Connecticut, and New Jersey, have waived their telehealth restrictions and now allow their residents to seek telehealth services from doctors licensed anywhere in the nation.⁷ This is a small action that has the potential to pay large dividends.

⁴ See <https://shopinplacechi.com/>

⁵ E.g., <https://idfpr.com/COVID-19%20HC.asp>

⁶ See Andis Robeznieks, Retired doctors hear COVID-19 battle call, look for ways to help, (Apr. 3, 2020) <https://www.ama-assn.org/delivering-care/public-health/retired-doctors-hear-covid-19-battle-call-look-ways-help>.

⁷ See also, Shirley V. Svorny, *Liberating Telemedicine Options to Eliminate the State-Licensing Roadblock*, Policy Analysis, (Nov. 15, 2017),

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We thus respectfully recommend that you expand Executive Order 2020-09 to allow Illinois residents to utilize telehealth services from providers licensed anywhere in the United States during the pandemic. Doing so will help understaffed hospitals and will support the efforts of all Illinoisans to continue staying home. We also hope that you will choose to make this change permanent. If you have any questions, I can be reached at jcavanaugh@ij.org and would be happy to assist with drafting any future Executive Orders.

Sincerely,



Jaimie Cavanaugh
Attorney
Institute for Justice

cc: Christian Mitchell, Deputy Governor, Christian.mitchell@illinois.gov
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