

NEW DATA FROM FLORIDA AND IDAHO:

Few Disciplinary Issues with Out-of-State Telehealth

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Introduction

Millions of Americans tried telehealth for the first time during the COVID-19 pandemic and a substantial fraction of these telehealth visits were with an out-of-state clinician. This rapid expansion was facilitated by a series of temporary executive orders from governors including waivers of licensure requirements. Previously, most patients could only receive care from a clinician who was licensed in the state in which they were located.

Should these temporary licensure orders be made permanent? There is real urgency behind this decision. **Without action, once public health emergency declarations expire, many patients will lose access—if they have not already—to out-of-state clinicians who have been providing them care.**

Unfortunately, the debate about licensure is happening within a relative data vacuum with many unanswered questions. One concern with making it easy for out-of-state clinicians to provide care relates to disciplinary action. Can a state effectively discipline a clinician located in another state? Is this even common? Another concern, often not stated publicly, is that allowing easier access to out-of-state clinicians will create competition and out-of-state clinicians will “steal” patients away. Who chooses to provide telehealth? Is it largely clinicians in adjoining states?

We begin to answer some of these questions using data from Florida and Idaho. The states of Florida and Idaho offer two interesting case studies. Prior to the pandemic, Florida passed a law allowing across-state-line access with a provider registration, while Idaho has allowed it during the pandemic by executive order without registration. We obtained data from both states to see what lessons emerged.

Approach to Out-of-State Telehealth in the Two States

In 2019, the Florida Legislature passed legislation making it easier for out-of-state clinicians to provide care to Florida residents.¹ The new telehealth law required providers to submit an application to Florida and demonstrate, among other requirements, they have an active, unencumbered license in another state with no disciplinary actions in the previous five years. Providers who obtain a telehealth registration agree to not open an office in the state and there is no fee to register. Under the new law, across-state-line registrations began in October 2019.



WITHOUT REGISTRATION DATA, IT IS IMPOSSIBLE TO ASSESS THE NUMBER AND TYPE OF PROVIDERS OFFERED ACROSS-STATE-LINE TELEHEALTH TO IDAHO PATIENTS.

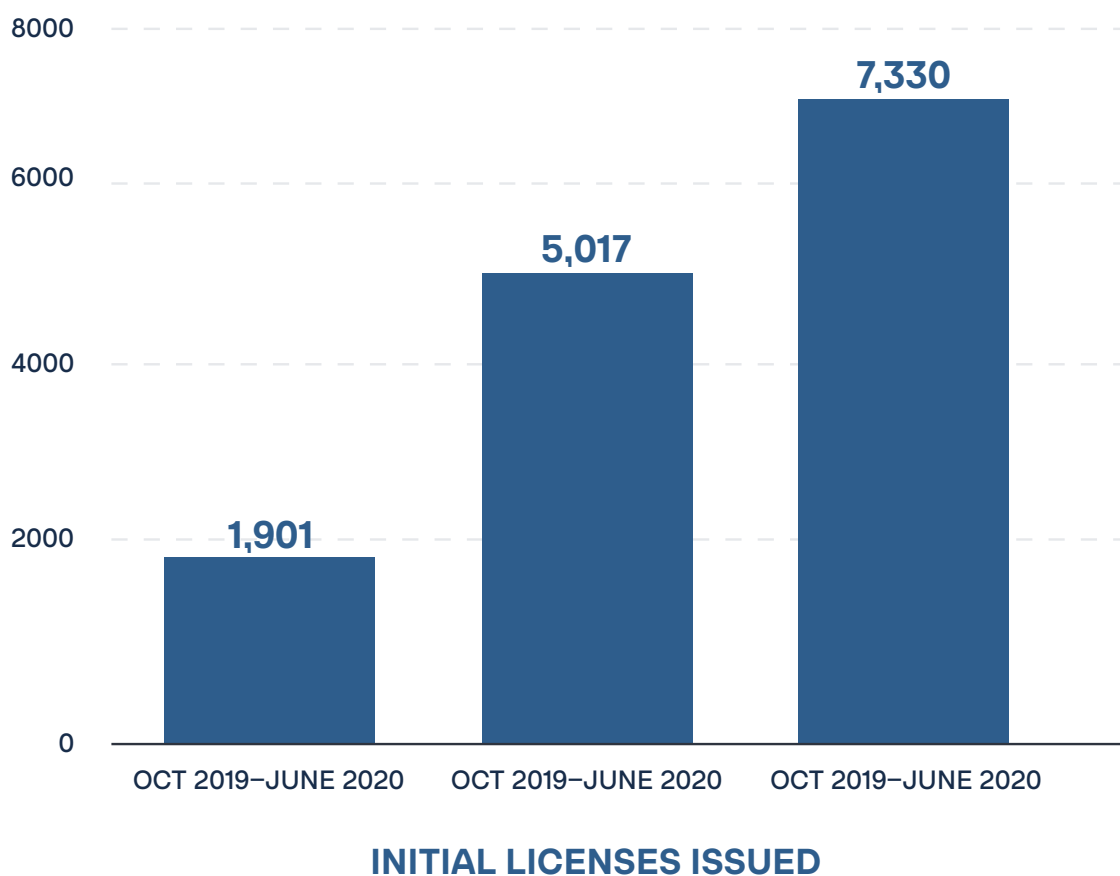
In April and June of 2020, Idaho Governor Brad Little implemented executive actions waiving rules and regulations related to telehealth.²⁻³ In response, the Idaho Division of Occupational and Professional Licenses issued guidance stating “Any healthcare professional may provide telehealth services in or into Idaho, so long as the healthcare professional is licensed or registered and in good standing with another U.S. state or jurisdiction and acting in good faith.”⁴ There is no registration process and no fee for providers to start to offer across-state-line telehealth in Idaho. Without registration data it is impossible to assess the number and type of providers offered across-state-line telehealth to Idaho patients, but Idaho does still collect complaints.

Number of Telehealth Registrations in Florida Growing Quickly

To learn more about the experience in Florida, we obtained data from the Florida Department of Health which oversees the across-state-line telehealth registration process. The number of providers registering has grown each year (Figure 1). Roughly 90 percent of applications

having been approved. The Department reports that most applications that don't result in initial approval are due to not meeting minimum qualifications and applicants are asked to reapply. The state has now approved more than 14,000 providers to use telehealth across state lines. For some context, there are currently 82,729 actively licensed medical doctors in Florida, and 1.4 million licensed providers.⁵

Figure 1. Number of Approved Out-of-State Telehealth Registrations in Florida



Out-of-state registrations issued to an array of clinical specialties from across the nation

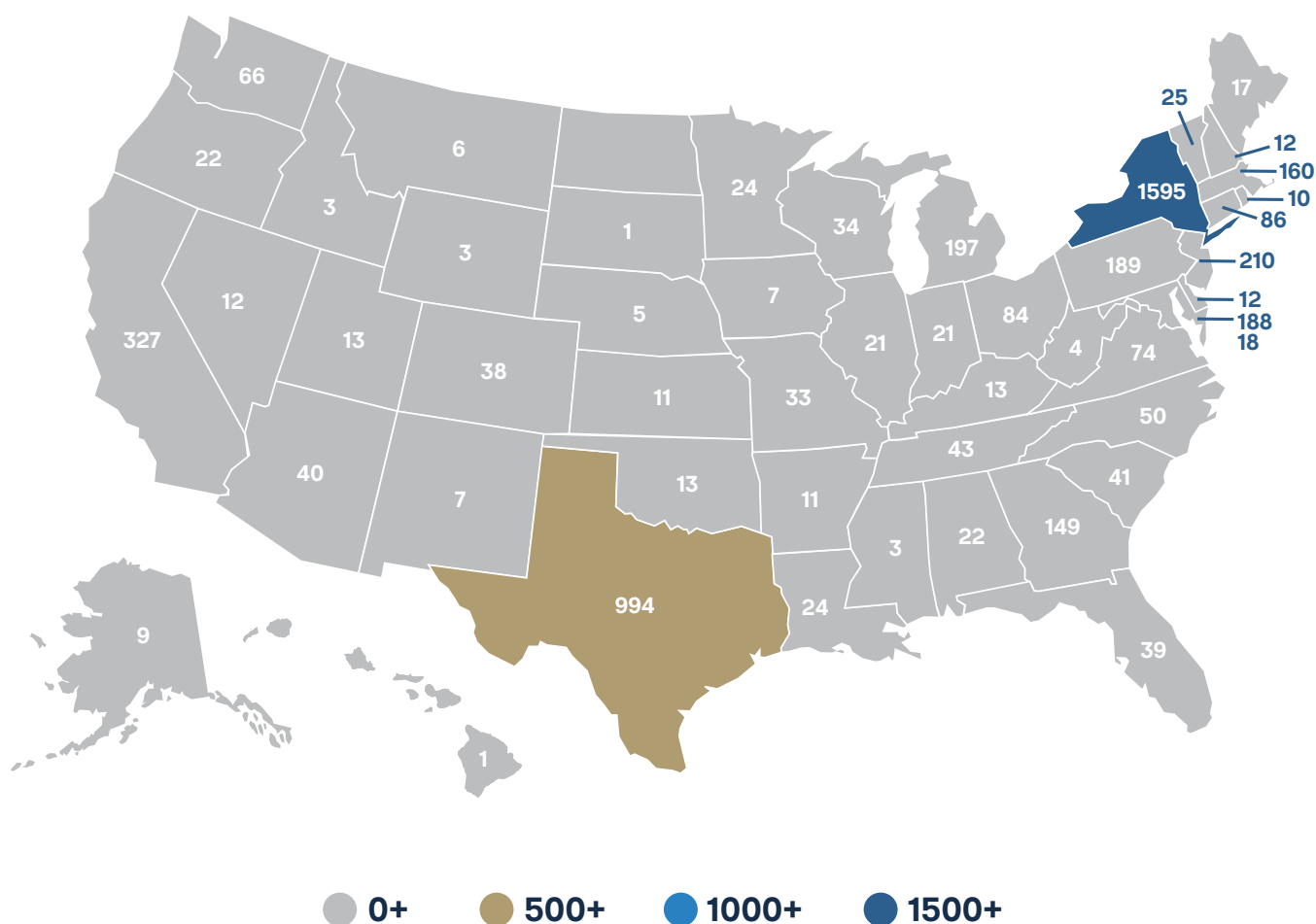
Among the 7,330 registrations during fiscal year 2021 to 2022, roughly 80 percent are for physicians or mental health specialists (mental health counselors, social workers, psychologists, and marriage and family therapists) (**Figure 2**). The remaining clinicians represent a wide range of training programs.

Figure 2. Specialty of Florida Out-of-State Telehealth Providers Issued a Registration in FY 2021–2022

Provider Type	Registrations Issued	Percent of Total
Medical Doctor	2,705	37%
Licensed Mental Health Counselor	1,127	15%
Licensed Clinical Social Worker	995	14%
Psychologist	701	10%
Advanced Practice Registered Nurse	596	8%
Licensed Marriage and Family Therapist	307	4%
Osteopathic Physician	254	3%
Physician Assistant	205	3%
Dietitian/Nutritionist	94	1%
Speech–Language Pathologist	70	0.95%
Physical Therapist	52	0.71%
Registered CSW Intern	48	0.65%
Registered Nurse	41	0.56%
Registered MHC Intern	35	0.48%
Optometrist	29	0.40%
Dentist	16	0.22%
Occupational Therapist	16	0.22%
Board Certified Behavior Analyst	8	0.11%
Registered MFT Intern	7	0.10%
Pharmacist	6	0.08%
Chiropractic Physician	4	0.05%
Hearing Aid Specialist	4	0.05%
Licensed Acupuncturist	3	0.04%
Licensed Midwife	2	0.03%
Licensed Practical Nurse	1	0.01%
Certified Master Social Worker	1	0.01%
School Psychologist	1	0.01%
Occupational Therapy Assistant	1	0.01%
Audiologist	1	0.01%
Total	7,330	100%

Doctors in Georgia and Alabama, the two contiguous states with Florida, make up a small fraction of the registrations (171, 3.4 percent).ⁱ Instead, physicians in California, New York, and Texas (2,916, 58 percent) are the states with the most medical doctors receiving telehealth registrations. There is wide geographic diversity of the physicians with Pennsylvania, Michigan, and Massachusetts also being home to many clinicians registering. These physicians may care for “snowbirds,” and may register to maintain continuity of care during the winter months.

Figure 3. Mailing Addresses for Out-of-State Telehealth MDs Registered in Florida



Source: Author's calculation based on public data pulled on December 13, 2022, from Public Data Portal of the Florida Department of Health, Division of Medical Quality Assurance, available at: <https://flhealthsource.gov/data-portal/>. This data covered all out-of-state telehealth medical doctors (5,044), not just those issued during FY21-22.

ⁱLocation of physicians was based on where they were receiving communications from the state of Florida.



Few Complaints in Florida or Idaho

In the first two and half years that Florida has allowed out-of-state telehealth registrations, there have been no cases that have resulted in discipline for a provider offering services to Florida patients.

Florida has also seen few complaints for providers providing telehealth across state lines. Of the 16 complaints reported for those with out-of-state telehealth registrations, five were related to controlled substance prescribing, five were related to discipline in another state, and the rest were one complaint each for six other concerns. Of the five controlled substances complaints, three were related to offering buprenorphine refills via telehealth, which is now legal. The fourth concern related to discipline in another state was connected to a report of concern over controlled substances in that other state, and the fifth was related to a pharmacist attempting to refill an ADHD drug for longer than is currently allowed under state law. Of the five other state issues, three were self-reported and two appeared to be from a report from another state. Ten of the 16 complaints have come to a conclusion, and nine of the 10 were found to have no violation with just one resulting in a letter of guidance.

For comparison, during the same time period, there were 57 complaints related to telehealth visits provided by in-state Florida providers. The complaints have largely revolved around similar issues, prescription prescribing over telehealth (21 percent) with the second biggest area of concern being related to discipline in another state (14 percent). Of the 57 total complaints, two have resulted in discipline.

Unlike in Florida, the reason behind a complaint in Idaho is not considered a matter of public record, so it is not possible to determine the reason or type of the complaints, only the number of complaints, against which kind of provider, and what happened to those complaints.



DATA FROM THE IDAHO DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES SHOW THAT DURING THE PANDEMIC NO FINAL DISCIPLINARY ACTION WAS TAKEN AGAINST A PROVIDER FOR CARE DELIVERED OVER TELEHEALTH.

During the first year of COVID, the Division presented to the Idaho Legislature that three complaints against three different kinds of providers were filed for care delivered over telehealth, but none resulted in disciplinary action. This care could have been delivered by providers in-state or over a state line.

Contrast that to pre-pandemic period (2017–2019), when out-of-state telehealth was not authorized, **there had been a total of 15 complaints against 11 different kinds of providers related to in-state telehealth care**, with half directed at doctors or physician assistants. Three of the 15 complaints, all for a doctor or physician assistant, resulted in a corrective action plan. Corrective action plans may cover a wide range of topics: additional education, training, behavior modification, supervision, reporting to board, peer recovery assistance, or narrow restrictions to practice. The rest of the complaints were dismissed, and none resulted in final discipline.

Given the size of Idaho, the data sample is small. But in a period when there has been much greater use of telehealth across state lines, there have been few complaints and no discipline that violates the Idaho standard of care.

Lessons for Ongoing Debate About Out-of-State Licensure or Registration

The experience of the two states reveals some interesting trends. Based on the number of telehealth registrations, a substantial and growing number of providers are interested in providing care in Florida. Future work should explore how much care these clinicians are providing and for what conditions and patients.

Based on complaints data, there have been few complaints, and none have resulted in disciplinary action. These early results question the concern that there will be substantial disciplinary concerns with across-state-line telehealth.



A SUBSTANTIAL AND GROWING NUMBER OF PROVIDERS ARE INTERESTED IN PROVIDING CARE IN FLORIDA.

Our findings also inform the debate on whether asking clinicians to register is critical. The few states that have permanently made it easier for out-of-state clinicians to provide telehealth have often asked clinicians to first register. It is unclear if this registration process is a necessary standard. While consumer protection is always a concern, these early results show that patients are not flocking to regulatory agencies to complain, and, among the complaints that have been submitted, the vast majority are dismissed as unfounded. The registration process does create an administrative burden for clinicians that may be unnecessary and may harm patient access to care.



BEING ABLE TO STAY IN TOUCH WITH PROVIDERS WHO KNOW THE PATIENT'S HISTORY AND HAVE THEIR TRUST MAY HELP TO KEEP CONTINUATION AND COORDINATION OF CARE.

Despite the attention telehealth has received during the pandemic, few states have implemented robust laws allowing out-of-state clinicians to provide care in their state. Four states with clear pathways are Arizona, Delaware, Florida and Indiana. In many other states that have allowed some kind of across-state-line telehealth, most have narrowed access to only a certain provider type, or passed a compact that only applies to one kind of provider from other compact states.

Pilots don't lose their skills when they cross a state line, and neither do health care professionals. As more Americans are mobile, being able to stay in touch with providers who know the patient's history and have their trust may help to keep continuation and coordination of care. As policymakers review their current laws to best help their state be ready for another pandemic, or to improve access to affordable care, Florida and Idaho offer some lessons on across-state-line telehealth for them to consider.

Authors

Josh Archambault is a Senior Fellow at the Cicero Institute. His work experience has ranged from work as a Senior Legislative Aide to a governor, Legislative Director for a state senator, to years working for think tanks operating in complex and highly political waters in 35 states, and in Washington, D.C. Josh has become a trusted adviser to Governors, state legislators, senior staff at the White House, and executive branch leadership as they navigate the policy issue of the decade. Josh's healthcare policy work has been covered in outlets including the *Wall Street Journal*, *USA Today*, *The New York Times*, *Fox News*, *NPR*, *MSNBC*, *Money Magazine*, and *National Review Online*. He is also a regular contributor to the influential Forbes.com blog, *The Apothecary*. Josh holds a master's in public policy from Harvard University's Kennedy School of Government and a B.A. in political studies and economics from Gordon College. He and his wife enjoy raising four kids—a mix of biological, adopted, and foster children.

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