

IN THE SENATE

SENATE BILL NO. 1126

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO VIRTUAL CARE ACCESS; AMENDING THE HEADING FOR CHAPTER 57, TITLE  
2 54, IDAHO CODE; AMENDING SECTION 54-5701, IDAHO CODE, TO PROVIDE FOR THE  
3 IDAHO VIRTUAL CARE ACCESS ACT; AMENDING SECTION 54-5702, IDAHO CODE, TO  
4 PROVIDE FOR VIRTUAL CARE AND TO MAKE A TECHNICAL CORRECTION; REPEALING  
5 SECTION 54-5703, IDAHO CODE, RELATING TO DEFINITIONS; AMENDING CHAP-  
6 TER 57, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-5703,  
7 IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 54-5704, IDAHO CODE, TO  
8 PROVIDE FOR VIRTUAL CARE AND TO MAKE TECHNICAL CORRECTIONS; REPEALING  
9 SECTION 54-5705, IDAHO CODE, RELATING TO PROVIDER-PATIENT RELATION-  
10 SHIPS; AMENDING CHAPTER 57, TITLE 54, IDAHO CODE, BY THE ADDITION OF A  
11 NEW SECTION 54-5705, IDAHO CODE, TO PROVIDE FOR PROVIDER-PATIENT RELA-  
12 TIONSHIPS; AMENDING SECTION 54-5706, IDAHO CODE, TO PROVIDE FOR VIRTUAL  
13 CARE AND TO PROVIDE FOR CERTAIN EVALUATIONS AND PROCEDURES; AMENDING  
14 SECTION 54-5707, IDAHO CODE, TO PROVIDE FOR CERTAIN PRESCRIPTIONS TO BE  
15 ISSUED THROUGH VIRTUAL CARE AND TO MAKE A TECHNICAL CORRECTION; AMEND-  
16 ING SECTION 54-5708, IDAHO CODE, TO PROVIDE FOR VIRTUAL CARE; AMENDING  
17 SECTION 54-5709, IDAHO CODE, TO PROVIDE FOR VIRTUAL CARE; AMENDING  
18 SECTION 54-5710, IDAHO CODE, TO REMOVE UNNECESSARY VERBIAGE; AMEND-  
19 ING SECTION 54-5711, IDAHO CODE, TO PROVIDE FOR CERTAIN MEDICAL RECORD  
20 REQUIREMENTS REGARDING VIRTUAL CARE; AMENDING SECTION 54-5712, IDAHO  
21 CODE, TO PROVIDE FOR VIRTUAL CARE, TO ESTABLISH CERTAIN PROVISIONS  
22 REGARDING VENUE, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
23 54-5713, IDAHO CODE, TO PROVIDE FOR VIRTUAL CARE AND TO PROVIDE FOR  
24 CERTAIN RULEMAKING AUTHORITY; AND AMENDING CHAPTER 57, TITLE 54, IDAHO  
25 CODE, BY THE ADDITION OF A NEW SECTION 54-5714, IDAHO CODE, TO ESTABLISH  
26 A VIRTUAL CARE ADVISORY BOARD.  
27

28 Be It Enacted by the Legislature of the State of Idaho:

29 SECTION 1. That the Heading for Chapter 57, Title 54, Idaho Code, be,  
30 and the same is hereby amended to read as follows:

31 CHAPTER 57  
32 IDAHO ~~TELEHEALTH~~ VIRTUAL CARE ACCESS ACT

33 SECTION 2. That Section 54-5701, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 54-5701. SHORT TITLE. This chapter shall be known and may be cited as  
36 the "Idaho ~~Telehealth~~ Virtual Care Access Act."

37 SECTION 3. That Section 54-5702, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

1           54-5702. LEGISLATIVE FINDINGS. The legislature hereby finds the fol-  
2     lowing:

3           (1) ~~Telehealth Virtual care~~ services enhance access to health care,  
4     ~~make making~~ delivery of health care more cost-effective and ~~distribute~~  
5     distribution of limited health care provider resources more efficiently  
6     efficient.

7           (2) Citizens with limited access to traditional health care may be  
8     diagnosed and treated sooner through ~~telehealth virtual care~~ services than  
9     they would be otherwise, resulting in improved health outcomes and less  
10    costly treatments due to early detection and prevention.

11          (3) ~~Telehealth Virtual care~~ services address an unmet need for health  
12    care by persons who have limited access to such care due to provider short-  
13    ages or geographic barriers.

14          (4) ~~Telehealth Virtual care~~ services provide increased capacity for  
15    appropriate care in the appropriate location at the appropriate time to bet-  
16    ter serve patients, providers, and communities.

17          (5) When practiced safely, ~~telehealth virtual care~~ services result in  
18    improvement in health outcomes by expanding health care access for the peo-  
19    ple of Idaho.

20          SECTION 4. That Section [54-5703](#), Idaho Code, be, and the same is hereby  
21    repealed.

22          SECTION 5. That Chapter 57, Title 54, Idaho Code, be, and the same is  
23    hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
24    ignated as Section 54-5703, Idaho Code, and to read as follows:

25          54-5703. DEFINITIONS. As used in this chapter:

26          (1) "Health care services" means the assessment, diagnosis, consul-  
27    tation, treatment, and remote monitoring of a patient; transfer of medical  
28    data; patient and professional health-related education; public health ser-  
29    vices; and health administration.

30          (2) "Provider" means any health care provider who is licensed or re-  
31    quired to be licensed under this title, or, if located outside of Idaho,  
32    would be required to be licensed under this title for the purposes of diag-  
33    nosing or treating physical or behavioral health conditions.

34          (3) "Provider group" means any group of licensed providers who have ac-  
35    cess to shared patient medical records and are organized to provide team-  
36    based or multidisciplinary care to patients.

37          (4) "Virtual care" means technology-enabled health care services in  
38    which the patient and provider are not in the same location. Virtual care  
39    is an umbrella term that encompasses terms associated with a wide variety  
40    of care delivery modalities enabled by technology, such as telemedicine,  
41    telehealth, m-health, e-consults, e-visits, video visits, remote patient  
42    monitoring, and similar technologies.

43          SECTION 6. That Section 54-5704, Idaho Code, be, and the same is hereby  
44    amended to read as follows:

45          54-5704. SCOPE OF PRACTICE. A provider ~~offering telehealth~~ delivering  
46    health care services via virtual care must at all times act within the scope

1 of the provider's license and according to all applicable laws and rules, in-  
2 cluding, but not limited to, this chapter and the community standard of care.

3 SECTION 7. That Section 54-5705, Idaho Code, be, and the same is hereby  
4 repealed.

5 SECTION 8. That Chapter 57, Title 54, Idaho Code, be, and the same is  
6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
7 ignated as Section 54-5705, Idaho Code, and to read as follows:

8 54-5705. PROVIDER-PATIENT RELATIONSHIP. A provider shall not pro-  
9 vide virtual care services to a patient unless such provider has first  
10 established a provider-patient relationship with the patient, the patient  
11 has a provider-patient relationship with another provider in the provider  
12 group, or the provider is covering calls for a provider with an established  
13 relationship with the patient. A provider-patient relationship may be es-  
14 tablished by use of two-way audio or audio-visual interaction; provided  
15 however, that the applicable Idaho community standard of care is satisfied.

16 SECTION 9. That Section 54-5706, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 54-5706. EVALUATION AND TREATMENT. (1) Prior to providing treatment  
19 delivering health care services via virtual care, including a prescription  
20 medical device order or a prescription drug order, a provider shall obtain  
21 and document a patient's relevant clinical history and current symptoms to  
22 establish the diagnosis and identify underlying conditions and contraindi-  
23 cations to the treatment recommended. Treatment recommendations provided  
24 through telehealth services shall be held to the applicable Idaho community  
25 standard of care that applies in an in-person setting. Treatment based  
26 solely on an online questionnaire does not constitute an acceptable standard  
27 of care. A provider may use virtual care to perform a patient evaluation.  
28 If a provider conducts a patient evaluation via virtual care in a manner  
29 sufficient to diagnose and treat a patient, the provider is not required  
30 to conduct an in-person physical examination of such patient before using  
31 virtual care to provide health care services to such patient. A provider  
32 delivering health care services via virtual care has a duty to practice in a  
33 manner consistent with the provider's scope of practice and the applicable  
34 Idaho community standard of care that applies in an in-person setting.

35 (2) All providers who deliver care virtually must have a written pol-  
36 icy and procedure for responding to a patient medical emergency, including a  
37 mental health emergency.

38 SECTION 10. That Section 54-5707, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 54-5707. PRESCRIPTIONS. (1) A provider with an established provider-  
41 patient relationship, including a relationship established pursuant to sec-  
42 tion 54-5705, Idaho Code, may issue prescription medical device orders and  
43 prescription drug orders using telehealth services, including controlled  
44 substances, via virtual care within the scope of the provider's license and

1 according to any applicable state or federal laws, rules, and regulations,  
2 including the Idaho community standard of care; provided however, that ~~the~~  
3 ~~prescription drug shall not be a controlled substance unless prescribed in~~  
4 ~~compliance with 21 U.S.C. section 802(54) (A) any such prescriptions must be~~  
5 issued for a legitimate medical purpose by a provider acting in the usual  
6 course of his professional practice. The provider must at all times adhere  
7 to the community standard of care.

8 (2) Nothing in this chapter shall be construed to expand or restrict  
9 the prescriptive authority of any provider beyond what is authorized by ~~the~~  
10 ~~provider's~~ the applicable licensing boards.

11 SECTION 11. That Section 54-5708, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 54-5708. INFORMED CONSENT. A patient's informed consent for the use of  
14 ~~telehealth services~~ virtual care shall be obtained as required by any appli-  
15 cable law.

16 SECTION 12. That Section 54-5709, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 54-5709. CONTINUITY OF CARE. A provider ~~of telehealth services~~  
19 delivering health care services via virtual care shall be available for  
20 follow-up care or to provide information to patients who make use of such  
21 services.

22 SECTION 13. That Section 54-5710, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 54-5710. REFERRAL TO OTHER SERVICES. A provider shall be familiar  
25 with and have access to available medical resources, including emergency  
26 resources near the patient's location, ~~in order~~ to make appropriate patient  
27 referrals when medically indicated.

28 SECTION 14. That Section 54-5711, Idaho Code, be, and the same is hereby  
29 amended to read as follows:

30 54-5711. MEDICAL RECORDS. A provider ~~offering telehealth services~~  
31 ~~shall generate and maintain medical records for each patient using tele-~~  
32 ~~health services~~ delivering health care services via virtual care must docu-  
33 ment in the patient's medical record the health care services rendered via  
34 virtual care according to the same standard as used for in-person services.  
35 All virtual care medical records must be maintained in compliance with any  
36 applicable state and federal laws, rules, and regulations, including the  
37 health insurance portability and accountability act (HIPAA), P.L. 104-191  
38 (1996), and the health information technology for economic and clinical  
39 health act (HITECH), P.L. 111-115 (2009). Such records shall be accessible  
40 to other providers, if the patient has given permission, and to the patient  
41 in accordance with applicable laws, rules, and regulations.

1 SECTION 15. That Section 54-5712, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 54-5712. ENFORCEMENT AND DISCIPLINE. (1) A provider is prohibited  
4 from ~~offering telehealth~~ delivering health care services via virtual care in  
5 his or her practice if the provider is not in full compliance with applicable  
6 laws, rules, and regulations, including this act and the Idaho community  
7 standard of care. State licensing boards shall be authorized to enforce  
8 the provisions of this chapter relating to the practice of individuals they  
9 license. A provider who fails to comply with applicable laws, rules, and  
10 regulations is subject to discipline by his or her licensing board.

11 (2) For the purposes of this section, any act that constitutes the de-  
12 livery of health care services is deemed to occur at the place where the pa-  
13 tient is located if the patient is located in Idaho at the time the act is  
14 performed, or in the patient's county of residence if the patient is an Idaho  
15 resident temporarily located out of state. Venue for a civil or administra-  
16 tive action initiated by the department of health and welfare, the appropri-  
17 ate board, or a patient who receives virtual care services from an out-of-  
18 state virtual care provider may be located in the patient's county of resi-  
19 dence or applicable county in Idaho.

20 SECTION 16. That Section 54-5713, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 54-5713. RULEMAKING. Any board authorized by title 54, Idaho Code,  
23 to license providers may promulgate rules relating to ~~telehealth services~~  
24 virtual care pursuant to this chapter and consistent with the provi-  
25 sions contained herein. Such rules must allow for the establishment of a  
26 provider-patient relationship via virtual care in a manner that is consis-  
27 tent with but not more restrictive than the requirements of this chapter.

28 SECTION 17. That Chapter 57, Title 54, Idaho Code, be, and the same is  
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
30 ignated as Section 54-5714, Idaho Code, and to read as follows:

31 54-5714. VIRTUAL CARE ADVISORY BOARD. (1) The governor shall appoint  
32 fifteen (15) members to serve on a virtual care advisory board. Such members  
33 shall serve at the pleasure of the governor.

34 (2) The virtual care advisory board shall be overseen and administered  
35 by the Idaho department of health and welfare and shall consist of repre-  
36 sentatives from the legislature, state agencies, a health care delivery  
37 team, business consumers, and other stakeholders that the Idaho department  
38 of health and welfare deems necessary to make recommendations regarding  
39 virtual care. At least half of such membership shall represent a health care  
40 delivery team.

41 (3) The virtual care advisory board shall be responsible for facilitat-  
42 ing statewide coordination, planning, and outreach for the purpose of in-  
43 creasing virtual care adoption and utilization in Idaho.

44 (4) The virtual care advisory board may submit reports when necessary  
45 to advise the governor and legislature regarding virtual care-related is-  
46 sues.