

IN THE SENATE

SENATE BILL NO. 1328

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO TELEHEALTH; AMENDING SECTION 54-1733, IDAHO CODE, TO REVISE PRO-
2 VISIONS REGARDING THE VALIDITY OF PRESCRIPTION DRUG ORDERS; AMENDING
3 SECTION 54-5703, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION
4 54-5705, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE PROVIDER-PA-
5 TIENT RELATIONSHIP; AMENDING SECTION 54-5706, IDAHO CODE, TO REVISE
6 PROVISIONS REGARDING EVALUATION AND TREATMENT; AND DECLARING AN EMER-
7 GENCY AND PROVIDING AN EFFECTIVE DATE.
8

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

10 SECTION 1. That Section 54-1733, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) A prescription
13 drug order for a legend drug is valid only if it is issued by a prescriber for
14 a legitimate medical purpose arising from a prescriber-patient relationship
15 ~~which~~ that includes a documented patient evaluation adequate to establish
16 diagnoses, if applicable, and identify underlying conditions and/or con-
17 traindications to the treatment.

18 (2) A prescriber who is otherwise authorized to perform any of the ac-
19 tivities listed in this section may prescribe or perform any of the follow-
20 ing activities for a patient with whom the prescriber does not have a pre-
21 scriber-patient relationship under the following circumstances:

22 (a) Writing initial admission orders for a newly hospitalized patient;

23 (b) Writing a prescription drug order for a patient of another pre-
24 scriber for whom the prescriber is taking call;

25 (c) Writing a prescription drug order for a patient examined by a physi-
26 cian assistant, advanced practice registered nurse or other licensed
27 practitioner with whom the prescriber has a supervisory or collabora-
28 tive relationship;

29 (d) Writing a prescription drug order for a medication on a short-term
30 basis for a new patient prior to the patient's first appointment;

31 (e) Writing a prescription for an opioid antagonist pursuant to section
32 54-1733B, Idaho Code;

33 (f) In emergency situations where the life or health of the patient is
34 in imminent danger;

35 (g) In emergencies that constitute an immediate threat to the public
36 health including, but not limited to, empiric treatment or prophylaxis
37 to prevent or control an infectious disease outbreak;

38 (h) Epinephrine auto-injectors in the name of a school pursuant to sec-
39 tion 33-520A, Idaho Code; and

40 (i) If a prescriber makes a diagnosis of an infectious disease in a
41 patient, prescribe or dispense antimicrobials to an individual who

1 has been exposed to the infectious person in accordance with clinical
2 guidelines.

3 (3) Treatment, including issuing a prescription drug order, based
4 solely on ~~an a static~~ online questionnaire or consultation ~~outside of an~~
5 ~~ongoing clinical~~ conducted in the absence of a prescriber-patient relation-
6 ship does not constitute a legitimate medical purpose.

7 (4) A prescription drug order shall be issued only by a prescriber in-
8 cluding a prescriber who is licensed in a jurisdiction other than the state
9 of Idaho and is permitted by such license to prescribe legend drugs in the
10 course of his professional practice as long as the individual is acting
11 within the jurisdiction, scope and authority of his license when issuing the
12 prescription drug order.

13 (5) The following acts shall be unlawful:

14 (a) To knowingly issue an invalid prescription drug order for a legend
15 drug;

16 (b) To knowingly dispense a legend drug pursuant to an invalid pre-
17 scription drug order; or

18 (c) To prescribe drugs to individuals without a prescriber-patient re-
19 lationship, unless excepted in this section.

20 Such acts shall constitute unprofessional conduct and the prescriber or
21 dispenser shall be subject to discipline according to the provisions of
22 the Idaho Code chapter pursuant to which the prescriber or dispenser is li-
23 censed, certified or registered.

24 SECTION 2. That Section 54-5703, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 54-5703. DEFINITIONS. As used in this chapter:

27 (1) "~~Asynchronous store and forward transfer interaction~~" means the
28 ~~transmission exchange~~ of a patient's health care information that does not
29 occur in real time from an originating site to a provider at a distant site
30 over a secure connection that complies with applicable state and federal
31 security and privacy laws.

32 (2) "Distant site" means the site at which a provider delivering tele-
33 health services is located at the time the service is provided.

34 (3) "Originating site" means the location of a patient at the time tele-
35 health services are provided, including but not limited to a patient's home.

36 (4) "Provider" means any health care provider who is licensed, required
37 to be licensed, or, if located outside of Idaho, would be required to be
38 licensed if located in Idaho, pursuant to title 54, Idaho Code, to deliver
39 health care consistent with his or her license.

40 (5) "Synchronous interaction" means real-time communication through
41 interactive technology that enables a provider and a patient at two (2) lo-
42 cations separated by distance to interact simultaneously through two-way
43 video and audio or audio transmission.

44 (6) "Telehealth services" means health care services provided by a
45 provider to a person through the use of electronic communications, infor-
46 mation technology, ~~asynchronous store and forward transfer interaction,~~
47 or synchronous interaction between a provider at a distant site and a pa-
48 tient at an originating site. Such services include but are not limited to
49 clinical care, health education, home health and facilitation of self-man-

1 aged care and caregiver support, and the use of synchronous or asynchronous
 2 telecommunications technologies by a provider to deliver patient health
 3 care services, including but not limited to assessment of, diagnosis of,
 4 consultation with, treatment of, and remote monitoring of a patient; trans-
 5 fer of medical data; patient and professional health-related education;
 6 public health services; and health administration. The term "telehealth
 7 services" does not include audio in isolation without access to and review of
 8 the patient's medical records, electronic mail messages that are not compli-
 9 ant with the health insurance portability and accountability act (HIPAA), if
 10 applicable, or facsimile transmissions.

11 (7) "Telehealth technologies" means synchronous or asynchronous
 12 telecommunications technologies capable of assisting a provider to deliver
 13 patient health care services, including but not limited to assessment of,
 14 diagnosis of, consultation with, treatment of, and remote monitoring of a
 15 patient; transfer of medical data; patient and professional health-related
 16 education; public health services; and health administration.

17 SECTION 3. That Section 54-5705, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 54-5705. PROVIDER-PATIENT RELATIONSHIP. (1) If a provider offering
 20 telehealth services does not have an established provider-patient relation-
 21 ship with a person seeking such services, the provider shall take appropri-
 22 ate steps to establish a provider-patient relationship by use of two-way
 23 audio, ~~or~~ audio-visual, or asynchronous interaction; provided however, that
 24 the applicable Idaho community standard of care must be satisfied. Nothing
 25 in this section shall prohibit electronic communications:

- 26 (a) Between a provider and a patient with a preexisting provider-pa-
 27 tient relationship;
- 28 (b) Between a provider and another provider concerning a patient with
 29 whom the other provider has a provider-patient relationship;
- 30 (c) Between a provider and a patient where the provider is taking call
 31 on behalf of another provider in the same community who has a provider-
 32 patient relationship with the patient; or
- 33 (d) In an emergency.

34 (2) As used in this section, "emergency" means a situation in which
 35 there is an occurrence that poses an imminent threat of a life-threatening
 36 condition or severe bodily harm.

37 SECTION 4. That Section 54-5706, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 54-5706. EVALUATION AND TREATMENT. Prior to providing treatment, in-
 40 cluding a prescription drug order, a provider shall obtain and document a
 41 patient's relevant clinical history and current symptoms to establish the
 42 diagnosis and identify underlying conditions and contraindications to the
 43 treatment recommended. Treatment recommendations provided through tele-
 44 health services shall be held to the applicable Idaho community standard of
 45 care ~~that applies in an in-person setting~~. Treatment based solely on ~~an a~~
 46 static online questionnaire does not constitute an acceptable standard of
 47 care.

1 SECTION 5. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2022.