

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 98

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO TELEHEALTH SERVICES; AMENDING TITLE 54, IDAHO CODE, BY THE AD-  
2 DITION OF A NEW CHAPTER 56, TITLE 54, IDAHO CODE, TO PROVIDE A SHORT  
3 TITLE, TO PROVIDE LEGISLATIVE FINDINGS, TO DEFINE TERMS, TO PROVIDE  
4 REQUIREMENTS FOR LICENSURE AND TO DEFINE THE SCOPE OF PRACTICE FOR TELE-  
5 HEALTH SERVICES, TO PROVIDE THAT A PATIENT-PROVIDER RELATIONSHIP SHALL  
6 BE ESTABLISHED UNDER CERTAIN CIRCUMSTANCES, TO CLARIFY REQUIREMENTS  
7 FOR PATIENT EVALUATION AND TREATMENT, TO PROVIDE REQUIREMENTS RELATING  
8 TO PRESCRIPTION DRUG ORDERS, TO PROVIDE THAT PATIENTS USING TELEHEALTH  
9 SERVICES MUST GIVE INFORMED CONSENT, TO PROVIDE THAT CONTINUING CARE  
10 SHALL BE MADE AVAILABLE TO PATIENTS, TO REQUIRE THAT PROVIDERS OF TELE-  
11 HEALTH SERVICES SHALL HAVE ACCESS TO CERTAIN MEDICAL RESOURCES, TO  
12 REQUIRE THAT PROVIDERS KEEP CERTAIN RECORDS AND MAKE THEM AVAILABLE TO  
13 CERTAIN PERSONS, TO PROVIDE THAT CERTAIN BOARDS MAY SUBJECT PROVIDERS  
14 OF TELEHEALTH SERVICES TO PROFESSIONAL DISCIPLINE AND TO GRANT RULEMAK-  
15 ING AUTHORITY TO CERTAIN BOARDS.  
16

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

18 SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended  
19 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
20 ter 56, Title 54, Idaho Code, and to read as follows:

21 CHAPTER 56

22 IDAHO TELEHEALTH ACCESS ACT

23 54-5601. SHORT TITLE. This chapter shall be known and may be cited as  
24 the "Idaho Telehealth Access Act."

25 54-5602. LEGISLATIVE FINDINGS. The legislature hereby finds the fol-  
26 lowing:

27 (1) Telehealth services enhance access to health care, make delivery of  
28 health care more cost-effective and distribute limited health care provider  
29 resources more efficiently.

30 (2) Citizens with limited access to traditional health care may be di-  
31 agnosed and treated sooner through telehealth services than they would be  
32 otherwise, resulting in improved health outcomes and less costly treatments  
33 due to early detection and prevention.

34 (3) Telehealth services address an unmet need for health care by per-  
35 sons who have limited access to such care due to provider shortages or geo-  
36 graphic barriers.

37 (4) Telehealth services provide increased capacity for appropriate  
38 care in the appropriate location at the appropriate time to better serve  
39 patients, providers and communities.

1 (5) When practiced safely, telehealth services result in improvement  
2 in health outcomes by expanding health care access for the people of Idaho.

3 54-5603. DEFINITIONS. As used in this chapter:

4 (1) "Asynchronous store and forward transfer" means the transmission  
5 of a patient's health care information from an originating site to a provider  
6 at a distant site over a secure connection that complies with state and fed-  
7 eral security and privacy laws.

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

10 (3) "Originating site" means the location of a patient at the time tele-  
11 health services are provided.

12 (4) "Provider" means a person who is licensed pursuant to title 54,  
13 Idaho Code, to deliver health care consistent with his or her license.

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

18 (6) "Telehealth services" means health care services provided to a per-  
19 son through the use of electronic communications, information technology,  
20 asynchronous store and forward transfer or synchronous interaction between  
21 a provider at a distant site and a patient at an originating site. Such ser-  
22 vices include, but are not limited to, clinical care, health education, home  
23 health and facilitation of self-managed care and caregiver support.

24 54-5604. LICENSURE AND SCOPE OF PRACTICE. A person must be a provider  
25 as defined in section 54-5603, Idaho Code, to offer telehealth services as  
26 part of his or her practice. A provider offering telehealth services must at  
27 all times act within the scope of the provider's license and according to all  
28 applicable laws and rules, including, but not limited to, this chapter and  
29 the community standard of care.

30 54-5605. PROVIDER-PATIENT RELATIONSHIP. (1) If a provider offering  
31 telehealth services in his or her practice does not have an established  
32 provider-patient relationship with a person seeking such services, the  
33 provider shall take appropriate steps to establish a provider-patient rela-  
34 tionship by use of two-way audio and visual interaction; provided however,  
35 that the applicable Idaho community standard of care must be satisfied.  
36 Nothing in this section shall prohibit electronic communications:

37 (a) Between a provider and a patient with a preexisting provider-pa-  
38 tient relationship;

39 (b) Between a provider and another provider concerning a patient with  
40 whom the other provider has a provider-patient relationship;

41 (c) Between a provider and a patient where the provider is taking call  
42 on behalf of another provider in the same community who has a provider-  
43 patient relationship with the patient; or

44 (d) In an emergency.

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

1 (3) Nothing in this section shall prohibit or restrict certified drug  
2 and alcohol counselors or crisis centers from performing authorized ser-  
3 vices by telephone.

4 54-5606. EVALUATION AND TREATMENT. Prior to providing treatment, in-  
5 cluding a prescription drug order, a provider shall obtain and document a  
6 patient's relevant clinical history and current symptoms to establish the  
7 diagnosis and identify underlying conditions and contraindications to the  
8 treatment recommended. Treatment recommendations provided through tele-  
9 health services shall be held to the applicable Idaho community standard  
10 of care that applies in an in-person setting. Treatment based solely on an  
11 online questionnaire does not constitute an acceptable standard of care.

12 54-5607. PRESCRIPTIONS. (1) A provider with an established provider-  
13 patient relationship, including a relationship established pursuant to  
14 section 54-5605, Idaho Code, may issue prescription drug orders using tele-  
15 health services within the scope of the provider's license and according to  
16 any applicable laws, rules and regulations, including the Idaho community  
17 standard of care; provided however, that the prescription drug shall not be a  
18 controlled substance unless prescribed in compliance with 21 U.S.C. section  
19 802(54) (A).

20 (2) Nothing in this chapter shall be construed to expand the prescrip-  
21 tive authority of any provider beyond what is authorized by the provider's  
22 licensing board.

23 (3) No drug may be prescribed through telehealth services for the pur-  
24 pose of causing an abortion.

25 54-5608. INFORMED CONSENT. A patient's informed consent for the use of  
26 telehealth services shall be obtained as required by any applicable law.

27 54-5609. CONTINUITY OF CARE. A provider of telehealth services shall  
28 be available for follow-up care or to provide information to patients who  
29 make use of such services.

30 54-5610. REFERRAL TO OTHER SERVICES. A provider shall be familiar  
31 with and have access to available medical resources, including emergency  
32 resources near the patient's location, in order to make appropriate patient  
33 referrals when medically indicated.

34 54-5611. MEDICAL RECORDS. Any provider offering telehealth services  
35 as part of his or her practice shall generate and maintain medical records  
36 for each patient using such telehealth services in compliance with any ap-  
37 plicable state and federal laws, rules and regulations, including the health  
38 insurance portability and accountability act (HIPAA), P.L. 104-191 (1996),  
39 and the health information technology for economic and clinical health act  
40 (HITECH), P.L. 111-115 (2009). Such records shall be accessible to other  
41 providers and to the patient in accordance with applicable laws, rules and  
42 regulations.

1           54-5612. ENFORCEMENT AND DISCIPLINE. A provider is prohibited from  
2 offering telehealth services in his or her practice if the provider is not  
3 in full compliance with applicable laws, rules and regulations, including  
4 this act and the Idaho community standard of care. State licensing boards  
5 shall be authorized to enforce the provisions of this chapter relating to the  
6 practice of individuals they license. A provider who fails to comply with  
7 applicable laws, rules and regulations is subject to discipline by his or her  
8 licensing board.

9           54-5613. RULEMAKING. Any board authorized by title 54, Idaho Code, to  
10 license providers may promulgate rules relating to telehealth services pur-  
11 suant to this chapter and consistent with the provisions contained herein.