

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 189

BY HEALTH AND WELFARE COMMITTEE

AN ACT

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

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

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

20 CHAPTER 56

21 IDAHO TELEHEALTH ACCESS ACT

22 54-5601. SHORT TITLE. This chapter shall be known and may be cited as
23 the "Idaho Telehealth Access Act."

24 54-5602. LEGISLATIVE FINDINGS. The legislature hereby finds the fol-
25 lowing:

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

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

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

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

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

1 54-5603. DEFINITIONS. As used in this chapter:

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

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

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

10 (4) "Provider" means a person who is licensed, required to be licensed,
11 or, if located outside of Idaho, would be required to be licensed if located
12 in Idaho, pursuant to title 54, Idaho Code, to deliver health care consistent
13 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 by a
19 provider to a person through the use of electronic communications, infor-
20 mation technology, asynchronous store and forward transfer or synchronous
21 interaction between a provider at a distant site and a patient at an origi-
22 nating site. Such services include, but are not limited to, clinical care,
23 health education, home health and facilitation of self-managed care and
24 caregiver support.

25 54-5604. SCOPE OF PRACTICE. A provider offering telehealth services
26 must at all times act within the scope of the provider's license and accord-
27 ing to all applicable laws and rules, including, but not limited to, this
28 chapter and the community standard of care.

29 54-5605. PROVIDER-PATIENT RELATIONSHIP. (1) If a provider offering
30 telehealth services in his or her practice does not have an established
31 provider-patient relationship with a person seeking such services, the
32 provider shall take appropriate steps to establish a provider-patient rela-
33 tionship by use of two-way audio and visual interaction; provided however,
34 that the applicable Idaho community standard of care must be satisfied.
35 Nothing in this section shall prohibit electronic communications:

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

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

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

43 (d) In an emergency.

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

1 54-5606. EVALUATION AND TREATMENT. Prior to providing treatment, in-
2 cluding a prescription drug order, a provider shall obtain and document a
3 patient's relevant clinical history and current symptoms to establish the
4 diagnosis and identify underlying conditions and contraindications to the
5 treatment recommended. Treatment recommendations provided through tele-
6 health services shall be held to the applicable Idaho community standard
7 of care that applies in an in-person setting. Treatment based solely on an
8 online questionnaire does not constitute an acceptable standard of care.

9 54-5607. PRESCRIPTIONS. (1) A provider with an established provider-
10 patient relationship, including a relationship established pursuant to
11 section 54-5605, Idaho Code, may issue prescription drug orders using tele-
12 health services within the scope of the provider's license and according to
13 any applicable laws, rules and regulations, including the Idaho community
14 standard of care; provided however, that the prescription drug shall not be a
15 controlled substance unless prescribed in compliance with 21 U.S.C. section
16 802(54) (A) .

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

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

22 54-5608. INFORMED CONSENT. A patient's informed consent for the use of
23 telehealth services shall be obtained as required by any applicable law.

24 54-5609. CONTINUITY OF CARE. A provider of telehealth services shall
25 be available for follow-up care or to provide information to patients who
26 make use of such services.

27 54-5610. REFERRAL TO OTHER SERVICES. A provider shall be familiar
28 with and have access to available medical resources, including emergency
29 resources near the patient's location, in order to make appropriate patient
30 referrals when medically indicated.

31 54-5611. MEDICAL RECORDS. Any provider offering telehealth services
32 as part of his or her practice shall generate and maintain medical records
33 for each patient using such telehealth services in compliance with any ap-
34 plicable state and federal laws, rules and regulations, including the health
35 insurance portability and accountability act (HIPAA), P.L. 104-191 (1996),
36 and the health information technology for economic and clinical health act
37 (HITECH), P.L. 111-115 (2009). Such records shall be accessible to other
38 providers and to the patient in accordance with applicable laws, rules and
39 regulations.

40 54-5612. ENFORCEMENT AND DISCIPLINE. A provider is prohibited from
41 offering telehealth services in his or her practice if the provider is not
42 in full compliance with applicable laws, rules and regulations, including
43 this act and the Idaho community standard of care. State licensing boards
44 shall be authorized to enforce the provisions of this chapter relating to the

1 practice of individuals they license. A provider who fails to comply with
2 applicable laws, rules and regulations is subject to discipline by his or her
3 licensing board.

4 54-5613. RULEMAKING. Any board authorized by title 54, Idaho Code, to
5 license providers may promulgate rules relating to telehealth services pur-
6 suant to this chapter and consistent with the provisions contained herein.