

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 162

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO VIRTUAL HEALTH CARE; AMENDING SECTION 54-1733, IDAHO CODE, TO  
2 PROVIDE THAT A VALID PRESCRIBER-PATIENT RELATIONSHIP MAY BE ESTAB-  
3 LISHED THROUGH VIRTUAL CARE TECHNOLOGIES, TO PROVIDE THAT TREATMENT  
4 BASED SOLELY ON A STATIC ONLINE QUESTIONNAIRE DOES NOT CONSTITUTE A  
5 LEGITIMATE MEDICAL PURPOSE, AND TO MAKE A TECHNICAL CORRECTION; AMEND-  
6 ING THE HEADING FOR CHAPTER 57, TITLE 54, IDAHO CODE; AMENDING SECTION  
7 54-5701, IDAHO CODE, TO REVISE TERMINOLOGY; REPEALING SECTION 54-5702,  
8 IDAHO CODE, RELATING TO LEGISLATIVE FINDINGS; AMENDING CHAPTER 57,  
9 TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-5702, IDAHO  
10 CODE, TO PROVIDE LEGISLATIVE FINDINGS; REPEALING SECTION 54-5703,  
11 IDAHO CODE, RELATING TO DEFINITIONS; AMENDING CHAPTER 57, TITLE 54,  
12 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-5703, IDAHO CODE, TO DE-  
13 FINE TERMS; AMENDING SECTION 54-5704, IDAHO CODE, TO REVISE PROVISIONS  
14 REGARDING SCOPE OF PRACTICE; REPEALING SECTION 54-5705, IDAHO CODE,  
15 RELATING TO THE PROVIDER-PATIENT RELATIONSHIP; AMENDING CHAPTER 57,  
16 TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-5705, IDAHO  
17 CODE, TO ESTABLISH PROVISIONS REGARDING THE PROVIDER-PATIENT RELA-  
18 TIONSHIP; AMENDING SECTION 54-5706, IDAHO CODE, TO REVISE PROVISIONS  
19 REGARDING EVALUATION AND TREATMENT; AMENDING SECTION 54-5707, IDAHO  
20 CODE, TO REVISE PROVISIONS REGARDING PRESCRIPTIONS; AMENDING SECTION  
21 54-5708, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 54-5709,  
22 IDAHO CODE, TO REVISE PROVISIONS REGARDING CONTINUITY OF CARE; AMENDING  
23 SECTION 54-5710, IDAHO CODE, TO REVISE PROVISIONS REGARDING REFERRAL  
24 TO OTHER SERVICES; AMENDING SECTION 54-5711, IDAHO CODE, TO REVISE  
25 PROVISIONS REGARDING MEDICAL RECORDS; AMENDING SECTION 54-5712, IDAHO  
26 CODE, TO REVISE PROVISIONS REGARDING ENFORCEMENT AND DISCIPLINE AND TO  
27 PROVIDE FOR VENUE; REPEALING SECTION 54-5713, IDAHO CODE, RELATING TO  
28 RULEMAKING; AMENDING CHAPTER 57, TITLE 54, IDAHO CODE, BY THE ADDITION  
29 OF A NEW SECTION 54-5713, IDAHO CODE, TO PROVIDE VIRTUAL CARE LICEN-  
30 SURE EXEMPTIONS AND TO PROVIDE FOR CONSENT TO CERTAIN JURISDICTION; AND  
31 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
32

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

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

36 54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) A prescription  
37 drug order for a legend drug is valid only if it is issued by a prescriber for  
38 a legitimate medical purpose arising from a prescriber-patient relationship  
39 ~~which~~ that includes a documented patient evaluation adequate to establish  
40 diagnoses, if applicable, and identify underlying conditions and/or con-  
41 traindications to the treatment. A valid prescriber-patient relationship

1 may be established through virtual care technologies, provided that the ap-  
2 plicable Idaho community standard of care must be satisfied.

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

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

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

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

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

16 (e) Writing a prescription for an opioid antagonist pursuant to section  
17 54-1733B, Idaho Code;

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

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

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

25 (i) If a prescriber makes a diagnosis of an infectious disease in a  
26 patient, prescribe or dispense antimicrobials to an individual who  
27 has been exposed to the infectious person in accordance with clinical  
28 guidelines.

29 (3) Treatment, including issuing a prescription drug order, based  
30 solely on an a static online questionnaire ~~or consultation outside of an~~  
31 ~~ongoing clinical relationship~~ does not constitute a legitimate medical pur-  
32 pose.

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

39 (5) The following acts shall be unlawful:

40 (a) To knowingly issue an invalid prescription drug order for a legend  
41 drug;

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

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

46 Such acts shall constitute unprofessional conduct and the prescriber or  
47 dispenser shall be subject to discipline according to the provisions of  
48 the Idaho Code chapter pursuant to which the prescriber or dispenser is li-  
49 censed, certified or registered.

1 SECTION 2. That the Heading for Chapter 57, Title 54, Idaho Code, be,  
2 and the same is hereby amended to read as follows:

3 CHAPTER 57  
4 IDAHO ~~TELEHEALTH~~ VIRTUAL CARE ACCESS ACT

5 SECTION 3. That Section 54-5701, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 54-5701. SHORT TITLE. This chapter shall be known and may be cited as  
8 the "Idaho ~~Telehealth~~ Virtual Care Access Act."

9 SECTION 4. That Section 54-5702, Idaho Code, be, and the same is hereby  
10 repealed.

11 SECTION 5. That Chapter 57, Title 54, Idaho Code, be, and the same is  
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
13 ignated as Section 54-5702, Idaho Code, and to read as follows:

14 54-5702. LEGISLATIVE FINDINGS. The legislature finds that virtual  
15 care provides an additional setting for the delivery of health care that  
16 maximizes the capacity and geographic reach of health care providers and  
17 limited health care resources. When practiced safely, virtual care enhances  
18 access to health care services and allows for a more cost-effective delivery  
19 system for the people of Idaho. Citizens with limited access to traditional  
20 health care settings may be diagnosed and treated sooner through virtual  
21 care than through in-person care, resulting in improved health outcomes due  
22 to early detection and prevention.

23 SECTION 6. That Section 54-5703, Idaho Code, be, and the same is hereby  
24 repealed.

25 SECTION 7. That Chapter 57, Title 54, Idaho Code, be, and the same is  
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
27 ignated as Section 54-5703, Idaho Code, and to read as follows:

28 54-5703. DEFINITIONS. As used in this chapter:

29 (1) "Health care services" means:

30 (a) The assessment, diagnosis, consultation, treatment, and remote  
31 monitoring of a patient;

32 (b) Transfer of medical data;

33 (c) Patient and professional health-related education;

34 (d) Public health services; and

35 (e) Health administration.

36 (2) "Provider" means any health care provider who is licensed or re-  
37 quired to be licensed under this title or, if located outside of Idaho, would  
38 be required to be licensed under this title for the purposes of diagnosing or  
39 treating physical or behavioral health conditions.

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

1 (4) "Static online questionnaire" means a questionnaire provided to a  
2 patient to which the patient responds with a static set of answers.

3 (5) "Virtual care" means technology-enabled health care services in  
4 which the patient and provider are not in the same location. Virtual care  
5 is an umbrella term that encompasses terms associated with a wide variety  
6 of synchronous and asynchronous care delivery modalities enabled by tech-  
7 nology, such as telemedicine, telehealth, m-health, e-consults, e-visits,  
8 video visits, remote patient monitoring, and similar technologies. Virtual  
9 care is considered to be rendered at the physical location of the patient.

10 SECTION 8. That Section 54-5704, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 54-5704. SCOPE OF PRACTICE. A provider ~~offering telehealth services~~  
13 delivering health care services via virtual care must at all times act within  
14 the scope of the provider's license and according to all applicable laws and  
15 rules, including<sup>7</sup> but not limited to<sup>7</sup> this chapter and the Idaho community  
16 standard of care.

17 SECTION 9. That Section 54-5705, Idaho Code, be, and the same is hereby  
18 repealed.

19 SECTION 10. That Chapter 57, Title 54, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 54-5705, Idaho Code, and to read as follows:

22 54-5705. PROVIDER-PATIENT RELATIONSHIP. A provider may provide vir-  
23 tual care to a patient if such provider has first established a provider-pa-  
24 tient relationship with the patient, the patient has a provider-patient  
25 relationship with another provider in the provider group, the provider is  
26 covering calls for a provider with an established relationship with the  
27 patient, or the provider is performing any activities set forth in section  
28 54-1733(2), Idaho Code. A provider-patient relationship may be established  
29 by use of virtual care technologies, provided that the applicable Idaho com-  
30 munity standard of care is satisfied.

31 SECTION 11. That Section 54-5706, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33 54-5706. EVALUATION AND TREATMENT. ~~Prior to providing treatment~~ When  
34 delivering health care services via virtual care, including a prescription  
35 drug order or prescription medical device order, a provider shall obtain  
36 and document a patient's relevant clinical history and current symptoms to  
37 establish the diagnosis and identify underlying conditions and contraindi-  
38 cations to the treatment recommended. ~~Treatment recommendations provided~~  
39 through telehealth services A provider delivering health care services  
40 via virtual care has a duty to practice in a manner consistent with the  
41 provider's scope of practice and shall be held to the applicable Idaho commu-  
42 nity standard of care that applies in an in-person setting. Treatment based  
43 solely on ~~an~~ a static online questionnaire does not constitute an acceptable  
44 standard of care.

1 SECTION 12. That Section 54-5707, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 54-5707. PRESCRIPTIONS. (1) A provider with an established provider-  
4 patient relationship, including a relationship established pursuant to  
5 section 54-5705, Idaho Code, may issue prescription drug orders ~~using tele-~~  
6 ~~health services and prescription medical device orders via virtual care~~  
7 within the scope of the provider's license and according to any applicable  
8 state and federal laws, rules, and regulations, including the Idaho commu-  
9 nity standard of care, provided however, that. However, the prescription  
10 drug shall not be a controlled substance unless prescribed in compliance  
11 with title 21 U.S.C. A prescription drug order and prescription medical  
12 device order must be issued for a legitimate medical purpose by a provider  
13 acting in a manner consistent with the provider's scope of practice.

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

17 SECTION 13. That Section 54-5708, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19 54-5708. INFORMED CONSENT. A patient's informed consent for the use of  
20 ~~telehealth services~~ virtual care shall be obtained as required by any appli-  
21 cable law.

22 SECTION 14. That Section 54-5709, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 54-5709. CONTINUITY OF CARE. A provider ~~of telehealth services~~  
25 delivering health care services via virtual care or a provider who is a  
26 member of the same provider group as the provider delivering health care  
27 services via virtual care shall be available for follow-up care or to provide  
28 information to patients who make use of such services. Patients receiving  
29 care virtually shall be provided a method to contact the provider of record.

30 SECTION 15. That Section 54-5710, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32 54-5710. REFERRAL TO OTHER SERVICES. A provider shall ~~be familiar~~  
33 ~~with and have access to available medical resources, including emergency~~  
34 ~~resources near the patient's location, in order to make appropriate patient~~  
35 ~~referrals, including to emergency resources, when medically indicated.~~

36 SECTION 16. That Section 54-5711, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 54-5711. MEDICAL RECORDS. A provider ~~offering telehealth services~~  
39 ~~shall generate and maintain medical records for each patient using tele-~~  
40 ~~health services~~ delivering health care services via virtual care must docu-  
41 ment in the patient's medical record the health care services rendered via  
42 virtual care according to the same standard used for equivalent in-person

1 services. All virtual care medical records must be maintained in compli-  
 2 ance with any applicable state and federal laws, rules, and regulations,  
 3 including the health insurance portability and accountability act (HIPAA),  
 4 P.L. 104-191 (1996), and the health information technology for economic and  
 5 clinical health act (HITECH), P.L. 111-115 (2009). Such records shall be  
 6 accessible to other providers, if the patient has given permission, and to  
 7 the patient in accordance with applicable laws, rules, and regulations.

8 SECTION 17. That Section 54-5712, Idaho Code, be, and the same is hereby  
 9 amended to read as follows:

10 54-5712. ENFORCEMENT AND DISCIPLINE. (1) A provider is prohibited  
 11 from ~~offering telehealth services in his or her~~ delivering health care ser-  
 12 vices via virtual care in the provider's practice if the provider is not in  
 13 full compliance with applicable state and federal laws, rules, and regula-  
 14 tions, including this ~~act~~ chapter and the Idaho community standard of care.  
 15 State licensing boards shall be authorized to enforce the provisions of this  
 16 chapter relating to the practice of individuals they license. A provider who  
 17 fails to comply with applicable state and federal laws, rules, and regula-  
 18 tions is subject to discipline by ~~his or her~~ such provider's licensing board.

19 (2) For purposes of this section, any act that constitutes the deliv-  
 20 ery of health care services is deemed to occur at the place where the pa-  
 21 tient is located at the time the act is performed. Venue for a civil or admin-  
 22 istrative action initiated by the appropriate regulatory licensing author-  
 23 ity or by a patient who receives virtual care services from an out-of-state  
 24 provider may be located in the patient's county of residence, an applicable  
 25 county in Idaho, or another venue as deemed proper by a court of competent ju-  
 26 risdiction.

27 SECTION 18. That Section 54-5713, Idaho Code, be, and the same is hereby  
 28 repealed.

29 SECTION 19. That Chapter 57, Title 54, Idaho Code, be, and the same is  
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 31 ignated as Section 54-5713, Idaho Code, and to read as follows:

32 54-5713. VIRTUAL CARE LICENSURE EXEMPTIONS AND JURISDICTION CON-  
 33 SENT. (1) Prior to delivering health care services via virtual care, a  
 34 provider must obtain a license from the applicable licensing board, except a  
 35 license is not required for virtual care when a provider licensed and in good  
 36 standing in another state or jurisdiction of the United States:

37 (a) Has established a patient-provider relationship with a person who  
 38 is in Idaho temporarily for business, work, education, vacation, or  
 39 other reasons and such person requires health care services from that  
 40 provider;

41 (b) Has established a patient-provider relationship with a person and  
 42 provides temporary or short-term follow-up health care services to such  
 43 person to ensure continuity of care;

44 (c) Is employed by or contracted with an Idaho facility or hospital to  
 45 provide care services for which the provider has been privileged and  
 46 credentialed;

- 1 (d) Renders health care services in a time of disaster and provides fol-  
2 low-up health care services to ensure continuity of care;  
3 (e) Provides health care services in preparation for a scheduled  
4 in-person care visit; or  
5 (f) Consults with or refers a patient to an Idaho licensed provider.  
6 (2) By engaging in virtual care with a patient located in Idaho, a  
7 provider exempted from Idaho licensure under subsection (1) of this section  
8 consents to the applicable Idaho laws, rules, and regulations governing  
9 the provider's profession, including this chapter and the Idaho community  
10 standard of care, the jurisdiction of Idaho courts, the jurisdiction of the  
11 division of occupational and professional licenses, and the jurisdiction of  
12 the applicable licensing board regulating the provider's profession, in-  
13 cluding the division's and licensing board's complaint, investigation, and  
14 hearing process and ability to seek injunctions and impose civil penalties  
15 and fines.

16 SECTION 20. An emergency existing therefor, which emergency is hereby  
17 declared to exist, this act shall be in full force and effect on and after  
18 July 1, 2023.