

CHAPTER 56
IDAHO TELEHEALTH ACCESS ACT

54-5601. Title. This chapter shall be known and may be cited as the “Idaho Telehealth Access Act.”

54-5602. Declaration of Policy. To provide for definitions; to provide for the delivery of healthcare services through telehealth; to authorize state agencies and licensing boards to promulgate rules governing healthcare services provided by telehealth; and to provide for related matters.

54-5603. Findings. The legislature hereby finds the following:

- (1) Telehealth enhances access to care, makes delivery of care more cost-effective, and distributes limited healthcare provider resources more efficiently.
- (2) Many citizens with limited access to traditional health care can be diagnosed and treated sooner through telehealth than they would be otherwise, resulting in improved outcomes and less costly treatments due to early detection and prevention.
- (3) Telehealth services address an unmet need for healthcare by persons who have limited access to healthcare due to healthcare provider shortages or geographic barriers.
- (4) Telehealth services provide increased capacity for appropriate care in the appropriate location at the appropriate time to better serve patients, providers and communities.
- (5) When practiced safely, telehealth will result in improvement in health outcomes by expanding access to telehealth services for people seeking healthcare in Idaho.

54-5604. Definitions.

- (1) “Telehealth ” means a modality of providing healthcare through the use of electronic communications, information technology or other means between a healthcare provider in one location, and a patient in another location for any aspects of healthcare, including but not limited to: clinical care, health education, home health, facilitation of self-managed care and caregiver support, physician and health care professional education (distance learning), administrative and program planning, and other diverse aspects of a health care delivery system. Within this act, the terms telehealth, telehealthcare and telemedicine may be used interchangeably.
- (2) “Healthcare Provider” means a person who is licensed or regulated by the state of Idaho pursuant to Title 54, Idaho Code, to deliver healthcare consistent with their licensing, regulation and training.
- (3) “Asynchronous store and forward transfer” means the transmission of a patient’s healthcare information from an originating site to the provider at the distant site without the patient being present over a secure connection that complies with state and federal security and privacy laws.

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- (4) "Synchronous interaction" means real time communication through interactive technology that enables a healthcare provider and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously.
- (5) "Originating site" means the location of the patient whether frontier, rural or urban, at the time the service is furnished via a telecommunications system or when the asynchronous store and forward transfer occurs.
- (6) "Distant site" means the site at which the healthcare provider delivering the service is located whether frontier, rural or urban, at the time the service is provided via a telecommunications system.

54-5605. Practice of telehealth.

- (1) Licensure. The practice of telehealth is allowed by a healthcare provider licensed or regulated in Idaho so long as the healthcare provider acts within the scope of services for which the healthcare provider is licensed or regulated and provided such health care provider meets the community standard of care. The practice of telehealth by any healthcare provider is prohibited if the healthcare provider is not in full compliance with this act.
- (2) Establishment of a provider-patient relationship. Where an existing provider-patient relationship is not present, a provider must take appropriate steps to establish a provider-patient relationship using synchronous interaction provided the community standard of care is met. A provider-patient relationship may be established whether or not there has been an in person encounter between the provider and patient if the appropriate steps have been taken as outlined in this paragraph.
- (3) Evaluation and treatment. A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contraindications to the treatment recommended and provided must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same community standard of care as those in traditional (encounter in person) settings. Treatment, including issuing a prescription, based solely on an online questionnaire does not constitute an acceptable standard of care. Nothing in this act shall prohibit care for a patient of another prescriber who has a relationship with a patient established in accordance with subsection 2 hereof and for whom the prescriber is taking call.
- (4) Prescribing. If a healthcare provider does not have a prior existing relationship with a patient in which there has been a physical examination or in-person encounter, and is authorized to prescribe prescription drugs pursuant to that healthcare provider's licensing and regulation, then the healthcare

77 provider shall be allowed to prescribe, dispense, or administer a prescription drug to a patient without
78 conducting an in-person physical examination only if the following conditions are met:

- 79 a. the healthcare provider is licensed in this state;
- 80 b. the episode of care meets the community standard of care;
- 81 c. a relationship has been established between the healthcare provider and the patient by the
82 provider's agreement to undertake diagnosis and treatment of a patient, and the patient's
83 agreement to be treated, whether or not there has been a physical examination or an encounter
84 in-person between the healthcare provider and patient;
- 85 d. the prescription drug is not a controlled substance.

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87 Nothing in this act shall be interpreted to expand prescriptive authority for any healthcare provider beyond
88 what is authorized by that provider's licensing and regulatory board.

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90 (5) Informed consent. Evidence documenting patient informed consent for the use of telehealth
91 technologies must be obtained and maintained when patient consent is required by federal or state law.

92 Appropriate informed consent must, as a baseline, include the following terms:

- 93 a. Identification of the patient, the provider and the provider's credentials;
- 94 b. Types of transmissions permitted using telehealth technologies;
- 95 c. The patient agrees that the provider determines whether or not the condition being diagnosed
96 and/or treated is appropriate for a telehealth encounter;
- 97 d. Types of transmissions used must be HIPAA compliant.
- 98 e. Hold harmless clause for information lost due to technical failures; and
- 99 f. Requirement for express patient consent to forward patient-identifiable information to a third
100 party.

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102 (6) Continuity of care. Patients must be able to seek follow-up care or information from the provider or
103 provider's designee who conducts an encounter using telehealth technologies. Providers solely
104 providing services using telehealth technologies with no existing provider-patient relationship prior to
105 the encounter must make documentation of the encounter using telehealth technologies easily
106 available to the patient, and subject to the patient's consent, any identified care provider of the patient
107 immediately after the encounter.

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109 (7) Referrals for emergency services. The provider shall have an emergency or contingency plan that is
110 communicated to the patient in advance of the telehealth encounter. The provider shall be familiar with
111 or have access to available medical resources in proximity to the patient in order to make referrals or
112 request transfers when indicated.

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114 (8) Medical records. Providers shall generate and maintain an electronic medical record for each patient for
115 whom they provide remote care. All communications with the patient (verbal, audiovisual or written)
116 shall be documented in the patient's unique medical record on par with documentation standards of in-

117 person visits. The patient record established during the use of telehealth technologies must be
118 accessible and documented for both the provider and the patient, consistent with all established laws
119 and regulations governing patient healthcare records.

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121 (9) Privacy and security of patient records and exchange of information. Providers shall meet or exceed
122 applicable federal and state legal requirements of medical/health information privacy, including
123 compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy,
124 confidentiality, security, and medical retention rules. Written policies and procedures must be
125 maintained at the same standard as traditional face-to-face encounters for documentation,
126 maintenance, and transmission of the records of the encounter using telehealth technologies.

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128 (10) Disclosures and functionality of online services. Online services used by providers using telehealth
129 technologies must clearly disclose:
130 a. Specific services provided;
131 b. Fees for services and how payment is to be made;
132 c. Financial interests, other than fees charged, in any information, products, or services provided
133 or promoted by a provider;
134 d. Uses and response times for e-mails, electronic messages and other communications
135 transmitted via telehealth technologies;
136 e. Accurate and transparent information about the website owner/operator, location, and contact
137 information, including a domain name that accurately reflects the identity.

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139 Online services used by providers using telehealth technologies must provide patients a clear mechanism to:
140 a. Access, supplement and amend patient-provided personal health information;
141 b. Provide feedback regarding the site and the quality of information and services; and
142 c. Register complaints, including information regarding filing a complaint with the applicable state
143 regulatory board(s).

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145 (11) Parity of professional and ethical standards. Providers must comply with generally accepted nationally
146 recognized health service standards and codes of ethics for their own profession. There must be parity
147 of ethical and professional standards applied to all aspects of a provider's care regardless of mode of
148 delivery.

149 54-5606. Rulemaking. Boards regulating healthcare providers governed by title 54, Idaho Code, shall
150 promulgate rules regulating the practice of telehealth pursuant to this chapter and not inconsistent with the
151 provisions contained herein.