

# TELEHEALTH



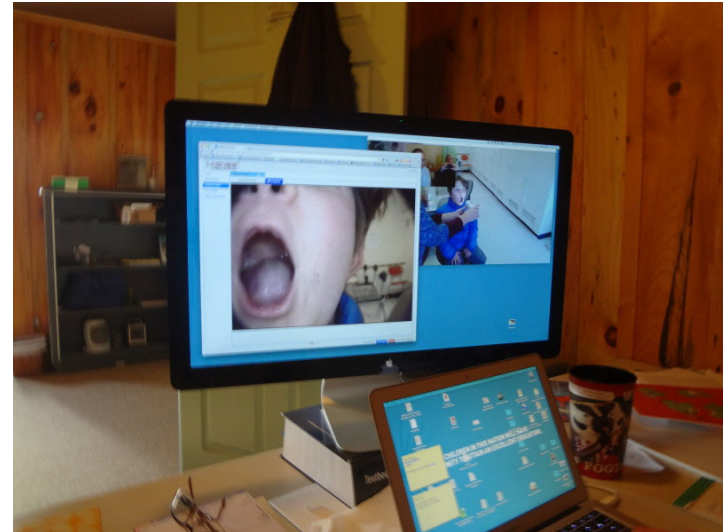
- ❖ Licensing
- ❖ Consent
- ❖ Scope of Care
- ❖ Risks

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# IDAHO TELEHEALTH ACCESS ACT

**Telehealth Services:** “Health care services provided by a provider to a person through the use of electronic communications, information technology, asynchronous store and forward transfer or synchronous interaction between a provider at a distant site and a patient at an originating site. Such services include, but are not limited to, clinical care, health education, home health and facilitation of self-managed care and caregiver support.”

I.C. §54-5703(6)



# LICENSING

A physician must be licensed, or under the jurisdiction, of the medical board of the state where the patient is located. The **practice of medicine occurs where the patient is located at the time telemedicine technologies are used**. Physicians who treat or prescribe through online services sites are practicing medicine and must possess appropriate licensure in all jurisdictions where patients receive care.

Model Policy, Federation of State Medical Boards (2014)

# LICENSING

## REQUIREMENTS IN IDAHO

- “Practice medicine”
  - To investigate, diagnose, treat or prescribe for any disease, ailment, injury, or other condition by any means.
  - To apply principles or techniques of medical science in the prevention of any such conditions.
  - To offer, undertake, attempt or hold oneself out as able to do any of the foregoing.

I.C. §54-1803(1)

- “Consultation” exception:
  - A person residing and licensed in another state or country may practice medicine in Idaho if:
    - He or she consults with a physician licensed in Idaho, and
    - He or she does not open an office or appoint a place to meet patients or receive calls in Idaho.

I.C. §54-1804(b)

# LICENSING

## REQUIREMENTS IN IDAHO

Any physician, physician's assistant, respiratory therapist, polysomnographer, dietician, or athletic trainer who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Medicine for their applicable practice.



IDAPA 22.01.05.202

# LICENSING

## ENFORCEMENT & DISCIPLINE

- A provider is prohibited from offering telehealth services in his or her practice if the provider is not in full compliance with applicable laws, rules and regulations, including this act and the Idaho community standard of care.
- A provider who fails to comply with applicable laws, rules and regulations is subject to discipline by his or her licensing board.
- Unlicensed provider may be liable for practicing without a license.

I.C. §54-5712

# LICENSING

## OTHER STATES





# LICENSING

## OTHER STATES

- State laws generally require that providers be licensed in state where patient resides.
  - Some allow for limited license.
  - Most require full license.
- Consequences of practicing without a license:
  - Criminal and administrative sanctions for engaging in the unauthorized practice of medicine.
  - Possible loss of liability insurance.
  - No reimbursement for services.
    - Medicare and Medicaid require licensure

# LICENSING

## OTHER STATES

- Practitioners in military, VA, Public Health Service
  - May practice within their organization across states.
- Nurse Licensure Compact
  - Developed by National Council of State Boards of Nursing (“NCSBN”)
  - Allows multistate licensure for nurses.
- Interstate Medical Licensure Compact
  - Developed by Federation of State Medical Boards (“FSMB”).
  - Allows expedited licensure for physicians licensed in another state that is a member of the compact.
  - Several states (including Idaho), have passed laws to participate, but still a year or two away from implementing. (See I.C. §54-1842 et seq.)

# CONSENT

## PROVIDER-PATIENT RELATIONSHIP

If a provider of telehealth services does not have an established provider-patient relationship, the provider shall take appropriate steps to establish a provider-patient relationship by use of two-way audio and visual interaction.

### **Exceptions:**

- Where there is a pre-existing provider-patient relationship.
- Between providers where the other provider has existing provider-patient relationship.
- Between provider and patient when provider is taking call for another provider in same community with existing provider-patient relationship.
- In an emergency.

I.C. §54-5705

# CONSENT

## PROVIDER-PATIENT RELATIONSHIP

During the first contact with patient, a provider of telehealth services shall:

1. Verify the location and identity of the patient;
2. Disclose to patient the provider's identity, their current location and telephone number and Idaho license number;
3. Obtain appropriate consents from the patient after disclosures regarding the delivery models and treatment methods or limitations, including a special informed consent regarding the use of telehealth technologies; and
4. Allow the patient an opportunity to select their provider rather than being assigned a provider at random to the extent possible.

IDAPA 22.01.05.203

# CONSENT

## INFORMED CONSENT

Informed consent for telehealth technologies must be obtained and maintained at regular intervals consistent with the community standard of care, including:

- Identification of patient, the provider and provider's credentials;
- Types of transmissions permitted using telemedicine technologies (e.g., prescription refills, appointment scheduling, patient education)
- Agreement of patient that provider will determine whether the condition being diagnosed or treated is appropriate for telehealth services;
- Info on the security measures taken with the use of telehealth technologies (e.g., encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques) and potential risks to privacy and notwithstanding such measures;
- Disclosure that information may be lost due to technical failures.

I.C. §54-5708; IDAPA 22.01.05.205; BoM Guidelines (12/14)

# TREATMENT

## STANDARD OF CARE

- A provider offering telehealth services must at all times act within the scope of the provider's licensure and according to all applicable laws and rules, including, but not limited to, this chapter and the community standard of care.
- Standard of care is the same as in-person setting.
- Provider is responsible for familiarizing themselves with the applicable Idaho community standard of care.

I.C. §§54-5704, 54-5706

- “[S]ome situations and patient presentations are appropriate for the utilization of telemedicine technologies ... while others are not.”

Idaho BoM Guidelines (12/14)

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# TREATMENT

## STANDARD OF CARE

- Prior to treatment, including a prescription, a provider shall obtain and document a patient's relevant clinical history and current symptoms to establish the diagnosis and identify underlying conditions and contraindications to the treatment recommended.
- If a patient's presenting symptoms and conditions require a physical examination, lab work or imaging studies in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained.
- Treatment based solely on an online questionnaire does not constitute an acceptable standard of care.

I.C. §54-5706; IDAPA 22.01.05.3

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# TREATMENT

## PRESCRIPTIONS: PROVIDERS

A provider with an established provider-patient relationship may issue prescription drug orders using telehealth services within the scope of the provider's license and according to any applicable laws, rules and regulations.

- Must comply with community standard of care.
- Cannot prescribe controlled substance unless prescribed in compliance with 21 U.S.C. §802(54)(A).

I.C. §54-5707

# TREATMENT

## RESTRICTIONS ON REMOTE PRESCRIBING

### **Prescriber-Patient Relationship**

“(1) A prescription for a legend drug is valid only if it is issued by a prescriber for a legitimate medical purpose arising from a prescriber-patient relationship which includes a documented patient evaluation adequate to establish diagnoses and identify underlying conditions and/or contraindications to the treatment.”

“(3) Treatment, including issuing a prescription drug order, based solely on an online questionnaire or consultation outside of an ongoing clinical relationship does not constitute a legitimate medical purpose.”

“(5) [It is unlawful] to prescribe drugs to individuals without a prescriber-patient relationship, unless excepted in this section.”

Prescriber is subject to Board discipline for violations.

I.C. §54-1733

# TREATMENT

## RESTRICTIONS ON REMOTE PRESCRIBING

**Exceptions:** licensed prescriber may do the following even though they do not have prescriber-patient relationship:

- a) Write initial admission orders for a newly hospitalized patient.
- b) Write a prescription drug order for a patient of another prescriber for whom the prescriber is taking call.
- c) Write a prescription drug order for a patient examined by a physician assistant, advanced practice registered nurse or other licensed practitioner with whom the prescriber has a supervisory or collaborative relationship.
- d) Write a prescription drug order for a medication on a short-term basis for a new patient prior to the patient's first appointment.

I.C. §54-1733(2)

# TREATMENT

## RESTRICTIONS ON REMOTE PRESCRIBING

**Exceptions (cont.):** licensed prescriber may do the following even though they do not have prescriber-patient relationship:

- e) Write a prescription for an opioid antagonist per I.C. §54-1733B.
- f) In emergency situations where the life or health of patient is in imminent danger.
- g) In emergencies that constitute an immediate threat to the public health...
- h) Epinephrine auto-injectors in the name of a school per I.C. §33-520A.
- i) If a prescriber makes a diagnosis of a sexually transmitted disease in a patient, the prescriber may prescribe or dispense antibiotics to the infected patient's named sexual partner ... for treatment of the sexually transmitted disease as recommended by the most current [CDC] guidelines."

I.C. §54-1733(2)

# TREATMENT

## MEDICAL RECORDS



- Must generate and maintain medical records for each patient using such telehealth services in compliance with any applicable state and federal laws, rules and regulations, including HIPAA and HITECH.
- Medical record should include copies of all patient related electronic communications, including patient-physician communications, prescriptions, lab and test results, evaluations and consultations, relevant info of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies.
- Records must be accessible to other providers and to the patient in accordance with applicable laws, rules and regulations.

I.C. §54-5711; IDAPA 22.01.05.206

# TREATMENT

## CONTINUITY OF CARE & REFERRALS

**Continuity of Care.** Provider must be available for follow-up care or to provide info to patients who make use of such services.

**Referral to Other Services.** Must be familiar with and have access to available medical resources, including emergency resources near the patient's location, in order to make appropriate patient referrals when medically indicated.

I.C. §§54-5709, 54-5710

# TREATMENT

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I.C. §§54-5709, 54-5710

# HIPAA

- Must implement specified physical, technical, and administrative safeguards for e-PHI, including:
  - *Transmission security*. Implement technical security measures to guard against unauthorized access to [e-PHI] that is being transmitted over an electronic communications network.
  - *Integrity controls* (Addressable). Implement security measures to ensure that electronically transmitted [e-PHI] is not improperly modified....
  - *Encryption* (Addressable). Implement a mechanism to encrypt [e-PHI] info whenever deemed appropriate.

45 CFR 164.312



# HIPAA

## BUSINESS ASSOCIATE AGREEMENTS

- Other treatment providers are not business associates while providing treatment. (45 CFR 160.103)
- May need business associate agreement with vendors or other outsiders who assist with telemedicine, including:
  - Entity that transmits PHI and has regular access to PHI, not “conduit”.
  - Entity that stores PHI.
- Exceptions:
  - Members of workforce.
    - You have control over person while onsite.
  - Members of organized health care arrangement (“OHCA”)
    - Integrated delivery of patient care.

# OTHER REGULATIONS

- FDA regulates medical devices, which may include telemedicine equipment and software if used in the diagnosis or treatment of a disease or condition.
- On 9/23/13, FDA issued guidance on mobile medical apps. See <http://www.fda.gov/medicaldevices/productsandmedicalprocedures/connectedhealth/mobilemedicalapplications/default.htm>.
- Ryan Haight Online Pharmacy Consumer Protection Act places limits on internet pharmacies

# RISKS

- Different laws and procedure if cross state boundaries.
- Provider-patient relationship may be established even if not intended.
- May be held to community standard of care for in-person treatment instead of some telehealth standard.
- Informed consent should address risks of telehealth.
- Beware abandoning patient after telehealth session.
- Malpractice liability insurance may not provide coverage, e.g., practice without license, practice in another state, administrative or criminal actions.
- Ensure claims are properly documented and submitted consistent with applicable laws and regulations.

# RESOURCES

- Idaho Law re Prescribing Without an Exam, I.C. §54-1733
- Idaho Telehealth Law and Regulations, I.C. §54-5701 et seq.
- Board of Medicine Regulations, IDAPA 22.01.05
- MedLearn, *Telehealth Services* (1/19)
- Medicaid, *Telehealth Policy* (7/18)
- Idaho Board of Medicine, *Guidelines for Appropriate Regulation of Telemedicine* (12/14)

# RESOURCES

- Federation of State Medical Boards,  
[http://www.fsmb.org/siteassets/advocacy/key-issues/telemedicine\\_policies\\_by\\_state.pdf](http://www.fsmb.org/siteassets/advocacy/key-issues/telemedicine_policies_by_state.pdf)  
<https://track.govhawk.com/reports/2Nzd2/public>
- Center for Telehealth & e-Health Law (“CTel”),  
<http://ctel.org/>
- American Telemedicine Ass’n,  
<http://www.americantelemed.org/>

# QUESTIONS?

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