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Telehealth: Practicing Across the Idaho Border

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More healthcare practitioners are using telehealth to render patient care or expand their practices. When telehealth crosses state borders, the practitioner must ensure that he or she is licensed in or otherwise authorized to practice medicine in the state where the patient resides. The Model Policy issued by the Federation of State Medical Boards states:

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 for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine (2014), available [here](#)).

In Idaho, for example, physicians and physician assistants must generally have an Idaho license to practice medicine in the state; practicing without a license is a felony, resulting in prison for up to 5 years and a \$10,000 fine. (Idaho Code § 54-1803(3)).

The "practice of medicine" means:

- (a) To investigate, diagnose, treat, correct or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality;
- (b) To apply principles or techniques of medical science in the prevention of any of the conditions listed in paragraph (a) of this subsection; or
- (c) To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in paragraphs (a) and (b) of this subsection.

(*Id.* at § 54-1803). More specifically, Idaho's Telehealth Access Act states:

A provider offering telehealth services¹ must at all times act within the scope of the provider's license and according to all applicable laws and rules....

(*Id.* at § 54-5704). The implementing regulations state,

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 22.01.15.11).

Unlike some states, Idaho does not have a limited license for telehealth service providers. The Medical Practices Act does contain certain exceptions to the licensure requirement, including practitioners who merely render consultations:

the following persons, though not holding a license to practice medicine in this state, may engage in activities included in the practice of medicine:

...

(b) A person residing in another state or country and authorized to practice medicine there, who is called in consultation by a person licensed in this state to practice medicine, or who for the purpose of furthering medical education is invited into this state to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, as long as he does not open an office or appoint a place to meet patients or receive calls in this state.

(I.C. § 54-1804(1)(B)). This is a narrow exception, and presumably would not apply where the telehealth practitioner is the one diagnosing or treating the patient or interpreting studies or images. In 2004, for example, the Idaho Board published a memo in which it stated:

Based upon these statutory provisions, it is the interpretation of the Idaho State Board of Medicine that a physician reading radiologic or imaging studies done in the State of Idaho on Idaho patients by an Idaho physician must hold an Idaho license to practice medicine, unless the radiologic or imaging studies are sent to an out-of-state physician directly by an Idaho licensed physician to obtain consultation on a patient.

(Idaho State Bd. of Med., Board Interpretation Regarding Reading of Radiologic or Imaging Studies (3/5/04)).

In short, physicians and other practitioners seeking to render telehealth services in Idaho must generally obtain an Idaho license even though they are never physically in the state. Idaho practitioners who wish to render telehealth services across the Idaho border must ensure that they comply with any laws from the state in which the patient resides.

¹ "Telehealth services" means 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)).

For questions regarding this update, please contact:

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