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Telehealth in Idaho: Regulations Withdrawn

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As part of Governor Little's initiative to reduce nonessential regulations, Idaho licensing boards (including the Idaho Board of Medicine) have withdrawn their rules implementing the Idaho Telehealth Access Act for healthcare providers, including physicians, physician assistants, dentists, and psychologists. (See, e.g., former IDAPA 24.33.03.201 *et seq.*). Consequently, physicians and most other healthcare providers need only comply with the Act, which requires the following:

54-5704. SCOPE OF PRACTICE. A provider¹ offering telehealth services² must at all times act within the scope of the provider's license and according to all applicable laws and rules, including, but not limited to, this chapter and the community standard of care.

54-5705. PROVIDER-PATIENT RELATIONSHIP. (1) If a provider offering telehealth services does not have an established provider-patient relationship with a person seeking such services, the provider shall take appropriate steps to establish a provider-patient relationship by use of two-way audio or audio-visual interaction; provided however, that the applicable Idaho community standard of care must be satisfied. Nothing in this section shall prohibit electronic communications:

(a) Between a provider and a patient with a preexisting provider-patient relationship;

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

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

(d) In an emergency.³

...

54-5706. EVALUATION AND TREATMENT. Prior to providing treatment, including a prescription drug order, 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. Treatment recommendations provided through telehealth services

shall be held to the applicable Idaho community standard of care that applies in an in-person setting. Treatment based solely on an online questionnaire does not constitute an acceptable standard of care.

54-5707. PRESCRIPTIONS. (1) A provider with an established provider-patient relationship, including a relationship established pursuant to section 54-5705, Idaho Code, 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, including the Idaho community standard of care; provided however, that the prescription drug shall not be a controlled substance unless prescribed in compliance with title 21 U.S.C.

(2) Nothing in this chapter shall be construed to expand the prescriptive authority of any provider beyond what is authorized by the provider's licensing board.

54-5708. INFORMED CONSENT. A patient's informed consent for the use of telehealth services shall be obtained as required by any applicable law.⁴

54-5709. CONTINUITY OF CARE. A provider of telehealth services shall be available for follow-up care or to provide information to patients who make use of such services.

54-5710. REFERRAL TO OTHER SERVICES. A provider shall 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.

54-5711. MEDICAL RECORDS. A provider offering telehealth services shall generate and maintain medical records for each patient using telehealth services in compliance with any applicable state and federal laws, rules, and regulations, including the Health Insurance Portability and Accountability Act (HIPAA)...and the Health Information Technology for Economic and Clinical Health Act (HITECH)....Such records shall be accessible to other providers, if the patient has given permission, and to the patient in accordance with applicable laws, rules, and regulations.

54-5712. ENFORCEMENT AND 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. State licensing boards shall be authorized to enforce the provisions of this chapter relating to the practice of individuals they license. A provider who fails to comply with applicable laws, rules and regulations is subject to discipline by his or her licensing board.

The Act is less specific than many of the former licensure rules and should make it easier for healthcare providers to engage in telehealth in Idaho. Providers should check and continue to monitor their licensure statutes to

confirm any telehealth requirements for their specific licensure types.

In addition to withdrawing board regulations, Idaho's Division of Occupational and Professional Licenses (“DOPL”) has made it even easier for out-of-state providers to render telehealth in Idaho during the COVID-19 emergency. In its September 2021 guidance, DOPL confirmed that:

Any healthcare professional may provide telehealth services in or into Idaho, so long as the healthcare professional is licensed or registered and in good standing with another U.S. state or jurisdiction and acting in good faith.

A healthcare professional providing telehealth services will consider the following provisions prior to providing patient care:

- A healthcare professional providing telehealth services in or into Idaho must be licensed or registered in any U.S. state or jurisdiction, and in good standing with no active or pending disciplinary action;
- A healthcare professional providing telehealth services in or into Idaho must act in good faith, exercise reasonable care, and follow applicable federal regulations;
- A healthcare professional providing telehealth services in or into Idaho must possess the necessary education, training, and experience for the services being provided; and
- A healthcare professional providing telehealth services in or into Idaho must use sufficient technology to establish a patient-provider relationship for the services being provided.

The Division enforcement discretion ends with the termination of the state of Idaho declaration of emergency unless ended sooner by DOPL announcement.

(DOPL, Idaho Telehealth Access Act COVID-19 Guidance (9/9/21), available here.)

¹“Provider’ means any health care provider who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho, pursuant to title 54, Idaho Code, to deliver health care consistent with his or her license.” (I.C. § 54-5703(4)).

²“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, and the use of synchronous or asynchronous telecommunications technologies by a provider to deliver patient health care services, including but not limited to assessment of, diagnosis of, consultation with, treatment of, and remote monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term ‘telehealth services’

does not include audio in isolation without access to and review of the patient's medical records, electronic mail messages that are not compliant with the Health Insurance Portability and Accountability Act (HIPAA), or facsimile transmissions." (I.C. § 54-5703(6)).

³"[E]mergency' means a situation in which there is an occurrence that poses an imminent threat of a life-threatening condition or severe bodily harm." (I.C. § 54-5705(2)).

⁴Idaho informed consent requirements are generally set forth at I.C. § 39-4501 *et seq.*