



Telemedicine

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2016 HEALTHCARE COMPLIANCE BOOTCAMP HOLLAND & HART 




The slide features a photograph of a healthcare professional in blue scrubs attending to a patient in a hospital bed. A monitor in the background displays a telemedicine session with a male doctor. The slide is titled 'Telemedicine' and lists the speaker as 'Lauren Prew'. At the bottom, it identifies the event as the '2016 HEALTHCARE COMPLIANCE BOOTCAMP' and includes the Holland & Hart logo and a row of navigation icons.

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Telemedicine

- “Telemedicine” is the provision of clinical services to patients by physicians and practitioners from a distance via electronic communications.
 - Simultaneous, “real time”, or “synchronous interaction” (e.g., teleICU)
 - Non-simultaneous, “store-and-forward”, or “asynchronous store and forward transfer”(e.g., teleradiology)

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Telemedicine Outline

- Idaho Telehealth Access Act
- Board of Medicine Rules Relating to Telehealth Services
- Licensure
 - Idaho
 - Interstate
 - Hospitals
- Restrictions on Remote Prescribing
- Credentialing

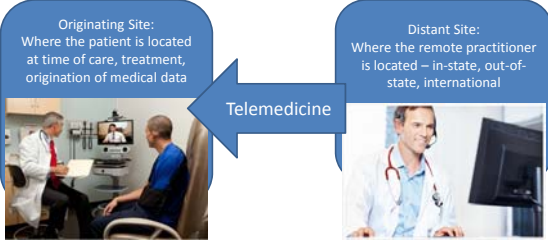
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Telemedicine - Generally

Originating Site:
Where the patient is located at time of care, treatment, origination of medical data

Distant Site:
Where the remote practitioner is located – in-state, out-of-state, international

Telemedicine



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Idaho Telehealth Access Act

- Idaho restricts providers' ability to remotely prescribe and treat
- "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. (IC 54-5703)

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Idaho Telehealth Access Act


- Allows providers to establish patient-provider relationship through use of telehealth, but:
 - Must still be licensed or authorized to practice in Idaho.
 - Must still satisfy community standard of care.
 - Must obtain informed consent.
 - Must maintain proper documentation.
 - Must be available for follow-up care.

(IC 54-5601 [54-5701])

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Idaho Telehealth Access Act

- What does the Act do?
 - Provides a mechanism for the establishment of a provider-patient relationship via two way audio and visual interaction (instead of requiring an in-person interaction in order to establish the relationship).
 - HOWEVER provider must still satisfy the community standard of care as if the provider and patient were having an in-person interaction. And if you violate the community standard of care, the Board is going to come after you.

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Idaho Telehealth Access Act

Provider-Patient Relationship.

- “If a provider offering telehealth services in his or her practice 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 and visual interaction;
- “The applicable Idaho community standard of care must be satisfied.”

(IC 54-5605 [54-5701])


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Idaho Telehealth Access Act

Exceptions:
Does not apply to 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, i.e., an imminent threat of a life-threatening condition or severe bodily harm.

(IC 54-5701 et seq.)


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Idaho Telehealth Access Act

Evaluation and Treatment.

- Prior to providing 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.
- Treatment 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.

(IC 54-5706)

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Idaho Telehealth Access Act

Prescriptions.

- 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 USC 802(54)(A).
 - No drug may be prescribed through telehealth services for the purpose of causing an abortion.

(IC 54-5607 [54-5707])

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Idaho Telehealth Access Act

Medical Records.

- Any provider offering telehealth services as part of his or her practice shall 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.
- Such records shall be accessible to other providers and to the patient in accordance with applicable laws, rules and regulations.

(IC 54-5611 [54-5711])

Idaho Telehealth Access Act

Additional Requirements:

- Obtain informed consent.
- Be available for follow-up care or to provide information to patients who elect to use telehealth services.
- 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.

IC 54-5608 - 54-5610 [54-5708 - 54-5710]

Idaho Telehealth Access Act


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.
- A provider who fails to comply with applicable laws, rules and regulations is subject to discipline by his or her licensing board.

IC 54-5612 [54-5712]


Rules Relating to Telehealth Services

- **22.01.15.012 Provider-Patient Relationship:**
 - Verification of patient's:
 - Location
 - Identity
 - Disclose to patient provider's:
 - Identity
 - Location
 - Phone Number
 - Idaho License Number
 - Consent
 - Appropriate consent following disclosures of models and treatment methods
 - Special informed consent regarding use of telehealth technologies
 - Provider Selection
 - Patient has the right to select provider, rather than randomly assigned

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Rules Relating to Telehealth Services

- **22.01.15.013 Standard of Care**
 - Applicable Idaho community standard of care
 - Provider's responsibility to determine and understand
 - If patient's symptoms require physical examination, lab work or imaging to diagnose, provider cannot diagnose or treat through telehealth until such services are provided


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Rules Relating to Telehealth Services

- **22.01.15.014 Informed Consent**
 - Evidence documenting appropriate patient informed consent for telehealth "must be obtained and maintained at regular intervals consistent with community standard of care."
 - At a minimum, include the following:
 - Verification of patient, provider and provider's credentials
 - Telehealth determination - provider to determine whether condition is appropriate for telehealth
 - Security measures taken (i.e., data encryption, password protection, authentication techniques, etc.)
 - Potential information loss - possibility of technical failures

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Licensure



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Licensure

- Who cares?
 - Telemedicine provider
 - Subject to criminal or administrative sanctions if not properly licensed, i.e., practicing without license
 - No liability insurance
 - No reimbursement for services provided
 - Originating site
 - No liability insurance for provider
 - No reimbursement for services provided
 - Facility licensing problems
 - COP problems
 - Maybe subject to negligent credentialing liability if bad outcome

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Licensure

- State laws generally require that practitioners be licensed by the state in which the patient is located at the time of service.
 - States prohibit the unauthorized practice of medicine.
 - The “practice of medicine” is often interpreted to include telehealth. Some states are passing laws specifically including “telehealth” and “telemedicine”.
 - Some allow for limited license, but most states require full licensure.
- Consequences for unlicensed practice of medicine include criminal and administrative sanctions, possible loss of liability insurance, no reimbursement for services.
- Medicare and Medicaid require licensure.


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Idaho Licensure

- In Idaho, to “practice medicine” means to:
 - Investigate, diagnose, treat or prescribe for any disease, ailment, injury, or other condition by any means.
 - Apply principles or techniques of medical science in the prevention of any such conditions.
 - Offer, undertake, attempt or hold oneself out as able to do any of the foregoing.

IC 54-1803(1)

- The unauthorized practice of medicine is a felony.
 - Up to \$10,000 fine
 - 5 years in prison
 - Adverse action against license


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Idaho Licensure

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

IC 54-1804(b)


- Test: direct care v. consultation
 - Frequency?
 - Other physician involved?
- If a telehealth provider contracts to provide services for a hospital, such provider must be licensed in Idaho.

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Idaho Licensure

- Board of Medicine Interpretation regarding Reading of Radiologic or Imaging Studies (3/5/04)
 - “It is the interpretation of the Idaho State Board of Medicine that a physician reading radiologic or imaging studies done in 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.”


(Available on Board of Medicine website)

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Idaho Licensure


- Board of Medicine Interpretation regarding Reading of Pathology Studies (Undated)
 - “It is the interpretation of the Idaho State Board of Medicine that a physician performing pathology tests on samples taken in the State of Idaho on Idaho patients by an Idaho physician must have an Idaho license to practice medicine if the physician performing pathology tests is rendering a diagnosis for inclusion in the patient’s medical chart UNLESS the pathology tests are sent to an out-of-state physician directly by an Idaho licensed physician to obtain consultation on a patient.” [emphasis added]

(Available on Board of Medicine website)

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Idaho Licensure

- For Idaho Medicaid reimbursement, the telemedicine physician providing care must have a current Idaho licensure. (Medicaid Info Release MA08-01)

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Interstate Licensure

- Practitioners in military, VA, Public Health Service
 - May practice within their organization across states.
- Nurse Licensure Compact
 - 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 IC 54-1842 et seq.)

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Summary of Licensure

- Telehealth provider in another state → Idaho
 - Ensure outside practitioner has an Idaho license, or
 - Ensure that the outside practitioner:
 - Consults with Idaho practitioner, and
 - Does set up a practice in Idaho or contract with a hospital to provide services in Idaho.
- Telehealth provider in Idaho → another state
 - Check laws of the other state
 - Varies significantly by state

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Hospital COPs

- In all cases, healthcare professional must be legally authorized to practice in the state where the hospital is located. (Interpretive Guidelines for 42 CFR 482.12 and .22)
- When telemedicine is used and the practitioner and patient are located in different states, the practitioner providing the patient care service must be licensed and/or meet the other applicable standards that are required by the state or local laws in both the state where the practitioner is located and the state where the patient is located. (Interpretive Guidelines for 42 CFR 482.11(c))


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Restrictions on Remote Prescribing

- Many states or medical boards require an in-person physical exam before allowing the practitioner to prescribe or render treatment.
 - Medical practices act
 - Statement of medical boards


See <http://www.fsmb.org/pdf/InternetPrescribing-law&policylanguage.pdf>.

- Check relevant state laws concerning in-person contact.

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Idaho Law Regarding Remote Prescribing

- (1) A prescription drug order for a legend drug is not valid unless it is issued 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.
- Prescribers are subject to the Board disciplinary actions for violations.
- IC 54-1733

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Idaho Law Regarding Remote Prescribing

Exceptions:

Licensed prescriber may do the following even though they do not have prescriber-patient relationship:

- (a) Writing initial admission orders for a newly hospitalized patient;
- (b) Writing a prescription drug order for a patient of another prescriber for whom the prescriber is taking call;
- (c) Writing 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) Writing a prescription drug order for a medication on a short-term basis for a new patient prior to the patient's first appointment;

IC 54-1733(2)

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Idaho Law Regarding Remote Prescribing

Exceptions (cont.):

Licensed prescriber may do the following even though they do not have prescriber-patient relationship:

- (e) Writing a prescription for an opioid antagonist per IC 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 IC 33-520A; and
- (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.

(IC 54-1733(2))

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Interstate Medical Licensure Act

- The Interstate Medical Licensure Compact was developed by representatives of state medical boards from across the country. It does not quite exist yet.
 - Passed: ID, MT, WY, NV, UT, SD, MN, IA, WI, IL, AL, WV
 - "A commission of representatives from states participating in the Compact has begun formally meeting and is implementing the administrative processes needed to begin the expedited licensure process, but licenses via the Compact process have not begun to be issued yet." <http://www.licenseportability.org/faq/>
- The goal is to make licensure more efficient in multiple states and promote shared information and access to medical care in rural areas.
- Physician must designate one of the member states as the state of principal license for the purpose of registration.
- The Board of Medicine will participate in the rules and governance of the commission that manages the Compact. The Compact will share data on practitioners who choose to use the expedited licensing process, share disciplinary information, and participate in joint investigations. Disciplinary actions will remain the duty/option of the Board of Medicine.
- Physicians will still receive a license for each state, just with an expedited procedure to achieve licensure.

Credentialing and Privileging

- States usually require credentialing of practitioners to provide services at hospitals or other facilities.
 - State statutes or licensing regulations.
 - Common law tort duty.
- Medical staff bylaws require credentialing.
- Statutes, regs, or bylaws may require individual credentialing.
- Individual credentialing for telemedicine is problematic.
 - Facility may have many providers rendering telemedicine services, e.g., teleradiology.
 - Facility may not be qualified to assess competence of telemedicine providers through internal credentialing.

Idaho Hospital Rules

- Idaho hospital statutes and regulations
 - Do not expressly cover telemedicine credentialing.
 - Contemplate individual credentialing.
 - Medical staff members must be qualified for privileges.
 - Privileges granted only on basis of individual training, competence and experience.
 - Process must include application, agreement to comply with bylaws, and delineation of privileges.
 - Must include board, administration and active medical staff.
 - Reappointment every two years.

(IDAPA 16.03.14.200 and - .250)

Medicare Conditions of Participation

- Allows credentialing by proxy for telemedicine providers, i.e., hospital may accept credentialing done by distant site if meet certain standards.
- Must have agreement between the hospital/CAH and either:
 - Distant-site hospital that participates in Medicare; or
 - Distant-site telemedicine entity, i.e.,
 - provides telemedicine services
 - not a Medicare-participating hospital
 - provides services in manner that allows hospital or CAH to meet all COPs.

(42 CFR 482.12 and 485.616; 76 FR 25550 (5/5/11); CMS Transmittal 78 (12/22/11))

Credentialing: Hospital COPs


- COPs only allow credentialing by proxy for telemedicine privileges.
- If practitioner provides non-telemedicine services, hospital must credential practitioner in traditional manner.
- For telemedicine services, hospital/CAH's governing board has the option to:
 - allow medical staff to rely on credentialing done by distant hospital or entity under new COPs; or
 - require med staff to credential each telemedicine provider.

Credentialing: Emergency Privileges

- Many state laws, regulations and/or bylaws allow facilities to grant temporary or emergency privileges.
 - Granted in limited circumstances, e.g.,
 - While normal credentialing process occurs.
 - Unique patient care need.
 - Subject to limited, preliminary review.
 - Privileges limited to no more than 60 days.
- Unclear how this would coordinate with telemedicine COPs.

Credentialing: Medical Staff Bylaws

- May need to update your medical staff bylaws to address telemedicine.
 - Qualifications for medical staff members.
 - e.g., geographic proximity, admissions, etc.
 - Categories of medical staff members.
 - e.g., add telemedicine staff category
 - Privileges.
 - e.g., grant telemedicine privileges without med staff
 - Credentialing process.
 - e.g., allow credentialing by proxy based on new COPs.
- CMS survey process requires review of medical staff bylaws to verify compliance.

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Questions?

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