

MIEC New Law Alert

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New Law Alert – Idaho

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The Idaho Legislature enacted a number of new laws affecting physicians, other health care professionals and patients, including: The Telehealth Access Act; several laws involving controlled substances, participation in the Interstate Medical Licensure Compact, and examination and consent requirements prior to prescribing abortion-inducing drugs. Laws are effective July 1, 2015.

**Controlled Substances:
 H 4 by Health and Welfare
 Committee**

Amends sections 37-2701, 37-2716, 37-2717, 37-2718, 37-2719, 37-2720, Idaho Code

This law allows the Board of Pharmacy to restrict and fine a controlled substance registrant (as opposed to the more stringent suspension and revocation) and gives the Board statutory authority to enforce these orders. This law also harmonizes and organizes previous inconsistencies in the Code, including the list of activities that require registration and the use of terms such as “dispense.” It eliminates the statutory requirement of separate

registrations for each location from which a practitioner prescribes. The new statutes read, in part:

37-2701. Definitions

- (i) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery. This definition previously included “prescribing” and “administering.”

37-2716. Registration Requirements

- (a) Every person who manufactures, distributes, prescribes, administers, dispenses, or conducts research with any controlled substance within this state shall obtain annually a registration issued by the Board in accordance with this chapter and its rules.
- (b) Every prescriber, except veterinarians, shall also register with the Board to obtain online access to

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the controlled substances prescription database.

- (f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, administers, dispenses, or conducts research with controlled substances, except a separate registration is not required under this chapter for practitioners engaging in research with non-narcotic controlled substances in Schedules II through IV where the practitioner is already registered under this chapter in another capacity.
- (g) Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon registering in Idaho and furnishing the board with evidence of the practitioner's federal registration.

37-2717. Registration

The Board shall register an applicant to manufacture, prescribe, administer, dispense, distribute or conduct research with controlled substances ... unless it determines that the issuance of that registration would be inconsistent with the public interest.

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Prescription Drugs: H 6 by Health and Welfare Committee

Amending section 54-1733, Idaho Code, and amending Chapter 17, Title 54, Idaho Code, by the addition of a new section 54-1733A

This law allows a nurse to transmit orders to a pharmacy for hospice patients via all means that are currently allowed for patients in an institutional facility.

Additionally, this law allows a nurse to electronically transmit to a pharmacy an order that the nurse received verbally from a prescriber for a patient in an institutional facility or a hospice patient. The new statutes read, in part:

54-1733. Validity of Prescription Drug Orders

- (1) A prescription drug order 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.
- (2) A prescriber who is otherwise authorized to perform any of the activities listed herein may prescribe or perform any of the following activities for a patient with whom the prescriber does not have a prescriber-patient relationship under the following circumstances:

- (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;
- (e) In emergency situations where the life or health of the patient is in imminent danger;
- (f) In emergencies that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- (g) Epinephrine auto-injectors in the name of a school pursuant to section 33-520A, Idaho Code; and
- (h) 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 or partners for treatment of the sexually transmitted disease as recommended by the most current Centers for Disease Control and Prevention (CDC) guidelines.

54-1733A. Transmission of Prescription Drug Orders

- (1) A valid prescription drug order may be transmitted to a licensed pharmacy by the following means:
- By delivery of the original signed written prescription drug order;
 - Electronically by the prescriber or prescriber's agent in compliance with the Uniform Electronic Transactions Act, Chapter 50, Title 28, Idaho Code;
 - Electronically by a licensed practical or professional nurse in an institutional facility for a patient of that facility via a secure, interoperable information technology system that exchanges data accurately, effectively and in compliance with applicable laws;
 - Verbally by the prescriber, prescriber's agent, or a licensed practical or professional nurse for a patient of an institutional facility or for a hospice patient; and
 - Via facsimile by a prescriber, prescriber's agent, institutional facility or hospice agent, provided that if the order was initially received verbally, the transmitted document shall include the name of the prescriber, the name of the licensed practical or professional nurse who received and transcribed the order and the name of the person who faxed the order.
- (2) In the event there are no refills remaining on an existing prescription drug order and the pharmacist requests a new

prescription drug order from the prescriber, the prescriber's agent, after obtaining prescriber authorization, may sign and return the request via facsimile so long as:

- The request is generated from the pharmacy;
- The request is for medication that the patient is currently taking;
- There are no changes to the type of drug, its strength or directions for the continuation of therapy;
- The prescriber's agent's transmission is received via facsimile from the prescriber's office; and
- The request, which is subsequently transmitted back to the requesting pharmacy by the prescriber's agent, contains all components of a valid prescription drug order.

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Controlled Substances: H 7 by Health and Welfare Committee

Amending section 37-2726, Idaho Code

This law clarifies that the authorization to provide Prescription Monitoring Program (PMP) database information "upon the lawful order of a court of competent jurisdiction" requires an order be signed by the presiding judge specifically requesting controlled substance records for an identified individual. This clarification protects the database information

from being used as a means of discovery in civil cases through the use of subpoenas executed by attorneys.

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Pharmacy, Opioid Antagonists: H 108 by Health and Welfare Committee

Amending sections 54-1704, 54-1732, 54-1734 Idaho Code and adding section 54-1733B, Idaho Code

This law allows the prescription and possession of opioid antagonists by pharmacists as well as physicians, so long as the pharmacist (acting in good faith and exercising reasonable judgment) believes the person to whom the prescription is issued to be experiencing an opiate-related overdose.

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Medical Licensure Compact: H 150 by Health and Welfare Committee

Addition of new sections 54-1842 through 54-1866, Idaho Code

These statutes allow qualifying physicians licensed to practice medicine in their principal state of residence to apply (on an annual basis) for an expedited medical license in other states which have entered the Interstate Medical Licensure Compact, a group of states who have agreed to facilitate the practice of telemedicine among states within the Compact. State Boards participating in an

interstate compact are required to share complaint/investigative information with each other, and physicians will still be required to pay licensing fees for states in which they wish to be licensed.

Physicians should be aware that a physician practicing under an interstate compact is bound to comply with the statutes, rules and regulations of each compact state wherein he/she chooses to practice. Furthermore, the practice of medicine occurs where the patient is located at the time of the physician-patient encounter. This means that, in the event of a claim of medical negligence against the physician, the state in which the patient resides will likely be the venue for the suit, and the standard of care and any applicable tort reform will be based on the definitions and provisions of that state.

Physicians who are interested in practicing medicine, via telemedicine or otherwise, should notify their MIEC Underwriter. Physicians can read more about the practice of telemedicine in Issue #5 of MIEC's newsletter, *The Exchange: Telemedicine and its evolution*, which can be downloaded at http://www.miec.com/Portals/0/TheExchange/TheExchange_Issue5.pdf.

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Chemical Abortions: H 154 by State Affairs Committee

Addition of new sections 18-617 through 18-621 to Chapter 6, Title 18, Idaho Code

Physicians are now required to conduct an in-person examination and counseling of a pregnant woman prior to prescribing abortion-inducing drugs. The law also provides for conditions of anonymity of the patient in a civil cause of action. The law reads, in part:

18-617. Chemical Abortions

- (2) No physician shall give, sell, dispense, administer, prescribe or otherwise provide an abortifacient for the purpose of effecting a chemical abortion unless the physician:
- (a) Has the ability to assess the duration of the pregnancy accurately in accordance with the applicable standard of care for medical practice in the state;
 - (b) Has determined, if clinically feasible, that the unborn child to be aborted is within the uterus and not ectopic;
 - (c) Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or, if the physician does not have admitting privileges at a local hospital, has made and documented in the patient's medical record plans to provide such emergency care through other qualified physicians who have agreed in writing to provide such care;

- (d) Informs the patient that she may need access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary, as a result of or in connection with the abortion procedure on a twenty-four (24) hour basis. If the appropriate medical facility is other than a local hospital emergency room, the physician shall provide the patient with the name, address and telephone number of such facility in writing;
 - (e) Has examined in person the woman to whom the abortifacient is administered to determine the medical appropriateness of such administration and has determined that the abortifacient is sufficiently safe for use in the gestational age at which it will be administered; and
 - (f) Has complied with the informed consent provisions of section 18-609, Idaho Code.
- (3) The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make reasonable efforts to ensure that the patient returns for a follow-up visit so that a physician can confirm that the pregnancy has been terminated and assess the patient's medical condition.
- #### **18-618. Civil Causes of Action**
- (1) Any female upon whom an abortion has been attempted or performed, or the father of the unborn child who was the subject of the abortion if the father was married to

the woman who received the abortion at the time the abortion was attempted or performed, or a maternal grandparent of the unborn child in the event the mother is deceased, may maintain an action for actual damages against the person who in knowing or reckless violation of section 18-617, Idaho Code, attempted or performed the abortion. The court may, in its discretion, award punitive damages ...

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**Telehealth Access Act:
H 189 by Health and Welfare
Committee**

Amending Title 54, Idaho Code, by the addition of a new Chapter 56: Idaho Telehealth Access Act

This law describes acceptable use of telehealth, including establishment of a doctor-patient relationship; limitations on prescriptions; provisions for continuity of care; informed consent, and more. This law reads, in part:

54-5603. Definitions

(1) “Asynchronous store and forward transfer” means the transmission of a patient’s health care information from an originating site to a provider at a distant site over a secure connection that complies with state and federal security and privacy laws.

- (2) “Distant site” means the site at which a provider delivering telehealth services is located at the time the service is provided.
- (3) “Originating site” means the location of a patient at the time telehealth services are provided.
- (4) “Provider” means a person 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.
- (5) “Synchronous interaction” means real-time communication through interactive technology that enables a provider and a patient at two (2) locations separated by distance to interact simultaneously through two-way video and audio or audio transmission.
- (6) “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.

54-5605. Provider-Patient Relationship

- (1) 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; 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 provide 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.

54-5606. 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.

54-5607. Prescriptions

- (1) 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, including the Idaho community standard of care; provided however, that the prescription drug shall not be a controlled substance unless prescribed in compliance with 21 U.S.C. section 802(54)(A).
- (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.
- (3) No drug may be prescribed through telehealth services for the purpose of causing an abortion.

54-5608. Informed Consent

A patient's informed consent for the use of telehealth services shall be obtained as required by any applicable law.

54-5609. 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.

54-5610. 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.

54-5611. 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 law, 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.

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