



# KEY HEALTHCARE UPDATES

IDAHO'S 2020 LEGISLATIVE SESSION

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# IDAHO PATIENT ACT

H 515 – “MELALEUCA LEGISLATION”

- Adds I.C. § 48-301, et seq., to governs the fair collection of debts owed to health care providers. Seeks to ensure that patients receive proper and timely notice regarding who rendered medical services and how much is owed before being sued in court, establishes fair and reasonable attorney fees, costs, and expenses related to medical debt collection.
- Requires healthcare providers/facilities to timely comply with statutory requirements before any “extraordinary collection action” can be taken.
  - Submit charges to patient or insurer within 45 days.
  - Provide “summary of services” within 60 days.
  - Provide final statement, including patient responsibility.
  - Not impose interest, fees, etc. for 60 days after final statement.
  - Not commence collection for 90 days after final statement.

# IDAHO PATIENT ACT

H 515 – “MELALEUCA LEGISLATION”

- Strict compliance enables recovery of fees, subject to statutory caps.
- Relaxed compliance (e.g., within contemplated extension periods) allows collection action, but no fees.
- Non-compliance subjects violating party to
  - Actual damages incurred by patient or \$1,000, whichever is more
  - If willful or knowing, treble damages or \$3,000, whichever is more
  - Inability to recover any fees or costs
- No statutory cap on fees patients can recover if they prevail in collection action.
- Effective 01.01.2021

# SIMON'S LAW

H 578

- Adds I.C. § 39-4516, governing life-sustaining treatment for unemancipated minors.
  - Definition of unemancipated minor is limited to “not married” and “not in active military service.”
- Requires notification of one parent/guardian at least 48 hours in advance of the physician’s intent to institute an order to withhold artificial life-sustaining procedures, including artificial nutrition/hydration, and reasonable attempts to notify any other parent or legal guardian.
  - Diligent notification efforts must be made for 72 hours
- Within 48 hours of notification, parent/guardian can request transfer of minor to another facility or discharge.
  - Hospital must continue providing life-sustaining artificial nutrition and hydration for minimum of 15 days pending transfer.
  - Hospital must make every reasonable effort to assist in the transfer process.
  - If transfer cannot be effectuated within 15 days from requested transfer, order withholding artificial hydration/nutrition can be instituted.
- Effective 07.01.2020

# PHARMACY BENEFIT MANAGERS

H 386

- Adds I.C. § 41-349 to help regulate pharmacy benefit managers (PBMs) in four ways:
  1. Requires PBMs in Idaho to register annually with DOI.
  2. Prohibits “gag clauses” so pharmacists can inform patients how to pay less out-of-pocket for prescriptions.
  3. Requires transparency on how PBMs determine the max allowable cost (MAC) they reimburse pharmacies for prescriptions and updates to pharmacies on MAC price changes.
  4. Prohibits retroactive denial or reduction of claims for reimbursement, except for legitimate purposes.
- Effective 07.01.2020

# TELEHEALTH

H 342 AAS

- “Telehealth Services” – amends I.C. § 54-5703(6)
  - Now specifically contemplates delivery of patient health care services including assessment, diagnosis, consultation, treatment, and remote patient monitoring, transfer of medical data, education, public health services, and health administration.
  - Specifically excludes (1) audio without access to and review of patient’s medical records; (2) non-HIPAA compliant email; and (2) facsimiles.
- Provider-Patient Relationship – amends I.C. § 54-5705(1)
  - Allows a provider to establish a provider-patient relationship by use of two-way audio – no longer requires two-way audio *and* visual interaction.
- Effective 07.01.2020

# HEALTH CARE PROVIDER IMMUNITY

H 392

- Purpose to encourage health care providers to volunteer their services at free medical clinics and community health screening events.
- “Health care provider” – amends I.C. § 39-7702(4)
  - Definition now contemplates “any person” who is licensed, certified, or registered to provide health care or other professional services in Idaho.
  - This allows the immunity to extend to healthcare volunteers.
  - Also extends to supervised students who are acting within scope, as long as patient has been notified the individual is a student.
- Effective 07.01.2020

# ABORTION

S 1385

- Prospective legislation that becomes effective if SCOTUS restores state authority to prohibit abortion.
- Adds I.C. § 18-622, which criminalizes performance or attempt to perform an abortion.
  - Felony, 2-5 yr imprisonment.
  - Professional license suspension, minimum 6 months, revoked subsequent offenses.
  - Affirmative defenses: necessary to prevent death of pregnant woman and in cases of rape and incest.
- Effective *TBD*

# DRUG HISTORY REVIEW

S 1348

- Strengthens state efforts to combat opioid misuse, requiring a check of the prescription drug monitoring program (PDMP) prior to writing a prescription for opioids or benzodiazepines, with certain exceptions.
- Amends I.C. § 37-2722(f)
  - Requires a check of the patient’s prescription drug history for the previous 12 months prior to issuing a prescription for outpatient use of opioids or benzodiazepine.
  - Exceptions include patients receiving treatment in inpatient setting; at scene of emergency or in an ambulance; hospice; SNF; prescriptions lasting no more than 3 days.
- Effective 10.01.2020
- Applicable to individuals required to register for PDMP.

# MEDICAID REIMBURSEMENTS

H 351

- Reduces net reimbursements to hospitals and nursing facilities to achieve the Medicaid 1% general fund reduction in SFY 2020 and 2% in SFY 2021.
- Nursing Facility Payment Methodology – adds I.C. § 56-116
  - Establishes a new prospective payment method for nursing facilities to replace existing reimbursement methods, which will consider patient needs, facility quality of care, reasonable cost principles, and state budget limitations.
  - New payment methodology effective 07.01.2021
- Provider Payments – amends I.C. § 56-265
  - Reflects Medicaid Reimbursement rates for inpatient mental health hospitals; critical access, out-of-state and state-owned hospitals.
  - For all other hospitals, replaces existing cost-based reimbursement methods with value-based payment methods for inpatient and outpatient hospital services.
- Effective 03.03.2020

# NURSING HOME ADMINISTRATORS

S 1242

- Allows applicants with management experience at an inpatient facility and master's-level degree with healthcare emphasis to qualify for a license.
- Amends I.C. § 54-1610 to allow certain master's degrees to satisfy examination requirements for nursing home administrator licensing.
- Effective 07.01.2020

# ADVANCED PRACTICE RN

S 1240

- APRNs have been able to practice without supervision of a physician since 2004, but many statutes still require a physician-only signature.
- Adds I.C. § 54-1420
  - Where a law or rule requires signature of a physician, the requirement may be fulfilled by an APRN including a certified nurse practitioner, certified nurse midwife, certified registered nurse anesthetist, or clinical nurse specialist.
- Effective 07.01.2020

# HOSPITALS, IDAPA, & COP

S 1354

- Hospitals are subject to both IDAPA “Rules and Minimum Standards for Hospitals in Idaho” and federal Conditions of Participation (COPs) under CMS.
- Amends I.C. § 39-1307 to state that any IDAPA rule that is more restrictive than COP shall not apply to CMS certified hospitals.
- Effective 07.01.2020

# WILLFUL OR RECKLESS MISCONDUCT

H 582

- Defines the term “willful or reckless misconduct” to ensure clarity among Idaho liability laws.
- Adds definition at I.C. § 6-1601(10):
  - “Willful or reckless misconduct” means conduct in which a person makes a conscious choice as to the person's course of conduct under circumstances in which the person knows or should know that such conduct both creates an unreasonable risk of harm to another and involves a high probability that such harm will actually result.
- Effective 07.01.2020

# OTHER CHANGES

- Controlled Substances (H315)
- Pharmacy Act (H316)
- Certified Medication Assistants (H385)
- Chiropractor Prescriptions (SB 1331)
- Advance Directive Registry (HB 616)

# NOTABLE BILLS OPPOSED

- Surgical Authority for Optometrists (H 317)
- Criminalizing Transgender Medical Care (H465)
- Balance Billing (H506)
- Adolescent Treatment Programs (H 340)
- Discrimination of Unvaccinated Persons (H 443)
- Amend Battery on Healthcare Worker Statute (H 458)

# QUESTIONS?

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