

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4463

BY DELEGATES ROHRBACH, SOBONYA, WAXMAN,
STANSBURY, ELLINGTON, SUMMERS, KURCABA, ARVON,
PERDUE AND MILLER

[Introduced February 9, 2016; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §30-3-13a; and to amend said code by adding thereto a new section,
3 designated §30-14-12d, all relating to the practice of medicine, permitting the practice of
4 telemedicine; establishing requirements; making exceptions; defining terms; and
5 authorizing rule-making.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §30-3-13a; and to amend said code by adding thereto a new section,
3 designated §30-14-12d, all to read as follows.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule-making.

1 (a) Definitions. – For the purposes of this section:

2 “Chronic nonmalignant pain” means pain that has persisted after reasonable medical
3 efforts have been made to relieve the pain or cure its cause and that has continued, either
4 continuously or episodically, for longer than three continuous months. “Chronic nonmalignant
5 pain” does not include pain associated with a terminal condition or illness or with a progressive
6 disease that, in the normal course of progression, may reasonably be expected to result in a
7 terminal condition or illness.

8 “Physician” means a doctor of allopathic or osteopathic medicine who is licensed to
9 practice in West Virginia by the West Virginia Board of Medicine or the West Virginia Board of
10 Osteopathic Medicine.

11 “Store and forward telemedicine” means the asynchronous computer-based
12 communication of medical data and/or images from an originating location to a physician or
13 podiatrist at another site for the purpose of diagnostic and/or therapeutic assistance.

14 “Telemedicine” means the practice of medicine using tools such as electronic
15 communication, information technology, store and forward telecommunication, or other means of

16 interaction between a physician or podiatrist in one location and a patient in another location, with
17 or without an intervening healthcare provider.

18 "Telemedicine technologies" means technologies and devices which enable secure
19 electronic communications and information exchange in the practice of telemedicine, and typically
20 involve the application of secure real-time video conferencing or similar secure video services,
21 remote monitoring, or store and forward digital image technology to provide or support healthcare
22 delivery by replicating the interaction of a traditional in-person encounter between a physician or
23 podiatrist and a patient.

24 (b) *Licensure.* --

25 (1) The practice of medicine occurs where the patient is located at the time the
26 telemedicine technologies are used.

27 (2) A physician or podiatrist who uses telemedicine technologies to engage in the practice
28 of medicine or podiatry on patients located in this state shall be licensed to practice medicine or
29 podiatry in the State of West Virginia and shall be subject to regulation by the West Virginia Board
30 of Medicine or the West Virginia Board of Osteopathy.

31 (3) This section does not apply to:

32 (A) An informal consultation or second opinion, at the request of a physician or podiatrist
33 who is licensed to practice medicine or podiatry in this state, provided that the physician or
34 podiatrist requesting the opinion retains authority and responsibility for the patient's care; and

35 (B) Furnishing of medical assistance by a physician or podiatrist in case of an emergency
36 or disaster if no charge is made for the medical assistance.

37 (c) *Establishing a physician-patient or podiatrist-patient relationship through telemedicine*
38 *encounter.* --

39 (1) A physician-patient or podiatrist-patient relationship may not be established through:

40 (A) Audio-only communication;

41 (B) Text-based communications such as e-mail, Internet questionnaires, text-based

42 messaging or other written forms of communication; or

43 (C) Any combination thereof.

44 (2) If an existing physician-patient or podiatrist-patient relationship is not present prior to
45 the utilization to telemedicine technologies, or if services are rendered solely through telemedicine
46 technologies, a physician-patient or podiatrist-patient relationship may only be established:

47 (A) Through the use of telemedicine technologies which incorporate interactive audio
48 using store and forward technology, real-time videoconferencing or similar secure video services
49 during the initial physician-patient or podiatrist-patient encounter; or

50 (B) For the practice of pathology and radiology, a physician-patient relationship may be
51 established through store and forward telemedicine or other similar technologies.

52 (3) Once a physician-patient or podiatrist-patient relationship has been established, either
53 through an in-person encounter or in accordance with subdivision (2) of this subsection, the
54 physician or podiatrist may utilize any telemedicine technology that meets the standard of care
55 and is appropriate for the particular patient presentation.

56 (d) Telemedicine practice. -- A physician or podiatrist using telemedicine technologies to
57 practice medicine or podiatry shall:

58 (1) Verify the identity and location of the patient;

59 (2) Provide the patient with confirmation of the identity, location and qualifications of the
60 physician or podiatrist;

61 (3) Establish and/or maintain a physician-patient or podiatrist-patient relationship which
62 conforms to the standard of care;

63 (4) Determine whether telemedicine technologies are appropriate for the particular patient
64 presentation for which the practice of medicine or podiatry is to be rendered;

65 (5) Conduct all appropriate evaluations and history of the patient consistent with traditional
66 standards of care for the particular patient presentation; and

67 (6) Create and maintain healthcare records for the patient which justify the course of

68 treatment and which verify compliance with the requirements of this section.

69 (7) The requirements of subdivisions (1) through (6) of this subsection do not apply to the
70 practice of pathology or radiology medicine through store and forward telemedicine.

71 (e) Standard of care. --

72 The practice of medicine or podiatry provided via telemedicine technologies, including the
73 establishment of a physician-patient or podiatrist-patient relationship and issuing a prescription
74 via electronic means as part of a telemedicine encounter, are subject to the same standard of
75 care, professional practice requirements and scope of practice limitations as traditional in-person
76 physician-patient or podiatrist-patient encounters. Treatment, including issuing a prescription,
77 based solely on an online questionnaire does not constitute an acceptable standard of care.

78 (f) Patient records. -- The patient record established during the use of telemedicine
79 technologies shall be accessible and documented for both the physician or podiatrist and the
80 patient, consistent with the laws and legislative rules governing patient healthcare records. All
81 laws governing the confidentiality of health care information and governing patient access to
82 medical records shall apply to records of practice of medicine or podiatry provided through
83 telemedicine technologies. A physician or podiatrist solely providing services using telemedicine
84 technologies shall make documentation of the encounter easily available to the patient, and
85 subject to the patient's consent, to any identified care provider of the patient.

86 (g) Prescribing limitations. --

87 (1) A physician or podiatrist who practices medicine to a patient solely through the
88 utilization of telemedicine technologies may not prescribe to that patient any controlled
89 substances listed in Schedule II of the Uniform Controlled Substances Act.

90 (2) A physician or podiatrist may not prescribe any pain-relieving controlled substance
91 listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of
92 treatment for chronic nonmalignant pain based upon, or as a result of, a telemedicine encounter.

93 (h) Exceptions. -- This article does not prohibit the use of audio-only or text-based

94 communications by a physician or podiatrist who is:

95 (1) Responding to call for patients with whom a physician-patient or podiatrist-patient
96 relationship has been established through an in-person encounter by the physician or podiatrist;

97 (2) Providing cross coverage for a physician or podiatrist who has established a physician-
98 patient or podiatrist-patient relationship with the patient through an in-person encounter; or

99 (3) Responding to an emergency situation or providing emergency services.

100 (i) Rule-making authority. -- The West Virginia Board of Medicine and West Virginia Board
101 of Osteopathic Medicine may propose rules for legislative approval in accordance with article
102 three, chapter twenty-nine-a of this code to implement standards for and limitations upon the
103 utilization of telemedicine technologies in the practice of medicine and podiatry in this state.

104 (j) Preservation of the traditional physician-patient or podiatrist-patient relationship. --
105 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
106 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to
107 change in any way the personal character of the physician-patient or podiatrist-patient
108 relationship. This section does not alter the scope of practice of any healthcare provider or
109 authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized
110 by law.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rule-making.

1 (a) Definitions. – For the purposes of this section:

2 “Chronic nonmalignant pain” means pain that has persisted after reasonable medical
3 efforts have been made to relieve the pain or cure its cause and that has continued, either
4 continuously or episodically, for longer than three (3) continuous months. “Chronic nonmalignant
5 pain” does not include pain associated with a terminal condition or illness or with a progressive
6 disease that, in the normal course of progression, may reasonably be expected to result in a
7 terminal condition or illness.

8 "Physician" means a doctor of allopathic or osteopathic medicine who is licensed to
9 practice in West Virginia by the West Virginia Board of Medicine or the West Virginia Board of
10 Osteopathic Medicine.

11 "Store and forward telemedicine" means the asynchronous computer-based
12 communication of medical data and/or images from an originating location to a physician at
13 another site for the purpose of diagnostic and/or therapeutic assistance.

14 "Telemedicine" means the practice of medicine using tools such as electronic
15 communication, information technology, store and forward telecommunication, or other means of
16 interaction between a physician in one location and a patient in another location, with or without
17 an intervening healthcare provider.

18 "Telemedicine technologies" means technologies and devices which enable secure
19 electronic communications and information exchange in the practice of telemedicine, and typically
20 involve the application of secure real-time video conferencing or similar secure video services,
21 remote monitoring, or store and forward digital image technology to provide or support healthcare
22 delivery by replicating the interaction of a traditional in-person encounter between a physician and
23 a patient.

24 (b) Licensure. --

25 (1) The practice of medicine occurs where the patient is located at the time the
26 telemedicine technologies are used.

27 (2) A physician who uses telemedicine technologies to engage in the practice of medicine
28 on patients located in this state shall be licensed to practice medicine in the State of West Virginia
29 and shall be subject to regulation by the West Virginia Board of Medicine or the West Virginia
30 Board of Osteopathy.

31 (3) This section does not apply to:

32 (A) An informal consultation or second opinion, at the request of a physician who is
33 licensed to practice medicine in this state, provided that the physician requesting the opinion

34 retains authority and responsibility for the patient's care; and

35 (B) Furnishing of medical assistance by a physician in case of an emergency or disaster
36 if no charge is made for the medical assistance.

37 (c) Establishing a physician-patient relationship through a telemedicine encounter.

38 (1) A physician-patient relationship may not be established through:

39 (A) Audio-only communication;

40 (B) Text-based communications such as e-mail, Internet questionnaires, text-based
41 messaging or other written forms of communication; or

42 (C) Any combination thereof.

43 (2) If an existing physician-patient relationship is not present prior to the utilization to
44 telemedicine technologies, or if services are rendered solely through telemedicine technologies,
45 a physician-patient relationship may only be established:

46 (A) Through the use of telemedicine technologies which incorporate interactive audio
47 using store and forward technology, real-time videoconferencing or similar secure video services
48 during the initial physician-patient encounter; or

49 (B) For the practice of pathology and radiology, a physician-patient relationship may be
50 established through store and forward telemedicine or other similar technologies.

51 (3) Once a physician-patient relationship has been established, either through an in-
52 person encounter or in accordance with subdivision (2) of this subsection, the physician may
53 utilize any telemedicine technology that meets the standard of care and is appropriate for the
54 particular patient presentation.

55 (d) Telemedicine Practice. -- A physician using telemedicine technologies to practice
56 medicine shall:

57 (1) Verify the identity and location of the patient;

58 (2) Provide the patient with confirmation of the identity, location and qualifications of the
59 physician;

60 (3) Establish and/or maintain a physician-patient relationship which conforms to the
61 standard of care;

62 (4) Determine whether telemedicine technologies are appropriate for the particular patient
63 presentation for which the practice of medicine is to be rendered;

64 (5) Conduct all appropriate evaluations and history of the patient consistent with traditional
65 standards of care for the particular patient presentation; and

66 (6) Create and maintain healthcare records for the patient which justify the course of
67 treatment and which verify compliance with the requirements of this section.

68 (7) The requirements of subdivisions (1) through (6) of this subsection do not apply to the
69 practice of pathology or radiology medicine through store and forward telemedicine.

70 (e) Standard of Care. -- The practice of medicine provided via telemedicine technologies,
71 including the establishment of a physician-patient relationship and issuing a prescription via
72 electronic means as part of a telemedicine encounter, are subject to the same standard of care,
73 professional practice requirements and scope of practice limitations as traditional in-person
74 physician-patient encounters. Treatment, including issuing a prescription, based solely on an
75 online questionnaire does not constitute an acceptable standard of care.

76 (f) Patient Records. -- The patient record established during the use of telemedicine
77 technologies shall be accessible and documented for both the physician and the patient,
78 consistent with the laws and legislative rules governing patient healthcare records. All laws
79 governing the confidentiality of health care information and governing patient access to medical
80 records shall apply to records of practice of medicine provided through telemedicine technologies.
81 A physician solely providing services using telemedicine technologies shall make documentation
82 of the encounter easily available to the patient, and subject to the patient's consent, to any
83 identified care provider of the patient.

84 (g) Prescribing Limitations. --

85 (1) A physician who practices medicine to a patient solely through the utilization of

86 telemedicine technologies may not prescribe to that patient any controlled substances listed in
87 Schedule II of the Uniform Controlled Substances Act.

88 (2) A physician may not prescribe any pain-relieving controlled substance listed in
89 Schedules II through V of the Uniform Controlled Substance Act as part of a course of treatment
90 for chronic nonmalignant pain based upon, or as a result of, a telemedicine encounter

91 (h) Exceptions. -- This article does not prohibit the use of audio-only or text-based
92 communications by a physician who is:

93 (1) Responding to call for patients with whom a physician-patient relationship has been
94 established through an in-person encounter by the physician;

95 (2) Providing cross coverage for a physician who has established a physician-patient or
96 relationship with the patient through an in-person encounter; or

97 (3) Responding to an emergency situation or providing emergency services.

98 (i) Rulemaking Authority. -- The West Virginia Board of Medicine and West Virginia Board
99 of Osteopathic Medicine may propose rules for legislative approval in accordance with article
100 three, chapter twenty nine-a of this code to implement standards for and limitations upon the
101 utilization of telemedicine technologies in the practice of medicine in this state.

102 (j) Preservation of the Traditional Physician-Patient Relationship. -- Nothing in this section
103 changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-
104 patient relationship, nor is it meant or intended to change in any way the personal character of
105 the physician-patient relationship. This section does not alter the scope of practice of any
106 healthcare provider or authorize the delivery of health care services in a setting, or in a manner,
107 not otherwise authorized by law.

NOTE: The purpose of this bill is to permit the practice of telemedicine. The bill establishes requirements and makes exceptions. The bill defines terms and authorizes rulemaking.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.