

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2509**

BY DELEGATES ELLINGTON, SUMMERS, ROWAN,

SOBONYA AND ATKINSON

[Passed April 7, 2017; in effect from passage.]



1 AN ACT to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and  
2 to amend and reenact §30-14-12d of said code, all relating to the practice of telemedicine  
3 generally; prohibiting the prescribing of a drug with the intent of causing an abortion; and  
4 allowing a physician to prescribe controlled substances on Schedule II of the Uniform  
5 Controlled Substances Act in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

1 That §30-3-13a of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted, and that §30-14-12d of said code be amended and reenacted, 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 (1) “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 (2) “Physician” means a person licensed by the West Virginia Board of Medicine to practice  
9 allopathic medicine in West Virginia.

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

13 (4) “Telemedicine” means the practice of medicine using tools such as electronic  
14 communication, information technology, store and forward telecommunication, or other means of  
15 interaction between a physician or podiatrist in one location and a patient in another location, with  
16 or without an intervening health care provider.

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

23           (b) *Licensure* –

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

26           (2) A physician or podiatrist who practices telemedicine must be licensed as provided in  
27 this article.

28           (3) This section does not apply to:

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

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

34           (c) *Physician-patient or Podiatrist-patient relationship through telemedicine encounter* –

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

36           (A) Audio-only communication;

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

39           (C) Any combination thereof.

40           (2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to  
41 the utilization to telemedicine technologies, or if services are rendered solely through telemedicine  
42 technologies, a physician-patient or podiatrist-patient relationship may only be established:

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

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

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

52 (d) *Telemedicine practice* – A physician or podiatrist using telemedicine technologies to  
53 practice medicine or podiatry shall:

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

55 (2) Provide the patient with confirmation of the identity and qualifications of the physician  
56 or podiatrist;

57 (3) Provide the patient with the physical location and contact information of the physician;

58 (4) Establish or maintain a physician-patient or podiatrist-patient relationship that conforms  
59 to the standard of care;

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

62 (6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

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

65 (8) Create and maintain health care records for the patient which justify the course of  
66 treatment and which verify compliance with the requirements of this section; and

67 (9) The requirements of subdivisions (1) through (8), inclusive, of this subsection do not  
68 apply to the practice of pathology or radiology medicine through store and forward telemedicine.

69 (e) *Standard of care* –

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

76 (f) *Patient records* –

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

85 (g) *Prescribing limitations* –

86 (1) A physician or podiatrist who practices medicine to a patient solely through the  
87 utilization of telemedicine technologies may not prescribe to that patient any controlled  
88 substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the  
89 prescribing limitations do not apply when a physician is providing treatment to patients who are  
90 minors , or if eighteen years of age or older, who are enrolled in a primary or secondary education  
91 program who are diagnosed with intellectual or developmental disabilities, neurological disease,  
92 Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set  
93 forth by organizations such as the American Psychiatric Association, the American Academy of  
94 Child and Adolescent Psychiatry or the American Academy of Pediatrics: *Provided, however*, That

95 the physician must maintain records supporting the diagnosis and the continued need of  
96 treatment.

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

100 (3) A physician or health care provider may not prescribe any drug with the intent of  
101 causing an abortion. The term “abortion” has the same meaning ascribed to it in section two,  
102 article two-f, chapter sixteen of this code.

103 (h) *Exceptions* –

104 This article does not prohibit the use of audio-only or text-based communications by a  
105 physician or podiatrist who is:

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

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

110 (3) Providing medical assistance in the event of an emergency situation.

111 (i) *Rulemaking* –

112 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine  
113 may propose joint rules for legislative approval in accordance with article three, chapter twenty-  
114 nine-a of this code to implement standards for and limitations upon the utilization of telemedicine  
115 technologies in the practice of medicine and podiatry in this state.

116 (j) *Preserving traditional physician-patient or podiatrist-patient relationship* –

117 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities  
118 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to  
119 change in any way the personal character of the physician-patient or podiatrist-patient  
120 relationship. This section does not alter the scope of practice of any health care provider or

121 authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized  
122 by law.

**ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**

**§30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rulemaking.**

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

2 (1) “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 (2) “Physician” means a person licensed by the West Virginia Board of Osteopathic  
9 Medicine to practice osteopathic medicine in West Virginia.

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

13 (4) “Telemedicine” means the practice of medicine using tools such as electronic  
14 communication, information technology, store and forward telecommunication or other means of  
15 interaction between a physician in one location and a patient in another location, with or without  
16 an intervening health care provider.

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

23 (b) *Licensure* –

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

26 (2) A physician who practices telemedicine must be licensed as provided in this article.

27 (3) This section does not apply to:

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

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

33 (c) *Physician-patient relationship through telemedicine encounter.*

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

35 (A) Audio-only communication;

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

38 (C) Any combination thereof.

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

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

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

47 (3) Once a physician-patient relationship has been established, either through an in-  
48 person encounter or in accordance with subdivision (2) of this subsection, the physician may

49 utilize any telemedicine technology that meets the standard of care and is appropriate for the  
50 particular patient presentation.

51 (d) *Telemedicine practice* – A physician using telemedicine technologies to practice  
52 medicine shall:

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

54 (2) Provide the patient with confirmation of the identity and qualifications of the physician;

55 (3) Provide the patient with the physical location and contact information of the physician;

56 (4) Establish or maintain a physician-patient relationship which conforms to the standard  
57 of care;

58 (5) Determine whether telemedicine technologies are appropriate for the particular patient  
59 presentation for which the practice of medicine is to be rendered;

60 (6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

61 (7) Conduct all appropriate evaluations and history of the patient consistent with traditional  
62 standards of care for the particular patient presentation;

63 (8) Create and maintain health care records for the patient which justify the course of  
64 treatment and which verify compliance with the requirements of this section; and

65 (9) The requirements of subdivisions (1) through (7), inclusive, of this subsection do not  
66 apply to the practice of pathology or radiology medicine through store and forward telemedicine.

67 (e) *Standard of care* –

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

74 (f) *Patient records* –

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

83           (g) *Prescribing limitations –*

84           (1) A physician who practices medicine to a patient solely through the utilization of  
85 telemedicine technologies may not prescribe to that patient any controlled substances listed in  
86 Schedule II of the Uniform Controlled Substances Act: *Provided*, That the prescribing limitations  
87 do not apply when a physician is providing treatment to patients who are minors, or if eighteen  
88 years of age or older, who are enrolled in a primary or secondary education program who are  
89 diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit  
90 Disorder, Autism or a traumatic brain injury in accordance with guidelines as set forth by  
91 organizations such as the American Psychiatric Association, the American Academy of Child and  
92 Adolescent Psychiatry or the American Academy of Pediatrics: *Provided, however*, That the  
93 physician must maintain records supporting the diagnosis and the continued need of treatment.

94           (2) A physician may not prescribe any pain-relieving controlled substance listed in  
95 Schedules II through V of the Uniform Controlled Substances Act as part of a course of treatment  
96 for chronic nonmalignant pain solely based upon a telemedicine encounter.

97           (3) A physician or health care provider may not prescribe any drug with the intent of  
98 causing an abortion. The term “abortion” has the same meaning ascribed to it in section two,  
99 article two-f, chapter sixteen of this code.

100           (h) *Exceptions –*

101           This section does not prohibit the use of audio-only or text-based communications by a  
102 physician who is:

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

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

107           (3) Providing medical assistance in the event of an emergency situation.

108           (i) *Rulemaking* –

109           The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine  
110 may propose joint rules for legislative approval in accordance with article three, chapter twenty-  
111 nine-a of this code to implement standards for and limitations upon the utilization of telemedicine  
112 technologies in the practice of medicine in this state.

113           (j) *Preservation of the traditional physician-patient relationship.*

114           Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities  
115 incident to the physician-patient relationship, nor is it meant or intended to change in any way the  
116 personal character of the physician-patient relationship. This section does not alter the scope of  
117 practice of any health care provider or authorize the delivery of health care services in a setting,  
118 or in a manner, not otherwise authorized by law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2017.

.....  
*Governor*