

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 390

BY SENATORS TAKUBO, STOLLINGS, UNGER, BLAIR AND

MARONEY

[Introduced February 22, 2017; Referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §30-14-12d of said code, all relating to the practice of medicine and
 3 telemedicine; providing exception to prescribing limitation for Schedule II controlled
 4 substances via telemedicine for certain diagnosed pediatric patients.

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 healthcare 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 healthcare 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 subsection (c)(2) of this section, 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; and

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

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

70 (e) *Standard of Care.*

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

77 (f) *Patient Records.*

78 The patient record established during the use of telemedicine technologies shall be
79 accessible and documented for both the physician or podiatrist and the patient, consistent with
80 the laws and legislative rules governing patient healthcare records. All laws governing the
81 confidentiality of healthcare information and governing patient access to medical records shall
82 apply to records of practice of medicine or podiatry provided through telemedicine technologies.
83 A physician or podiatrist solely providing services using telemedicine technologies shall make
84 documentation of the encounter easily available to the patient, and subject to the patient's
85 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: Provided, That the
90 prescribing limitations do not apply when providing treatment to diagnosed pediatric patients age
91 eighteen and younger 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 Academy of Child and Adolescent Psychiatry, the
94 American Psychiatric Association and/or the American Academy of Pediatrics: *Provided,*
95 however, That the physician must maintain records supporting the diagnosis and the continued

96 need of 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 (h) *Exceptions.*

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

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

105 (2) Providing cross coverage for a physician or podiatrist who has established a physician-
106 patient or podiatrist-patient 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 and podiatry in this state.

113 (j) *Preserving Traditional Physician-Patient or Podiatrist-Patient Relationship.*

114 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
115 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to
116 change in any way the personal character of the physician-patient or podiatrist-patient
117 relationship. This section does not alter the scope of practice of any healthcare provider or
118 authorize the delivery of healthcare services in a setting, or in a manner, not otherwise authorized
119 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 healthcare 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 healthcare 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 subsection (c)(2) of this section, the physician may utilize
49 any telemedicine technology that meets the standard of care and is appropriate for the particular
50 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; and
- 63 (8) Create and maintain healthcare records for the patient which justify the course of
64 treatment and which verify compliance with the requirements of this section.
- 65 (9) The requirements of subdivisions (1) through (7) of subsection (d) in this section do
66 not apply to the practice of pathology or radiology medicine through store and forward
67 telemedicine.

68 (e) *Standard of Care.*

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

75 (f) *Patient Records.*

76 The patient record established during the use of telemedicine technologies shall be
77 accessible and documented for both the physician and the patient, consistent with the laws and
78 legislative rules governing patient healthcare records. All laws governing the confidentiality of

79 healthcare information and governing patient access to medical records shall apply to records of
80 practice of medicine provided through telemedicine technologies. A physician solely providing
81 services using telemedicine technologies shall make documentation of the encounter easily
82 available to the patient, and subject to the patient's consent, to any identified care provider of the
83 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: Provided, That the prescribing limitations
88 do not apply when providing treatment to diagnosed pediatric patients age eighteen and younger
89 with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder,
90 Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations
91 such as the American Academy of Child and Adolescent Psychiatry, the American Psychiatric
92 Association and/or the American Academy of Pediatrics: *Provided, however, That the physician*
93 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 (h) *Exceptions.*

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

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

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

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

105 (i) *Rulemaking.*

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

110 (j) *Preservation of the Traditional Physician-Patient Relationship.*

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

NOTE: This purpose of this bill is to provide an exception to prescribing limitation for Schedule II controlled substances via telemedicine for certain diagnosed pediatric patients.

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