

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2947

BY DELEGATES STEELE, PACK, ROHRBACH AND ATKINSON

[Originating in the Committee Health and Human
Resources; Reported on February 13, 2019.]

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 telemedicine prescription
3 practice requirements; providing exceptions; allowing for physician submitted Schedule II
4 telemedicine prescriptions for immediate administration in a hospital.

Be it enacted by the Legislature of West Virginia:

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 emergency
33 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.* –

53 A physician or podiatrist using telemedicine technologies to practice medicine or podiatry
54 shall:

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

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

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

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

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

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

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

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

68 (9) The requirements of subdivisions (1) through (8), inclusive, of this subsection do not
69 apply to the practice of pathology or radiology medicine through store and forward 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 health care records. All laws governing the
81 confidentiality of health care 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 (2) The prescribing limitations in this subsection do not apply when a physician is providing
91 treatment to patients who are minors, or if 18 years of age or older, who are enrolled in a primary
92 or secondary education program ~~who~~ and are diagnosed with intellectual or developmental
93 disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in
94 accordance with guidelines as set forth by organizations such as the American Psychiatric
95 Association, the American Academy of Child and Adolescent Psychiatry or the American

96 Academy of Pediatrics. ~~: Provided, however, That the~~ The physician must maintain records
97 supporting the diagnosis and the continued need of treatment.

98 (3) The prescribing limitations in this subsection do not apply when a physician submits
99 an order to dispense a controlled substance, listed in Schedule II of the Uniform Controlled
100 Substances Act, to a hospital patient for immediate administration in a hospital.

101 ~~(2)~~ (4) A physician or podiatrist may not prescribe any pain-relieving controlled substance
102 listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of
103 treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

104 ~~(3)~~ (5) A physician or health care provider may not prescribe any drug with the intent of
105 causing an abortion. The term “abortion” has the same meaning ascribed to it in §16-2F-2 of this
106 code.

107 (h) *Exceptions.* –

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

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

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

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

115 (i) *Rulemaking.* –

116 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine
117 may propose joint rules for legislative approval in accordance with §29A-3-1 et seq., of this code
118 to implement standards for and limitations upon the utilization of telemedicine technologies in the
119 practice of medicine and podiatry in this state.

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

121 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
122 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to
123 change in any way the personal character of the physician-patient or podiatrist-patient
124 relationship. This section does not alter the scope of practice of any health care provider or
125 authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized
126 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 or podiatrist who practices medicine to a patient solely through the
85 utilization of telemedicine technologies may not prescribe to that patient any controlled
86 substances listed in Schedule II of the Uniform Controlled Substances Act. ~~Provided, That the~~

87 (2) The prescribing limitations in this subsection do not apply when a physician is providing
88 treatment to patients who are minors, or if 18 years of age or older, who are enrolled in a primary
89 or secondary education program ~~who~~ and are diagnosed with intellectual or developmental
90 disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in
91 accordance with guidelines as set forth by organizations such as the American Psychiatric
92 Association, the American Academy of Child and Adolescent Psychiatry or the American
93 Academy of Pediatrics. ~~Provided, however, That the~~ The physician must maintain records
94 supporting the diagnosis and the continued need of treatment.

95 (3) The prescribing limitations in this subsection do not apply when a physician submits
96 an order to dispense a controlled substance, listed in Schedule II of the Uniform Controlled
97 Substances Act, to a hospital patient for immediate administration in a hospital.

98 ~~(2)~~ (4) A physician or podiatrist may not prescribe any pain-relieving controlled substance
99 listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of
100 treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

101 ~~(3)~~ (5) A physician or health care provider may not prescribe any drug with the intent of
102 causing an abortion. The term “abortion” has the same meaning ascribed to it in §16-2F-2 of this
103 code.

104 (h) *Exceptions.* –

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

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

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

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

112 (i) *Rulemaking.* –

113 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine
114 may propose joint rules for legislative approval in accordance with §29A-3-1 et seq., of this code
115 to implement standards for and limitations upon the utilization of telemedicine technologies in the
116 practice of medicine in this state.

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

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

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

NOTE: The purpose of this bill is to permit a telemedicine physician prescription/order for a Schedule II pharmaceutical in the hospital setting for immediate administration in the hospital. Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

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