

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 710

BY SENATORS AZINGER, CLINE, MARONEY, AND ROBERTS

[Introduced February 5, 2020; referred
to the Committee on Banking and Insurance; and then
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; to
 2 amend said code by adding thereto a new section, designated §30-3-13b; to amend and
 3 reenact §30-14-12d of said code; and to amend said code by adding thereto a new section,
 4 designated §30-14-12e, all relating to practice of telemedicine; establishing a pilot
 5 program for members of Public Employees Insurance Agency; setting a sunset date for
 6 pilot program; providing for use of audio only engagement in certain circumstances; and
 7 providing for an independent audit.

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) Except as provided in §30-3-13b of this code, a physician-patient or podiatrist-patient
36 relationship may not be established through:

37 (A) Audio-only communication;

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

40 (C) Any combination thereof.

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

43 technologies, a physician-patient or podiatrist-patient relationship may only be established:

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

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

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

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

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

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

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

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

101 (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 (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.* – This article does not prohibit the use of audio-only or text-based
108 communications by a physician or podiatrist who is:

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

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

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

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

118 (j) *Preserving traditional physician-patient or podiatrist-patient relationship.* – Nothing in
119 this section changes the rights, duties, privileges, responsibilities and liabilities incident to the
120 physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any

121 way the personal character of the physician-patient or podiatrist-patient relationship. This section
122 does not alter the scope of practice of any health care provider or authorize the delivery of health
123 care services in a setting, or in a manner, not otherwise authorized by law.

§30-3-13b. Pilot program for members of Public Employees Insurance established.

1 (a) Notwithstanding any provision of this code to the contrary, a pilot program is
2 established authorizing physicians licensed pursuant to §30-3-1 et seq. of this code to use audio-
3 only communications to establish the physician-patient relationship and render associated care
4 while treating members of the Public Employees Insurance Agency. This pilot program shall
5 authorize the use of audio-only telemedicine technologies, as that term is defined in §30-3-13a of
6 this code.

7 (b) The use of audio-only telemedicine technology is authorized if:

8 (1) The patient is a plan member of Public Employees Insurance Agency;

9 (2) The physician determines that based upon the patient's presentation, the technology
10 is sufficient to provide necessary information to provide medical services to the patient; and

11 (3) In the physician's medical opinion, the audio-only technology meets the standard of
12 care.

13 (c) A physician who establishes a physician-patient relationship pursuant to this section
14 shall not prescribe controlled substance medications listed in Schedules II through V of the
15 Uniform Controlled Substances Act to the patient until such time as the physician has evaluated
16 the patient in person or pursuant to §30-3-13a(c)(2)(A) of this code.

17 (d) A physician establishing a physician-patient relationship by audio-only communication
18 shall have established a collaborative agreement with a primary care physician located within a
19 50-mile radius of the patient's primary residence. A physician prescribing care by means of audio-
20 only telemedicine during the establishing encounter shall advise the patient to follow up with that
21 primary care physician within 15 days of the establishing audio encounter.

22 (e) The physician shall document in the patient's medical record the following:

23 (1) His or her rationale for his or her medical opinion that audio-only technology meets the
 24 appropriate standard of care;

25 (2) That he or she has engaged in a collaborative agreement with a primary care physician
 26 located within a 50-mile radius of the patient's primary residence;

27 (3) That he or she has advised the patient to seek further medical treatment with the
 28 primary care physician with whom the physician has entered into a collaborative relationship; and

29 (4) Any other information the physician deems necessary in his or her medical opinion.

30 (f) An independent audit shall be conducted after the first year of the two-year pilot
 31 program. The audit shall evaluate the efficacy, access to care, standard of care, and financial
 32 feasibility of the establishment of a physician-patient relationship through the use of audio only
 33 telemedicine technologies. The West Virginia Board of Medicine shall provide input to the audit.
 34 The audit shall be presented to the Legislative Oversight Commission on Health and Human
 35 Resources Accountability as set forth in §16-29E-1 et seq. of this code prior to the end of the
 36 second year of the pilot program.

37 (g) The pilot program established by this section shall terminate two years from the
 38 effective date of this section unless further authorized by act of the Legislature.

39 (h) The use of secure telephonic communication or similar secure real-time, audio-only
 40 communication, if the patient is insured through the Public Employees Insurance Agency, is
 41 hereby authorized at the discretion of the physician.

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 (4) “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) Except as provided in §30-14-12e of this code, a physician-patient relationship may
35 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 relationship is not present prior to the utilization to
41 telemedicine technologies, or if services are rendered solely through telemedicine technologies,
42 a physician-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 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 relationship has been established, either through an in-
49 person encounter or in accordance with subdivision (2) of this subsection, the physician may
50 utilize any telemedicine technology that meets the standard of care and is appropriate for the
51 patient presentation.

52 (d) *Telemedicine practice.* – A physician using telemedicine technologies to practice
53 medicine 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 (3) Provide the patient with the physical location and contact information of the physician;

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

58 of care;

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

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

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

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

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

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

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

82 (g) *Prescribing limitations.* –

83 (1) A physician or podiatrist who practices medicine to a patient solely through the

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

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

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

98 (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 (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.* – This section does not prohibit the use of audio-only or text-based
105 communications by a physician who is:

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

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

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

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

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

§30-14-12e. Pilot program for members of Public Employees Insurance established.

1 (a) Notwithstanding any provision of this code to the contrary, a pilot program is
2 established authorizing physicians licensed pursuant to §30-12-1 *et seq.* of this code to use audio-
3 only communications to establish the physician-patient relationship and render associated care
4 while treating members of the Public Employees Insurance Agency. This pilot program shall
5 authorize the use of audio-only telemedicine technologies as that term is defined in §30-14-12d
6 of this code.

7 (b) The use of audio-only telemedicine technology is authorized if:

8 (1) The patient is a plan member of the Public Employees Insurance Agency;

9 (2) The physician determines that based upon the patient's presentation the technology is
10 sufficient to provide necessary information to provide medical services to the patient; and

11 (3) In the physician's medical opinion, the audio-only technology meets the standard of
12 care.

13 (c) A physician who establishes a physician-patient relationship pursuant to this section
14 shall not prescribe controlled substance medications listed in Schedules II through V of the

15 Uniform Controlled Substances Act to the patient until such time as the physician has evaluated
16 the patient in person or pursuant to §30-14-12d(c)(2)(A) of this code.

17 (d) A physician establishing a physician-patient relationship by audio-only communication
18 shall establish a collaborative agreement with a primary care physician located within a 50-mile
19 radius of the patient's primary residence. A physician prescribing care by means of audio-only
20 telemedicine during the establishing encounter shall advise the patient to follow up with that
21 primary care physician within 15 days of the establishing audio encounter.

22 (e) The physician shall document in the patient's medical record the following:

23 (1) His or her rationale for his or her medical opinion that audio-only technology meets the
24 appropriate standard of care;

25 (2) That he or she has engaged in a collaborative agreement with a primary care physician
26 located within a 50-mile radius of the patient's primary residence;

27 (3) That he or she has advised the patient to seek further medical treatment with the
28 primary care physician with whom the physician has entered into a collaborative relationship; and

29 (4) Any other information the physician deems necessary in his or her medical opinion.

30 (f) An independent audit shall be conducted after the first year of the two-year pilot
31 program. The audit shall evaluate the efficacy, access to care, standard of care, and financial
32 feasibility of the establishment of a physician-patient relationship through the use of audio-only
33 telemedicine technologies. The West Virginia Board of Osteopathic Medicine shall provide input
34 to the audit. The audit shall be presented to the Legislative Oversight Commission on Health and
35 Human Resources Accountability as set forth in §16-29E-1 *et seq.* of this code prior to the end of
36 the second year of the pilot program.

37 (g) The pilot program established by this section shall terminate two years from the
38 effective date of this section unless further authorized by act of the Legislature.

39 (h) The use of secure telephonic communication or similar secure real-time, audio-only
40 communication, if the patient is insured through the Public Employees Insurance Agency, is

41 hereby authorized at the discretion of the physician.

NOTE: The purpose of this bill is to establish a pilot program to evaluate the efficacy and sustainability of telemedicine health services in this state.

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