

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2024**

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Passed March 30,2021; in effect from passage.]

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[Passed March 30,2021; in effect from passage.]

1 AN ACT to amend and reenact §5-16-7b of the Code of West Virginia, 1931, as amended; to  
2 amend said code by adding thereto a new section, designated §9-5-28; to amend and  
3 reenact §30-1-26 of said code; to amend and reenact §30-3-13a of said code; to amend  
4 and reenact §30-14-12d of said code; and to amend and reenact §33-57-1 of said code,  
5 all relating to telehealth; defining terms; establishing reimbursement for telehealth services  
6 at a negotiated rate for virtual telehealth encounters; establishing reimbursement for a  
7 telehealth service on the same basis and at the same rate as if the service is provided in-  
8 person for established patients or for care rendered on a consulting basis to a patient  
9 located in an acute care facility; establishing a registration; permitting health care  
10 practitioners licensed in other states to practice in West Virginia using telehealth services;  
11 providing emergency rule-making authority; setting forth requirements for registration;  
12 permitting a fee for registration; establishing that a registrant is subject to this jurisdiction;  
13 placing a cap on the fee; providing for when the physician-patient relationship is  
14 established; providing for how a physician-patient relationship is established; removing  
15 restrictions on prescriptive authority; providing exceptions to prescriptive authority; adding  
16 criteria to the standard of care related to telehealth services; providing exceptions; and  
17 providing for effective date.

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-7b. Coverage for telehealth services.**

1 (a) The following terms are defined:

2 (1) "Distant site" means the telehealth site where the health care practitioner is seeing the  
3 patient at a distance or consulting with a patient's health care practitioner.

4 (2) "Established patient" means a patient who has received professional services, face-to-  
5 face, from the physician, qualified health care professional, or another physician or qualified  
6 health care professional of the exact same specialty and subspecialty who belongs to the same  
7 group practice, within the past three years.

8 (3) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code  
9 who provides health care services.

10 (4) "Originating site" means the location where the patient is located, whether or not  
11 accompanied by a health care practitioner, at the time services are provided by a health care  
12 practitioner through telehealth, including, but not limited to, a health care practitioner's office,  
13 hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's  
14 home, and other nonmedical environments such as school-based health centers, university-  
15 based health centers, or the work location of a patient.

16 (5) "Remote patient monitoring services" means the delivery of home health services using  
17 telecommunications technology to enhance the delivery of home health care, including monitoring  
18 of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and  
19 other condition-specific data; medication adherence monitoring; and interactive video  
20 conferencing with or without digital image upload.

21 (6) "Telehealth services" means the use of synchronous or asynchronous  
22 telecommunications technology or audio only telephone calls by a health care practitioner to  
23 provide health care services, including, but not limited to, assessment, diagnosis, consultation,  
24 treatment, and monitoring of a patient; transfer of medical data; patient and professional health-

25 related education; public health services; and health administration. The term does not include e-  
26 mail messages, or facsimile transmissions.

27 (7) "Virtual telehealth" means a new patient or follow-up patient for acute care that does  
28 not require chronic management or scheduled medications.

29 (b) After July 1, 2020, the plan shall provide coverage of health care services provided  
30 through telehealth services if those same services are covered through face-to-face consultation  
31 by the policy.

32 (c) After July 1, 2020, the plan may not exclude a service for coverage solely because the  
33 service is provided through telehealth services.

34 (d) The plan, which issues, renews, amends, or adjusts a plan, policy, contract, or  
35 agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate  
36 negotiated between the provider and the insurance company for virtual telehealth encounters.  
37 The plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or  
38 after July 1, 2021, shall provide reimbursement for a telehealth service for an established patient,  
39 or care rendered on a consulting basis to a patient located in an acute care facility whether  
40 inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement,  
41 or policy as if the service is provided through an in-person encounter rather than provided via  
42 telehealth.

43 (e) The plan may not impose any annual or lifetime dollar maximum on coverage for  
44 telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate  
45 to all items and services covered under the policy, or impose upon any person receiving benefits  
46 pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or  
47 deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit  
48 limitation or maximum for benefits or services, that is not equally imposed upon all terms and  
49 services covered under the policy, contract, or plan.

50 (f) An originating site may charge the plan a site fee.

51 (g) The coverage required by this section shall include the use of telehealth technologies  
52 as it pertains to medically necessary remote patient monitoring services to the full extent that  
53 those services are available.

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

#### **§9-5-28. Requirement for telehealth rates.**

1 The Medicaid plan, which issues, renews, amends, or adjusts a plan, policy, contract, or  
2 agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate  
3 negotiated between the provider and the insurance company for virtual telehealth encounters.  
4 The Medicaid plan, which issues, renews, amends, or adjusts a plan, policy, contract, or  
5 agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service for an  
6 established patient, or care rendered on a consulting basis to a patient located in an acute care  
7 facility whether inpatient or outpatient on the same basis and at the same rate under a contract,  
8 plan, agreement, or policy as if the service is provided through an in-person encounter rather than  
9 provided via telehealth.

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

#### **§30-1-26. Telehealth practice.**

1 (a) For the purposes of this section:  
2 'Established patient' means a patient who has received professional services, face-to-  
3 face, from the physician, qualified health care professional, or another physician or qualified  
4 health care professional of the exact same specialty and subspecialty who belongs to the same  
5 group practice, within the past three years.

6           “Health care practitioner” means a person authorized to practice under §30-3-1 *et seq.*,  
7 §30-3E-1 *et seq.*, §30-4-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-8-1 *et*  
8 *seq.*, §30-10-1 *et seq.*, §30-14-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-20A-1 *et seq.*,  
9 §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-26-1 *et seq.*, §30-28-1 *et seq.*, §30-30-1 *et seq.*, §30-31-  
10 1 *et seq.*, §30-32-1 *et seq.*, §30-34-1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, §30-37-1 *et seq.*  
11 and any other person licensed under this chapter that provides health care services.

12           “Interstate telehealth services” means the provision of telehealth services to a patient  
13 located in West Virginia by a health care practitioner located in any other state or commonwealth  
14 of the United States.

15           “Registration” means an authorization to practice a health profession regulated by §30-1-  
16 1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the  
17 registrant’s scope of practice.

18           “Telehealth services” means the use of synchronous or asynchronous  
19 telecommunications technology or audio only telephone calls by a health care practitioner to  
20 provide health care services, including, but not limited to, assessment, diagnosis, consultation,  
21 treatment, and monitoring of a patient; transfer of medical data; patient and professional health-  
22 related education; public health services; and health administration. The term does not include  
23 internet questionnaires, e-mail messages, or facsimile transmissions.

24           (b) Unless provided for by statute or legislative rule, a health care board, referred to in  
25 §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in  
26 accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice  
27 by a telehealth practitioner. The proposed rule shall consist of the following:

28           (1) The practice of the health care service occurs where the patient is located at the time  
29 the telehealth services are provided;

30           (2) The health care practitioner who practices telehealth shall be:

31 (A) Licensed in good standing in all states in which he or she is licensed and not currently  
32 under investigation or subject to an administrative complaint; and

33 (B) Registered as an interstate telehealth practitioner with the appropriate board in West  
34 Virginia;

35 (3) When the health care practitioner-patient relationship is established.

36 (4) The standard of care for the provision of telehealth services. The standard of care  
37 shall require that with respect to the established patient, the patient shall visit an in-person health  
38 care practitioner within 12 months of using the initial telemedicine service or the telemedicine  
39 service shall no longer be available to the patient until an in-person visit is obtained. This  
40 requirement may be suspended, in the discretion of the health care practitioner, on a case-by-  
41 case basis, and it does not to the following services: acute inpatient care, post-operative follow-  
42 up checks, behavioral medicine, addiction medicine, or palliative care.

43 (5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform  
44 Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing  
45 limitations contained in this section do not apply to a physician or a member of the same group  
46 practice with an established patient.

47 (6) Establish the conduct of a registrant for which discipline may be imposed by the board  
48 of registration.

49 (7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the  
50 interstate telehealth practitioner registered in the state.

51 (8) A reference to the Board's discipline process.

52 (c) A registration issued pursuant to the provisions of or the requirements of this section  
53 does not authorize a health care professional to practice from a physical location within this state  
54 without first obtaining appropriate licensure.

55 (d) By registering to provide interstate telehealth services to patients in this state, a health  
56 care practitioner is subject to:



57 (1) The laws regarding the profession in this state, including the state judicial system and  
58 all professional conduct rules and standards incorporated into the health care practitioner's  
59 practice act and the legislative rules of registering board; and

60 (2) The jurisdiction of the board with which he or she registers to provide interstate  
61 telehealth services, including such board's complaint, investigation, and hearing process.

62 (e) A health care professional who registers to provide interstate telehealth services  
63 pursuant to the provisions of or the requirements of this section shall immediately notify the board  
64 where he or she is registered in West Virginia and of any restrictions placed on the individual's  
65 license to practice in any state or jurisdiction.

66 (f) A person currently licensed in this state is not subject to registration but shall practice  
67 telehealth in accordance with the provisions of this section and the rules promulgated thereunder.

**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 or registered by the West Virginia Board of  
9 Medicine to practice 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, audio only  
15 telephone calls, or other means of interaction between a physician or podiatrist in one location  
16 and a patient in another location, with or without an intervening health care provider.

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

23 (b) *Licensure or registration.* –

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 or registered as provided in §30-1-1 *et seq.* of this code.

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 Text-based communications such as e-mail, Internet questionnaires, text-based  
37 messaging, or other written forms of communication.

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

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

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

46 (C) Through the use of audio-only calls or conversations that occur in real time. Patient  
47 communication though audio-visual communication is preferable, if available or possible. Audio-  
48 only calls or conversations that occur in real time may be used to establish the physician-patient  
49 relationship.

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

54 (d) *Telemedicine practice.* –

55 A physician or podiatrist using telemedicine technologies to practice medicine or podiatry  
56 shall:

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

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

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

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

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

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

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

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

70 (9) The requirements of §30-3-13(a)(1) through §30-3-13(a)(8) of this code do not apply  
71 to the practice of pathology or radiology medicine through store and forward telemedicine.

72 (e) *Standard of care.* –

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

79 (f) *Patient records.* –

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

88 (g) *Prescribing limitations.* –

89 (1) A physician or podiatrist who practices medicine to a patient solely through the  
90 utilization of telemedicine technologies may not prescribe to that patient any controlled

91 substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the  
92 prescribing limitations contained in this section do not apply to a physician or a member of the  
93 same group practice with an established patient.

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

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

106 (4) A physician or podiatrist may not prescribe any pain-relieving controlled substance  
107 listed in Schedule II of the Uniform Controlled Substance Act as part of a course of treatment for  
108 chronic nonmalignant pain solely based upon a telemedicine encounter: *Provided*, That the  
109 prescribing limitations contained in this section do not apply to a physician or a member of the  
110 same group practice with an established patient.

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

114 (h) *Exceptions.* –

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

- 117 (1) Responding to a call for patients with whom a physician-patient or podiatrist-patient
- 118 relationship has been established through an in-person encounter by the physician or podiatrist;
- 119 (2) Providing cross coverage for a physician or podiatrist who has established a physician-
- 120 patient or podiatrist-patient relationship with the patient through an in-person encounter; or
- 121 (3) Providing medical assistance in the event of an emergency.

122 (i) *Rulemaking.* –

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

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

128 Nothing in this section changes the rights, duties, privileges, responsibilities, and liabilities  
129 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to  
130 change in any way the personal character of the physician-patient or podiatrist-patient  
131 relationship. This section does not alter the scope of practice of any health care provider or  
132 authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized  
133 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 or registered by the West Virginia Board of  
9 Osteopathic 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, audio only  
15 telephone calls, or other means of interaction between a physician in one location and a patient  
16 in another location, with or without an intervening health care provider.

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

23           (b) *Licensure or registration.* –

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 or  
27 registered as provided in §30-1-1 *et seq.* of this code.

28           (3) This section does not apply to:

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

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

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

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

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

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

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

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

46 (C) Through the use of audio-only calls or conversations that occur in real time. Patient  
47 communication though audio-visual communication is preferable, if available or possible. Audio-  
48 only calls or conversations that occur in real time may be used to establish the physician-patient  
49 relationship.

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

54 (d) *Telemedicine practice.* – A physician using telemedicine technologies to practice  
55 medicine shall:

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

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

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



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

61 (5) Determine whether telemedicine technologies are appropriate for the patient  
62 presentation for which the practice of medicine 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 §30-3-13(a)(1) through §30-3-13(a)(8) of this code do not apply  
69 to the practice of pathology or radiology medicine through store and forward telemedicine.

70 (e) *Standard of care.* –

71 The practice of medicine provided via telemedicine technologies, including the  
72 establishment of a physician-patient relationship and issuing a prescription via electronic means  
73 as part of a telemedicine encounter, are subject to the same standard of care, professional  
74 practice requirements, and scope of practice limitations as traditional in-person physician-patient  
75 encounters. Treatment, including issuing a prescription, based solely on an online questionnaire  
76 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 and the patient, consistent with the laws and  
80 legislative rules governing patient health care records. All laws governing the confidentiality of  
81 health care information and governing patient access to medical records shall apply to records of  
82 practice of medicine provided through telemedicine technologies. A physician solely providing  
83 services using telemedicine technologies shall make documentation of the encounter easily

84 available to the patient, and subject to the patient's consent, to any identified care provider of the  
85 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 contained in this section do not apply to a physician or a member of the  
91 same group practice with an established patient.

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

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

104 (4) A physician or podiatrist may not prescribe any pain-relieving controlled substance  
105 listed in Schedule II of the Uniform Controlled Substance Act as part of a course of treatment for  
106 chronic nonmalignant pain solely based upon a telemedicine encounter: *Provided*, That the  
107 prescribing limitations contained in this section do not apply to a physician or a member of the  
108 same group practice with an established patient.

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

112 (h) *Exceptions.* –

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

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

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

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

120 (i) *Rulemaking.* –

121 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine  
122 may propose joint rules for legislative approval in accordance with §29A-3-1, of this code to  
123 implement standards for and limitations upon the utilization of telemedicine technologies in the  
124 practice of medicine in this state. The West Virginia Board of Medicine and the West Virginia  
125 Board of Osteopathic Medicine may promulgate emergency rules pursuant to the provisions of  
126 §29A-3-15 of this code to implement the provisions of the bill passed during the 2021 session of  
127 the Legislature.

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

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

## CHAPTER 33. INSURANCE.

### ARTICLE 57. REQUIRED COVERAGE FOR HEALTH INSURANCE.

#### §33-57-1. Coverage of telehealth services.

1 (a) The following terms are defined:

2 (1) "Distant site" means the telehealth site where the health care practitioner is seeing the  
3 patient at a distance or consulting with a patient's health care practitioner.

4 (2) "Established patient" means a patient who has received professional services, face-to-  
5 face, from the physician, qualified health care professional, or another physician or qualified  
6 health care professional of the exact same specialty and subspecialty who belongs to the same  
7 group practice, within the past three years.

8 (3) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code  
9 who provides health care services.

10 (4) "Originating site" means the location where the patient is located, whether or not  
11 accompanied by a health care practitioner, at the time services are provided by a health care  
12 practitioner through telehealth, including, but not limited to, a health care practitioner's office,  
13 hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's  
14 home, and other nonmedical environments such as school-based health centers, university-  
15 based health centers, or the work location of a patient.

16 (5) "Remote patient monitoring services" means the delivery of home health services  
17 using telecommunications technology to enhance the delivery of home health care, including  
18 monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood  
19 glucose, and other condition-specific data; medication adherence monitoring; and interactive  
20 video conferencing with or without digital image upload.

21 (6) "Telehealth services" means the use of synchronous or asynchronous  
22 telecommunications technology or audio only telephone calls by a health care practitioner to

23 provide health care services, including, but not limited to, assessment, diagnosis, consultation,  
24 treatment, and monitoring of a patient; transfer of medical data; patient and professional health-  
25 related education; public health services; and health administration. The term does not include e-  
26 mail messages or facsimile transmissions.

27 (7) "Virtual telehealth" means a new patient or follow-up patient for acute care that does  
28 not require chronic management or scheduled medications.

29 (b) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to  
30 §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of  
31 this code which issues or renews a health insurance policy on or after July 1, 2020, shall provide  
32 coverage of health care services provided through telehealth services if those same services are  
33 covered through face-to-face consultation by the policy.

34 (c) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et*  
35 *seq.*, and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or  
36 after July 1, 2020, may not exclude a service for coverage solely because the service is provided  
37 through telehealth services.

38 (d) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et*  
39 *seq.*, and §33-25A-1 *et seq.* of this code which issues, renews, amends, or adjusts a plan, policy,  
40 contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth  
41 service at a rate negotiated between the provider and the insurance company for the virtual  
42 telehealth encounter. An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*,  
43 §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues, renews, amends, or adjusts a  
44 plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a  
45 telehealth service for an established patient, or care rendered on a consulting basis to a patient  
46 located in an acute care facility whether inpatient or outpatient on the same basis and at the same  
47 rate under a contract, plan, agreement, or policy as if the service is provided through an in-person  
48 encounter rather than provided via telehealth.


49           (e) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et*  
50 *seq.*, and §33-25A-1 *et seq.* of this code may not impose any annual or lifetime dollar maximum  
51 on coverage for telehealth services other than an annual or lifetime dollar maximum that applies  
52 in the aggregate to all items and services covered under the policy, or impose upon any person  
53 receiving benefits pursuant to the provisions of or the requirements of this section any copayment,  
54 coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational  
55 benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms  
56 and services covered under the policy, contract, or plan.

57           (f) An originating site may charge an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*,  
58 §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code a site fee.

59           (g) The coverage required by this section shall include the use of telehealth technologies  
60 as it pertains to medically necessary remote patient monitoring services to the full extent that  
61 those services are available.

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

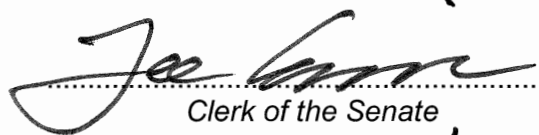
  
.....  
Chairman, House Committee

  
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Chairman, Senate Committee

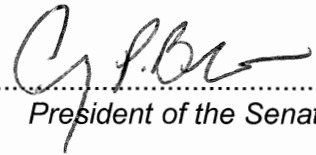
Originating in the House.

In effect from passage.

  
.....  
Clerk of the House of Delegates

  
.....  
Clerk of the Senate

  
.....  
Speaker of the House of Delegates

  
.....  
President of the Senate

The within *is approved* this the *9th*  
day of *April*, 2021.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 05 2021

Time 10:16am