

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 499

By Senators Chapman and Karnes

[Introduced January 22, 2024; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §30-1-26 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §30-3-13 and §30-3-13a of said code, all relating to permitting medical
 3 providers outside the State of West Virginia to practice telehealth and telemedicine in West
 4 Virginia, as was previously permitted under the COVID-19 state of emergency.

Be it enacted by the Legislature of West Virginia:

**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 "Abortifacient" means any chemical or drug prescribed or dispensed with the intent of
 3 causing an abortion.

4 "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 health
 6 care professional of the exact same specialty and subspecialty who belongs to the same group
 7 practice, within the past three years.

8 "Health care practitioner" means a person authorized to practice under §30-3-1 *et seq.*,
 9 §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*
 10 *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.*,
 11 §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.*, §30-31-1
 12 *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.*
 13 and any other person licensed under this chapter that provides health care services.

14 "Interstate telehealth services" means the provision of telehealth services to a patient
 15 located in West Virginia by a health care practitioner located in any other state or commonwealth
 16 of the United States.

17 "Registration" means an authorization to practice a health profession regulated by §30-1-1

18 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the
19 registrant's scope of practice.

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

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

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

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

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

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

37 (3) When the health care practitioner-patient relationship is established;

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

44 behavioral medicine, addiction medicine, or palliative care;

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

49 (6) Establish the conduct of a registrant for which discipline may be imposed by the board
50 of registration;

51 (7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the
52 interstate telehealth practitioner registered in the state;

53 (8) A reference to the Board's discipline process; and

54 (9) A prohibition of prescribing or dispensing an abortifacient.

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

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

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

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

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

69 (f) A person currently licensed in this state is not subject to registration but shall practice

70 telehealth in accordance with the provisions of this section and the rules promulgated thereunder.

71 (g) To the extent that medical providers outside the state were permitted to practice
72 telemedicine in this state during the COVID-19 state of emergency, such providers may continue
73 to practice telemedicine so long as the other provisions of this section and those of §30-3-13 and
74 §30-3-13a of this code are followed.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Licensing requirements for the practice of medicine and surgery or podiatry; exceptions; unauthorized practice; notice; criminal penalties.

1 (a) It is unlawful for any person who does not hold an active, unexpired license issued
2 pursuant to this article, or who is not practicing pursuant to the licensure exceptions set forth in this
3 section, to:

- 4 (1) Engage in the practice of medicine and surgery or podiatry in this state;
- 5 (2) Represent that he or she is a physician, surgeon or podiatrist authorized to practice
6 medicine and surgery or podiatry in this state; or
- 7 (3) Use any title, word or abbreviation to indicate or induce others to believe that he or she
8 is licensed to practice medicine and surgery or podiatry in this state.

9 (b) It is unlawful for any person who does not hold an active, unexpired license issued
10 pursuant to this article to engage in the practice of telemedicine within this state. As used in this
11 section, the "practice of telemedicine" means the practice of medicine using communication tools
12 such as electronic communication, information technology or other means of interaction between
13 a licensed health care professional in one location and a patient in another location, with or without
14 an intervening health care provider, and typically involves secure real time audio/video
15 conferencing or similar secure audio/video services, remote monitoring, interactive video and
16 store and forward digital image or health data technology to provide or support health care delivery
17 by replicating the interaction of a traditional in person encounter between a provider and a patient.

18 The practice of telemedicine occurs in this state when the patient receiving health care services
19 through a telemedicine encounter is physically located in this state.

20 (c) It is not unlawful for a person:

21 (1) Who is a licensed health care provider under this code to act within his or her scope of
22 practice;

23 (2) Who is not a licensed health care professional in this state to provide first aid care in an
24 emergency situation; or

25 (3) To engage in the bona fide religious tenets of any recognized church in the
26 administration of assistance to the sick or suffering by mental or spiritual means.

27 (d) The following persons are exempt from the licensure requirements under this article:

28 (1) A person enrolled in a school of medicine approved by the Liaison Committee on
29 Medical Education or by the board;

30 (2) A person enrolled in a school of podiatric medicine approved by the Council of Podiatry
31 Education or by the board;

32 (3) A person engaged in graduate podiatric training in a program approved by the Council
33 on Podiatric Education or by the board;

34 (4) A physician or podiatrist engaged in the performance of his or her official duties holding
35 one or more licenses from another state or foreign country and who is a commissioned medical
36 officer of, a member of or employed by:

37 (A) The United States Military;

38 (B) The Department of Defense;

39 (C) The United States Public Health Service; or

40 (D) Any other federal agency;

41 (5) A physician or podiatrist holding one or more unrestricted licenses granted by another
42 state or foreign country serving as visiting medical faculty engaged in education, training or
43 research duties at a medical school or institution recognized by the board for up to six months if:

44 (A) The physician does not engage in the practice of medicine and surgery or podiatry
45 outside of the auspices of the sponsoring school or institution; and

46 (B) The sponsoring medical school or institution provides prior written notification to the
47 board including the physician's name, all jurisdictions of licensure and the beginning and end date
48 of the physician's visiting medical faculty status;

49 (6) A physician or podiatrist holding one or more unrestricted licenses granted by another
50 state present in the state as a member of an air ambulance treatment team or organ harvesting
51 team;

52 (7) A physician or podiatrist holding one or more unrestricted licenses granted by another
53 state or foreign country providing a consultation on a singular occasion to a licensed physician or
54 podiatrist in this state, whether the consulting physician or podiatrist is physically present in the
55 state for the consultation or not;

56 (8) A physician or podiatrist holding one or more unrestricted licenses granted by another
57 state or foreign country providing teaching assistance, in a medical capacity, for a period not to
58 exceed seven days;

59 (9) A physician or podiatrist holding one or more unrestricted licenses granted by another
60 state or foreign country serving as a volunteer in a noncompensated role for a charitable function
61 for a period not to exceed seven days; and

62 (10) A physician or podiatrist holding one or more unrestricted licenses granted by another
63 state or foreign country providing medical services to a college or university affiliated and/or
64 sponsored sports team or an incorporated sports team if:

65 (A) He or she has a written agreement with that sports team to provide care to team
66 members, band member, cheerleader, mascot, coaching staff and families traveling with the team
67 for a specific sporting event, team appearance or training camp occurring in this state;

68 (B) He or she may only provide care or consultation to team members, coaching staff and
69 families traveling with the team no longer than seven consecutive days per sporting event;

70 (C) He or she is not authorized to practice at a health care facility or clinic, acute care
71 facility or urgent care center located in this state, but the physician may accompany the patient to
72 the facility and consult; and

73 (D) The physician or podiatrist may be permitted, by written permission from the executive
74 director, to extend his or her authorization to practice medicine for a maximum of seven additional
75 consecutive days if the requestor shows good cause for the extension.

76 (e) A physician or podiatrist who does not hold a license issued by the board and who is
77 practicing medicine in this state pursuant to the exceptions to licensure set forth in this section may
78 practice in West Virginia under one or more of the licensure exceptions for no greater than a
79 cumulative total of thirty days in any one calendar year.

80 (f) The executive director shall send by certified mail to a physician not licensed in this state
81 a written order that revokes the privilege to practice medicine under this section if the executive
82 director finds good cause to do so. If no current address can be determined, the order may be sent
83 by regular mail to the physician's last known address.

84 (g) A person who engages in the unlawful practice of medicine and surgery or podiatry
85 while holding a license issued pursuant to this article which has been classified by the board as
86 expired for 90 ~~ninety~~ days or fewer is guilty of a misdemeanor and, upon conviction, shall be fined
87 not more than \$5,000 or confined in jail not more than twelve months, or both fined and confined.

88 (h) A person who is found to be engaging in the practice of medicine and: (1) Has never
89 been licensed by the board under this article; (2) holds a license which has been classified by the
90 board as expired for greater than 90 ~~ninety~~ days; or (3) holds a license which has been placed in
91 inactive status, revoked, suspended or surrendered to the board is guilty of a felony and, upon
92 conviction, shall be fined not more than \$10,000 or imprisoned in a correctional facility for not less
93 than one year nor more than five years or both fined and imprisoned.

94 (i) Upon a determination by the board that any report or complaint submitted to it concerns
95 allegations of the unlawful practice of medicine and surgery by an individual who is licensed under

96 another article of this chapter, the board shall refer the complaint to the appropriate licensing
97 authority. Additionally, whenever the board receives credible information that an individual is
98 engaging in the unlawful practice of medicine and surgery or podiatry in violation of this section,
99 the board may report such information to the appropriate state and/or federal law enforcement
100 authority and/or prosecuting attorney.

101 (j) To the extent that medical providers outside the state were permitted to practice
102 telemedicine in this state during the COVID-19 state of emergency, such providers may continue
103 to practice telemedicine so long as the other provisions of this section and §30-3-13a of this code
104 are followed.

§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 and
16 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 or
59 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 to
71 the practice of pathology or radiology medicine through store and forward telemedicine.

72 (10) Out of state providers may practice telemedicine with patients in West Virginia so long
73 as the other requirements of this section are satisfied.

74 (e) *Standard of care.* –

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

81 (f) *Patient records.* –

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

90 (g) *Prescribing limitations.* –

91 (1) A physician or podiatrist who practices medicine to a patient solely through the
92 utilization of telemedicine technologies may not prescribe to that patient any controlled
93 substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the
94 prescribing limitations contained in this section do not apply to a physician or a member of the
95 same group practice with an established patient.

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

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

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

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

116 (h) *Exceptions.* –

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

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

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

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

124 (i) *Rulemaking.* –

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

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

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

NOTE: The purpose of this bill is to permit the care of a patient by telemedicine across state lines.

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