

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.]

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.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor