

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 1

BY SENATORS TAKUBO, WELD, BALDWIN, PLYMALE,
STOLLINGS, JEFFRIES, WOELFEL, ROBERTS, MARONEY,
NELSON, ROMANO, GRADY, WOODRUM, AND LINDSAY
[Originating in the Committee on Health and Human
Resources; reported on February 18, 2021]

1 A BILL to amend and reenact §5-16-7b of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding thereto a new section, designated §9-5-28; to amend and reenact
3 §30-1-26 of said code; to amend and reenact §30-3-13a of said code; to amend and
4 reenact §30-14-12d of said code; and to amend and reenact §33-57-1 of said code, all
5 relating to telehealth services; defining terms; requiring the Public Employees Insurance
6 Agency, Medicaid, and specified insurance plans to reimburse for telehealth services at a
7 negotiated rate for virtual telehealth encounters; requiring the Public Employees Insurance
8 Agency, Medicaid, and specified insurance plans to provide reimbursement for a
9 telehealth service on the same basis and at the same rate as if the service is provided in-
10 person for established patients; requiring the Department of Health and Human Resources
11 to file a Medicaid waiver; establishing a registration; permitting health care practitioners
12 licensed in other states, in good standing, to practice in West Virginia using telehealth
13 services and providing rule-making authority and emergency rule-making authority; setting
14 forth requirements for registration; permitting a fee for registration; placing a cap on the
15 fee; permitting physician-patient relationship to begin with an audio-only call or
16 conversation in real time; providing restrictions and exceptions on prescriptive authority;
17 adding criteria to the standard of care related to telehealth services; and providing
18 exceptions.

19 *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 ~~(2)~~ (3) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this
9 code who provides health care services.

10 ~~(3)~~ (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 ~~(4)~~ (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 ~~(5)~~ (6) "Telehealth services" means the use of synchronous or asynchronous
22 telecommunications technology by a health care practitioner to provide health care services,
23 including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a
24 patient; transfer of medical data; patient and professional health-related education; public health

25 services; and health administration. The term does not include ~~audio-only telephone calls~~, e-mail
26 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 shall provide reimbursement for a telehealth service at a rate negotiated
35 between the provider and the insurance company for virtual telehealth encounters after July 1,
36 2021. The plan shall provide reimbursement for a telehealth service for an established patient on
37 the same basis and at the same rate under a contract, plan, agreement, or policy as if the service
38 is provided through an in-person encounter rather than provided via telehealth after July 1, 2021.

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

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

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

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

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

1 The Medicaid plan shall provide reimbursement for a telehealth service at a rate
2 negotiated between the provider and the insurance company for virtual telehealth encounters
3 after July 1, 2021. The plan shall provide reimbursement for a telehealth service for an established
4 patient on the same basis and at the same rate under a contract, plan, agreement, or policy as if
5 the service is provided through an in-person encounter rather than provided via telehealth after
6 July 1, 2021.

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 “Health care practitioner” means a person licensed under §30-1-1 *et seq.* who provides
3 health care services.

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

7 “Registration” means an authorization to practice a health profession regulated by this
8 chapter for the limited purpose of providing interstate telehealth services within the registrant’s
9 scope of practice.

10 “Telehealth services” means the use of synchronous or asynchronous
11 telecommunications technology by a health care practitioner to provide health care services,
12 including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a
13 patient; transfer of medical data; patient and professional health-related education; public health

14 services; and health administration. The term does not include ~~audio-only telephone calls~~ internet
15 questionnaires, e-mail messages, or facsimile transmissions.

16 (b) Unless already provided for by statute or legislative rule, a health care board, referred
17 to in this chapter, shall propose a rule for legislative approval in accordance with the provisions
18 of §29A-3-1 *et seq.* to regulate telehealth practice by a telehealth practitioner. The proposed rule
19 shall consist of the following:

20 (1) The practice of the health care service occurs where the patient is located at the time
21 the telehealth technologies are used;

22 (2) The health care practitioner who practices telehealth ~~must be licensed as provided in~~
23 this chapter shall be:

24 (A) Licensed in the state in which he or she is located when rendering the services to
25 patients in West Virginia; and

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

28 (3) The qualifications and requirements for eligibility to register as an interstate telehealth
29 practitioner shall include, but not be limited to, verification that:

30 (A) The health care practitioner is licensed without restriction and is in good standing in all
31 jurisdictions where he or she holds or held professional practitioner licensure;

32 (B) The health care practitioner has not had a license or other authorization to practice a
33 health care profession revoked or restricted in any jurisdiction;

34 (C) The health care practitioner has not surrendered licensure in any jurisdiction while
35 under or to avoid investigation or professional discipline; and

36 (D) The health care practitioner is not currently under investigation or the subject of an
37 administrative complaint by a professional licensing board;

38 (4) The process and requirements to apply for registration shall include, but not be limited
39 to, the provision of:

40 (A) Verification of out-of-state licenses;

41 (B) Contact and practice information;

42 (C) Information concerning the applicant's education and professional training, where
43 appropriate to the profession;

44 (D) Any adverse or negative licensing actions previously taken against a registration
45 applicant in any other jurisdiction; and

46 (E) Other information requested by the board;

47 (5) The length of the initial registration period and a registration renewal process;

48 (6) Any requirements for continuing education;

49 ~~(3) (7) When the health care practitioner-patient relationship is established;~~

50 ~~(4) (8) The standard of care for the provision of telehealth services: *Provided*, That the~~
51 ~~standard of care shall require that with respect to the established patient, the patient shall visit an~~
52 ~~in-person health care practitioner within 12 months of using the initial telemedicine service or the~~
53 ~~telemedicine service shall no longer be available to the patient until an in-person visit is obtained:~~
54 ~~*Provided, however*, That the requirements in this section may be suspended in the event the~~
55 ~~Governor declares a state of emergency that impacts the public health: *Provided further*, That the~~
56 ~~requirements of this section do not apply to the following services: acute inpatient care, post-~~
57 ~~operative follow-up checks, behavioral medicine, or addiction medicine;~~

58 ~~(5) (9) A prohibition of prescribing: schedule II drugs, unless authorized by another section;~~
59 ~~and~~

60 (A) any controlled substances listed in Schedule II of the Uniform Controlled Substances
61 Act, unless authorized by another section; and

62 (B) Any controlled substance listed in Schedules III through V of the Uniform Controlled
63 Substances Act, even if the health care practitioner is authorized to prescribe these drugs by
64 another section, if the duly registered health care professional practices medicine to a patient
65 solely through the utilization of audio-only telehealth services: *Provided*, That the prescribing

66 limitations contained in this section do not apply to a physician or a member of the same group
67 practice with an existing physician-patient relationship of at least one year;

68 (10) Establish the conduct of a registrant for which discipline may be imposed by the board
69 of registration;

70 ~~(6)~~ (11) Implement the provisions of this section while ensuring competency, protecting
71 the citizens of this state from harm, and addressing issues specific to each profession-; and

72 (12) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the
73 interstate telehealth practitioner registered in the state.

74 (c) A registration issued pursuant to this section does not authorize a health care
75 professional to practice from a physical location within this state without first obtaining appropriate
76 licensure.

77 (d) By accepting a registration to provide interstate telehealth services to patients in this
78 state, a health care practitioner is subject to:

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

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

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

88 (f) The Board of registration shall suspend a health care practitioner's registration to
89 provide interstate telehealth services without further hearing or process when presented with:

90 (1) A certified copy of an order from a licensing authority that revokes or suspends the
91 license of a health care practitioner who holds a registration issued pursuant to this section; or

92 (2) A certified order or other evidence from the registrant or a licensing authority that a
93 registrant surrendered licensure in another jurisdiction while under, or to avoid, an investigation.

94 A health care practitioner whose registration has been suspended pursuant to this
95 subsection may seek reregistration only if the license or licenses which were subject to revocation,
96 suspension, and/or license surrender are restored and in good standing.

97 (g) A health care practitioner who receives a registration pursuant to this section shall
98 comply with the requirements of §16-29-1 et seq. of this code.

99 (h) A patient record of the telemedicine encounter shall be transmitted to the patient's
100 primary care physician, and if no primary care physician is identified, then no obligation exists to
101 send a record.

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, or other means of

15 interaction between a physician or podiatrist in one location and a patient in another location, with
16 or without an intervening health care provider.

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

23 (b) *Licensure 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 ~~(A) Audio-only communication;~~

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

39 ~~(C) Any combination thereof.~~

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

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

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

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

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

56 (d) *Telemedicine practice.* —

57 A physician or podiatrist using telemedicine technologies to practice medicine or podiatry
58 shall:

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

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

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

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

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

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

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

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

72 (9) The requirements of subdivisions (1) through (8), inclusive, of this subsection do not
73 apply to the practice of pathology or radiology medicine through store and forward telemedicine.

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
77 via electronic means as part of a telemedicine encounter, are subject to the same standard of
78 care, 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
84 the 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.
87 A 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. A patient record of the telemedicine

90 encounter shall be transmitted to the patient's primary care physician, and if no primary care
91 physician is identified then no obligation exists to send a record.

92 (g) *Prescribing limitations.* —

93 (1) A physician or podiatrist who practices medicine to a patient solely through the
94 utilization of telemedicine technologies may not prescribe to that patient any controlled
95 substances listed in Schedule II of the Uniform Controlled Substances Act.

96 (2) A physician or podiatrist who practices medicine to a patient solely through the
97 utilization of audio-only telemedicine may not prescribe to that patient any controlled substances
98 listed in Schedules III through V of the Uniform Controlled Substances Act until such time as the
99 physician has evaluated the patient in-person or pursuant to the provisions of §30-3-13a(c)(2)(A)
100 of this code: *Provided*, That the prescribing limitations contained in this section do not apply to a
101 physician or a member of the same group practice with an existing physician-patient relationship
102 of at least one year.

103 ~~(2)~~ (3) The prescribing limitations in this subsection do not apply when a physician is
104 providing treatment to patients who are minors, or if 18 years of age or older, who are enrolled in
105 a primary or secondary education program and are diagnosed with intellectual or developmental
106 disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in
107 accordance with guidelines as set forth by organizations such as the American Psychiatric
108 Association, the American Academy of Child and Adolescent Psychiatry, or the American
109 Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the
110 continued need of treatment.

111 ~~(3)~~ (4) The prescribing limitations in this subsection do not apply to a hospital, excluding
112 the emergency department, when a physician submits an order to dispense a controlled
113 substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient
114 for immediate administration in a hospital.

115 (4) ~~(5)~~ A physician or podiatrist may not prescribe any pain-relieving controlled substance
116 listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of
117 treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

118 ~~(5)~~ ~~(6)~~ A physician or health care provider may not prescribe any drug with the intent of
119 causing an abortion. The term “abortion” has the same meaning ascribed to it in §16-2F-2 of this
120 code.

121 (h) *Exceptions.* —

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

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

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

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

129 (i) *Rulemaking.* —

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

134 (j) *Preserving traditional physician-patient or podiatrist-patient relationship.* —

135 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
136 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to
137 change in any way the personal character of the physician-patient or podiatrist-patient
138 relationship. This section does not alter the scope of practice of any health care provider or
139 authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized
140 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 or other means of
15 interaction between a physician in one location and a patient in another location, with or without
16 an intervening health care provider.

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

23 (b) *Licensure 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 ~~(A) Audio-only communication;~~

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

39 ~~(C) Any combination thereof.~~

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

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

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

48 (C) Through the use of audio-only calls or conversations that occur in real time. Patient
49 communication though audio-visual communication is preferable, if available or possible.

50 However, audio-only calls or conversations that occur in real time may be used to establish the
51 physician-patient relationship.

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

56 (d) *Telemedicine practice.* — A physician using telemedicine technologies to practice
57 medicine shall:

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

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

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

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

63 (5) Determine whether telemedicine technologies are appropriate for the patient
64 presentation for which the practice of medicine 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 subdivisions (1) through (8), inclusive, of this subsection do not
71 apply to the practice of pathology or radiology medicine through store and forward telemedicine.

72 (e) *Standard of care.* —

73 The practice of medicine provided via telemedicine technologies, including the
74 establishment of a physician-patient relationship and issuing a prescription via electronic means
75 as part of a telemedicine encounter, are subject to the same standard of care, professional

76 practice requirements and scope of practice limitations as traditional in-person physician-patient
77 encounters. Treatment, including issuing a prescription, based solely on an online questionnaire
78 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 and the patient, consistent with the laws and
82 legislative rules governing patient health care records. All laws governing the confidentiality of
83 health care information and governing patient access to medical records shall apply to records of
84 practice of medicine provided through telemedicine technologies. A physician solely providing
85 services using telemedicine technologies shall make documentation of the encounter easily
86 available to the patient, and subject to the patient's consent, to any identified care provider of the
87 patient. A patient record of the telemedicine encounter shall be transmitted to the patient's primary
88 care physician, and if no primary care physician is identified then no obligation exists to send a
89 record.

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.

94 (2) A physician or podiatrist who practices medicine to a patient solely through the
95 utilization of audio-only telemedicine may not prescribe to that patient any controlled substances
96 listed in Schedules III through V of the Uniform Controlled Substances Act until such time as the
97 physician has evaluated the patient in-person or pursuant to the provisions of ~~§30-3-13a(c)(2)(A)~~
98 §30-14-12d(c)(2)(A) of this code: *Provided*, That the prescribing limitations contained in this
99 section do not apply to a physician or a member of the same group practice with an existing
100 physician-patient relationship of at least one year.

101 ~~(2)~~ (3)The prescribing limitations in this subsection do not apply when a physician is
102 providing treatment to patients who are minors, or if 18 years of age or older, who are enrolled in
103 a primary or secondary education program and are diagnosed with intellectual or developmental
104 disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in
105 accordance with guidelines as set forth by organizations such as the American Psychiatric
106 Association, the American Academy of Child and Adolescent Psychiatry, or the American
107 Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the
108 continued need of treatment.

109 ~~(3)~~ (4) The prescribing limitations in this subsection do not apply to a hospital, excluding
110 the emergency department, when a physician submits an order to dispense a controlled
111 substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient
112 for immediate administration in a hospital.

113 ~~(4)~~ (5) A physician or podiatrist may not prescribe any pain-relieving controlled substance
114 listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of
115 treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

116 ~~(5)~~ (6) A physician or health care provider may not prescribe any drug with the intent of
117 causing an abortion. The term “abortion” has the same meaning ascribed to it in §16-2F-2 of this
118 code.

119 (h) *Exceptions.* —

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

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

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

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

127 (i) *Rulemaking.* —

128 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine
129 may propose joint rules for legislative approval in accordance with §29A-3-1 ~~et seq.~~, of this code
130 to implement standards for and limitations upon the utilization of telemedicine technologies in the
131 practice of medicine in this state. The West Virginia Board of Medicine and the West Virginia
132 Board of Osteopathic Medicine may promulgate emergency rules pursuant to the provisions of
133 §29A-3-15 of this code to implement the provisions of the bill passed during the regular session
134 of the Legislature, 2021.

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

136 Nothing in this section changes the rights, duties, privileges, responsibilities, and liabilities
137 incident to the physician-patient relationship, nor is it meant or intended to change in any way the
138 personal character of the physician-patient relationship. This section does not alter the scope of
139 practice of any health care provider or authorize the delivery of health care services in a setting,
140 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 ~~(2)~~ (3) “Health care practitioner” means a person licensed under §30-1-1 *et seq.* of this
9 code who provides health care services.

10 ~~(3)~~ (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 ~~(4)~~ (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 ~~(5)~~ (6) “Telehealth services” means the use of synchronous or asynchronous
22 telecommunications technology by a health care practitioner to provide health care services,
23 including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a
24 patient; transfer of medical data; patient and professional health-related education; public health
25 services; and health administration. The term does not include ~~audio-only telephone calls~~ e-mail
26 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 plane, policy,
40 contract, or agreement after July 1, 2021, shall provide reimbursement for a telehealth service at
41 a rate negotiated between the provider and the insurance company for the virtual telehealth
42 encounter. An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1
43 *et seq.*, and §33-25A-1 *et seq.* of this code which issues, renews, amends, or adjusts a plane,
44 policy, contract, or agreement after July 1, 2021, shall provide reimbursement for a telehealth
45 service for an established patient on the same basis and at the same rate under a contract, plan,
46 agreement, or policy as if the service is provided through an in-person encounter rather than
47 provided via telehealth.

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

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

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