

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 320

BY SENATORS FERNS AND STOLLINGS

[Originating in the Committee on Health and Human

Resources; reported on February 17, 2016]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §30-3-13a; and to amend said code by adding thereto a new section,
3 designated §30-14-12d, all related to practice of medicine permitting practice of
4 telemedicine; establishing requirements; making exceptions; defining terms; and
5 authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §30-3-13a; and that said code be amended by adding thereto a new section,
3 designated §30-14-12d, all to read as follows:

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 (3) continuous months. "Chronic non-malignant
5 pain" does not include pain associated with a terminal condition or illness or with a progressive
6 disease that, in the normal course of progression, may reasonably be expected to result in a
7 terminal condition or illness.

8 (2) "Physician" means a person licensed by the West Virginia Board of Medicine to
9 practice allopathic medicine in West Virginia.

10 (3) "Store and forward telemedicine" means the asynchronous computer-based
11 communication of medical data and/or images from an originating location to a physician or
12 podiatrist at another site for the purpose of diagnostic and/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 healthcare 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 healthcare delivery by replicating the interaction of a traditional in-person encounter between a
22 physician or podiatrist and a patient.

23 (b) Licensure.

24 (1) The practice of medicine occurs where the patient is located at the time the
25 telemedicine technologies are used.

26 (2) A physician or podiatrist who practices telemedicine must be licensed as provided in
27 this section.

28 (3) This section does not apply to:

29 (A) An informal consultation or second opinion, at the request of a physician or
30 podiatrist who is licensed to practice medicine or podiatry in this state, provided that the
31 physician or podiatrist requesting the opinion retains authority and responsibility for the
32 patient's care; and

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

35 (c) Physician-Patient or Podiatrist-Patient Relationship Through Telemedicine Encounter.

36 (1) A physician-patient or podiatrist-patient relationship may not be established through:

37 (A) audio-only communication;

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

40 (C) any combination thereof.

41 (2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to

42 the utilization to telemedicine technologies, or if services are rendered solely through telemedicine
43 technologies, a physician-patient or podiatrist-patient relationship may only be established:

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

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

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

53 (d) *Telemedicine Practice.* A physician or podiatrist using telemedicine technologies to
54 practice medicine or podiatry shall:

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

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

58 (3) Provide the patient with the physical location of the physician if the patient requests
59 such information;

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

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

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

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

67 (8) Create and maintain healthcare records for the patient which justify the course of

68 treatment and which verify compliance with the requirements of this section,

69 (8) The requirements of subdivisions (1) through (8) of subsection (d) in this section do
70 not apply to the practice of pathology or radiology medicine through store and forward
71 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 healthcare records. All laws governing the
83 confidentiality of healthcare 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.

92 (2) A physician or podiatrist may not prescribe any pain-relieving controlled substance
93 listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of
94 treatment for chronic non-malignant pain solely based upon a telemedicine encounter.

95 (h) Exceptions.

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

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

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

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

103 (i) Rulemaking.

104 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine
105 may propose joint rules for legislative approval in accordance with article three, chapter twenty
106 nine a of this code to implement standards for and limitations upon the utilization of telemedicine
107 technologies in the practice of medicine and podiatry in this state.

108 (j) Preserving Traditional Physician-Patient or Podiatrist-Patient Relationship.

109 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
110 incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to
111 change in any way the personal character of the physician-patient or podiatrist-patient
112 relationship. This section does not alter the scope of practice of any healthcare provider or
113 authorize the delivery of healthcare services in a setting, or in a manner, not otherwise authorized
114 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 non-malignant 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 (3) continuous months. "Chronic non-malignant
5 pain" does not include pain associated with a terminal condition or illness or with a progressive
6 disease that, in the normal course of progression, may reasonably be expected to result in a
7 terminal condition or illness.

8 (2) "Physician" means a person licensed by the West Virginia Board of Osteopathic
9 Medicine to practice osteopathic medicine in West Virginia.

10 (3) "Store and forward telemedicine" means the asynchronous computer-based
11 communication of medical data and/or images from an originating location to a physician at
12 another site for the purpose of diagnostic and/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 healthcare 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 healthcare delivery by replicating the interaction of a traditional in-person encounter between a
22 physician and a patient.

23 (b) Licensure.

24 (1) The practice of medicine occurs where the patient is located at the time the
25 telemedicine technologies are used.

26 (2) A physician who practices telemedicine must be licensed as provided in this section.

27 (3) This section does not apply to:

28 (A) An informal consultation or second opinion, at the request of a physician who
29 is licensed to practice medicine in this state, provided that the physician requesting the
30 opinion retains authority and responsibility for the patient's care; and

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

33 (c) Physician-Patient Relationship Through Telemedicine Encounter.

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

35 (A) audio-only communication;

36 (B) text-based communications such as e-mail, internet questionnaires, text-based
37 messaging or other written forms of communication; or

38 (C) any combination thereof.

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

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

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

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

51 (d) Telemedicine Practice. A physician using telemedicine technologies to practice
52 medicine shall:

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

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

55 (3) Provide the patient with the physical location of the physician if the patient requests
56 such information;

57

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

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

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

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

65 (8) Create and maintain healthcare records for the patient which justify the course of
66 treatment and which verify compliance with the requirements of this section.

67 (9) The requirements of subdivisions (1) through (7) of subsection (d) in this section do
68 not apply to the practice of pathology or radiology medicine through store and forward
69 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 healthcare records. All laws governing the confidentiality of
81 healthcare 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 who practices medicine to a patient solely through the utilization of
88 telemedicine technologies may not prescribe to that patient any controlled substances listed in
89 Schedule II of the Uniform Controlled Substances Act.

90 (2) A physician may not prescribe any pain-relieving controlled substance listed in
91 Schedules II through V of the Uniform Controlled Substances Act as part of a course of treatment
92 for chronic nonmalignant pain solely based upon a telemedicine encounter.

93 (h) Exceptions.

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

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

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

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

101 (i) Rulemaking.

102 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine
103 may propose joint rules for legislative approval in accordance with article three, chapter twenty
104 nine a of this code to implement standards for and limitations upon the utilization of telemedicine
105 technologies in the practice of medicine in this state.

106 (j) Preservation of the Traditional Physician-Patient Relationship.
107 Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities
108 incident to the physician-patient relationship, nor is it meant or intended to change in any way the
109 personal character of the physician-patient relationship. This section does not alter the scope of
110 practice of any healthcare provider or authorize the delivery of healthcare services in a setting, or
111 in a manner, not otherwise authorized by law.