

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 320**

BY SENATORS FERNS AND STOLLINGS

[Introduced January 19, 2016;

Referred to the Committee on Health and Human  
Resources; and then to the Committee on Government  
Organization.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §30-3-13a, relating generally to practice of medicine; permitting the practice  
 3 of telemedicine; establishing requirements; making exceptions; defining terms; and  
 4 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, 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 “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 “Physician” means a doctor of allopathic or osteopathic medicine who is licensed to  
 9 practice in West Virginia by the West Virginia Board of Medicine or the West Virginia Board of  
 10 Osteopathic Medicine.

11 "Store and forward telemedicine" means the asynchronous computer-based  
 12 communication of medical data and/or images from an originating location to a physician at  
 13 another site for the purpose of diagnostic and/or therapeutic assistance.

14 "Telemedicine" means the practice of medicine using tools such as electronic  
 15 communication, information technology, store and forward telecommunication, or other means of

16 interaction between a physician in one location and a patient in another location, with or without  
17 an intervening healthcare provider.

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

24 (b) *Licensure.* --

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

27 (2) A physician who uses telemedicine technologies to engage in the practice of medicine  
28 on patients located in this state shall be licensed to practice medicine in the State of West Virginia  
29 and shall be subject to regulation by the West Virginia Board of Medicine or the West Virginia  
30 Board of Osteopathy.

31 (3) This section does not apply to:

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

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

37 (c) *Establishing a Physician-Patient Relationship Through Telemedicine Encounter.* --

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

39 (A) Audio-only communication;

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

42 (C) Any combination thereof.

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

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

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

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

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

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

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

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

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

64 (5) Obtain from the patient informed consent for the use of telemedicine technologies in  
65 the practice of medicine to the patient;

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

68 (7) Create and maintain healthcare records for the patient which justify the course of  
69 treatment and which verify compliance with the requirements of this section.

70 (8) The requirements of subdivisions (2) and (5) of subsection (d) in this section do not  
71 apply to the practice of pathology or radiology medicine through store and forward  
72 telemedicine.

73 (e) Standard of Care. --

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

80 (2) The utilization of telemedicine technologies to practice medicine on a patient for whom  
81 the standard of care requires an in-person, physical examination shall constitute dishonorable,  
82 unethical and unprofessional conduct.

83 (f) Patient Records.--

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

93 (g) Prescribing Limitations. --

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

97 (2) A physician may not prescribe any pain-relieving controlled substance listed in  
98 Schedules II through V of the Uniform Controlled Substance Act as part of a course of treatment  
99 for chronic nonmalignant pain based upon, or as a result of, a telemedicine encounter.

100 (h) Exceptions. --

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

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

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

107 (3) Responding to an emergency situation or providing emergency services.

108 (i) Rulemaking Authority. --

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

113 (j) Preservation of the Traditional Physician-Patient Relationship. --

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

NOTE: The purpose of this bill is to authorize the practice of “telemedicine.” “Telemedicine” is defined as a means to practice medicine using particular technologies such as electronic communication. E.g., telecommunication between physician and patient when each are located in separate physical locations. The bill contains definitions in furtherance of providing a frame of reference toward appropriate standards to be observed in the implementation of telemedicine as well as enunciating particular practices to which it may not apply. The bill also sets for standards that must be met before telemedicine may be utilized as well as defining situations in which it may not be utilized. The bill also proclaims that if a physician practices telemedicine on a patient that would otherwise require an in-person physical exam, that this constitutes unethical conduct. The bill reaffirms the applicability of the rule of confidentiality related to this particular medical practice. The bill also prohibits physicians from prescribing medication when telemedicine is a physician’s sole contact with a patient. Finally the bill authorizes rulemaking authority to the West Virginia Boards of Medicine and Osteopathy to implement standards to be observed.

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