WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2509

BY DELEGATES ELLINGTON, SUMMERS, ROWAN, SOBONYA AND ATKINSON

[Originating in the Committee on the Judiciary]
A BILL to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-12d of said code, all relating to the practice of telemedicine; changing certain prescription limitations.

Be it enacted by the Legislature of West Virginia:

That §30-3-13a of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that §30-14-12d of said code be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13a. Telemedicine practice

(a) Definitions -- For the purposes of this section:

(1) “Chronic nonmalignant pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. “Chronic nonmalignant pain” does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

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

(3) “Store and forward telemedicine” means the asynchronous computer-based communication of medical data or images from an originating location to a physician or podiatrist at another site for the purpose of diagnostic or therapeutic assistance.

(4) “Telemedicine” means the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication, or other means of interaction between a physician or podiatrist in one location and a patient in another location, with or without an intervening healthcare provider.

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

(b) Licensure.--

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

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

(3) This section does not apply to:

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

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

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

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

(A) Audio-only communication;

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

(C) Any combination thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The requirements of subdivisions (1) through (8) of subsection (d) in this section do
not apply to the practice of pathology or radiology medicine through store and forward
telemedicine.
(e) Standard of Care.--

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

(f) Patient Records.--

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

(g) Prescribing Limitation.--

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

A physician or podiatrist may not prescribe a narcotic listed in Schedules II through V of the Uniform Controlled Substance Act.

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

(h) Exceptions.--
This article does not prohibit the use of audio-only or text-based communications by a physician or podiatrist who is:

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

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

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

(i) Rulemaking.--

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

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

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

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12d. Telemedicine practice.

(a) Definitions. – For the purposes of this section:

(1) “Chronic nonmalignant pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. “Chronic nonmalignant pain” does not include pain associated with a terminal condition or illness or with a progressive
disease that, in the normal course of progression, may reasonably be expected to result in a
terminal condition or illness.

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

(3) “Store and forward telemedicine” means the asynchronous computer-based
communication of medical data or images from an originating location to a physician at another
site for the purpose of diagnostic or therapeutic assistance.

(4) "Telemedicine" means the practice of medicine using tools such as electronic
communication, information technology, store and forward telecommunication, or other means of
interaction between a physician in one location and a patient in another location, with or without
an intervening healthcare provider.

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

(b) Licensure.--

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

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

(3) This section does not apply to:

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

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

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

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

(A) Audio-only communication;

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

(C) Any combination thereof.

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

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

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

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

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

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

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

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

(4) Establish or maintain a physician-patient relationship which conforms to the standard of care;
(5) Determine whether telemedicine technologies are appropriate for the particular patient presentation for which the practice of medicine is to be rendered;

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

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

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

(9) The requirements of subdivisions (1) through (7) of subsection (d) in this section do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) Standard of Care.--

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

(f) Patient Records.--

The patient record established during the use of telemedicine technologies shall be accessible and documented for both the physician and the patient, consistent with the laws and legislative rules governing patient healthcare records. All laws governing the confidentiality of healthcare information and governing patient access to medical records shall apply to records of practice of medicine provided through telemedicine technologies. A physician solely providing services using telemedicine technologies shall make documentation of the encounter easily available to the patient, and subject to the patient's consent, to any identified care provider of the patient.
(g) *Prescribing Limitation.* --

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

A physician or podiatrist may not prescribe a narcotic listed in Schedules II through V of the Uniform Controlled Substance Act.

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

(h) *Exceptions.* --

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

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

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

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

(i) *Rulemaking.* --

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

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

Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient relationship. This section does not alter the scope of
practice of any healthcare provider or authorize the delivery of healthcare services in a setting, or

in a manner, not otherwise authorized by law.

NOTE: The purpose of this bill is to permit a physician to prescribe certain controlled substances when using telemedicine technologies.

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