

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **Senate Bill 273**

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

[BY REQUEST OF THE EXECUTIVE]

[Introduced February 13, 2021; Referred  
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended, relating  
 2 to telemedicine; expanding use of telemedicine to all medical personnel; allowing for  
 3 audio-only telemedicine encounters; ensuring parity for telemedicine to match in-person  
 4 coverage and fees; and limiting the ability of medical personnel professional licensure  
 5 boards to restrict telemedicine.

*Be it enacted by the Legislature of West Virginia:*

### **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 by the West Virginia Board of Medicine to practice~~  
 9 ~~allopathic medicine in West Virginia~~ “Medical personnel” means a health professional who, by  
 10 virtue of education, credentials, and experience, is permitted by state law to evaluate and care for  
 11 patients within the scope of the professional’s licensure.

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

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

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

25 (b) Licensure. –

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

28 (2) ~~A physician or podiatrist~~ Medical personnel who practices telemedicine must be  
29 licensed as provided in this article.

30 (3) This section does not apply to:

31 (A) An informal consultation or second opinion, at the request of ~~a physician or podiatrist~~  
32 medical personnel who ~~is licensed to practice medicine or podiatry in this state~~ is permitted by  
33 state law to evaluate and care for patients within the scope of the professional's licensure,  
34 provided that the ~~physician or podiatrist~~ medical personnel requesting the opinion retains authority  
35 and responsibility for the patient's care; and

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

38 (c) ~~Physician-patient or Podiatrist-patient relationship~~ Patient relationship with medical  
39 personnel through telemedicine encounter. –

40 (1) ~~A physician-patient or podiatrist-patient relationship~~ patient relationship with medical  
41 personnel may not be established through:

42 (A) ~~Audio-only communication;~~

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

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

46 (2) If an existing ~~physician-patient or podiatrist-patient relationship~~ patient relationship with  
47 medical personnel does not exist prior to the utilization ~~to~~ of telemedicine technologies, or if  
48 services are rendered solely through telemedicine technologies, a ~~physician-patient or podiatrist-~~  
49 ~~patient relationship~~ patient relationship with medical personnel may only be established:

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

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

56 (3) Once a ~~physician-patient or podiatrist-patient relationship~~ patient relationship with  
57 medical personnel has been established, either through an in-person encounter or in accordance  
58 with subdivision (2) of this subsection, the ~~physician or podiatrist~~ medical personnel may utilize  
59 any telemedicine technology that meets the standard of care and is appropriate for the patient  
60 presentation.

61 (d) Telemedicine practice. –

62 ~~A physician or podiatrist~~ Medical personnel using telemedicine technologies to practice  
63 medicine or podiatry shall:

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

65 (2) Provide the patient with confirmation of the identity and qualifications of the ~~physician~~  
66 ~~or podiatrist~~ medical personnel;

67 (3) Provide the patient with the physical location and contact information of the ~~physician~~  
68 medical personnel;

69 (4) Establish or maintain a ~~physician-patient or podiatrist-patient relationship~~ patient  
70 relationship with medical personnel that conforms to the standard of care;

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

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

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

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

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

80 (e) Standard of care. –

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

87 (f) Patient records. –

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

96 (g) Prescribing limitations. –

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

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

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

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

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

119 (h) An insurance provider who offers an insurance product in this state, the Bureau for  
120 Medical Services, the West Virginia Children's Health Insurance Program, and the Public  
121 Employees Insurance Agency shall provide the same coverage and fees for telemedicine visits  
122 as in-person visits.

123 (j) Exceptions. –

124 This article does not prohibit the use of ~~audio-only~~ or text-based communications by a  
125 ~~physician or podiatrist~~ medical personnel who is:

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

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

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

133 (†) (j) Rulemaking. –

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

138 (†) (k) Preserving traditional ~~physician-patient or podiatrist-patient relationship~~ patient  
139 relationship with the medical personnel. –

140 Nothing in this section changes the rights, duties, privileges, responsibilities, and liabilities  
141 incident to the ~~physician-patient or podiatrist-patient relationship~~ patient relationship with the  
142 medical personnel, nor is it meant or intended to change in any way the personal character of the  
143 ~~physician-patient or podiatrist-patient relationship~~ patient relationship with the medical personnel.  
144 This section does not alter the scope of practice of any health care provider or authorize the  
145 delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

146 (l) The boards of psychologists, nurses, medicine, osteopathic medicine, social workers,  
147 counselors, occupational therapists, physical therapists, and speech-language pathologists and  
148 audiologists shall not promulgate rules regarding telemedicine that are more restrictive than set

149 forth in this section.

NOTE: The purpose of this bill is to expand the use of telemedicine by allowing medical personnel to participate in telemedicine visits, to ensure parity between telemedicine and in-person visits, and to restrict the ability of medical professional boards to restrict telemedicine beyond what is in this section.

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