

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 551

BY SENATOR BEACH

[Introduced February 01, 2022; referred
to the Committee on Health and Human Resources]

1 A BILL to repeal §16-2I-1, §16-2I-2, §16-2I-3, §16-2I-4, §16-2I-5, §16-2I-6, §16-2I-7, §16-2I-8,
 2 and §16-2I-9 of the Code of West Virginia, 1931, as amended; to repeal §16-2M-1, §16-
 3 2M-2, §16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6, and §16-2M-7 of said code; to repeal
 4 §16-2O-1 of said code; to repeal §16-2P-1 of said code; to repeal §61-2-8 of said code;
 5 and to amend and reenact §30-14-12d of said code, all relating to preserving a woman’s
 6 right to choose an abortion.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§16-2I-1. Definitions.

1 [Repealed.]

§16-2I-2. Informed consent.

1 [Repealed.]

§16-2I-3. Printed information.

1 [Repealed.]

§16-2I-4. Internet website.

1 [Repealed.]

§16-2I-5. Procedure in case of medical emergency.

1 [Repealed.]

§16-2I-6. Protection of privacy in court proceedings.

1 [Repealed.]

§16-2I-7. Reporting requirements.

1 [Repealed.]

§16-2I-8. Administrative remedies.

1 [Repealed.]

§16-2I-9. Severability.

1 [Repealed.]

ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT.

§16-2M-1. Legislative findings.

1 [Repealed.]

§16-2M-2. Definitions.

1 [Repealed.]

§16-2M-3. Determination of gestational age.

1 [Repealed.]

§16-2M-4. Abortion of fetus of pain capable gestational age prohibited.

1 [Repealed.]

§16-2M-5. Reporting.

1 [Repealed.]

§16-2M-6. Penalties.

1 [Repealed.]

§16-2M-7. Severability.

1 [Repealed.]

ARTICLE 2O. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT.

§16-2O-1. Unborn Child Protection from Dismemberment Abortion Act.

1 [Repealed.]

ARTICLE 2P. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.

§16-2P-1. Born-Alive Abortion Survivors Protection Act.

1 [Repealed.]

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

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, audio only
15 telephone calls, or other means of interaction between a physician in one location and a patient
16 in another location, with or without an intervening health care provider.

17 (5) “Telemedicine technologies” means technologies and devices which enable secure
18 communications and information exchange in the practice of telemedicine, and typically involve
19 the application of secure real-time audio/video conferencing or similar secure video services,
20 remote monitoring or store and forward digital image technology, or audio only telephone calls, to
21 provide or support health care delivery by replicating the interaction of a traditional in-person
22 encounter between a 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 Text-based communications such as e-mail, Internet questionnaires, text-based
37 messaging, or other written forms of communication.

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

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

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

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

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

54 (d) *Telemedicine practice.* – A physician using telemedicine technologies to practice
55 medicine shall:

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

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

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

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

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

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

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

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

68 (9) The requirements of §30-3-13(a)(1) through §30-3-13(a)(8) of this code do not apply
69 to the practice of pathology or radiology medicine through store and forward 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 health care records. All laws governing the confidentiality of
81 health care 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 or podiatrist who practices medicine to a patient solely through the
88 utilization of telemedicine technologies may not prescribe to that patient any controlled
89 substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the
90 prescribing limitations contained in this section do not apply to a physician or a member of the
91 same group practice with an established patient.

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

100 (3) The prescribing limitations in this subsection do not apply to a hospital, excluding the

101 emergency department, when a physician submits an order to dispense a controlled substance,
102 listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient for immediate
103 administration in a hospital.

104 (4) A physician or podiatrist may not prescribe any pain-relieving controlled substance
105 listed in Schedule II of the Uniform Controlled Substance Act as part of a course of treatment for
106 chronic nonmalignant pain solely based upon a telemedicine encounter: *Provided*, That the
107 prescribing limitations contained in this section do not apply to a physician or a member of the
108 same group practice with an established patient.

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

112 (h) *Exceptions.* –

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

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

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

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

120 (i) *Rulemaking.* –

121 The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine
122 may propose joint rules for legislative approval in accordance with §29A-3-1, of this code to
123 implement standards for and limitations upon the utilization of telemedicine technologies in the
124 practice of medicine in this state. The West Virginia Board of Medicine and the West Virginia
125 Board of Osteopathic Medicine may promulgate emergency rules pursuant to the provisions of

126 §29A-3-15 of this code to implement the provisions of the bill passed during the 2021 session of
127 the Legislature.

128 (j) *Preservation of the traditional physician-patient relationship.* –

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-8. Abortion; penalty.

1 [Repealed].

NOTE: The purpose of this bill is to repeal or delete code provisions that restrict a patient's right to abortion.

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