WEST virginia legislature

2022 regular session

Originating

Senate Bill 660

By Senators Azinger, Caputo, Karnes, Lindsay, Maynard, Romano, Takubo, Weld, Woodrum, and Trump

[Originating in the Committee on the Judiciary; reported on February 16, 2022]

A BILL to amend and reenact §30-1-26 of the Code of West Virginia, 1931, as amended, relating to setting forth standard of care requirements for telehealth practice.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-26. Telehealth practice.

(a) For the purposes of this section:

(1) “Established patient” means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

(2) “Health care practitioner” means a person authorized to practice under §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-4-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-8-1 *et seq.*, §30-10-1 *et seq.*, §30-14-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-20A-1 *et seq.*, §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-26-1 *et seq.*, §30-28-1 *et seq.*, §30-30-1 *et seq.*, §30-31-1 *et seq.*, §30-32-1 *et seq.*, §30-34-1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, §30-37-1 *et seq.* of this code*,* and any other person licensed under this chapter that provides health care services.

(3) “Interstate telehealth services” means the provision of telehealth services to a patient located in West Virginia by a health care practitioner located in any other state or commonwealth of the United States.

(4) “Registration” means an authorization to practice a health profession regulated by §30-1-1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the registrant’s scope of practice.

(5) “Telehealth services” means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

(b) Unless provided for by statute or legislative rule, a health care board, referred to in §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice by a telehealth practitioner. The proposed emergency and legislative rule shall consist of the following:

(1) The practice of the health care service occurs where the patient is located at the time the telehealth services are provided;

(2) The health care practitioner who practices telehealth shall be:

(A) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and

(B) Registered as an interstate telehealth practitioner with the appropriate board in West Virginia;

(3) When the health care practitioner-patient relationship is established;

(4) The standard of care for the provision of telehealth services. The standard of care ~~shall require that with respect to the established patient,~~ requires that the patient ~~shall~~ visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it does not apply to the following services: Acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care;

(5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient;

(6) Establish the conduct of a registrant for which discipline may be imposed by the board of registration;

(7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the interstate telehealth practitioner registered in the state; and

(8) A reference to the board’s discipline process.

(c) A registration issued pursuant to the provisions of ~~or the requirements of~~ this section does not authorize a health care professional to practice from a physical location within this state without first obtaining appropriate licensure.

(d) By registering to provide interstate telehealth services to patients in this state, a health care practitioner is subject to:

(1) The laws regarding the profession in this state, including the state judicial system and all professional conduct rules and standards incorporated into the health care practitioner’s practice act and the legislative rules of registering board; and

(2) The jurisdiction of the board with which he or she registers to provide interstate telehealth services, including such board’s complaint, investigation, and hearing process.

(e) A health care professional who registers to provide interstate telehealth services pursuant to the provisions of ~~or the requirements of~~ this section shall immediately notify the board where he or she is registered in West Virginia and of any restrictions placed on the individual’s license to practice in any state or jurisdiction.

(f) A person currently licensed in this state is not subject to registration but shall practice telehealth in accordance with the provisions of this section and the rules promulgated thereunder.