

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Originating

Senate Bill 660

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TRUMP

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

1 A BILL to amend and reenact §30-1-26 of the Code of West Virginia, 1931, as amended, relating
2 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.

1 (a) For the purposes of this section:

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

6 (2) “Health care practitioner” means a person authorized to practice under §30-3-1 *et seq.*,
7 §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*
8 *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.*,
9 §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-
10 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.*
11 of this code, and any other person licensed under this chapter that provides health care services.

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

15 (4) “Registration” means an authorization to practice a health profession regulated by §30-
16 1-1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within
17 the registrant’s scope of practice.

18 (5) “Telehealth services” means the use of synchronous or asynchronous
19 telecommunications technology or audio only telephone calls by a health care practitioner to

20 provide health care services, including, but not limited to, assessment, diagnosis, consultation,
21 treatment, and monitoring of a patient; transfer of medical data; patient and professional health-
22 related education; public health services; and health administration. The term does not include
23 internet questionnaires, e-mail messages, or facsimile transmissions.

24 (b) Unless provided for by statute or legislative rule, a health care board, referred to in
25 §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in
26 accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice
27 by a telehealth practitioner. The proposed emergency and legislative rule shall consist of the
28 following:

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

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

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

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

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

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

44 (5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform
45 Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing

46 limitations contained in this section do not apply to a physician or a member of the same group
47 practice with an established patient;

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

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

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

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

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

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

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

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

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