

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3472

By Delegates Walker and Hansen

[Introduced February 14, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to repeal §9-2-11 of the Code of West Virginia, 1931, as amended; to repeal §16-2I-1, §16-
 2 2I-2, §16-2I-3, §16-2I-4, §16-2I-5, §16-2I-6, §16-2I-7, §16-2I-8, and §16-2I-9 of said code;
 3 to repeal §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6, and, §16-2M-7
 4 of said code; to repeal §16-2O-1 of said code; to repeal §16-2P-1 of said code; to repeal
 5 §16-2Q-1 of said code; to repeal §16-2R-1, §16-2R-2, §16-2R-3, §16-2R-4, §16-2R-5,
 6 §16-2R-6, §16-2R-7, §16-2R-8, and §16-2R-9 of said code; to amend and reenact §30-1-
 7 26; to amend and reenact §30-14-12d of said code; to repeal §33-42-8 of said code; to
 8 repeal §61-2-8 of said code; all relating to returning a woman’s right to choose.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-11. Limitation on use of funds.

1 [Repealed.]

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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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1 [Repealed.]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 20. 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1 [Repealed.]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1 [Repealed.]

ARTICLE 2Q. UNBORN CHILD WITH A DISABILITY PROTECTION AND EDUCATION

ACT.

§16-2Q-1. Abortion may not be performed because of a disability, except in a medical emergency.

1 [Repealed.]

ARTICLE 2R. UNBORN CHILD PROTECTION ACT.

§16-2R-1. Legislative findings.

1 [Repealed.]

§16-2R-2. Definitions.

1 [Repealed.]

§16-2R-3. Prohibition to perform an abortion.

1 [Repealed.]

§16-2R-4. Not considered an abortion.

1 [Repealed.]

§16-2R-5. Requirements when an abortion is performed on an unemancipated minor.

1 [Repealed.]

§16-2R-6. Reporting by licensed medical professionals regarding abortion.

1 [Repealed.]

§16-2R-7. Licensure action.

1 [Repealed.]

§16-2R-8. Protection of aborted fetuses born alive.

1 [Repealed.]

§16-2R-9. Severability.

1 [Repealed.]

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

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 ~~"Abortifacient" means mifepristone, misoprostol or any other chemical or drug dispensed~~
3 ~~with the intent of causing an abortion~~

4 "Established patient" means a patient who has received professional services, face-to-
5 face, from the physician, qualified health care professional, or another physician or qualified health
6 care professional of the exact same specialty and subspecialty who belongs to the same group
7 practice, within the past three years.

8 "Health care practitioner" means a person authorized to practice under §30-3-1 *et seq.*,
9 §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*
10 *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.*,
11 §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
12 *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.*
13 and any other person licensed under this chapter that provides health care services.

14 "Interstate telehealth services" means the provision of telehealth services to a patient
15 located in West Virginia by a health care practitioner located in any other state or commonwealth
16 of the United States.

17 "Registration" means an authorization to practice a health profession regulated by §30-1-1
18 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the
19 registrant's scope of practice.

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

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

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

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

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

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

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

38 (4) The standard of care for the provision of telehealth services. The standard of care shall
39 require that with respect to the established patient, the patient shall visit an in-person health care
40 practitioner within 12 months of using the initial telemedicine service or the telemedicine service
41 shall no longer be available to the patient until an in-person visit is obtained. This requirement may
42 be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it

43 does not to the following services: acute inpatient care, post-operative follow-up checks,
44 behavioral medicine, addiction medicine, or palliative care;

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

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

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

53 (8) A reference to the Board's discipline process; ~~and~~

54 ~~(9) A prohibition of prescribing or dispensing an abortifacient.~~

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

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

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

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

65 (e) A health care professional who registers to provide interstate telehealth services
66 pursuant to the provisions of or the requirements of this section shall immediately notify the board

67 where he or she is registered in West Virginia and of any restrictions placed on the individual's
68 license to practice in any state or jurisdiction.

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

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 in
16 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 if
33 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, a
40 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 of
60 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 to
69 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 or
94 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 Board
 125 of Osteopathic Medicine may promulgate emergency rules pursuant to the provisions of §29A-3-
 126 15 of this code to implement the provisions of the bill passed during the 2021 session of the
 127 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, or
 133 in a manner, not otherwise authorized by law.

CHAPTER 33. INSURANCE.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

**§33-42-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by
 state Board of Medicine.**

1 [Repealed.]

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 return a woman's right to choose.

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