

West Virginia's New Telemedicine Practice Standards & Remote Prescribing Laws

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West Virginia Gov. *Earl Ray Tomblin* (D) signed into law, on March 24, 2016, a [new bill \(House Bill No. 4463\)](#) implementing a variety of telemedicine practice standards and remote prescribing rules in the Mountain State. Effective June 11, 2016, the bill passed the House and Senate unanimously, reflecting strong bi-partisan support. The new statute may potentially require the Board of Medicine to rewrite some of its current telemedicine rules to the extent the prior rules conflict with the controlling provisions of the statute. West Virginia's Medical Board previously issued a [Telemedicine Position Statement](#) in November, 2014.

The bill creates a new section in the West Virginia Code (§30-3-13a and 30-14-12d). Interested telemedicine companies and healthcare providers looking to offer telemedicine services in West Virginia should review the new statute and adjust your policies and processes accordingly.

- **Telemedicine.** The law separates the definition of telemedicine into three parts:
 - Telemedicine is defined as the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication, or other means of interaction between a physician in one location and a patient in another location, with or without an intervening healthcare provider.
 - “Telemedicine technologies” means technologies and devices which enable secure electronic communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring, or store and forward digital image technology to provide or support healthcare delivery by replicating the interaction of a traditional in-person encounter between a physician and a patient.
 - “Store and forward telemedicine” means the asynchronous computer-based communication of medical data or images from an originating location to a physician at another site for the purpose of diagnostic or therapeutic assistance.
- **Licensure.** The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used, and the physician must be appropriately licensed in West

Virginia.

- **Second Opinions.** The licensing requirement does not apply to “an informal consultation or second opinion, at the request of a physician who is licensed to practice medicine in this state, provided that the physician requesting the opinion retains authority and responsibility for the patient’s care.”
- **Physician-Patient Relationship.** Physicians utilizing telemedicine must establish a proper physician-patient relationship by, among other things, conducting an appropriate examination. Depending on the technology used, an in-person exam is not required. A physician-patient relationship may not be established through:
 - Audio-only communication;
 - Text-based communications such as e-mail, internet questionnaires, text-based messaging or other written forms of communication; or
 - Any combination thereof.
- If an existing physician-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient relationship may only be established:
 - Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing or similar secure video services during the initial physician-patient encounter; or
 - For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies.
- Once a physician-patient relationship has been established, either through an in-person encounter or in accordance with the requirements above, the physician may use any telemedicine technology that meets the standard of care and is appropriate for the particular patient presentation.
- **Audio-Only or Text-Based Communications.** The law does not prohibit the use of audio-only or text-based communications by a physician who is:
 - Responding to call for patients with whom a physician-patient relationship has been established through an in-person encounter by the physician;
 - Providing cross coverage for a physician who has established a physician-patient relationship with the patient through an in-person encounter; or
 - Providing medical assistance in the event of an emergency situation.
- **Telemedicine Examinations.** A physician using telemedicine technologies to practice medicine must observe the following rules:
 - Verify the identity and location of the patient;

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- Provide the patient with confirmation of the physician's identity and qualifications;
 - Provide the patient with the physician's physical location and contact information;
 - Establish (or maintain) a physician-patient relationship that conforms to the standard of care;
 - Determine whether telemedicine technologies are appropriate for the patient's particular condition;
 - Obtain the patient's consent for telemedicine;
 - Conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the patient's particular condition; and
 - Create and maintain healthcare records for the patient which justify the course of treatment.
 - Note: These eight requirements do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.
- **Standard of Care.** A physician who delivers healthcare services through telemedicine is held to the same standards of appropriate practice as those in traditional in-person settings. Treatment, including issuing a prescription, based solely on an online questionnaire, does not constitute an acceptable standard of care.
 - **Remote Prescribing.** Remote prescribing without a prior in-person exam is permitted, including prescriptions for controlled substances, subject to certain limitations.
 - A physician who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any Schedule II controlled substances.
 - A physician may not prescribe any pain-relieving controlled substance listed in Schedules II through V as part of a course of treatment for chronic non-malignant pain solely based upon a telemedicine encounter.
 - **Informed Consent.** The physician must obtain the patient's informed consent to telemedicine services.
 - **Patient Records.** A patient record must be created for every telemedicine visit. The maintenance and confidentiality of the records must be consistent with state and federal law. A physician solely providing services using telemedicine technologies must make the records "easily available" to the patient, and subject to the patient's consent, to any identified care provider of the patient.

West Virginia was the fifth state to enact the [Interstate Medical Licensure Compact](#) after the Governor signed the legislation into law last year. Currently, twelve states have enacted the Compact, including Alabama, Idaho, Illinois, Iowa, Minnesota, Montana, Nevada, South Dakota,

Utah, Wisconsin and Wyoming. The Compact, which offers a streamlined licensing process for physicians interested in practicing medicine in multiple states, is expected to expand access to health care, especially to those in rural and underserved areas of the country, and facilitate new modes of health care delivery such as telemedicine. A number of state legislatures have introduced the model Compact legislation, bringing the total number of states that have introduced or enacted the legislation to 26. Bills are pending in Alaska, Arizona, Colorado, Kansas, New Hampshire, and Washington.

And yet, West Virginia still lacks a telehealth commercial insurance [coverage law](#), which would have health plans cover services provided via telehealth if that same service is covered in an in-person setting. 29 states plus DC have enacted a commercial insurance coverage law for telehealth services.

A number of West Virginia hospitals and health care providers already offer telehealth services, and patients have been able to access virtual care as part of these health care delivery models. Surveys indicate health care executives are optimistic on the benefits offered by telehealth. The new law serves as express guidance to inform telehealth practitioners on how to operate within West Virginia and provide virtual care services to patients in the state.

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