



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

QUARTEL-AYNE AMIAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SHETH, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED RULE 11 CSR 15 AND RESPONSES OF THE WEST VIRGINIA BOARD OF MEDICINE

On June 29, 2021, the West Virginia Board of Medicine filed a Notice of Comment Period on a Proposed Rule, 11 CSR 15. Series 15 is a new rule promulgated in response to HB 2024, and relates to telehealth practice by, and interstate telehealth registrations for, the professions regulated by the Board (physicians, podiatric physicians, and physician assistants). The Notice established a thirty day comment period on the proposed rule, which concluded at 4:30 pm on July 29, 2021. During the comment period, the Board received communications from seven commenters regarding this proposed rule. These communications were largely inquiries about the applicability of the rule (and HB 2024) to practice via telemedicine technologies in West Virginia. Copies of all five communications are attached hereto, along with the Board's written responses.¹ On July 29, 2021, the following responses were authorized by the Board. A copy of this summary is being provided to the five individuals who communicated with the Board concerning this new rule.

Commenter	Date Received
1. John Ellis, MD	June 29, 2021

Dr. Ellis indicated that the rule does not seem to address West Virginia physicians or allow them to perform telehealth services. Dr. Ellis also observed that physicians licensed in West Virginia are not required to register to provide telehealth services.

Response: The Board's response to Dr. Ellis is attached herewith. In the response, the Board confirmed that HB 2024 both creates an interstate telehealth registration process and delegates authority to licensing boards to establish the rules regarding telehealth practice for both licensed providers and interstate telehealth registrants. The Board confirmed that West Virginia licensed

¹ A copy of the comments received by the Board and the Board's responses thereto are attached to this summary.

physicians may practice medicine to patients located in West Virginia either by in-person visits or via telemedicine technologies. The value of the proposed rule to licensed physicians is that it identifies the professional standards and standard of care for the provision of health care services via telehealth technologies. The Board noted that Dr. Ellis did not identify any specific proposed modifications to the rule, and invited him to do so before the comment deadline if he had specific recommendations. No modifications were made to 11 CSR 15 based upon this communication.

Commenter	Date Received
2. Su Fairchild, MD	June 29, 2021

Dr. Fairchild indicated that she believes 11 CSR 15 seems reasonable. Dr. Fairchild also asked questions regarding the establishment of the physician-patient relationship via telemedicine technologies.

Response: The Board's response to Dr. Fairchild is attached herewith. The Board referred Dr. Fairchild to recent changes to the West Virginia Medical Practice Act, which were enacted as part of HB 2024, noting that if a provider holds a West Virginia medical license or is registered by the Board as an interstate telehealth registrant, the provider may establish a physician-patient relationship through telehealth and may provide health care services to patients physically located in West Virginia through the use of telemedicine technologies which are consistent with the standard of care for the particular patient presentation. No modifications were made to 11 CSR 15 based upon this comment.

Commenter	Date Received
3. James R. Shope, MD	June 30, 2021

Dr. Shope commented:

For many years "telehealth" has been practiced, by Poison Control, Stroke Consult and most notably, after hours Radiology. Will these practitioners now be required to be Telehealth licensed in WV ? And what vetting procedures are in place for licensing, in particular Radiologists, who are Nighthawk reading from New Zealand or other non US locations?

Response: The Board's response to Dr. Shope is attached herewith. In pertinent part, the Board responded:

Under West Virginia law, the practice of medicine occurs where the patient is located at the time medical services are rendered, including medical

services provided through the use of telemedicine technologies. Historically, with some very limited exceptions, in order to practice medicine to patients located in West Virginia, a physician was required to hold a West Virginia medical license. (The exceptions are set forth in W. Va. Code § 30-3-13.) Prior to March 8, 2021, all physicians who did not meet one of the limited exceptions set forth in state law were required to hold a West Virginia medical license to treat West Virginia patients. This includes physicians who practice radiology, telestroke and practice medicine to patients in association with poison control.

During the 2021 legislative session, the West Virginia Legislature created an interstate telehealth registration process which permits certain health care practitioners, who practice in another state outside of West Virginia, to register with the appropriate licensing board to provide telehealth services to West Virginia patients. The interstate telehealth registration is not available to practitioners who are practicing from outside of the United States. Additionally, a practitioner must meet eligibility requirements for an interstate telehealth registration, which include that the practitioner:

1. Holds a valid, active medical license issued by another state licensing authority or board;
2. Is licensed in good standing in all states in which the practitioner is licensed;
3. Is not the subject of an administrative complaint which is currently pending before another state licensing authority or board; and
4. Is not currently under investigation by another state licensing authority or board.

The interstate telehealth registration is a second pathway to provide telehealth services to West Virginia patients. Physicians who hold a West Virginia medical license may also practice via telemedicine.

With respect to the specific example you identify, a physician practicing radiology from New Zealand is not eligible for an interstate telehealth registration, and would need to apply for a West Virginia medical license to practice medicine from New Zealand to West Virginia patients. In contrast, a radiologist practicing in New Jersey could practice medicine to West Virginia patients pursuant to an interstate telehealth registration if the radiologist meets all of the eligibility criteria for a registration. This would also be true of the other specialties you mention. The vetting procedures for physicians practicing out of the country will not change under this rule as out of country providers are not eligible for an interstate telehealth registration and may only practice telemedicine

to West Virginia patients pursuant to a West Virginia medical license. The requirements for medical licensure are set forth in W. Va. Code § 30-3-10.

The Board noted that Dr. Shope did not identify any specific proposed modifications to the rule, and invited him to do so before the comment deadline if he had specific recommendations. No modifications were made to 11 CSR 15 based upon this communication.

Commenter	Date Received
4. Skip White, Associate General Counsel Piedmont Liability Trust	July 22, 2021

Mr. White is counsel for Piedmont Liability Trust, which represents clinicians practicing at the University of Virginia. He expressed enthusiasm for the new Telehealth Practitioner Registration program. Mr. White also posed a question concerning the language of the proposed rule:

I also have a question regarding 11CSR15, subsection 3.7, which currently reads: *Nothing in this section shall prohibit an educational permit holder from providing telehealth services in conformity with the guidelines, requirements, and supervision of the physician's graduate medical education training program.* Are you able to offer any guidance or clarification on whether this requires residents and fellows at out-of-state academic medical centers to obtain a WV telehealth registration in order to provide telehealth services under the supervision of an attending?

Response: At the request of the Executive Director, counsel for the Board communicated with Mr. White concerning his question. Mr. White was advised that staff did not believe that the Board intended subsection 3.7 of the proposed rule to apply to physicians who were in training in other states, but that his comment/question would be relayed to the Board for consideration. The Board considered this question at its meeting on July 29, 2021, and concluded that the intent of subsection 3.7 was to ensure that the rule did not impose any limitations on graduate medical education programs within West Virginia. Through subsection 3.7, the Board seeks to avoid a collateral consequence of this rule which would unduly restrict pedagogical approaches of West Virginia residency and fellowship programs. However, permitting educational permit holders in other states to practice in West Virginia without a license, interstate telehealth registration or educational permit is inconsistent with the West Virginia Medical Practice Act and HB 2024. Consequently, the Board has modified subsection 3.7 of proposed rule 11 CSR 15 as follows:

3.7. Nothing in this section shall prohibit an a West Virginia educational permit holder from providing telehealth services in conformity with the guidelines, requirements, and supervision of the physician's graduate medical education training program.

Commenter	Date Received
5. Richard Topping, MD Legislative Chairman West Virginia Orthopaedic Society	July 28, 2021

The West Virginia Orthopaedic Society (“WVOS”) submitted a comment addressing two of the Board’s proposed rules. With regard to 11 CSR 15, WVOS wrote:

Also, the telehealth bill concerns us in specialty care. We practice on very tight margins in one of the poorest states in US. Telehealth would make it much easier for mega tertiary centers such as UPMC and Cleveland Clinic to cherry pick well insured patients for orthopedic surgery. This would leave us treating an even higher percentage of Medicare/Medicaid patients while we would still be stuck taking care of complications on those that left in our emergency rooms. Further cuts from any reason would most likely make it impossible to continue the private practice model of orthopedic care in our state.

Response: While the Board understands and appreciates the comments provided by WVOS, the Board’s legislative rulemaking with regard to telehealth is directed by statute. The Legislature enacted HB 2024 during the 2021 regular legislative session and directed the board to promulgate rules to effectuate the interstate telehealth registration and regulate telehealth practice. WVOS’s concerns cannot be addressed by modifying 11 CSR 15. It would require a statutory change.

Commenter	Date Received
6. Sherri P. Ferrell Chief Executive Officer WV Primary Care Association	July 29, 2021

WV Primary Care Association provided a consolidated comment on four of the Board’s proposed rules and/or proposed rule amendments. With respect to this rule, WV Primary Care Association indicated that it is “encouraged by the WVBOM’s progressive changes to physician and physician assistant licensing and telehealth regulation while still holding true to the legislative intent of relevant legislation.” The commentor indicated that it believes the proposed changes will “allow providers under the purview of the WVBOM to practice at the top of their training without unnecessary red tape.” The organization did not recommend any changes to the proposed rule.

Response: The Board appreciates WV Primary Care Association’s thoughtful comments. No changes were made to the proposed rule in response thereto.

Commenter	Date Received
7. Kyle Zebley Public Policy Director American Telemedicine Association	July 29, 2021

The ATA has provided a proposed comment which is favorable to the proposed rule in many regards:

The ATA is supportive of many aspects of the proposed rules -- particularly the creation of a registration system that allows out-of-state providers to easily and efficiently submit their registration application to the Board so that they can render care to West Virginia citizens. This will increase the number of providers available for West Virginia patients to utilize and will ultimately increase the access to and affordability of care in West Virginia. Similarly, the ATA supports the permissive definition of telehealth created by HB2024 and adopted by the Board that allows for the use of synchronous and asynchronous modalities by providers.

However, the ATA also identifies a specific proposed concern:

The ATA is concerned that there may be confusion for providers around the standard of care language found in Section 7 of the proposed rules. While the language in the proposed rule at §11-15-7.4 et al is similar to the language found in §30-1-26(b)(4), the proposed rule notably differs from the legislation by not distinguishing that this standard of care only applies to “established patients” as defined in both statute at §30-1-26(a) and in the proposed rules §11-15-2.4. House Bill 2024 bifurcated telehealth patients into two categories: (1) an “established 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,” and (2) a “virtual telehealth” patient who is a “new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.” The legislative intent behind the bifurcation of “established patient” and “virtual telehealth” patient was to ensure that patients living with chronic conditions are regularly seen in-person by their providers. This legislative decision is what gave rise to a legislated standard of care that mandates a yearly encounter for “established patients.” While the ATA believes that the decision on whether to require that a patient have an in-person encounter is best left to the discretion of the treating healthcare provider in conjunction with the patient’s preferences, we understand that the legislature has spoken on this matter. However, the legislature only dictated this mandate for “established patients” – not for “virtual patients.” This distinction is not reflected in the proposed rules as §11-15-7.4 encapsulates all patients, not just “established patients” as is contemplated by the authorizing Code section at §30-1-26(b)(4).

With this in mind, the ATA suggests that the Board amend their proposed rules to include the definition of “virtual telehealth” patient - as found in §5-16-7b (7) – and make clear that the standard of care as posited in §11-15-7.4 et al is limited to “established patients” and does not encapsulate “virtual telehealth” patients. By making this change, it will ensure that more West Virginia patients are able to receive the care they want, need, and deserve.

The ATA urges thoughtful consideration on this issue. In the context of the ongoing pandemic, we believe that it is essential for West Virginians to have access to high-quality, affordable health care as efficiently and equitably as possible. We urge you and your colleagues to consider the changes as proposed in this letter.

Response: West Virginia Code § 30-1-26(b) provides the following rulemaking authority:

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 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, 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 to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care.

The legislature authorized the Board to promulgate rules that set forth the standard of care for the provision of telehealth services. Specific direction was provided to the boards regarding the required standard of care for established patients. The legislature did not proscribe the standard

of care for patients who did not have an established provider-patient relationship at the time of an initial telehealth encounter. In promulgating section 7 of the proposed rule, the Board determined that a uniform standard of care for all telehealth patients provides clarity and certainty for patients and providers. Accordingly, the Board established clear guidance on the standard of care:

7.2. The standard of care for the provision of health care services is the same for health care services provided in-person and health care services provided via telemedicine technologies.

7.3. A telehealth provider's selection of telemedicine technologies for a patient encounter must permit the provider to meet the standard of care for the patient's particular health issue and presentation. Treatment, including issuing a prescription, based solely on an online questionnaire, does not conform to the standard of care.

7.4. The standard of care requires a telehealth provider to verify that a patient has visited an in-person health care practitioner within twelve months of an initial telehealth service by the provider or the provider's telehealth service or company. Continued treatment of a patient solely through telemedicine technologies after an initial telehealth encounter, with no intervening in-person health services, violates the standard of care. The provisions of this subsection:

7.4.1. Do not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care; and

7.4.2. May be suspended, in the discretion of the telehealth provider, on a case-by-case basis. If suspended, the telehealth provider must document the reason for suspending the in-person visit requirement in the patient medical record.

Subsection 7.4 includes two very broad exceptions to the general rule. The twelve month in-person visit rule does not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care. Likewise, the requirement may be waived in the discretion of the telehealth provider, if the waiver is appropriately documented in the patient medical record. The Board believes that the proposed rule is consistent with the rulemaking authority granted to the Board and is consistent with the West Virginia Medical Practice Act, which provides:

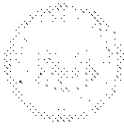
The practice of medicine or podiatry provided via telemedicine technologies, including the establishment of a physician-patient or podiatrist-patient relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard of care, professional practice requirements and scope of practice limitations as traditional in-person physician-patient or podiatrist-patient encounters. Treatment, including issuing a

prescription, based solely on an online questionnaire, does not constitute an acceptable standard of care.

W. Va. Code § 30-3-13a(e). The Board is concerned that the approach suggested by the ATA would inadvertently create two classes of patients, purely based upon the method by which the provider-patient relationship is established, all of whom are entitled to the same standard of care. The Board did not make any changes to the proposed rule in response to this comment.

Conclusion

In conclusion, based upon the communications and comments received, the Board's agency approved filing contains one modification which identified hereinabove. The Board again expresses its appreciation to all who submitted written communications and/or comments regarding this rule. These communications assisted the Board's review of its proposed rule and resulted in a modification which the Board believes clarifies the rule.



Frame, Jamie C <jamie.c.frame@wv.gov>

Fwd: [External] Telehealth

1 message

Spangler, Mark A <mark.a.spangler@wv.gov>
To: "Frame, Jamie C" <jamie.c.frame@wv.gov>

Thu, Jul 29, 2021 at 10:32 AM

Mark A. Spangler*Executive Director*

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.

----- Forwarded message -----

From: Spangler, Mark A <mark.a.spangler@wv.gov>
Date: Tue, Jul 20, 2021 at 4:18 PM
Subject: Re: [External] Telehealth
To: John Ellis <john_ellis_md@man.com>

Good afternoon Dr. Ellis,

I am writing in response to your email of June 29, 2021, which I shared with the Legislative Committee of the Board on July 11, 2021. In your email, you wrote:

The bill does not seem to address WV physicians or allow them to perform teleheath services. It would seem that WV licensed physicians would not need to register to provide teleheath care.

I am writing at the Committee's request to respond to your inquiry. While legislation passed by the West Virginia legislature in the 2021 regular session creates an interstate telehealth registration process, it also delegates authority to licensing boards to establish the rules regarding telehealth practice for both licensed providers and interstate telehealth registrants. Telehealth services may be provided to West Virginia patients by licensed providers, including licensed physicians. West Virginia licensed physicians may practice medicine to patients located in West Virginia either by in-person visits or via telemedicine technologies. The value of the proposed rule to licensed physicians is that it identifies the professional standards and standard of care for the provision of health care services via telehealth technologies.

I hope this is responsive to your email. The Committee did not read your email as a comment upon the proposed rule or its contents. If you intended your June 29, 2021 email to be a comment upon the proposed rule, the Committee invites you to provide any recommendations you might have regarding the content of the rule for its consideration in reply to this email. The deadline to provide comments remains 4:30 pm July 29, 2021.

The Committee asked me to extend its appreciation for your thoughtful communication regarding proposed rule 11 CSR 15.

Kind regards,

Mark A. Spangler

Executive Director

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

QUARTEL-AYNE AMJAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SHETHI, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

July 30, 2021

VIA ELECTRONIC MAIL ONLY

John Ellis, MD

John_ellis_md@msn.com

Re: Proposed West Virginia Board of Medicine Rule 11 CSR 15

Dear Dr. Ellis:

Thank you for taking the time to review and comment on the Board's proposed rule 11 CSR 15, *Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants*.

The Legislative Committee of the Board met yesterday, July 29, 2021, to review and consider all of the comments that were received. Discussion occurred, and the Board approved some modifications to the proposed rule in response to the comments it received. Enclosed please find the Board's *Summary of Comments Received Regarding Proposed Rule 11 CSR 15 and Responses of the West Virginia Board of Medicine* (without attachments).

The agency-approved version of 11 CSR 15 will be filed with the West Virginia Secretary of State's Office today and will be available for review on their website at <https://apps.sos.wv.gov/adlaw/csr/>. The enclosed summary along with all comments will also be available on the Secretary of State's website.

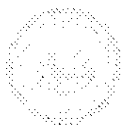
Thank you again for your participation in the rulemaking process and for your comments.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Spangler". The signature is written in a cursive style with a large, prominent "M" and "S".

Mark A. Spangler

MAS/jcf
Enclosure



Frame, Jamie C <jamie.c.frame@wv.gov>

Fwd: [External] Fwd: Comment Period Underway for Board of Medicine Rules

1 message

Spangler, Mark A <mark.a.spangler@wv.gov>
To: "Frame, Jamie C" <jamie.c.frame@wv.gov>

Thu, Jul 29, 2021 at 10:32 AM

Mark A. Spangler*Executive Director*

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.

----- Forwarded message -----

From: **Spangler, Mark A** <mark.a.spangler@wv.gov>

Date: Wed, Jul 21, 2021 at 9:34 AM

Subject: Re: [External] Fwd: Comment Period Underway for Board of Medicine Rules

To: Su Fairchild <sfairchildmt@gmail.com>

Dear Dr. Fairchild,

I am writing in response to your email of June 29, 2021, which I shared with the Legislative Committee of the Board on July 11, 2021. In your email, you wrote:

The new Telehealth rules seem reasonable.

I have been operating under the belief that one could only deliver telemedicine care to patients one had previously seen in person. I would like a clarification if this is no longer the case, as this has prevented me from offering services to WV residents.

I personally am in PA, and would like to treat people in WV, but would have to do so by audio and/or video live communication.

Am I now allowed to establish care using interactive audio/video without first having seen people in person? I ask all my patients to maintain their own PCP; I only offer second opinion consults.

I am writing at the Committee's request to respond to the inquiry you submitted with your comment. Recent amendments to the West Virginia Medical Practice Act permit the establishment of a physician-patient relationship without a face to face, in person, office visit:

(c) Physician-patient or podiatrist-patient relationship through telemedicine encounter. -

(1) A physician-patient or podiatrist-patient relationship may not be established through: Text-based communications such as e-mail, Internet questionnaires, text-based messaging, or other written forms of communication.

(2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient or podiatrist-patient relationship may only be established:

(A) 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 or podiatrist-patient encounter;

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

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

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

If you hold a West Virginia medical license or are registered by the Board as an interstate telehealth registrant, you may establish a physician-patient relationship through telehealth and may provide health care services to patients physically located in West Virginia through the use of telemedicine technologies which are consistent with the standard of care for the particular patient presentation.

I hope this is responsive to your email. If you wish to comment further upon the proposed rule, the Committee invites you to provide any comments or suggestions regarding the content of the rule in reply to this email. The deadline to provide comments remains 4:30 pm July 29, 2021.

The Committee asked me to extend its appreciation for your thoughtful communication regarding proposed rule 11 CSR 15.

Kind regards,

Mark A. Spangler

Executive Director

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.

On Tue, Jun 29, 2021 at 4:26 PM Su Fairchild <sfairchildmd@gmail.com> wrote:

CAUTION: External email. Do not click links or open attachments unless you verify sender.

The new Telehealth rules seem reasonable.

I have been operating under the belief that one could only deliver telemedicine care to patients one had previously seen in person.

I would like a clarification if this is no longer the case, as this has prevented me from offering services to WV residents.

I personally am in PA, and would like to treat people in WV, but would have to do so by audio and/or video live communication.

Am I now allowed to establish care using interactive audio/video without first having seen people in person? I ask all my patients to maintain their own PCP; I only offer second opinion consults.

Su Fairchild, MD

This email is not HIPAA compliant. Please do not send any personal or protected health information to this email.

----- Forwarded message -----

From: <wvbcem@wv.gov>

Date: Tue, Jun 29, 2021 at 3:40 PM

Subject: Comment Period Underway for Board of Medicine Rules

To: <sfairchildmd@gmail.com>

Comment Period Underway for Proposed Amendments to Seven Existing Board of Medicine Rules and a Proposed New Rule

June 29, 2021

Due, in part, to legislation enacted during the 2021 regular session of the West Virginia Legislature, the West Virginia Board of Medicine is accepting written comments on proposed amendments to seven existing rules and a proposed new rule. To view the proposed amendments and the proposed new rule, click on the appropriate link below.

PROPOSED AMENDMENTS TO EXISTING RULES

11 CSR 1A, Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons

11 CSR 1B, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants

11 CSR 6, Board of Medicine rules for Dispensing of Prescription Drugs by Practitioners

11 CSR 8, Continuing Education for Physician and Podiatric Physicians

11 CSR 10, Practitioner Requirements for Accessing the West Virginia Controlled Substance Monitoring Program Database

11 CSR 11, Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities

11 CSR 14, Registration to Practice During Declared State of Emergency

PROPOSED NEW RULE

11 CSR 15, Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants

Written comments on the proposed amendments and the proposed new rule are being accepted through 4:30 pm on July 29, 2021, and should be submitted to:

Mark A. Spangler, Executive Director
West Virginia Board of Medicine
101 Doe Drive, Suite 103
Charleston, West Virginia 25311
Mark.A.Spangler@wv.gov



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

QUARTEL-AYNE AMJAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SHETI, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

July 30, 2021

VIA ELECTRONIC MAIL ONLY

Su Fairchild, MD

sfairchildmd@gmail.com

Re: Proposed West Virginia Board of Medicine Rule 11 CSR 15

Dear Dr. Fairchild:

Thank you for taking the time to review and comment on the Board's proposed rule 11 CSR 15, *Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants*.

The Legislative Committee of the Board met yesterday, July 29, 2021, to review and consider all of the comments that were received. Discussion occurred, and the Board approved some modifications to the proposed rule in response to the comments it received. Enclosed please find the Board's *Summary of Comments Received Regarding Proposed Rule 11 CSR 15 and Responses of the West Virginia Board of Medicine* (without attachments).

The agency-approved version of 11 CSR 15 will be filed with the West Virginia Secretary of State's Office today and will be available for review on their website at <https://apps.sos.wv.gov/adlaw/csr/>. The enclosed summary along with all comments will also be available on the Secretary of State's website.

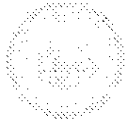
Thank you again for your participation in the rulemaking process and for your comments.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Spangler". The signature is written in a cursive, flowing style.

Mark A. Spangler

MAS/jcf
Enclosure



Frame, Jamie C <jamie.c.frame@wv.gov>

Fwd: FW: [External] Re: Comment Period Underway for Board of Medicine Rules

1 message

Spangler, Mark A <mark.a.spangler@wv.gov>
To: "Frame, Jamie C" <jamie.c.frame@wv.gov>

Thu, Jul 29, 2021 at 10:31 AM

Mark A. Spangler*Executive Director*

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.

----- Forwarded message -----

From: **Spangler, Mark A** <mark.a.spangler@wv.gov>

Date: Wed, Jul 21, 2021 at 10:54 AM

Subject: Re: FW: [External] Re: Comment Period Underway for Board of Medicine Rules

To: WV BOM <wvbom@wv.gov>

Good morning Dr. Shope,

I am writing in response to your email of June 30, 2021, which I shared with the Legislative Committee of the Board on July 11, 2021. In your email, you wrote:

For many years "telehealth" has been practiced, by Posion Control, Stroke Consult and most notably, after hours Radiology. Will these practioners now be required to be Telehealth licensed in WV ? And what vetting procedures are in place for licensing, in particular Radiologists, who are Nighthawk reading from New Zealand or other non US locations?

I am writing at the Committee's request to respond to your inquiry. Under West Virginia law, the practice of medicine occurs where the patient is located at the time medical services are rendered, including medical services provided through the use of telemedicine technologies. Historically, with some very limited exceptions, in order to practice medicine to patients located in West Virginia, a physician was required to hold a West Virginia medical license. (The exceptions are set forth in W. Va. Code § 30-3-13.) Prior to March 8, 2021, all physicians who did not meet one of the limited exceptions set forth in state law were required to hold a West Virginia medical license to treat West Virginia patients. This includes physicians who practice radiology, telestroke and practice medicine to patients in association with poison control.

During the 2021 legislative session, the West Virginia Legislature created an interstate telehealth registration process which permits certain health care practitioners, who practice in another state outside of West Virginia, to register with the appropriate licensing board to provide telehealth services to West Virginia patients. The interstate telehealth registration is not available to practitioners who are practicing from outside of the United States. Additionally, a practitioner must meet eligibility requirements for an interstate telehealth registration, which include that the practitioner:

1. Holds a valid, active medical license issued by another state licensing authority or board;
2. Is licensed in good standing in all states in which the practitioner is licensed;
3. Is not the subject of an administrative complaint which is currently pending before another state licensing authority or board; and
4. Is not currently under investigation by another state licensing authority or board.

The interstate telehealth registration is a second pathway to provide telehealth services to West Virginia patients. Physicians who hold a West Virginia medical license may also practice via telemedicine.

With respect to the specific example you identify, a physician practicing radiology from New Zealand is not eligible for an interstate telehealth registration, and would need to apply for a West Virginia medical license to practice medicine from New Zealand to West Virginia patients. In contrast, a radiologist practicing in New Jersey could practice medicine to West Virginia patients pursuant to an interstate telehealth registration if the radiologist meets all of the eligibility criteria for a registration. This would also be true of the other specialties you mention. The vetting procedures for physicians practicing out

of the country will not change under this rule as out of country providers are not eligible for an interstate telehealth registration and may only practice telemedicine to West Virginia patients pursuant to a West Virginia medical license. The requirements for medical licensure are set forth in W. Va. Code § 30-3-10.

I hope this is responsive to your email. The Committee did not read your email as a comment upon the proposed rule or its contents. If you intended your June 30, 2021 email to be a comment upon the proposed rule, the Committee invites you to provide any recommendations you might have regarding the content of the rule for its consideration in reply to this email. The deadline to provide comments remains 4:30 pm July 29, 2021.

The Committee asked me to extend its appreciation for your thoughtful communication regarding proposed rule 11 CSR 15.

Kind regards,

Mark A. Spangler

Executive Director

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.

On Wed, Jun 30, 2021 at 10:46 AM WV BOM <wvbom@wv.gov> wrote:

From: James Shope <j.shopemdc@yahoo.com>
Sent: Wednesday, June 30, 2021 7:53 AM
To: WV BOM <wvbom@wv.gov>
Subject: [External] Re: Comment Period Underway for Board of Medicine Rules

CAUTION: External email. Do not click links or open attachments unless you verify sender.

Regarding 11 CSR 15 -

For many years "telehealth" has been practiced, by Poison Control, Stroke Consult and most notably, after hours Radiology. Will these practitioners now be required to be Telehealth licensed in WV ? And what vetting procedures are in place for licensing, in particular Radiologists, who are Nighthawk reading from New Zealand or other non US locations?

James R Shope, MD

On Tuesday, June 29, 2021, 03:49:43 PM EDT, wvbom@wv.gov <wvbom@wv.gov> wrote:

Comment Period Underway for Proposed Amendments to Seven Existing Board of Medicine Rules and a Proposed New Rule

June 29, 2021

Due, in part, to legislation enacted during the 2021 regular session of the West Virginia Legislature, the West Virginia Board of Medicine is accepting written comments on proposed amendments to seven existing rules and a proposed new rule. To view the proposed amendments and the proposed new rule, click on the appropriate link below.

PROPOSED AMENDMENTS TO EXISTING RULES

11 CSR 1A, Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons

11 CSR 1B, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants

11 CSR 3, Board of Medicine rules for Dispensing of Prescription Drugs by Practitioners

11 CSR 6, Continuing Education for Physician and Podiatric Physicians

11 CSR 10, Practitioner Requirements for Accessing the West Virginia Controlled Substance Monitoring Program Database

11 CSR 11, Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities

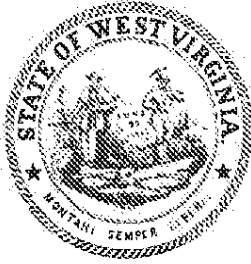
11 CSR 14, Registration to Practice During Declared State of Emergency

PROPOSED NEW RULE

11 CSR 15, Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants

Written comments on the proposed amendments and the proposed new rule are being accepted through 4:30 pm on July 29, 2021, and should be submitted to:

Mark A. Spangler, Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, West Virginia 25311
Mark.A.Spangler@wv.gov



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

QUARTEL-AYNE AMJAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SRETH, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

July 30, 2021

VIA ELECTRONIC MAIL ONLY

James R. Shope, MD
j.shopemd@yahoo.com

Re: Proposed West Virginia Board of Medicine Rule 11 CSR 15

Dear Dr. Shope:

Thank you for taking the time to review and comment on the Board's proposed rule 11 CSR 15, *Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants*.

The Legislative Committee of the Board met yesterday, July 29, 2021, to review and consider all of the comments that were received. Discussion occurred, and the Board approved some modifications to the proposed rule in response to the comments it received. Enclosed please find the Board's *Summary of Comments Received Regarding Proposed Rule 11 CSR 15 and Responses of the West Virginia Board of Medicine* (without attachments).

The agency-approved version of 11 CSR 15 will be filed with the West Virginia Secretary of State's Office today and will be available for review on their website at <https://apps.sos.wv.gov/adlaw/csr/>. The enclosed summary along with all comments will also be available on the Secretary of State's website.

Thank you again for your participation in the rulemaking process and for your comments.

Sincerely,

A handwritten signature in cursive script that reads "Mark A. Spangler".

Mark A. Spangler

MAS/jcf
Enclosure



Alley, Jamie S <jamie.s.alley@wv.gov>

RE: Public Comment Re: Telehealth Practitioner Registration

1 message

White, Skip *HS <ROW9C@hscmail.mcc.virginia.edu> Fri, Jul 23, 2021 at 3:55 PM
To: "Alley, Jamie S" <jamie.s.alley@wv.gov>

Jamie,

Thank you so much for your email, and sorry to have missed you. I am available at 11am any of those days. Let me know what's most convenient and I'll put a hold on my calendar.

Have a great weekend and thanks again,

Skip

From: Alley, Jamie S [mailto:jamie.s.alley@wv.gov]
Sent: Friday, July 23, 2021 12:32 PM
To: White, Skip *HS <ROW9C@hscmail.mcc.virginia.edu>
Subject: Public Comment Re: Telehealth Practitioner Registration

Good afternoon Mr. White,

Mark Spangler, Executive Director of the West Virginia Board of Medicine asked me to reach out to you in response to your email of yesterday. Unfortunately, I was unable to reach you by phone this afternoon. Rather than leaving a

voicemail, I wondered if it might be better to contact you via email to schedule a mutually convenient time to talk.

I am available Monday, Tuesday or Wednesday of next week at 11:00 am. Are any of those dates and times agreeable with your schedule?

Thanks,

Jamie S. Alley

Deputy Director/General Counsel

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49864

Facsimile: (304) 558-2084

The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.



Frame, Jamie C <jamie.c.frame@wv.gov>

Fwd: Public Comment Re: Telehealth Practitioner Registration

1 message

Spangler, Mark A <mark.a.spangler@wv.gov>
To: "Frame, Jamie C" <jamie.c.frame@wv.gov>

Fri, Jul 23, 2021 at 2:38 PM

Mark A. Spangler*Executive Director*

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.

----- Forwarded message -----

From: White, Skip *HS <R0WNSC@hscmail.mcc.virginia.edu>
Date: Thu, Jul 22, 2021 at 11:22 AM
Subject: Public Comment Re: Telehealth Practitioner Registration
To: mark.a.spangler@wv.gov <mark.a.spangler@wv.gov>

Mr. Spangler,

Good morning. I am an attorney at Piedmont Liability Trust in Charlottesville, VA. We represent the clinicians practicing at the University of Virginia. I am excited to learn about the new Telehealth Practitioner Registration program recently

enacted in West Virginia. I understand the public comment period ends at the end of this month – when do you anticipate going live with the registration?

I also have a question regarding 11CSR15, subsection 3.7, which currently reads: *Nothing in this section shall prohibit an educational permit holder from providing telehealth services in conformity with the guidelines, requirements, and supervision of the physician's graduate medical education training program.* Are you able to offer any guidance or clarification on whether this requires residents and fellows at out-of-state academic medical centers to obtain a WV telehealth registration in order to provide telehealth services under the supervision of an attending?

Thank you for your time. If it's easier to quickly discuss over the phone please feel free to call me at your convenience.

Skip

Skip White

Associate General Counsel

Piedmont Liability Trust

(434) 245-2168



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

QUARTEL-AYNE AMJAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SHETH, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

July 30, 2021

VIA ELECTRONIC MAIL ONLY

Skip White, Associate General Counsel
Piedmont Liability Trust
ROWSC@hscmail.mcc.virginia.edu

Re: Proposed West Virginia Board of Medicine Rule 11 CSR 15

Dear Mr. White:

Thank you for taking the time to review and comment on the Board's proposed rule 11 CSR 15, *Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants*.

The Legislative Committee of the Board met yesterday, July 29, 2021, to review and consider all of the comments that were received. Discussion occurred, and the Board approved some modifications to the proposed rule in response to the comments it received. Enclosed please find the Board's *Summary of Comments Received Regarding Proposed Rule 11 CSR 15 and Responses of the West Virginia Board of Medicine* (without attachments).

The agency-approved version of 11 CSR 15 will be filed with the West Virginia Secretary of State's Office today and will be available for review on their website at <https://apps.sos.wv.gov/adlaw/csr/>. The enclosed summary along with all comments will also be available on the Secretary of State's website.

Thank you again for your participation in the rulemaking process and for your comments.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Spangler".

Mark A. Spangler

MAS/jef
Enclosure



Frame, Jamie C <jamie.c.frame@wv.gov>

Fwd: West Virginia Orthopaedic Society comments

1 message

Spangler, Mark A <mark.a.spangler@wv.gov>

Thu, Jul 29, 2021 at 9:48 AM

To: Jamie Alley <jamie.s.alley@wv.gov>, "Frame, Jamie C" <jamie.c.frame@wv.gov>

This came in after hours

Mark A. Spangler*Executive Director*

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

Telephone: (304) 558-2921 Ext. 49862

Facsimile: (304) 558-2084



The information contained in this electronic message is legally privileged and confidential under applicable law and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify the West Virginia Board of Medicine, (304) 558-2921, and purge this communication immediately without making any copy or distribution.

----- Forwarded message -----

From: r topping <rtopping@yahoo.com>

Date: Wed, Jul 28, 2021 at 4:47 PM

Subject: West Virginia Orthopaedic Society comments

To: Mark A.Spangler@wv.gov <Mark.A.Spangler@wv.gov>

Cc: wvos@frontier.com <wvos@frontier.com>

Dear Mr. Spangler,

Our society has 2 concerns with the BOM proposals. First, in the prescribing of narcotic rules for utilization of the data bank, I see no clarification if this includes the emergency room and operating room setting. It would be very difficult to add this to the must do list during on call visits to reduce fractures and providing other emergent call without the support of office staff. The same applies to the operating room setting. Frequently, there is minimal time to complete orders and

other already required paper work before starting another surgery. This is especially so for private practice based surgeons without residents to assist in such requirements. The office setting has multiple tiers of staff to assist for patients in that setting.

Also, the telehealth bill concerns us in specialty care. We practice on very tight margins in one of the poorest states in US. Telehealth would make it much easier for mega tertiary centers such as UPMC and Cleveland Clinic to cherry pick well insured patients for orthopedic surgery. This would leave us treating an even higher percentage of Medicare/Medicaid patients while we would still be stuck taking care of complications on those that left in our emergency rooms. Further cuts from any reason would most likely make it impossible to continue the private practice model of orthopedic care in our state.

Please feel free to contact me for further details.

Richard Topping, MD
WVOS legislative chairman



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

QUARTEL-AYNE AMJAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SHETH, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

July 30, 2021

VIA ELECTRONIC MAIL ONLY

Richard Topping, MD
Legislative Chairman
West Virginia Orthopaedic Society
retopping@yahoo.com

Re: Proposed West Virginia Board of Medicine Rule 11 CSR 15

Dear Dr. Topping:

Thank you for taking the time to review and comment on the Board's proposed rule 11 CSR 15, *Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants*.

The Legislative Committee of the Board met yesterday, July 29, 2021, to review and consider all of the comments that were received. Discussion occurred, and the Board approved some modifications to the proposed rule in response to the comments it received. Enclosed please find the Board's *Summary of Comments Received Regarding Proposed Rule 11 CSR 15 and Responses of the West Virginia Board of Medicine* (without attachments).

The agency-approved version of 11 CSR 15 will be filed with the West Virginia Secretary of State's Office today and will be available for review on their website at <https://apps.sos.wv.gov/adlaw/csr/>. The enclosed summary along with all comments will also be available on the Secretary of State's website.

Thank you again for your participation in the rulemaking process and for your comments.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Spangler". The signature is written in a cursive style with a large initial "M".

Mark A. Spangler

MAS/jcf
Enclosure



Mark Spangler
Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

July 29, 2021

RE: Comments on West Virginia Board of Medicine Proposed Rules 11 CSR 1A, 11 CSR 1B, 11 CSR 5 and 11 CSR 15

Dear Mr. Spangler:

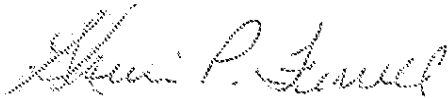
The West Virginia Primary Care Association (“WVPCA”) is grateful for the opportunity to offer feedback on the West Virginia Board of Medicine’s (“WVBOM”) various proposed rules currently out for public comment. The WVPCA represents the state’s 32 community health centers and one rural health clinic, which constitute the largest independent primary care network in the state. Health centers and rural health clinics provide primary care, and many offer specialty care, such as dental, behavioral health and school-based health services, and fill prescriptions at affiliated pharmacies. Services and prescriptions are provided to health center patients regardless of their insurance status or ability to pay. Nearly 480,000 West Virginians receive health care services from a health center—more than one out of every four citizens.

The WVPCA is encouraged by the WVBOM’s progressive changes to physician and physician assistant licensing and telehealth regulation while still holding true to the legislative intent of relevant legislation. We believe the proposed rule revisions to 11 CSR 1A, 11 CSR 1B and 11 CSR 5, as well as new proposed rule 11 CSR 15, will allow providers under the purview of the WVBOM to practice at the top of their training without unnecessary red tape. Given the rural areas that our members serve and the associated challenge of recruiting qualified physicians and physician assistants, we are especially excited about the revisions to proposed rule 11 CSR 1B .

The proposed revisions to rule 11 CSR 1B, among other things, allow physician assistants to register with the WVBOM via a practice notification instead of a practice agreement. We thank the WVBOM for extending this practice notification eligibility, which has been available to hospital-based physician assistants since 2019, to community-based providers such as health centers. This change promotes regulatory simplicity and equity. Moreover, we appreciate the WVBOM developing a simple, streamlined form for submission of practice notifications. These proposed rules revisions will reduce costs to our health centers from a compliance/legal standpoint and decrease the time needed to onboard new physician assistants.

Again, we thank you for your time and consideration of our comments. Should you or other WVBOM staff wish to discuss our comments on these proposed rules, please do not hesitate to contact Joshua Austin, Policy and Communications Director at the WVPCA, at Joshua.Austin@wvcca.org or at 304.400.8300.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sherri P. Ferrell".

Sherri P. Ferrell,
Chief Executive Officer



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

QUARTEI-AYNE AMJAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

ASHISH P. SHETH, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

July 30, 2021

VIA ELECTRONIC MAIL ONLY

Sherri P. Ferrell
Chief Executive Officer
West Virginia Primary Care Association
Sherri@wvpcsa.org

Re: Proposed West Virginia Board of Medicine Rule 11 CSR 15

Dear Ms. Ferrell:

Thank you for taking the time to review and comment on the Board's proposed rule 11 CSR 15, *Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants*.

The Legislative Committee of the Board met yesterday, July 29, 2021, to review and consider all of the comments that were received. Discussion occurred, and the Board approved some modifications to the proposed rule in response to the comments it received. Enclosed please find the Board's *Summary of Comments Received Regarding Proposed Rule 11 CSR 15 and Responses of the West Virginia Board of Medicine* (without attachments).

The agency-approved version of 11 CSR 15 will be filed with the West Virginia Secretary of State's Office today and will be available for review on their website at <https://apps.sos.wv.gov/adlaw/csr/>. The enclosed summary along with all comments will also be available on the Secretary of State's website.

Thank you again for your participation in the rulemaking process and for your comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Spangler", is written over a faint, larger version of the same signature.

Mark A. Spangler

MAS/jcf
Enclosure



July 29, 2021

Mr. Mark A. Spangler
Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

RE: American Telemedicine Association Comment Letter on Proposed Telehealth Rules 11CSR15

Mr. Spangler,

On behalf of the American Telemedicine Association and the over 400 organizations we represent, I am writing to voice our concerns with the proposed telehealth rules.

The ATA is the only national organization whose mission revolves solely around the advancement of telehealth in the United States. Our utmost priority is ensuring that Americans have the ability to receive affordable, first-rate health care when and where they need it. The expansion of telehealth infrastructure around the country eases strain on the overburdened health care system, enabling it to provide care for millions more patients every year in an efficient and effective manner. The ATA represents a diverse and expansive coalition of technology solution providers and payers, as well as partner organizations and alliances, working together to promote the implementation of telehealth across the country, endorse responsible telehealth policy, encourage government and market normalization, and deliver education and resources designed to further the integration of virtual care through the use of various innovative technologies.

The ATA is supportive of many aspects of the proposed rules – particularly the creation of a registration system that allows out-of-state providers to easily and efficiently submit their registration application to the Board so that they can render care to West Virginia citizens. This will increase the number of providers available for West Virginia patients to utilize and will ultimately increase the access to and affordability of care in West Virginia. Similarly, the ATA supports the permissive definition of telehealth created by HB2024 and adopted by the Board that allows for the use of synchronous and asynchronous modalities by providers.

The ATA is concerned that there may be confusion for providers around the standard of care language found in Section 7 of the proposed rules. While the language in the proposed rule at §11-15-7.4 *et al* is similar to the language found in §30-1-26(b)(4), the proposed rule notably differs from the legislation by not distinguishing that this standard of care only applies to “established patients” as defined in both statute at §30-1-26(a) and in the proposed rules §11-15-2.4. House Bill 2024 bifurcated telehealth patients into two categories: (1) an “established 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,” and (2) a “virtual telehealth” patient who is a “new patient or follow-up patient for



acute care that does not require chronic management or scheduled medications.” The legislative intent behind the bifurcation of “established patient” and “virtual telehealth” patient was to ensure that patients living with chronic conditions are regularly seen in-person by their providers. This legislative decision is what gave rise to a legislated standard of care that mandates a yearly encounter for “established patients.” While the ATA believes that the decision on whether to require that a patient have an in-person encounter is best left to the discretion of the treating healthcare provider in conjunction with the patient’s preferences, we understand that the legislature has spoken on this matter. However, the legislature only dictated this mandate for “established patients” – not for “virtual patients.” This distinction is not reflected in the proposed rules as §11-15-7.4 encapsulates all patients, not just “established patients” as is contemplated by the authorizing Code section at §30-1-26(b)(4).

With this in mind, the ATA suggests that the Board amend their proposed rules to include the definition of “virtual telehealth” patient - as found in §5-16-7b (7) – and make clear that the standard of care as posited in §11-15-7.4 *et al* is limited to “established patients” and does not encapsulate “virtual telehealth” patients. By making this change, it will ensure that more West Virginia patients are able to receive the care they want, need, and deserve.

The ATA urges thoughtful consideration on this issue. In the context of the ongoing pandemic, we believe that it is essential for West Virginians to have access to high-quality, affordable health care as efficiently and equitably as possible. We urge you and your colleagues to consider the changes as proposed in this letter. Please let us know how we can be helpful in your efforts to adopt telehealth policy in West Virginia. If you have any questions or would like to discuss further the telehealth industry’s perspective, please contact me at kzebley@americantelemed.org.

Kind regards,

A handwritten signature in black ink, appearing to read 'Kyle Zebley', written in a cursive style.

Kyle Zebley
Public Policy Director
American Telemedicine Association



State of West Virginia *Board of Medicine*

KISHORE K. CHALLA, MD, FACC
PRESIDENT

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbm.wv.gov

ASHISH P. SHETH, MD
VICE PRESIDENT

QUARTEL-AYNE AMJAD, MD, MPH
SECRETARY

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

July 30, 2021

VIA ELECTRONIC MAIL ONLY

Kyle Zebley
Public Policy Director
American Telemedicine Association
kzebley@americantelemed.org

Re: Proposed West Virginia Board of Medicine Rule 11 CSR 15

Dear Mr. Zebley:

Thank you for taking the time to review and comment on the Board's proposed rule 11 CSR 15, *Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants*.

The Legislative Committee of the Board met yesterday, July 29, 2021, to review and consider all of the comments that were received. Discussion occurred, and the Board approved some modifications to the proposed rule in response to the comments it received. Enclosed please find the Board's *Summary of Comments Received Regarding Proposed Rule 11 CSR 15 and Responses of the West Virginia Board of Medicine* (without attachments).

The agency-approved version of 11 CSR 15 will be filed with the West Virginia Secretary of State's Office today and will be available for review on their website at <https://apps.sos.wv.gov/adlaw/csr/>. The enclosed summary along with all comments will also be available on the Secretary of State's website.

Thank you again for your participation in the rulemaking process and for your comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Spangler".

Mark A. Spangler

MAS/jcf
Enclosure