



June 1, 2022

Sue Ann Painter, DNP, RN
Executive Director
West Virginia Board of Registered Nurses
5001 MacCorkle Ave SW
South Charleston, WV 25309

RE: Teladoc Health Comment Letter on Proposed Telehealth Rules 19-16

Dear Director Painter:

On behalf of Teladoc Health, I write to share our comments regarding the proposed telehealth rule currently before the West Virginia Board of Registered Nurses.

By way of background, Teladoc Health is the world's largest telehealth company. With more than 5,000 employees, we deliver care in 175 countries and in more than 40 languages, partnering with employers, hospitals and health systems, and more than 50 health plans in the U.S. Teladoc Health serves more than 40 percent of Fortune 500 employers, as well as thousands of small businesses, labor unions, and public-sector employers, which offer our virtual care services to their employees.

Today in West Virginia, over 3,000 employers use Teladoc Health. We cover over 260,000 West Virginians, and we performed over 11,000 virtual visits in 2021 alone. In addition, we saved the healthcare system in West Virginia over \$5 million in 2021; these are savings to the patient and employers or health plans that pay the bills.

Teladoc Health is particularly concerned with §19-16-7.4 of the telehealth proposed rule, as it is inconsistent with current statute as well as the standards adopted by the West Virginia Board of Medicine and the Board of Osteopathic Medicine. If approved, the current language would require that all patients must have an in-person encounter within 12 months of the initial visit. This unwarranted additional barrier to care will significantly restrict the ability of patients to receive needed care – particularly for those living in rural areas without easy access to a medical care and those with mobility challenges.

Teladoc Health was actively engaged in the legislative process that culminated with the passage of House Bill 2024 during the 2021 Regular Session. This was the catalyst to the Board of Medicine and Board of Osteopathic Medicine's decision to revise their telehealth standards of practice. We worked collaboratively to carefully craft language that would both protect patients from bad actors and poor quality care while simultaneously allowing the use of telehealth technologies to deliver needed care to West Virginia patients. While Teladoc Health supports much of the language put forth by the Board of Registered Nurses in this proposed rule, we strongly urge reconsideration of §19-16-7.4 as it runs contrary to current statute and the subsequent actions by the Board of Medicine and Board of Osteopathic Medicine to update their telehealth standards of practice.

Teladoc_{..}

HEALTH

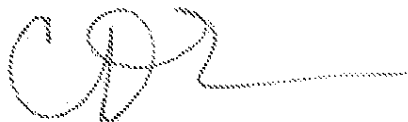
In order for the Board of Registered Nurse's telehealth practices to conform with existing statute, particularly the new rule language approved by the 2022 Session in SB334, , Teladoc Health recommends that the Board amend §19-16-7.4 by replacing the current language with the following:

Nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion determines that in in-person encounter is required.

By adopting this amendment, the Board of Registered Nurses would ensure patients continue to receive high quality, appropriate medical care without instituting unnecessary and clinically unjustified requirements. Furthermore, this language would conform the telehealth standards of practice among all physicians and registered nurses who practice in the state.

We appreciate your continued efforts to craft thoughtful public policy for telehealth in West Virginia. Please consider Teladoc Health a resource should you have any questions regarding telehealth.

Respectfully,

A handwritten signature in black ink, appearing to read 'CDT', followed by a horizontal line extending to the right.

Claudia Duck Tucker
Senior Vice President of Government Affairs and Public Policy
Teladoc Health, Inc.

Painter, Sue A <sue.a.painter@wv.gov>

WV SB334 SUB1 ENR (1) - Telemedicine Nursing Regs

Swann, William M. <wswann@fbtlaw.com>
To: "sue.a.painter@wv.gov" <sue.a.painter@wv.gov>

Fri, May 20, 2022 at 12:17 PM

Sue,

Thanks for taking the time to chat this afternoon.

See page 32 for the language which was passed last session. You'll note that section 7.4 in the BOM rule tracks with the statutory language from the attached bill. Here's a side-by-side comparison of the BOM rule and the Nursing rule:

[BOM Rule](#)
from [WV RN Board](#)

[Current and Proposed Rule](#)

§ 11-15-7. **Standard of Care, Delivery of Telehealth Services and Medical Records.**

- 7.1. A telehealth provider has the duty to practice in a manner consistent with:
- 7.1.1. The provider's scope of practice;
 - 7.1.2. The professional conduct standards established in this state for the provider's profession;
 - 7.1.3. The standard of care applicable to the provider's practice.

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. Nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion determines that an in-person encounter is required.

7.5. With the exception of the practice of pathology and radiology, a telehealth provider shall:

- 7.5.1. Verify the identity and location of the patient.

19CS816

- 7.1.2. The professional conduct standards established in this state for the provider's profession.

and

- 7.1.3. The standard of care applicable to the provider's practice.

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, if the nurse has prescriptive authority, based solely on an online questionnaire, does not conform to the standard of care.

6/1/22, 11:59 AM

State of West Virginia Mail - WV SB334 SUB1 ENR (1) - Telemedicine Nursing Regs

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:

We'll submit formal comments to help explain this so the agency can correct the regulation.

Please let me know if you have any questions or concerns. Thank you.

Best regards,

Will Swann

William M. Swann


Attorney at Law | Thea Swann Todd LLC

304.349.2414 Direct

304.441.8837 Mobile

wswann@tdlaw.com

NOTICE: This electronic mail transmission is for the use of the named individual or entity to which it is directed and may contain information that is privileged or confidential. It is not to be transmitted to or received by anyone other than the named addressee (or a person authorized to deliver it to the named addressee). It is not to be copied or forwarded to any unauthorized persons. If you have received this electronic mail transmission in error, delete it from your system without copying or forwarding it, and notify the sender of the error by replying via email or by calling Frost Brown Todd LLC at (513) 651-6800, so that our address record can be corrected.

 **WV SB334 SUB1 ENR (1).pdf**
238K