

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 38.2-3418.16 and 54.1-3303 of the Code of Virginia, relating to the
3 provision of health care services through telemedicine services.

4 [S 1227]
5 Approved

6 Be it enacted by the General Assembly of Virginia:

7 1. That §§ 38.2-3418.16 and 54.1-3303 of the Code of Virginia are amended and reenacted as
8 follows:

9 § 38.2-3418.16. Coverage for telemedicine services.

10 A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group
11 accident and sickness insurance policies providing hospital, medical and surgical, or major medical
12 coverage on an expense-incurred basis; each corporation providing individual or group accident and
13 sickness subscription contracts; and each health maintenance organization providing a health care plan
14 for health care services shall provide coverage for the cost of such health care services provided through
15 telemedicine services, as provided in this section.

16 B. As used in this section, "telemedicine services," as it pertains to the delivery of health care
17 services, means the use of *electronic technology or media, including* interactive audio, ~~or video, or other~~
18 ~~electronic media used~~ for the purpose of ~~diagnosis, consultation, diagnosing or treatment~~ *treating a*
19 *patient or consulting with other health care providers regarding a patient's diagnosis or treatment.*
20 "Telemedicine services" ~~do~~ does not include an audio-only telephone, electronic mail message, ~~or~~
21 facsimile transmission, *or online questionnaire.*

22 C. An insurer, corporation, or health maintenance organization shall not exclude a service for
23 coverage solely because the service is provided through telemedicine services and is not provided
24 through face-to-face consultation or contact between a health care provider and a patient for services
25 appropriately provided through telemedicine services.

26 D. An insurer, corporation, or health maintenance organization shall not be required to reimburse the
27 treating provider or the consulting provider for technical fees or costs for the provision of telemedicine
28 services; however, such insurer, corporation, or health maintenance organization shall reimburse the
29 treating provider or the consulting provider for the diagnosis, consultation, or treatment of the insured
30 delivered through telemedicine services on the same basis that the insurer, corporation, or health
31 maintenance organization is responsible for coverage for the provision of the same service through
32 face-to-face consultation or contact.

33 E. Nothing shall preclude the insurer, corporation, or health maintenance organization from
34 undertaking utilization review to determine the appropriateness of telemedicine services, provided that
35 such appropriateness is made in the same manner as those determinations are made for the treatment of
36 any other illness, condition, or disorder covered by such policy, contract, or plan. Any such utilization
37 review shall not require pre-authorization of emergent telemedicine services.

38 F. An insurer, corporation, or health maintenance organization may offer a health plan containing a
39 deductible, copayment, or coinsurance requirement for a health care service provided through
40 telemedicine services, provided that the deductible, copayment, or coinsurance does not exceed the
41 deductible, copayment, or coinsurance applicable if the same services were provided through face-to-face
42 diagnosis, consultation, or treatment.

43 G. No insurer, corporation, or health maintenance organization shall impose any annual or lifetime
44 dollar maximum on coverage for telemedicine services other than an annual or lifetime dollar maximum
45 that applies in the aggregate to all items and services covered under the policy, or impose upon any
46 person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or
47 any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits
48 or services, that is not equally imposed upon all terms and services covered under the policy, contract,
49 or plan.

50 H. The requirements of this section shall apply to all insurance policies, contracts, and plans
51 delivered, issued for delivery, reissued, or extended in the Commonwealth on and after January 1, 2011,
52 or at any time thereafter when any term of the policy, contract, or plan is changed or any premium
53 adjustment is made.

54 I. This section shall not apply to short-term travel, accident-only, or limited or specified disease
55 policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage
56 under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under

57 state or federal governmental plans.

58 **§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic**
 59 **purposes only.**

60 A. A prescription for a controlled substance may be issued only by a practitioner of medicine,
 61 osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled
 62 substances, or by a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant
 63 pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of
 64 Chapter 32. The prescription shall be issued for a medicinal or therapeutic purpose and may be issued
 65 only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship.

66 For purposes of this section, a bona fide practitioner-patient-pharmacist relationship is one in which a
 67 practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for
 68 a medicinal or therapeutic purpose within the course of his professional practice. In addition, a bona fide
 69 practitioner-patient relationship means that the practitioner shall (i) ensure that a medical or drug history
 70 is obtained; (ii) provide information to the patient about the benefits and risks of the drug being
 71 prescribed; (iii) perform or have performed an appropriate examination of the patient, either physically
 72 or by the use of instrumentation and diagnostic equipment through which images and medical records
 73 may be transmitted electronically; except for medical emergencies, the examination of the patient shall
 74 have been performed by the practitioner himself, within the group in which he practices, or by a
 75 consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and
 76 follow-up care, if necessary, especially if a prescribed drug may have serious side effects.

77 *For the purpose of prescribing a Schedule VI controlled substance to a patient via telemedicine*
 78 *services as defined in § 38.2-3418.16, a prescriber may establish a bona fide practitioner-patient*
 79 *relationship by an examination through face-to-face interactive, two-way, real-time communications*
 80 *services or store and forward technologies when all of the following conditions are met: (a) the patient*
 81 *has provided a medical history that is available for review by the prescriber; (b) the prescriber obtains*
 82 *an updated medical history at the time of prescribing; (c) the prescriber makes a diagnosis at the time*
 83 *of prescribing; (d) the prescriber conforms to the standard of care expected of in-person care as*
 84 *appropriate to the patient's age and presenting condition, including when the standard of care requires*
 85 *the use of diagnostic testing and performance of a physical examination, which may be carried out*
 86 *through the use of peripheral devices appropriate to the patient's condition; (e) the prescriber is actively*
 87 *licensed in the Commonwealth and authorized to prescribe; (f) if the patient is a member or enrollee of*
 88 *a health plan or carrier, the prescriber has been credentialed by the health plan or carrier as a*
 89 *participating provider and the diagnosing and prescribing meets the qualifications for reimbursement by*
 90 *the health plan or carrier pursuant to § 38.2-3418.16; and (g) upon request, the prescriber provides*
 91 *patient records in a timely manner in accordance with the provisions of § 32.1-127.1:03 and all other*
 92 *state and federal laws and regulations. Nothing in this paragraph shall permit a prescriber to establish*
 93 *a bona fide practitioner-patient relationship for the purpose of prescribing a Schedule VI controlled*
 94 *substance when the standard of care dictates that an in-person physical examination is necessary for*
 95 *diagnosis. Nothing in this paragraph shall apply to: (1) a prescriber providing on-call coverage per an*
 96 *agreement with another prescriber or his prescriber's professional entity or employer; (2) a prescriber*
 97 *consulting with another prescriber regarding a patient's care; or (3) orders of prescribers for hospital*
 98 *out-patients or in-patients.*

99 Any practitioner who prescribes any controlled substance with the knowledge that the controlled
 100 substance will be used otherwise than medicinally or for therapeutic purposes shall be subject to the
 101 criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the
 102 distribution or possession of controlled substances.

103 B. In order to determine whether a prescription that appears questionable to the pharmacist results
 104 from a bona fide practitioner-patient relationship, the pharmacist shall contact the prescribing practitioner
 105 or his agent and verify the identity of the patient and name and quantity of the drug prescribed. The
 106 person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in
 107 § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of
 108 controlled substances.

109 No prescription shall be filled unless there is a bona fide practitioner-patient-pharmacist relationship.
 110 A prescription not issued in the usual course of treatment or for authorized research is not a valid
 111 prescription.

112 C. Notwithstanding any provision of law to the contrary and consistent with recommendations of the
 113 Centers for Disease Control and Prevention or the Department of Health, a practitioner may prescribe
 114 Schedule VI antibiotics and antiviral agents to other persons in close contact with a diagnosed patient
 115 when (i) the practitioner meets all requirements of a bona fide practitioner-patient relationship, as
 116 defined in subsection A, with the diagnosed patient; (ii) in the practitioner's professional judgment, the
 117 practitioner deems there is urgency to begin treatment to prevent the transmission of a communicable

118 disease; (iii) the practitioner has met all requirements of a bona fide practitioner-patient relationship, as
119 defined in subsection A, for the close contact except for the physical examination required in clause (iii)
120 of subsection A; and (iv) when such emergency treatment is necessary to prevent imminent risk of
121 death, life-threatening illness, or serious disability.

122 D. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state
123 practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine authorized to issue such
124 prescription if the prescription complies with the requirements of this chapter and ~~Chapter 34~~ *the Drug*
125 *Control Act* (§ 54.1-3400 et seq.); known as the "Drug Control Act."

126 E. A licensed nurse practitioner who is authorized to prescribe controlled substances pursuant to
127 § 54.1-2957.01 may issue prescriptions or provide manufacturers' professional samples for controlled
128 substances and devices as set forth in ~~Chapter 34~~ *the Drug Control Act* (§ 54.1-3400 et seq.) in good
129 faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

130 F. A licensed physician assistant who is authorized to prescribe controlled substances pursuant to
131 § 54.1-2952.1 may issue prescriptions or provide manufacturers' professional samples for controlled
132 substances and devices as set forth in ~~Chapter 34~~ *the Drug Control Act* (§ 54.1-3400 et seq.) in good
133 faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

134 G. A TPA-certified optometrist who is authorized to prescribe controlled substances pursuant to
135 Article 5 (§ 54.1-3222 et seq.) of Chapter 32 may issue prescriptions in good faith or provide
136 manufacturers' professional samples to his patients for medicinal or therapeutic purposes within the
137 scope of his professional practice for the drugs specified on the TPA-Formulary, established pursuant to
138 § 54.1-3223, which shall be limited to (i) oral analgesics included in Schedules III through VI, as
139 defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), which are
140 appropriate to relieve ocular pain, (ii) other oral Schedule VI controlled substances, as defined in
141 § 54.1-3455 of the Drug Control Act, appropriate to treat diseases and abnormal conditions of the human
142 eye and its adnexa, (iii) topically applied Schedule VI drugs, as defined in § 54.1-3455 of the Drug
143 Control Act, and (iv) intramuscular administration of epinephrine for treatment of emergency cases of
144 anaphylactic shock.

145 H. The requirement for a bona fide practitioner-patient relationship shall be deemed to be satisfied by
146 a member or committee of a hospital's medical staff when approving a standing order or protocol for the
147 administration of influenza vaccinations and pneumococcal vaccinations in a hospital in compliance with
148 § 32.1-126.4.