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HOUSE BILL NO. 2063

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact §§ 38.2-3418.16 and 54.1-3303 of the Code of Virginia, relating to the provision of health care services through telemedicine services.

Patron—Kilgore

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

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

§ 38.2-3418.16. Coverage for telemedicine services.

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

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

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

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

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

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

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

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

I. This section shall not apply to short-term travel, accident-only, or limited or specified disease

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59 policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage  
60 under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under  
61 state or federal governmental plans.

62 **§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic**  
63 **purposes only.**

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

70 For purposes of this section, a bona fide practitioner-patient-pharmacist relationship is one in which a  
71 practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for  
72 a medicinal or therapeutic purpose within the course of his professional practice. In addition, a bona fide  
73 practitioner-patient relationship means that the practitioner shall (i) ensure that a medical or drug history  
74 is obtained; (ii) provide information to the patient about the benefits and risks of the drug being  
75 prescribed; (iii) perform or have performed an appropriate examination of the patient, either physically  
76 or by the use of instrumentation and diagnostic equipment through which images and medical records  
77 may be transmitted electronically; except for medical emergencies, the examination of the patient shall  
78 have been performed by the practitioner himself, within the group in which he practices, or by a  
79 consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and  
80 follow-up care, if necessary, especially if a prescribed drug may have serious side effects. *An*  
81 *examination performed using telemedicine services, as defined in subsection B of § 38.2-3418.16, shall*  
82 *be sufficient to meet the requirement for an "appropriate examination" pursuant to clause (iii). If the*  
83 *telemedicine services practitioner prescribes medication other than Schedule VI controlled substances to*  
84 *a patient, at least one in-person physical examination must have occurred.*

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

89 B. In order to determine whether a prescription that appears questionable to the pharmacist results  
90 from a bona fide practitioner-patient relationship, the pharmacist shall contact the prescribing practitioner  
91 or his agent and verify the identity of the patient and name and quantity of the drug prescribed. The  
92 person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in  
93 § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of  
94 controlled substances.

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

98 C. Notwithstanding any provision of law to the contrary and consistent with recommendations of the  
99 Centers for Disease Control and Prevention or the Department of Health, a practitioner may prescribe  
100 Schedule VI antibiotics and antiviral agents to other persons in close contact with a diagnosed patient  
101 when (i) the practitioner meets all requirements of a bona fide practitioner-patient relationship, as  
102 defined in subsection A, with the diagnosed patient; (ii) in the practitioner's professional judgment, the  
103 practitioner deems there is urgency to begin treatment to prevent the transmission of a communicable  
104 disease; (iii) the practitioner has met all requirements of a bona fide practitioner-patient relationship, as  
105 defined in subsection A, for the close contact except for the physical examination required in clause (iii)  
106 of subsection A; and (iv) when such emergency treatment is necessary to prevent imminent risk of  
107 death, life-threatening illness, or serious disability.

108 D. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state  
109 practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine authorized to issue such  
110 prescription if the prescription complies with the requirements of this chapter and Chapter 34  
111 (§ 54.1-3400 et seq.), known as the "Drug Control Act."

112 E. A licensed nurse practitioner who is authorized to prescribe controlled substances pursuant to  
113 § 54.1-2957.01 may issue prescriptions or provide manufacturers' professional samples for controlled  
114 substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.) in good faith to his patient for a  
115 medicinal or therapeutic purpose within the scope of his professional practice.

116 F. A licensed physician assistant who is authorized to prescribe controlled substances pursuant to  
117 § 54.1-2952.1 may issue prescriptions or provide manufacturers' professional samples for controlled  
118 substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.) in good faith to his patient for a  
119 medicinal or therapeutic purpose within the scope of his professional practice.

120 G. A TPA-certified optometrist who is authorized to prescribe controlled substances pursuant to

121 Article 5 (§ 54.1-3222 et seq.) of Chapter 32 may issue prescriptions in good faith or provide  
122 manufacturers' professional samples to his patients for medicinal or therapeutic purposes within the  
123 scope of his professional practice for the drugs specified on the TPA-Formulary, established pursuant to  
124 § 54.1-3223, which shall be limited to (i) oral analgesics included in Schedules III through VI, as  
125 defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), which are  
126 appropriate to relieve ocular pain, (ii) other oral Schedule VI controlled substances, as defined in §  
127 54.1-3455 of the Drug Control Act, appropriate to treat diseases and abnormal conditions of the human  
128 eye and its adnexa, (iii) topically applied Schedule VI drugs, as defined in § 54.1-3455 of the Drug  
129 Control Act, and (iv) intramuscular administration of epinephrine for treatment of emergency cases of  
130 anaphylactic shock.

131 H. The requirement for a bona fide practitioner-patient relationship shall be deemed to be satisfied by  
132 a member or committee of a hospital's medical staff when approving a standing order or protocol for the  
133 administration of influenza vaccinations and pneumococcal vaccinations in a hospital in compliance with  
134 § 32.1-126.4.