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SENATE BILL NO. 1119

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 2, 2023)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact § 54.1-2901 of the Code of Virginia, relating to telemedicine; continuity of care.

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2901 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2901. Exceptions and exemptions generally.

A. The provisions of this chapter shall not prevent or prohibit:

1. Any person entitled to practice his profession under any prior law on June 24, 1944, from continuing such practice within the scope of the definition of his particular school of practice;

2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice in accordance with regulations promulgated by the Board;

3. Any licensed nurse practitioner from rendering care in accordance with the provisions of §§ 54.1-2957 and 54.1-2957.01, any nurse practitioner licensed by the Boards of Medicine and Nursing in the category of certified nurse midwife practicing pursuant to subsection H of § 54.1-2957, or any nurse practitioner licensed by the Boards of Medicine and Nursing in the category of clinical nurse specialist practicing pursuant to subsection J of § 54.1-2957 when such services are authorized by regulations promulgated jointly by the Boards of Medicine and Nursing;

4. Any registered professional nurse, licensed nurse practitioner, graduate laboratory technician or other technical personnel who have been properly trained from rendering care or services within the scope of their usual professional activities which shall include the taking of blood, the giving of intravenous infusions and intravenous injections, and the insertion of tubes when performed under the orders of a person licensed to practice medicine or osteopathy, a nurse practitioner, or a physician assistant;

5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his usual professional activities;

6. Any practitioner licensed or certified by the Board from delegating to personnel supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by practitioners of the healing arts, if such activities or functions are authorized by and performed for such practitioners of the healing arts and responsibility for such activities or functions is assumed by such practitioners of the healing arts;

7. The rendering of medical advice or information through telecommunications from a physician licensed to practice medicine in Virginia or an adjoining state, or from a licensed nurse practitioner, to emergency medical personnel acting in an emergency situation;

8. The domestic administration of family remedies;

9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in public or private health clubs and spas;

10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists or druggists;

11. The advertising or sale of commercial appliances or remedies;

12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant bracer or prosthetist for the purpose of having a three-dimensional record of the deformity, when such bracer or prosthetist has received a prescription from a licensed physician, licensed nurse practitioner, or licensed physician assistant directing the fitting of such casts and such activities are conducted in conformity with the laws of Virginia;

13. Any person from the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter;

14. The practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation;

15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth;

16. Any practitioner of the healing arts licensed or certified and in good standing with the applicable regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia

60 temporarily and such practitioner has been issued a temporary authorization by the Board from
61 practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer
62 camp or in conjunction with patients who are participating in recreational activities, (ii) while
63 participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any
64 site any health care services within the limits of his license, voluntarily and without compensation, to
65 any patient of any clinic which is organized in whole or in part for the delivery of health care services
66 without charge as provided in § 54.1-106;

67 17. The performance of the duties of any active duty health care provider in active service in the
68 army, navy, coast guard, marine corps, air force, or public health service of the United States at any
69 public or private health care facility while such individual is so commissioned or serving and in
70 accordance with his official military duties;

71 18. Any masseur, who publicly represents himself as such, from performing services within the scope
72 of his usual professional activities and in conformance with state law;

73 19. Any person from performing services in the lawful conduct of his particular profession or
74 business under state law;

75 20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225;

76 21. Qualified emergency medical services personnel, when acting within the scope of their
77 certification, and licensed health care practitioners, when acting within their scope of practice, from
78 following Durable Do Not Resuscitate Orders issued in accordance with § 54.1-2987.1 and Board of
79 Health regulations, or licensed health care practitioners from following any other written order of a
80 physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

81 22. Any commissioned or contract medical officer of the army, navy, coast guard or air force
82 rendering services voluntarily and without compensation while deemed to be licensed pursuant to
83 § 54.1-106;

84 23. Any provider of a chemical dependency treatment program who is certified as an "acupuncture
85 detoxification specialist" by the National Acupuncture Detoxification Association or an equivalent
86 certifying body, from administering auricular acupuncture treatment under the appropriate supervision of
87 a National Acupuncture Detoxification Association certified licensed physician or licensed acupuncturist;

88 24. Any employee of any assisted living facility who is certified in cardiopulmonary resuscitation
89 (CPR) acting in compliance with the patient's individualized service plan and with the written order of
90 the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

91 25. Any person working as a health assistant under the direction of a licensed medical or osteopathic
92 doctor within the Department of Corrections, the Department of Juvenile Justice or local correctional
93 facilities;

94 26. Any employee of a school board, authorized by a prescriber and trained in the administration of
95 insulin and glucagon, when, upon the authorization of a prescriber and the written request of the parents
96 as defined in § 22.1-1, assisting with the administration of insulin or administering glucagon to a
97 student diagnosed as having diabetes and who requires insulin injections during the school day or for
98 whom glucagon has been prescribed for the emergency treatment of hypoglycemia;

99 27. Any practitioner of the healing arts or other profession regulated by the Board from rendering
100 free health care to an underserved population of Virginia who (i) does not regularly practice his
101 profession in Virginia, (ii) holds a current valid license or certificate to practice his profession in another
102 state, territory, district or possession of the United States, (iii) volunteers to provide free health care to
103 an underserved area of the Commonwealth under the auspices of a publicly supported all volunteer,
104 nonprofit organization that sponsors the provision of health care to populations of underserved people,
105 (iv) files a copy of the license or certification issued in such other jurisdiction with the Board, (v)
106 notifies the Board at least five business days prior to the voluntary provision of services of the dates and
107 location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be
108 valid, in compliance with the Board's regulations, during the limited period that such free health care is
109 made available through the volunteer, nonprofit organization on the dates and at the location filed with
110 the Board. The Board may deny the right to practice in Virginia to any practitioner of the healing arts
111 whose license or certificate has been previously suspended or revoked, who has been convicted of a
112 felony or who is otherwise found to be in violation of applicable laws or regulations. However, the
113 Board shall allow a practitioner of the healing arts who meets the above criteria to provide volunteer
114 services without prior notice for a period of up to three days, provided the nonprofit organization
115 verifies that the practitioner has a valid, unrestricted license in another state;

116 28. Any registered nurse, acting as an agent of the Department of Health, from obtaining specimens
117 of sputum or other bodily fluid from persons in whom the diagnosis of active tuberculosis disease, as
118 defined in § 32.1-49.1, is suspected and submitting orders for testing of such specimens to the Division
119 of Consolidated Laboratories or other public health laboratories, designated by the State Health
120 Commissioner, for the purpose of determining the presence or absence of tubercle bacilli as defined in
121 § 32.1-49.1;

29. Any physician of medicine or osteopathy or nurse practitioner from delegating to a registered nurse under his supervision the screening and testing of children for elevated blood-lead levels when such testing is conducted (i) in accordance with a written protocol between the physician or nurse practitioner and the registered nurse and (ii) in compliance with the Board of Health's regulations promulgated pursuant to §§ 32.1-46.1 and 32.1-46.2. Any follow-up testing or treatment shall be conducted at the direction of a physician or nurse practitioner;

30. Any practitioner of one of the professions regulated by the Board of Medicine who is in good standing with the applicable regulatory agency in another state or Canada from engaging in the practice of that profession when the practitioner is in Virginia temporarily with an out-of-state athletic team or athlete for the duration of the athletic tournament, game, or event in which the team or athlete is competing;

31. Any person from performing state or federally funded health care tasks directed by the consumer, which are typically self-performed, for an individual who lives in a private residence and who, by reason of disability, is unable to perform such tasks but who is capable of directing the appropriate performance of such tasks;

32. Any practitioner of one of the professions regulated by the Board of Medicine who is in good standing with the applicable regulatory agency in another state from engaging in the practice of that profession in Virginia with a patient who is being transported to or from a Virginia hospital for care;

33. Any doctor of medicine or osteopathy, physician assistant, or nurse practitioner who would otherwise be subject to licensure by the Board who holds an active, unrestricted license in another state, the District of Columbia, or a United States territory or possession and who is in good standing with the applicable regulatory agency in that state, the District of Columbia, or that United States territory or possession who provides behavioral health services, as defined in § 37.2-100, from engaging in the practice of his profession and providing behavioral health services to a patient located in the Commonwealth in accordance with the standard of care when (i) such practice is for the purpose of providing continuity of care through the use of telemedicine services as defined in § 38.2-3418.16 and (ii) the practitioner has previously established a practitioner-patient relationship with the patient and has performed an in-person evaluation of the patient within the previous year. A practitioner who provides behavioral health services to a patient located in the Commonwealth through use of telemedicine services pursuant to this subdivision may provide such services for a period of no more than one year from the date on which the practitioner began providing such services to such patient;

34. Any employee of a program licensed by the Department of Behavioral Health and Developmental Services who is certified in cardiopulmonary resuscitation from acting in compliance with a program participant's valid written order not to resuscitate issued in accordance with § 54.1-2987.1 if such valid written order not to resuscitate is included in the program participant's individualized service plan; or

35. ~~Any practitioner of a profession regulated by the Board of Medicine who is licensed~~ Any doctor of medicine or osteopathy, physician assistant, respiratory therapist, occupational therapist, or nurse practitioner who would otherwise be subject to licensure by the Board who holds an active, unrestricted license in another state or the District of Columbia and who is in good standing with the applicable regulatory agency in that state or the District of Columbia from engaging in the practice of that profession in the Commonwealth with a patient located in the Commonwealth when (i) such practice is for the purpose of providing continuity of care through the use of telemedicine services as defined in § 38.2-3418.16 and (ii) the patient is a current patient of the practitioner with whom the practitioner has previously established a practitioner-patient relationship and the practitioner has performed an in-person examination of the patient within the previous 12 months.

For purposes of this subdivision, if such practitioner with whom the patient has previously established a practitioner-patient relationship is unavailable at the time in which the patient seeks continuity of care, another practitioner of the same subspecialty at the same practice group with access to the patient's treatment history may provide continuity of care using telemedicine services until the practitioner with whom the patient has a previously established practitioner-patient relationship becomes available. For purposes of this subdivision, "practitioner of the same subspecialty" means a practitioner who utilizes the same subspecialty taxonomy code designation for claims processing.

For the purposes of this subdivision, if a patient is (a) an enrollee of a health maintenance organization that contracts with a multispecialty group of practitioners, each of whom is licensed by the Board of Medicine, and (b) a current patient of at least one practitioner who is a member of the multispecialty group with whom such practitioner has previously established a practitioner-patient relationship and of whom such practitioner has performed an in-person examination within the previous 12 months, the patient shall be deemed to be a current patient of each practitioner in the multispecialty group with whom each such practitioner has established a practitioner-patient relationship.

B. Notwithstanding any provision of law or regulation to the contrary, military medical personnel, as defined in § 2.2-2001.4, while participating in a program established by the Department of Veterans

183 Services pursuant to § 2.2-2001.4, may practice under the supervision of a licensed physician or
184 podiatrist or the chief medical officer of an organization participating in such program, or his designee
185 who is a licensee of the Board and supervising within his scope of practice.