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HOUSE BILL NO. 537

House Amendments in [] — February 8, 2022

A *BILL to amend and reenact §§ 54.1-2901, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia, relating to telemedicine; out of state providers; behavioral health services.*

Patron Prior to Engrossment—Delegate Batten

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2901, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia are 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

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HB537E

60 licensed practitioners in this Commonwealth;

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

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

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

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

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

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

84 22. Any commissioned or contract medical officer of the army, navy, coast guard or air force
85 rendering services voluntarily and without compensation while deemed to be licensed pursuant to
86 § 54.1-106;

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

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

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

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

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

119 28. Any registered nurse, acting as an agent of the Department of Health, from obtaining specimens
120 of sputum or other bodily fluid from persons in whom the diagnosis of active tuberculosis disease, as
121 defined in § 32.1-49.1, is suspected and submitting orders for testing of such specimens to the Division

of Consolidated Laboratories or other public health laboratories, designated by the State Health Commissioner, for the purpose of determining the presence or absence of tubercle bacilli as defined in § 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; or

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; or

33. Any [~~practitioner of a profession regulated~~ doctor of medicine or osteopathy, physician assistant, or nurse practitioner who would otherwise be subject to licensure] by the Board who [~~is licensed~~ 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.

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

§ 54.1-3501. Exemption from requirements of licensure.

The requirements for licensure in this chapter shall not be applicable to:

1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories in this chapter, including persons acting as members of substance abuse self-help groups, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and the person rendering such service is not held out, by himself or otherwise, as a person licensed under this chapter.

2. The activities or services of a student pursuing a course of study in counseling, substance abuse treatment or marriage and family therapy in an institution accredited by an accrediting agency recognized by the Board or under the supervision of a person licensed or certified under this chapter, if such activities or services constitute a part of the student's course of study and are adequately supervised.

3. The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such

183 governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or
184 part, by a community-based citizen group or organization. Any person who renders psychological
185 services, as defined in Chapter 36 (§ 54.1-3600 et seq.) of this title, shall be subject to the requirements
186 of that chapter. Any person who, in addition to the ~~above enumerated~~ *above-enumerated* employment,
187 engages in an independent private practice shall not be exempt from the requirements for licensure.

188 5. Persons regularly employed by private business firms as personnel managers, deputies or assistants
189 so long as their counseling activities relate only to employees of their employer and in respect to their
190 employment.

191 6. Persons regulated by this Board as professional counselors or persons regulated by another board
192 within the Department of Health Professions who provide, within the scope of their practice, marriage
193 and family therapy, counseling or substance abuse treatment to individuals or groups.

194 7. *Any practitioner of a profession regulated by the Board who is licensed in another state, the*
195 *District of Columbia, or a United States territory or possession and who is in good standing with the*
196 *applicable regulatory agency in that state, the District of Columbia, or that United States territory or*
197 *possession who provides behavioral health services, as defined in § 37.2-100, to a patient located in the*
198 *Commonwealth when (i) such practice is for the purpose of providing continuity of care through the use*
199 *of telemedicine services as defined in § 38.2-3418.16 and (ii) the practitioner has previously established*
200 *a practitioner-patient relationship with the patient. A practitioner who provides behavioral health*
201 *services to a patient located in the Commonwealth through use of telemedicine services pursuant to this*
202 *subdivision may provide such services for a period of no more than one year from the date on which*
203 *the practitioner began providing such services to such patient.*

204 **§ 54.1-3601. Exemption from requirements of licensure.**

205 The requirements for licensure provided for in this chapter shall not be applicable to:

206 1. Persons who render services that are like or similar to those falling within the scope of the
207 classifications or categories in this chapter, so long as the recipients or beneficiaries of such services are
208 not subject to any charge or fee, or any financial requirement, actual or implied, and the person
209 rendering such service is not held out, by himself or otherwise, as a licensed practitioner or a provider
210 of clinical or school psychology services.

211 2. The activities or services of a student pursuing a course of study in psychology in an institution
212 accredited by an accrediting agency recognized by the Board or under the supervision of a practitioner
213 licensed or certified under this chapter, if such activities or services constitute a part of his course of
214 study and are adequately supervised.

215 3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when
216 such activities are within the scope of the performance of their regular or specialized ministerial duties,
217 and no separate charge is made or when such activities are performed, whether with or without charge,
218 for or under the auspices or sponsorship, individually or in conjunction with others, of an established
219 and legally cognizable church, denomination or sect, and the person rendering service remains
220 accountable to its established authority.

221 4. Persons employed as salaried employees or volunteers of the federal government, the
222 Commonwealth, a locality, or any agency established or funded, in whole or part, by any such
223 governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or
224 part, by a community-based citizen group or organization, except that any such person who renders
225 psychological services, as defined in this chapter, shall be (i) supervised by a licensed psychologist or
226 clinical psychologist; (ii) licensed by the Department of Education as a school psychologist; or (iii)
227 employed by a school for students with disabilities which is certified by the Board of Education. Any
228 person who, in addition to the ~~above enumerated~~ *above-enumerated* employment, engages in an
229 independent private practice shall not be exempt from the licensure requirements.

230 5. Persons regularly employed by private business firms as personnel managers, deputies or assistants
231 so long as their counseling activities relate only to employees of their employer and in respect to their
232 employment.

233 6. Any psychologist holding a license or certificate in another state, the District of Columbia, or a
234 United States territory or foreign jurisdiction consulting with licensed psychologists in this
235 Commonwealth.

236 7. Any psychologist holding a license or certificate in another state, the District of Columbia, or a
237 United States territory or foreign jurisdiction when in Virginia temporarily and such psychologist has
238 been issued a temporary license by the Board to participate in continuing education programs or
239 rendering psychological services without compensation to any patient of any clinic which is organized in
240 whole or in part for the delivery of health care services without charge as provided in § 54.1-106.

241 8. The performance of the duties of any commissioned or contract clinical psychologist in active
242 service in the army, navy, coast guard, marine corps, air force, or public health service of the United
243 States while such individual is so commissioned or serving.

244 9. Any person performing services in the lawful conduct of his particular profession or business

under state law.

10. Any person duly licensed as a psychologist in another state or the District of Columbia who testifies as a treating psychologist or who is employed as an expert for the purpose of possibly testifying as an expert witness.

11. Any psychologist who is licensed 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, to 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 psychologist has previously established a practitioner-patient relationship with the patient. A psychologist 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 psychologist began providing such services to such patient.

§ 54.1-3701. Exemption from requirements of licensure.

The requirements for licensure provided for in this chapter shall not be applicable to:

1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories in this chapter, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and the person rendering such service is not held out, by himself or otherwise, as a licensed practitioner.

2. The activities or services of a student pursuing a course of study in social work in an institution recognized by the Board for purposes of licensure upon completion of the course of study or under the supervision of a practitioner licensed under this chapter; if such activities or services constitute a part of his course of study and are adequately supervised.

3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization. Any person who renders psychological services, as defined in Chapter 36 (§ 54.1-3600 et seq.) of this title, shall be subject to the requirements of that chapter. Any person who, in addition to the ~~above enumerated~~ above-enumerated employment, engages in an independent private practice shall not be exempt from the requirements for licensure.

5. Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.

6. Any person who is licensed to practice as a clinical social worker 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, to 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 clinical social worker has previously established a practitioner-patient relationship with the patient. A person who is licensed to practice as clinical social worker 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 clinical social worker began providing such services to such patient.