

By the Committee on Health Policy

588-02190A-14

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1 A bill to be entitled
2 An act relating to telemedicine; creating s. 456.4501,
3 F.S.; providing a short title; creating s. 456.4502,
4 F.S.; defining terms applicable to the act; creating
5 s. 456.4503, F.S.; requiring physicians providing
6 telemedicine services to patients in this state to be
7 licensed in this state or to meet alternative
8 requirements; requiring pertinent records to be made
9 available upon request; providing certain exceptions
10 for emergency services and consultations; requiring
11 other health care providers to be supervised by a
12 physician; providing continuing education requirements
13 for telemedicine providers; establishing venue;
14 providing applicability; authorizing the licensing
15 boards to adopt rules; creating s. 456.4504, F.S.;
16 providing standards and prohibitions for the provision
17 of telemedicine services; prohibiting nonemergency
18 prescribing of a legend drug without a physical
19 examination; prohibiting the prescription of a
20 controlled substance for chronic nonmalignant pain
21 using telemedicine; creating s. 456.4505, F.S.;
22 authorizing the use of telemedicine services in the
23 diagnosis and treatment of the human eye; providing
24 requirements for the use of automated equipment;
25 requiring the owner or lessee of the automated
26 equipment to maintain specified liability insurance
27 under certain circumstances; prohibiting prescriptions
28 for spectacles or contact lens based solely on the use
29 of an autorefractor; creating s. 456.4506, F.S.;

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30 providing requirements for reimbursement of
31 telemedicine services under the Medicaid program;
32 requiring a report to the Legislature on the usage and
33 costs of telemedicine in Medicaid by a certain date;
34 providing for future repeal; providing an effective
35 date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Section 456.4501, Florida Statutes, is created
40 to read:

41 456.4501 Short title.—Sections 456.4501-456.4506 may be
42 cited as the “Florida Telemedicine Act.”

43 Section 2. Section 456.4502, Florida Statutes, is created
44 to read:

45 456.4502 Definitions.—As used in this act, the term:

46 (1) “Act” means the Florida Telemedicine Act.

47 (2) “Advanced communications technology” means:

48 (a) Compressed digital interactive video, audio, or data
49 transmissions;

50 (b) Real-time synchronous video- or web-conferencing
51 communications;

52 (c) Secure web-based communications;

53 (d) Still-image capture or asynchronous store and forward;

54 (e) Health care service transmissions supported by mobile
55 devices (mHealth); or

56 (f) Other technology that facilitates access to health care
57 services or medical specialty expertise.

58 (3) “Distant site” means the location at which the

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59 telemedicine provider delivering the health care service is
60 located at the time the service is provided via telemedicine.

61 (4) "Encounter" means an examination, consultation,
62 monitoring, or other health care service.

63 (5) "Health care provider" means a health care practitioner
64 or out-of-state licensed individual who provides health care
65 services within the scope of his or her professional license.

66 (6) "In person" means that a patient is in the physical
67 presence of the health care provider without regard to whether
68 portions of the encounter are conducted by other providers.

69 (7) "Originating site" means the location of the patient
70 receiving telemedicine services, which site meets the standards
71 of this act as verified by the telemedicine provider.

72 (8) "Patient presenter" means an individual who has
73 clinical background training in the use of advanced
74 communications technology equipment and who is available at the
75 originating site to present the patient, manage the cameras or
76 equipment, and perform any hands-on activity necessary to
77 successfully complete the telemedicine encounter under the
78 direction and supervision of a telemedicine provider.

79 (9) "Store and forward" means the type of telemedicine
80 encounter that uses still images of patient data for rendering a
81 medical opinion or diagnosis. The term includes the asynchronous
82 transmission of clinical data from one site to another.

83 (10) "Telehealth" means the use of advanced communications
84 technology to provide access to health assessment, diagnosis,
85 intervention, consultation, supervision, and information across
86 distances. The term includes the use of remote patient-
87 monitoring devices that are used to collect and transmit data

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88 for telemonitoring and interpretation.

89 (11) "Telemedicine" means the practice of medicine through
90 the use of advanced communications technology by a telemedicine
91 provider at a distant site in compliance with federal and state
92 privacy and confidentiality requirements and encryption
93 standards. Services provided through telemedicine may include
94 patient assessment, diagnosis, consultation, treatment,
95 prescription of medicine, transfer of medical data, or other
96 medical-related services. The term does not include audio-only
97 calls, e-mail messages, or facsimile transmissions. Telemedicine
98 includes telehealth and telemonitoring.

99 (12) "Telemedicine provider" means a physician licensed
100 under chapter 458 or chapter 459 who provides telemedicine
101 services.

102 Section 3. Section 456.4503, Florida Statutes, is created
103 to read:

104 456.4503 Telemedicine requirements.—

105 (1) An out-of-state physician who provides telemedicine
106 across state lines to a patient physically located in this state
107 must:

108 (a) Have a Florida license to practice medicine as provided
109 under chapter 458 or chapter 459, except as provided under
110 subsection (2); or

111 (b) If not licensed in this state:

112 1. Hold an unrestricted active license to practice
113 allopathic or osteopathic medicine in the state of the distant
114 site and that state's licensure requirements must meet or exceed
115 those of this state under chapter 458 or chapter 459, as
116 determined by the appropriate board;

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117 2. Maintain professional liability coverage that includes
118 coverage for telemedicine services, in an amount and manner
119 consistent with s. 458.320 and appropriate to the physician's
120 scope of practice and location;

121 3. Have one of the following:

122 a. Privileges at or be on the medical staff of an out-of-
123 state hospital affiliated with a Florida hospital licensed under
124 chapter 395; or

125 b. Affiliation with an out-of-state health insurer or
126 health plan that is also authorized to conduct business in this
127 state pursuant to chapter 627 or chapter 641; and

128 4. Practice in a state that authorizes Florida-licensed
129 physicians to provide telemedicine services to patients located
130 in that state without having to be licensed to practice medicine
131 in that state.

132 (2) An out-of-state physician authorized under paragraph
133 (1) (b) to provide telemedicine services to patients in this
134 state is subject to appropriate disciplinary action by the Board
135 of Medicine, the Board of Osteopathic Medicine, or a regulatory
136 entity in this state which has regulatory jurisdiction over the
137 hospital, insurer, or health plan affiliated with the physician
138 as described in subparagraph (1) (b) 3.

139 (3) A telemedicine provider and a hospital, insurer, or
140 health plan operating in this state which is affiliated with an
141 out-of-state provider as described in subparagraph (1) (b) 3.
142 shall make any pertinent records available upon request of the
143 board, the department, or other regulatory authority as
144 applicable. Failure to comply with such request may result in
145 the revocation of the provider's license or imposition of a fine

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146 by the applicable board; or, in the case of an affiliated
147 hospital, insurer, or health plan, a fine, license restriction,
148 or revocation of an affiliated entity's authorization to conduct
149 business in this state.

150 (4) An out-of-state physician is not required to meet the
151 requirements of subsection (1) if:

152 (a) The out-of-state physician is consulting with a
153 physician licensed to practice medicine in this state; and

154 (b) The physician licensed in this state retains ultimate
155 authority and responsibility for the diagnosis, treatment, and
156 care of the patient located within this state.

157 (5) Physician consultations that occur on an emergency
158 basis and that are conducted via telemedicine are exempt from
159 subsection (1). "Emergency services and care" provided to
160 relieve an "emergency medical condition" have the same meaning
161 as provided in s. 395.002.

162 (6) A health care provider or patient presenter acting
163 under the direction and supervision of a physician through the
164 use of telemedicine may not be interpreted as practicing
165 medicine without a license. However, the health care provider
166 must be trained in, educated on, and knowledgeable about the
167 procedure and technology and may not perform duties for which
168 the provider does not have sufficient training, education, and
169 knowledge. Failure to have adequate training, education, and
170 knowledge is grounds for disciplinary action by the appropriate
171 board, or the department if there is no board, or the affiliated
172 regulatory entity for affiliated providers.

173 (7) Upon license renewal, a physician practicing
174 telemedicine shall:

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175 (a) Designate himself or herself as a telemedicine provider
176 on the physician's practitioner profile; and

177 (b) Submit proof of successful completion of a course and
178 subsequent examination, approved by the board, on the standards
179 of practice in telemedicine. The course must consist of 2 web-
180 based contact hours. The first course and examination must be
181 offered by July 1, 2014, and shall be conducted at least
182 annually thereafter. The course and examination shall be
183 developed and offered by a statewide professional association of
184 physicians in this state accredited to provide educational
185 activities designated for an American Medical Association
186 Physician's Recognition Award (AMA PRA) Category 1 credit. The
187 board shall review and approve the content of the initial course
188 and examination if the board determines that the course and
189 examination adequately and reliably satisfy the criteria set
190 forth in this section. The board shall annually thereafter
191 review and approve the course and examination if the board
192 determines that the content continues to adequately and reliably
193 satisfy the criteria set forth in this section. Successful
194 completion of the board-approved course and examination may be
195 used by a certified physician to satisfy 2 hours of continuing
196 education requirements for the biennial period during which the
197 board-approved course and examination are taken. A physician who
198 does not complete a board-approved course and examination under
199 this section may not provide telemedicine services.

200 (8) Venue for a civil or administrative action initiated by
201 the telemedicine recipient, the department, or the appropriate
202 board shall be based on the location of the patient or shall be
203 in Leon County.

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204 (9) The boards may adopt rules to administer the
205 requirements of this act and must repeal rules that are
206 inconsistent with this act, including rules that prohibit the
207 use of telemedicine in this state. The appropriate board may
208 also develop standards and adopt rules relating to requirements
209 for patient presenters. Such rules may not require the use of
210 patient presenters in telemedicine services if special skills or
211 training is not needed for a patient to participate in the
212 encounter.

213 Section 4. Section 456.4504, Florida Statutes, is created
214 to read:

215 456.4504 Telemedicine standards.—

216 (1) The standard of care as provided in s. 766.102 is the
217 same regardless of whether the physician provides health care
218 services in person or by telemedicine. The applicable board may
219 adopt rules specifically related to the standard of care for
220 telemedicine.

221 (2) A telemedicine provider providing telemedicine services
222 under this act is responsible for the quality of the equipment
223 and technology employed and for its safe use. Telemedicine
224 equipment and advanced communications technology must, at a
225 minimum, be able to provide the same information to the
226 telemedicine provider as the information that would be obtained
227 in an in-person encounter with a health care provider and must
228 enable the telemedicine provider to meet or exceed the
229 prevailing standard of care for the practice of the profession.

230 (3) The telemedicine provider is not required to conduct a
231 patient history or physical examination of the patient before
232 engaging in a telemedicine encounter if the telemedicine

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233 provider conducts a patient evaluation sufficient to meet the
234 prevailing standard of care for the services provided.

235 (4) Before each telemedicine encounter, the identification
236 and location of the telemedicine provider and all other
237 individuals present via advanced communications technology who
238 will view the patient or the patient's information must be
239 identified to the patient.

240 (5) For the purposes of this act, the nonemergency
241 prescribing of a legend drug based solely on an electronic
242 questionnaire without a visual examination is considered a
243 failure to practice medicine with the level of care, skill, and
244 treatment which is recognized by a reasonably prudent physician
245 or other authorized practitioner and is not authorized under
246 this act.

247 (6) A controlled substance may not be prescribed through
248 the use of telemedicine for chronic, nonmalignant pain.

249 (7) Medical records must be kept by each telemedicine
250 provider that participates in a patient telemedicine encounter
251 to the same extent as required for an in-person encounter under
252 state and federal law. Telemedicine providers are encouraged to
253 create electronic health records to document the encounter and
254 to transmit information in the most efficient manner possible.

255 (8) Any medical records generated, including records
256 maintained via video, audio, electronic, or other means, due to
257 a telemedicine encounter must conform to the confidentiality and
258 recordkeeping requirements of federal law and nationally
259 recognized health care accreditation organizations and the laws
260 and rules of this state, regardless of where the medical records
261 of a patient in this state are maintained.

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262 (9) Telemedicine technology used by a telemedicine provider
263 must be encrypted and must use a recordkeeping program to verify
264 each interaction.

265 (10) In those situations in which a telemedicine provider
266 uses telemedicine technology provided by a third-party vendor,
267 the telemedicine provider must:

268 (a) Require a business associate agreement with the third-
269 party vendor; and

270 (b) Ensure that the third-party vendor complies with the
271 administrative, physical, and technical safeguards and standards
272 set forth by the Health Information Technology for Economic and
273 Clinical Health (HITECH) Act and by federal regulations
274 implemented pursuant to HITECH.

275 Section 5. Section 456.4505, Florida Statutes, is created
276 to read:

277 456.4505 Telemedicine services to diagnose or treat the
278 human eye.—

279 (1) The use of automated equipment, including computer-
280 controlled devices, in the provision of telemedicine services to
281 diagnose or treat the human eye and its appendages, is
282 permissible if the following requirements are met at the time
283 the automated equipment is used:

284 (a) The automated equipment is approved by the United
285 States Food and Drug Administration for the intended use;

286 (b) The automated equipment is designed and operated in a
287 manner that provides any accommodation required by the federal
288 ADA Amendments Act of 2008;

289 (c) The automated equipment and accompanying technology
290 used for the collection and transmission of information and

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291 data, including photographs and scans, gathers and transmits
292 protected health information in compliance with the federal
293 Health Insurance Portability and Accountability Act;

294 (d) The procedure for which the automated equipment is used
295 has a recognized Current Procedural Terminology (CPT) code
296 approved by the Centers for Medicare and Medicaid Services;

297 (e) The physical location of the automated equipment
298 prominently displays the name and Florida license number of the
299 individual who will read and interpret the diagnostic
300 information and data, including photographs and scans;

301 (f) Diagnostic information and data, including photographs
302 and scans, gathered by the automated equipment is read and
303 interpreted by an optometrist licensed under chapter 463 or a
304 physician skilled in diseases of the human eye and licensed
305 under chapter 458 or chapter 459; and

306 (g) The owner or lessee of the automated equipment
307 maintains liability insurance in an amount adequate to cover
308 claims made by individuals diagnosed or treated based on
309 information and data, including photographs and scans, generated
310 by the automated equipment.

311 (2) A prescription for spectacles or contact lens may not
312 be made based on telemedicine services or based solely on the
313 refractive error of the human eye generated by a computer-
314 controlled device such as an autorefractor.

315 Section 6. Section 456.4506, Florida Statutes, is created
316 to read:

317 456.4506 Telemedicine services under Medicaid.-

318 (1) The Agency for Health Care Administration shall
319 reimburse for Medicaid services provided through telemedicine in

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320 the same manner and equivalent to Medicaid services provided in
321 person under parts III and IV of chapter 409, except as provided
322 in subsection (7).

323 (2) Telemedicine services reimbursed under Medicaid must
324 meet the standards and requirements of this act.

325 (3) Except as provided in subsection (7), the agency may
326 not require in-person contact between a telemedicine provider
327 and Medicaid recipient as a prerequisite for payment for
328 services appropriately provided through telemedicine in
329 accordance with generally accepted health care practices and
330 standards prevailing in the applicable health care community at
331 the time the services are provided.

332 (4) Before receipt of telemedicine services, a Medicaid
333 recipient or the legal representative of a Medicaid recipient
334 must provide informed consent for telemedicine services. A
335 Medicaid recipient shall also be provided the opportunity to
336 receive the same service through an in-person encounter.

337 (5) A Medicaid service that is provided through a fee-for-
338 service or managed care program may not be denied as a
339 creditable Medicaid service solely because that service is
340 provided through telemedicine.

341 (6) Reimbursement of telemedicine services under Medicaid
342 shall be the amount negotiated between the parties involved to
343 the extent permitted under state and federal law. Regardless of
344 the reimbursement methodology or amount, telemedicine providers
345 located at the originating site and the distant site should both
346 receive reimbursement based on the services rendered, if any,
347 during the telemedicine encounter.

348 (7) If, after implementation, the agency determines that

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349 the delivery of a particular service through telemedicine is not
350 cost-effective or does not adequately meet the clinical needs of
351 recipients and the determination has been documented, the agency
352 may discontinue Medicaid reimbursement for that telemedicine
353 service.

354 (8) The agency shall submit a report on the usage and
355 costs, including savings, if any, associated with the provision
356 of health care services through telemedicine under the Medicaid
357 program by January 1, 2017, to the President of the Senate, the
358 Speaker of the House of Representatives, and the minority
359 leaders of the Senate and the House of Representatives.

360 (9) This section is repealed June 30, 2017.

361 Section 7. This act shall take effect October 1, 2014.