

By the Committee on Appropriations; and Senator Harrell

576-04600-19

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1 A bill to be entitled
2 An act relating to telehealth; creating s. 456.47,
3 F.S.; defining terms; establishing standards of
4 practice for telehealth providers; authorizing
5 telehealth providers to use telehealth to perform
6 patient evaluations; authorizing certain telehealth
7 providers to use telehealth to prescribe certain
8 controlled substances under specified circumstances;
9 providing that a nonphysician telehealth provider
10 using telehealth and acting within his or her relevant
11 scope of practice is not deemed to be practicing
12 medicine without a license; providing recordkeeping
13 requirements for telehealth providers; providing
14 registration requirements for out-of-state telehealth
15 providers; requiring the Department of Health to
16 publish certain information on its website;
17 authorizing a board, or the department if there is no
18 board, to take disciplinary action against a
19 telehealth provider under certain circumstances;
20 providing venue; providing exemptions from telehealth
21 registration requirements; authorizing the applicable
22 board, or the department if there is no board, to
23 adopt rules; creating s. 627.42396, F.S.; prohibiting
24 a contract between a certain health insurer and a
25 telehealth provider from requiring the telehealth
26 provider to be reimbursed at lesser amount than if the
27 service were provided in person; amending s. 641.31,
28 F.S.; prohibiting a contract between a certain health
29 maintenance organization and a telehealth provider

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30 from requiring the telehealth provider to be
31 reimbursed at lesser amount than if the service were
32 provided in-person; requiring the department to
33 annually review the amount of certain collected fees
34 and make a determination relating to the sufficiency
35 of funding to implement specified telehealth
36 provisions; upon making a certain determination,
37 requiring the department to indicate insufficient
38 funding and recommend fee adjustments in its annual
39 legislative budget request; providing an
40 appropriation; authorizing positions; providing
41 effective dates.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Section 456.47, Florida Statutes, is created to
46 read:

47 456.47 Use of telehealth to provide services.—

48 (1) DEFINITIONS.—As used in this section, the term:

49 (a) "Telehealth" means the use of synchronous or
50 asynchronous telecommunications technology by a telehealth
51 provider to provide health care services, including, but not
52 limited to, assessment, diagnosis, consultation, treatment, and
53 monitoring of a patient; transfer of medical data; patient and
54 professional health-related education; public health services;
55 and health administration. The term does not include audio-only
56 telephone calls, e-mail messages, or facsimile transmissions.

57 (b) "Telehealth provider" means any individual who provides
58 health care and related services using telehealth and who is

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59 licensed or certified under s. 393.17; part III of chapter 401;
60 chapter 457; chapter 458; chapter 459; chapter 460; chapter 461;
61 chapter 463; chapter 464; chapter 465; chapter 466; chapter 467;
62 part I, part III, part IV, part V, part X, part XIII, or part
63 XIV of chapter 468; chapter 478; chapter 480; part II or part
64 III of chapter 483; chapter 484; chapter 486; chapter 490; or
65 chapter 491; who is licensed under a multi-state health care
66 licensure compact of which Florida is a member state; or who is
67 registered under and complies with subsection (4).

68 (2) PRACTICE STANDARDS.—

69 (a) A telehealth provider has the duty to practice in a
70 manner consistent with his or her scope of practice and the
71 prevailing professional standard of practice for a health care
72 professional who provides in-person health care services to
73 patients in this state.

74 (b) A telehealth provider may use telehealth to perform a
75 patient evaluation. If a telehealth provider conducts a patient
76 evaluation sufficient to diagnose and treat the patient, the
77 telehealth provider is not required to research a patient's
78 medical history or conduct a physical examination of the patient
79 before using telehealth to provide health care services to the
80 patient.

81 (c) A telehealth provider may not use telehealth to
82 prescribe a controlled substance unless the controlled substance
83 is prescribed for the following:

- 84 1. The treatment of a psychiatric disorder;
- 85 2. Inpatient treatment at a hospital licensed under chapter
86 395;
- 87 3. The treatment of a patient receiving hospice services as

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88 defined in s. 400.601; or

89 4. The treatment of a resident of a nursing home facility
90 as defined in s. 400.021.

91 (d) A telehealth provider and a patient may be in separate
92 locations when telehealth is used to provide health care
93 services to a patient.

94 (e) A nonphysician telehealth provider using telehealth and
95 acting within his or her relevant scope of practice, as
96 established by Florida law or rule, is not in violation of s.
97 458.327(1)(a) or s. 459.013(1)(a).

98 (3) RECORDS.—A telehealth provider shall document in the
99 patient's medical record the health care services rendered using
100 telehealth according to the same standard as used for in-person
101 services. Medical records, including video, audio, electronic,
102 or other records generated as a result of providing such
103 services, are confidential pursuant to ss. 395.3025(4) and
104 456.057.

105 (4) REGISTRATION OF OUT-OF-STATE TELEHEALTH PROVIDERS.—

106 (a) A health care professional not licensed in this state
107 may provide health care services to a patient located in this
108 state using telehealth if the health care professional registers
109 with the applicable board, or the department if there is no
110 board, and provides health care services within the applicable
111 scope of practice established by Florida law or rule.

112 (b) The board, or the department if there is no board,
113 shall register a health care professional not licensed in this
114 state as a telehealth provider if the health care professional:

115 1. Completes an application in the format prescribed by the
116 department;

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117 2. Is licensed with an active, unencumbered license that is
118 issued by another state, the District of Columbia, or a
119 possession or territory of the United States and that is
120 substantially similar to a license issued to a Florida-licensed
121 provider specified in paragraph (1) (b);

122 3. Has not been the subject of disciplinary action relating
123 to his or her license during the 5-year period immediately prior
124 to the submission of the application;

125 4. Designates a duly appointed registered agent for service
126 of process in this state on a form prescribed by the department;
127 and

128 5. Demonstrates to the board, or the department if there is
129 no board, that he or she is in compliance with paragraph (e).

130
131 The department shall use the National Practitioner Data Bank to
132 verify the information submitted under this paragraph, as
133 applicable.

134 (c) The website of a telehealth provider registered under
135 paragraph (b) must prominently display a hyperlink to the
136 department's website containing information required under
137 paragraph (h).

138 (d) A health care professional may not register under this
139 subsection if his or her license to provide health care services
140 is subject to a pending disciplinary investigation or action, or
141 has been revoked in any state or jurisdiction. A health care
142 professional registered under this subsection must notify the
143 appropriate board, or the department if there is no board, of
144 restrictions placed on his or her license to practice, or any
145 disciplinary action taken or pending against him or her, in any

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146 state or jurisdiction. The notification must be provided within
147 5 business days after the restriction is placed or disciplinary
148 action is initiated or taken.

149 (e) A provider registered under this subsection shall
150 maintain professional liability coverage or financial
151 responsibility, that includes coverage or financial
152 responsibility for telehealth services provided to patients not
153 located in the provider's home state, in an amount equal to or
154 greater than the requirements for a licensed practitioner under
155 s. 456.048, s. 458.320, or s. 459.0085, as applicable.

156 (f) A health care professional registered under this
157 subsection may not open an office in this state and may not
158 provide in-person health care services to patients located in
159 this state.

160 (g) A pharmacist registered under this subsection may only
161 use a pharmacy permitted under chapter 465, a nonresident
162 pharmacy registered under s. 465.0156, or a nonresident pharmacy
163 or outsourcing facility holding an active permit pursuant to s.
164 465.0158 to dispense medicinal drugs to patients located in this
165 state.

166 (h) The department shall publish on its website a list of
167 all registrants and include, to the extent applicable, each
168 registrant's:

169 1. Name.

170 2. Health care occupation.

171 3. Completed health care training and education, including
172 completion dates and any certificates or degrees obtained.

173 4. Out-of-state health care license with the license
174 number.

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175 5. Florida telehealth provider registration number.

176 6. Specialty.

177 7. Board certification.

178 8. Five-year disciplinary history, including sanctions and
179 board actions.

180 9. Medical malpractice insurance provider and policy
181 limits, including whether the policy covers claims that arise in
182 this state.

183 10. The name and address of the registered agent designated
184 for service of process in this state.

185 (i) The board, or the department if there is no board, may
186 take disciplinary action against an out-of-state telehealth
187 provider registered under this subsection if the registrant:

188 1. Fails to notify the applicable board, or the department
189 if there is no board, of any adverse actions taken against his
190 or her license as required under paragraph (d).

191 2. Has restrictions placed on or disciplinary action taken
192 against his or her license in any state or jurisdiction.

193 3. Violates any of the requirements of this section.

194 4. Commits any act that constitutes grounds for
195 disciplinary action under s. 456.072(1) or the applicable
196 practice act for Florida-licensed providers.

197
198 Disciplinary action taken by a board, or the department if there
199 is no board, under this paragraph may include suspension or
200 revocation of the provider's registration or the issuance of a
201 reprimand or letter of concern. A suspension may be accompanied
202 by a corrective action plan as determined by the board, or the
203 department if there is no board, the completion of which may

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204 lead to the suspended registration being reinstated according to
205 rules adopted by the board, or the department if there is no
206 board.

207 (5) VENUE.—For the purposes of this section, any act that
208 constitutes the delivery of health care services is deemed to
209 occur at the place where the patient is located at the time the
210 act is performed or in the patient’s county of residence. Venue
211 for a civil or administrative action initiated by the
212 department, the appropriate board, or a patient who receives
213 telehealth services from an out-of-state telehealth provider may
214 be located in the patient’s county of residence or in Leon
215 County.

216 (6) EXEMPTIONS.—A health care professional who is not
217 licensed to provide health care services in this state but who
218 holds an active license to provide health care services in
219 another state or jurisdiction, and who provides health care
220 services using telehealth to a patient located in this state, is
221 not subject to the registration requirement under this section
222 if the services are provided:

223 (a) In response to an emergency medical condition as
224 defined in s. 395.002; or

225 (b) In consultation with a health care professional
226 licensed in this state who has ultimate authority over the
227 diagnosis and care of the patient.

228 (7) RULEMAKING.—The applicable board, or the department if
229 there is no board, may adopt rules to administer this section.

230 Section 2. Effective January 1, 2020, section 627.42396,
231 Florida Statutes, is created to read:

232 627.42396 Reimbursement for telehealth services.—A contract

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233 between a health insurer issuing major medical comprehensive
234 coverage through an individual or group policy and a telehealth
235 provider, as defined in s. 456.47, may not require the provider
236 be reimbursed for a covered service provided through telehealth
237 in an amount less than the reimbursement the insurer would pay
238 if the service were delivered through an in-person encounter.

239 Section 3. Effective January 1, 2020, subsection (45) is
240 added to section 641.31, Florida Statutes, to read:

241 641.31 Health maintenance contracts.—

242 (45) A contract between a health maintenance organization
243 issuing major medical individual or group coverage and a
244 telehealth provider, as defined in s. 456.47, may not require
245 the provider be reimbursed for a covered service provided
246 through telehealth in an amount less than the reimbursement the
247 health maintenance organization would pay if the service were
248 delivered through an in-person encounter.

249 Section 4. Effective July 1, 2020, the Department of Health
250 shall annually review the amount of any fees collected under
251 section 456.47, Florida Statutes, in the prior fiscal year and
252 shall determine whether such fees are sufficient to enable the
253 department and the boards, as defined in section 456.001,
254 Florida Statutes, to fully implement section 456.47, Florida
255 Statutes. If the department determines that the fees collected
256 are insufficient, the department shall so indicate to the
257 Legislature in its annual legislative budget request and shall
258 recommend appropriate adjustments to the applicable fees.

259 Section 5. For fiscal year 2019-2020, the sums of \$261,389
260 in recurring funds and \$15,020 in nonrecurring funds from the
261 Medical Quality Assurance Trust Fund are appropriated to the

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262 Department of Health, and four full-time equivalent positions
263 with associated salary rate of 145,870 are authorized for the
264 purpose of implementing s. 456.47, Florida Statutes, as created
265 by this act.

266 Section 6. Except as otherwise provided, this act shall
267 take effect July 1, 2019.

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