

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, February 18, 2014
TIME: 2:00 —4:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Bean, Chair; Senator Sobel, Vice Chair; Senators Brandes, Braynon, Flores, Galvano, Garcia, Grimsley, and Joyner

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 670 Thrasher (Compare H 569)	Nursing Home Litigation; Providing that a nursing home resident who alleges negligence or a violation of residents' rights has a cause of action against the nursing home licensee or its management company and the licensee's direct caregiver employees; providing that a claim for punitive damages may not be brought unless there is a showing of admissible evidence submitted by the parties which provides a reasonable basis for recovery of punitive damages when certain criteria are applied, etc. HP 02/11/2014 Temporarily Postponed HP 02/18/2014 Fav/CS JU RC	Fav/CS Yeas 8 Nays 1
2	SB 260 Latvala (Identical H 203)	Unaccompanied Youth; Authorizing certain unaccompanied youths to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment for themselves and for their children in certain circumstances; providing that such consent does not affect the requirements of the Parental Notice of Abortion Act, etc. CF 02/04/2014 Favorable HP 02/18/2014 Favorable JU	Favorable Yeas 9 Nays 0
3	SB 694 Garcia (Identical H 437)	Diabetes Advisory Council; Requiring the council, in conjunction with the Department of Health, the Agency for Health Care Administration, and the Department of Management Services, to develop plans to manage, treat, and prevent diabetes; requiring a report to the Governor and Legislature; providing for contents of the report, etc. HP 02/18/2014 Favorable GO AHS AP	Favorable Yeas 9 Nays 0

Consideration of proposed committee bill:

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Tuesday, February 18, 2014, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7028	Telemedicine; Citing this act as the "Florida Telemedicine Act"; creating licensure and registration requirements; providing health insurer and health plan reimbursement requirements for telemedicine; providing requirements for reimbursement of telemedicine services under the Medicaid program, etc.	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 670

INTRODUCER: Health Policy Committee and Senator Thrasher

SUBJECT: Nursing Home Litigation

DATE: February 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 670 amends statutory provisions relating to civil causes of action against nursing homes and the release of nursing home resident records and establishes provisions to help ensure timely payment of adverse final judgments. The bill:

- Limits the class of persons who may be sued in the initial pleading for negligence or a violation of a nursing home resident's rights to only the nursing home licensee and its management or consulting company, managing employees, and direct caregivers, whether employees or contracted. A passive investor is shielded from liability. Definitions are provided for these individuals or entities.
- Requires the court to hold a hearing on a motion for leave to amend the initial pleading before other parties may be sued.
- Makes these provisions of law the exclusive remedy against a nursing home licensee, its management or consulting company, managing employees, and direct caregivers for a cause of action alleging direct or vicarious liability for the recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.
- Specifies when the claimant must elect either survival damages or wrongful death damages, which is after the verdict but before the judgment is entered.
- Requires certain proposed amended pleadings to related back to the original pleading.
- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed.

- Requires payment of a judgment within 60 days, unless agreed otherwise, or the nursing home is subject to licensure sanction by the Agency for Health Care Administration (AHCA or Agency).
- Revises provisions relating to the release of a nursing home resident's records.

II. Present Situation:

“Nursing Homes and Related Health Care Facilities” is the subject of ch. 400, F.S. Part I of ch. 400, F.S., establishes the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local long-term care ombudsman councils. Part II of ch. 400, F.S., provides for the regulation of nursing homes, and part III of ch. 400, F.S., provides for the regulation of home health agencies.

The Agency for Health Care Administration (AHCA) is charged with the responsibility of developing rules related to the operation of nursing homes. Section 400.022, F.S., specifies the rights and responsibilities of nursing home residents. Section 400.023, F.S., creates a statutory cause of action against nursing homes that violate the statutory rights of residents. The action may be brought in any court to enforce the resident's rights and to recover actual and punitive damages for any violation of a resident's statutory rights or for negligence.¹ Prevailing plaintiffs may be entitled to recover reasonable attorney fees plus costs of the action along with actual and punitive damages.²

Sections 400.023- 400.0238, F.S., provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights. A claim for punitive damages is not permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.³ A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence as defined in s. 400.0237(2), F.S.⁴

In the case of an employer, principal, corporation, or other entity, punitive damages may be imposed for conduct of an employee or agent only for intentional misconduct or gross negligence which is proven by clear and convincing evidence, and if the employer actively and knowingly participated in the conduct, ratified or consented to the conduct, or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.⁵

Named Defendants and Causes of Action in Nursing Home Cases

Section 400.023, F.S., provides that “any resident whose rights as specified in this part are violated shall have a cause of action.” However, the section does not indicate who may be named

¹ Sections 400.023 and 400.0237, F.S.

² *Id.*

³ Section 400.0237(1), F.S.

⁴ Section 400.0237(2), F.S.

⁵ Section 400.0237(3), F.S.

as a defendant. Current law in ss. 400.023- 400.0238, F.S., provides the exclusive remedy for a cause of action for personal injury or death of a nursing home resident or a violation of the resident's rights statute. Current law further provides that s. 400.023, F.S., "does not preclude theories of recovery not arising out of negligence or s. 400.022[, F.S.,] which are available to the resident or to the [A]gency."

Liability of Employees, Officers, Directors, or Owners

In *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825 (Fla. 2d DCA 2004), the court considered whether the managing member of a limited liability company could be held personally liable for damages suffered by a resident in a nursing home. The claimant argued the managing member, Friedbauer, could be held liable.

[The claimant] argues that the concept of piercing the corporate veil does not apply in the case of a tort, and that it presented sufficient evidence of Friedbauer's negligence, by act or omission, for the jury to reasonably conclude that Friedbauer caused harm to Canavan. [The claimant] argues that Friedbauer had the responsibility of approving the budget for the nursing home. He also functioned as the sole member of the "governing body" of the nursing home, and pursuant to federal regulation 42 C.F.R. § 483.75(d) 2002, the governing body is legally responsible for establishing and implementing policies regarding the management and operation of the facility and for appointing the administrator who is responsible for the management of the facility. Friedbauer was thus required by federal mandate to create, approve, and implement the facility's policies and procedures. Because he ignored complaints of inadequate staffing while cutting the operating expenses, and because the problems Canavan suffered, pressure sores, infections, poor hygiene, malnutrition and dehydration, were the direct result of understaffing, [The claimant] argues that a reasonable jury could have found that Friedbauer's elevation of profit over patient care was negligent.⁶

The trial court granted a directed verdict in favor of Friedbauer, finding that there was no basis upon which a corporate officer could be held liable. On appeal, the district court reversed:

We conclude that the trial court erred in granting the directed verdict because there was evidence by which the jury could have found that Friedbauer's negligence in ignoring the documented problems at the facility contributed to the harm suffered by Canavan. This was not a case in which the plaintiffs were required to pierce the corporate veil in order to establish individual liability because Friedbauer's alleged negligence constituted tortious conduct, which is not shielded from individual liability. We, therefore, reverse the order granting the directed verdict and remand for a new trial against Friedbauer.⁷

⁶ *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825, 826 (Fla. 2d DCA 1994).

⁷ *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825, 826-827 (Fla. 2d DCA 1994)(citations omitted). One author has criticized the *Canavan* decision as "arguably an example of personal liability founded on business decisions

Elements in a Civil Action Under s. 400.023, F.S.

Section 400.023(2), F.S., provides that in any claim alleging a violation of a resident's rights or alleging that negligence caused injury to or the death of a resident, the claimant must prove, by a preponderance of the evidence:

- The defendant owed a duty to the resident;
- The defendant breached the duty to the resident;
- The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- The resident sustained loss, injury, death, or damage as a result of the breach.

The Florida Supreme Court has set forth the elements of a negligence action:

1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the [defendant's] part to conform to the standard required: a breach of the duty....
3. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.
4. Actual loss or damage....⁸

Current law provides in any claim brought pursuant to s. 400.023, F.S., a licensee, person, or entity has the duty to exercise "reasonable care" and nurses⁹ have the duty to exercise care "consistent with the prevailing professional standard of care."¹⁰

Punitive Damages

Current law provides for recovery of punitive damages by a claimant. Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."¹¹ Punitive damages are generally

normally protected by the 'business judgment rule,' which immunizes directors' business decisions from claims founded on simple negligence." Christopher A. Cazin, *Personal Liability Exposure for Nursing Home Operators: Canavan's Encroachment on the Business Judgment Rule*, 85 FLA. B.J. 46, 46 (May 2011). "Under the [business judgment rule], a company's directors are given liberal discretion to make management and policy decisions, and a court should not substitute its judgment for that of the directors." *Id.* (citing *Lobato-Bleidt v. Lobato*, 668 So. 2d 431, 434 (Fla. 5th DCA 1997)).

⁸ *United States v. Stevens*, 994 So. 2d 1062, 1065-66 (Fla. 2008).

⁹ "The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses." s. 400.023(4), F.S.

¹⁰ See s. 400.023(3) and (4), F.S.

¹¹ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

limited to three times the amount of compensatory damages or \$1 million, whichever is greater.¹² Damages can exceed \$1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.¹³ If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.¹⁴

Evidentiary Requirements to Bring a Punitive Damages Claim

Section 400.0237(1), F.S., provides:

In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

A court discussed how a claimant can make a proffer to assert a punitive damages claim:

[A] 'proffer' according to traditional notions of the term, connotes merely an 'offer' of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.^{15, 16}

¹² See s. 400.0238(1)(a), F.S.

¹³ See s. 400.0238(1)(b), F.S.

¹⁴ See s. 400.0238(1)(c), F.S.

¹⁵ *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).

¹⁶ The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.

Punitive damages claims are often raised after the initial complaint has been filed. Once a claimant discovers enough evidence that the claimant believes justifies a punitive damages claim, the claimant files a motion to amend the complaint to add a punitive damages action. Current law provides that the rules of civil procedure are to be liberally construed to allow the claimant discovery of admissible evidence on the issue of punitive damages. The trial judge considers the evidence presented and proffered by the claimant to determine whether the claim should proceed.

Individual Liability for Punitive Damages

Section 400.0237(2), F.S., provides:

A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct¹⁷ or gross negligence.¹⁸

Vicarious Liability for Punitive Damages

Punitive damages claims are sometimes brought under a theory of vicarious liability where an employer is held responsible for the acts of an employee. Section 400.0273(3), F.S., provides:

In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2)¹⁹ and:

- (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or
- (c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

III. Effect of Proposed Changes:

Section 1 amends s. 400.023, F.S., as follows:

Named Defendants in Nursing Home Cases

The bill provides that any claimant who alleges negligence or a violation of nursing home resident's rights for personal injury or death of a nursing home resident has a cause of action

¹⁷ "Intentional misconduct" is actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant will result and, despite that knowledge, intentionally pursuing a course of conduct that results in injury or damage. *See* s. 400.0237(2)(a), F.S.

¹⁸ "Gross negligence" is conduct that is so reckless or wanting in care such that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. *See* s. 400.0237(2)(b), F.S.

¹⁹ Criteria are whether the defendant was personally guilty of intentional misconduct or gross negligence.

against the licensee, the licensee's management company or consulting company, the licensee's managing employees, and any direct caregivers, whether they are employees or contractors. In effect, the bill limits the persons who may be sued in the initial pleading to only these categories of defendants without a preliminary hearing to determine whether there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that the elements of liability exist for other parties.

The bill defines "licensee," "management or consulting company," and "passive investor." A passive investor is an individual or entity that does not participate in the decisionmaking or operations of a facility. A passive investor is shielded from liability in a cause of action for damages for the personal injury or death of a nursing home resident due to negligence or a violation of residents' rights.

Liability of those Other than a Nursing Home Licensee, Management or Consulting Company, Managing Employee, or Direct Caregiver

As a prerequisite to asserting a claim against a party who is not a licensee, management or consulting company, managing employee or direct caregiver, a claimant must file a motion for leave to amend the initial pleading. The court, or an arbitration panel if applicable, will hold a hearing to determine if there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that the individual or entity owed a duty of reasonable care to the resident, the individual or entity breached that duty, and that breach is a legal cause of loss, injury, or damage to, or death of the resident.

The proposed amended pleading, if it asserts that the cause of action arose out of the conduct, transaction, or occurrence as alleged in the initial pleading, must relate back to the original pleading. This is a legal doctrine²⁰ that requires the original pleading to give fair notice of the general fact situation out of which the claim or defense arises and allows amendments to relate back even though the statute of limitations has since expired.

Causes of Action in Nursing Home Cases

Under current law, s. 400.023, F.S., states that "any resident whose rights as specified in this part are violated shall have a cause of action." An aggrieved nursing home resident may sue under the statute,²¹ and may sue under other appropriate legal theories. A remedy created by statute may only supplant other statutory and common law remedies if the statute specifically states that it is an exclusive remedy.²² Section 400.023, F.S., is not an exclusive remedy statute.²³

The bill amends s. 400.023, F.S., to establish an exclusive remedy for a cause of action claiming direct or vicarious liability against a nursing home licensee, a management or consulting company, managing employees, or direct caregivers for recovery of personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.

²⁰ Florida Rule of Civil Procedure 1.190(c).

²¹ Section 400.023, F.S.

²² *St. Angelo v. Healthcare and Retirement Corp. of America*, 824 So. 2d 997, 999 (Fla. 4th DCA 2002).

²³ "Appellant has sufficiently alleged violations of right which are guaranteed him under section 400.022[, F.S.]. Nothing in the statute precludes this lawsuit or requires appellant to first bring a simple negligence action." *Id.* at 1000.

Section 2 amends s. 400.0237, F.S.

Evidentiary Requirements to Bring a Punitive Damages Claim

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill requires the court to conduct an evidentiary hearing where both sides present evidence. The judge must determine whether there is sufficient admissible evidence to ensure that there is a reasonable basis to believe that the claimant can demonstrate at trial, by clear and convincing evidence, that the recovery of punitive damages is warranted under a claim for direct or vicarious liability.

Current law does not require a showing of admissibility at this stage of the proceedings or authorize the claimant and defendant to present evidence before a judge authorizes a claim for punitive damages. Current law contemplates that the claimant will proffer evidence and the court, considering the proffer in the light most favorable to the claimant, will determine whether reasonable basis exists to allow the claimant's punitive damages case to proceed.²⁴ Under the bill, the claimant may not proceed with discovery on the defendant's net worth until after the trial judge approves the pleading on punitive damages.

Individual Liability for Punitive Damages

The bill provides that a defendant against whom punitive damages is sought, may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that "a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant."

The current law and standard jury instructions provide for punitive damages if the defendant was "personally guilty of intentional misconduct."²⁵ The bill requires that the defendant "actively and knowingly participated in intentional misconduct," instead.

Vicarious Liability for Punitive Damages

The bill provides that in the case of vicarious liability of an individual, employer, principal, corporation, or other legal entity, punitive damages may not be imposed for the conduct of an employee or agent unless:

- An identified employee or agent actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence, and that conduct contributed to the loss, damages, or injury suffered by the claimant; and,
- An officer, director, or manager of the actual employer, corporation, or legal entity condoned, ratified, or consented to the specific conduct alleged.

²⁴ See *Estate of Despain*, *supra*, note 16.

²⁵ Standard Jury Instructions in Civil Cases, 503.1, Punitive Damages - Bifurcated Procedure *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500 (last visited Feb. 19, 2014).

Section 3 creates s. 400.024, F.S.

Satisfying a Judgment or Settlement Agreement

The bill provides that when an adverse judgment that arises from a court award, arbitration award, or settlement agreement relating to a claim of negligence or violation of residents' rights against a licensee is final, the licensee must pay the judgment creditor the entire amount of the judgment and all accrued interest within 60 days, unless otherwise mutually agreed to in writing by the parties. This requirement applies to an adverse final judgment from a claim in contract or tort. If the licensee does not do so, the Agency may suspend the nursing home's license, deny a license renewal application, or deny a change of ownership application.

The bill outlines the procedures the Agency must follow upon notification of the existence of an unsatisfied judgment or settlement. The Agency must notify the licensee that within 30 days after receipt of the notification the licensee is subject to disciplinary action unless it provides the Agency with proof of compliance with one of five conditions pertaining to the judgment or settlement. The five conditions are:

- The judgment or settlement has been paid;
- A mutually agreed upon payment plan exists;
- A notice of appeal has been timely filed;
- A court order staying execution of the final judgment exists; or
- The court or arbitration panel that is overseeing the action documents that the licensee is seeking indemnification from an insurance carrier or other party that may be required to pay the award.

If the licensee fails to provide proof of one of the five conditions within the 30 days, the Agency must issue an emergency order finding that the nursing home facility lacks financial ability to operate and that the agency is in the process of suspending the facility's license. Following or during the period of suspension, a controlling interest in that facility may not seek licensure for the facility at issue. Additionally, if the judgment results from a trial or arbitration, the Agency may not approve a change of ownership until one of the five conditions is met with respect to the judgment.

Section 4 amends s. 400.145, F.S.

Release of a resident's records

This section of law is substantially reworded to comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and to provide for release of a deceased resident's medical records.

Upon receipt of a written request that complies with HIPAA or this section of law, a nursing home must provide to a competent resident or to a resident's representative who is authorized to make requests for the resident's records copies of medical records and records concerning the

care and treatment of the resident performed by the facility. However, progress notes and consultation report sections of a psychiatric nature may not be released.

The bill requires the nursing home to provide the requested records within 14 working days after receipt of a request relating to a current resident or within 30 working days after receipt of a request relating to a former resident. Current law requires a nursing home to release requested records pertaining to a current resident within 7 working days after receipt of a written request and within 10 working days after receipt of a written request pertaining to a former resident.

The bill identifies to whom and under what circumstances medical records relating to a deceased resident may be released. The list is presented in the order of priority, as follows:

- A court appointed personal representative, executor, administrator, or temporary administrator of the deceased resident's estate, upon submission of a copy of the court order.
- If a judicial appointment has not been made, a person designated in the deceased resident's legally valid will to act as his or her representative, upon submission of a copy of the will.
- If a judicial appointment or person designated by will is not available, the following individuals may request the medical records upon submission of a letter from the person's attorney verifying the relationship to the deceased resident:
 - A surviving spouse.
 - A surviving child of the resident if there is no spouse.
 - A parent of the resident if there is no spouse or child.

The bill authorizes a nursing home to refuse to release records to the resident if it would be detrimental to the physical or mental health of the resident. However, the nursing home must provide the records to another medical provider if requested to do so by the resident.

A nursing home is granted immunity from criminal or civil laws and is not civilly liable to the resident or other persons for any damages resulting from release of the medical records if the nursing home relies on this section of law and releases the records in good faith. The agency may not cite a nursing home through the survey process for noncompliance with the requirements of this section of law.

The bill restates current law with respect to the fees a nursing home may charge for copies of the records and allowing an authorized person to examine original records on site. The fees may not exceed \$1 per page for the first 25 pages and 25 cents for each additional page. As in current law, the bill provides that a nursing home is not required to provide copies of requested records more frequently than once per month, except that copies of physician reports must be released as often as necessary to allow the effective monitoring of the resident's condition.

Section 5 creates an unnumbered section of law to apply the amendments to ss. 400.023 and 400.0237, F.S., to causes of action accruing on or after the effective date of this act.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Agency will incur administrative and legal costs to notify nursing homes that have not satisfied adverse final judgments or terms of a settlement agreement and then for pursuing emergency suspension and final suspension of the nursing home's license if the statutory conditions are not met. An Agency analysis has not been received yet so the cost is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 of the bill, creating s. 400.024, F.S., may need to address additional procedural matters, including but not limited to, abatement of suspension actions or other sanctions if conditions such as those enumerated in subsection (2) occur.

On line 322 in section 4 of the bill, amending s. 400.145, F.S., the bill authorizes a nursing home to furnish records to a competent resident or to a representative of *that* resident who is authorized to make requests for the resident's records. This appears to limit release of resident records to a resident or his or her representative when the resident is competent. The bill is silent regarding release of a resident's records to his or her representative when the resident is not competent.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.023, 400.0237, and 400.145.

This bill creates section 400.024 of the Florida Statutes.

The bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 18, 2014:

- Clarifies that the exclusive cause of action for negligence or a violation of residents' rights relates to claims arising from either direct or vicarious liability.
- Sets the timeframe for electing survival damages or wrongful death damages.
- Specified parties who may be sued in original pleading:
 - Adds two more categories of defendants to include the licensee's consulting company and the licensee's managing employees and clarifies that the defendants may be either employees or contractors.
 - Shields a passive investor from liability.
 - Defines "licensee," "management or consulting company," and "passive investor."
- Hearing to sue non-specified parties:
 - Changes the type of hearing to a "motion for leave to amend hearing" instead of an "evidentiary hearing."
 - Includes an arbitration panel, in addition to the court, as a body that may determine whether the requirements are met to sue non-specified parties.
 - Rather than a finding of sufficient evidence to establish a reasonable basis for duty, breach, and causation; there is a determination of sufficient evidence to establish a reasonable showing of duty, breach, and causation.
 - Requires that a proposed amended pleading that asserts the cause of action arose out of the conduct, transaction, or occurrence set forth in the original pleading must relate back to the original pleading.
- Punitive Damages:
 - Clarifies that the hearing to determine whether the evidentiary requirements have been met to amend the complaint to include a claim for punitive damages applies to both a claim for direct liability and vicarious liability.
 - Reinstates current law that the rules of civil procedures shall be liberally construed to allow discovery to support the issue of punitive damages.
 - No longer prohibits using the state or federal survey report to establish an entitlement to punitive damages.

- Requires the payment of the judgment, arbitration award, or settlement agreement to occur within 60 days after it becomes final, unless otherwise agreed and provides administrative procedures for sanctions by the AHCA.
- Revises provisions relating to the release of a resident's records to comply with HIPAA; increases the timeframe for producing the records; specifies who and under what conditions a person may get a deceased resident's medical records; authorizes a nursing home to refuse to release records to the resident under certain conditions; provides immunity for good faith compliance with this section of law; and precludes the AHCA from citing a nursing home for noncompliance.
- Provides that the amendments made to the civil enforcement and punitive damages sections of law apply to causes of action accruing on or after the date the act becomes a law.

B. Amendments:

None.



441096

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2014	.	
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The Committee on Health Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 400.023, Florida Statutes, is amended to
read:

400.023 Civil enforcement.—

(1) An exclusive cause of action for negligence or a
violation of residents' ~~Any resident whose~~ rights as specified
under ~~in~~ this part which alleges direct or vicarious liability



441096

11 for the personal injury or death of a nursing home resident
12 arising from such negligence or violation of rights and which
13 seeks damages for such injury or death may be brought against
14 the licensee, the licensee's management or consulting company,
15 the licensee's managing employees, and any direct caregivers,
16 whether employees or contractors are violated shall have a cause
17 of action. A passive investor is not liable under this section.
18 An action against any other individual or entity may be brought
19 only pursuant to subsection (3).

20 (a) The action may be brought by the resident or his or her
21 guardian, by a person or organization acting on behalf of a
22 resident with the consent of the resident or his or her
23 guardian, or by the personal representative of the estate of a
24 deceased resident regardless of the cause of death.

25 (b) If the action alleges a claim for the resident's rights
26 or for negligence that caused the death of the resident, the
27 claimant shall, after the verdict, but before the judgment is
28 entered, be required to elect either survival damages pursuant
29 to s. 46.021 or wrongful death damages pursuant to s. 768.21. If
30 the action alleges a claim for the resident's rights or for
31 negligence that did not cause the death of the resident, the
32 personal representative of the estate may recover damages for
33 the negligence that caused injury to the resident.

34 (c) The action may be brought in any court of competent
35 jurisdiction to enforce such rights and to recover actual and
36 punitive damages for the any violation of the rights of a
37 resident or for negligence.

38 (d) A Any resident who prevails in seeking injunctive
39 relief or ~~a claim for~~ an administrative remedy is entitled to



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40 recover the costs of the action, and a reasonable attorney
41 ~~attorney's~~ fee assessed against the defendant of up to not to
42 ~~exceed~~ \$25,000. Fees shall be awarded solely for the injunctive
43 or administrative relief and not for any claim or action for
44 damages whether such claim or action is brought ~~together~~ with a
45 request for an injunction or administrative relief or as a
46 separate action, except as provided under s. 768.79 or the
47 Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238~~
48 ~~provide the exclusive remedy for a cause of action for recovery~~
49 ~~of damages for the personal injury or death of a nursing home~~
50 ~~resident arising out of negligence or a violation of rights~~
51 ~~specified in s. 400.022.~~

52 (e) This section does not preclude theories of recovery not
53 arising out of negligence or s. 400.022 which are available to a
54 resident or to the agency. ~~The provisions of Chapter 766 does de~~
55 not apply to a any cause of action brought under ss. 400.023-
56 400.0238.

57 (2) As used in this section, the term:

58 (a) "Licensee" means an individual, corporation,
59 partnership, firm, association, governmental entity, or other
60 entity that is issued a permit, registration, certificate, or
61 license by the agency, and that is legally responsible for all
62 aspects of the operation of the nursing home facility.

63 (b) "Management or consulting company" means an individual
64 or entity who contracts with, or receives a fee from a licensee
65 to provide any of the following services for a nursing home
66 facility:

67 1. Hiring or firing of the administrator or director of
68 nursing;



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69 2. Controlling or having control over the staffing levels
70 at the facility;

71 3. Having control over the budget of the facility; or

72 4. Implementing and enforcing the policies and procedures
73 of the facility.

74 (c) "Passive investor" means an individual or entity that
75 does not participate in the decisionmaking or operations of a
76 facility.

77 (3) A cause of action may not be asserted against an
78 individual or entity, other than the licensee, the licensee's
79 management or consulting company, the licensee's managing
80 employees, and any direct caregivers, whether employees or
81 contractors, unless, after a motion for leave to amend hearing,
82 the court or an arbitration panel determines that there is
83 sufficient evidence in the record or proffered by the claimant
84 to establish a reasonable showing that:

85 (a) The individual or entity owed a duty of reasonable care
86 to the resident and the individual or entity breached that duty;
87 and

88 (b) The breach of that duty is a legal cause of loss,
89 injury, or damage to or death of the resident.

90
91 For purposes of this subsection, if, in a proposed amended
92 pleading, it is asserted that such cause of action arose out of
93 the conduct, transaction, or occurrence set forth or attempted
94 to be set forth in the original pleading, the proposed amendment
95 relates back to the original pleading.

96 (4)(2) In a ~~any~~ claim brought pursuant to this part
97 alleging a violation of ~~residents'~~ ~~resident's~~ rights or



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98 negligence causing injury to or the death of a resident, the
99 claimant has ~~shall have~~ the burden of proving, by a
100 preponderance of the evidence, that:

- 101 (a) The defendant owed a duty to the resident;
- 102 (b) The defendant breached the duty to the resident;
- 103 (c) The breach of the duty is a legal cause of loss,
104 injury, death, or damage to the resident; and
- 105 (d) The resident sustained loss, injury, death, or damage
106 as a result of the breach.

107

108 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create
109 strict liability. A violation of the rights set forth in s.
110 400.022, ~~or~~ in any other standard or guidelines specified in
111 this part, or in any applicable administrative standard or
112 guidelines of this state or a federal regulatory agency is ~~shall~~
113 ~~be~~ evidence of negligence but is ~~shall~~ not ~~be~~ considered
114 negligence per se.

115 ~~(5)(3)~~ In a any claim brought pursuant to this section, a
116 licensee, individual person, or entity has ~~shall have~~ a duty to
117 exercise reasonable care. Reasonable care is that degree of care
118 which a reasonably careful licensee, individual person, or
119 entity would use under like circumstances.

120 ~~(6)(4)~~ In a any claim for a residents' ~~resident's~~ rights
121 violation or negligence by a nurse licensed under part I of
122 chapter 464, such nurse has ~~shall have~~ the duty to exercise care
123 consistent with the prevailing professional standard of care for
124 a nurse. The prevailing professional standard of care for a
125 nurse is ~~shall be~~ that level of care, skill, and treatment
126 which, in light of all relevant surrounding circumstances, is



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127 recognized as acceptable and appropriate by reasonably prudent
128 similar nurses.

129 ~~(7)-(5)~~ A licensee is ~~shall~~ not ~~be~~ liable for the medical
130 negligence of a ~~any~~ physician rendering care or treatment to the
131 resident except for the administrative services of a medical
132 director as required under ~~in~~ this part. ~~Nothing in~~ This
133 subsection does not ~~shall be construed to~~ protect a licensee,
134 individual person, or entity from liability for failure to
135 provide a resident with appropriate observation, assessment,
136 nursing diagnosis, planning, intervention, and evaluation of
137 care by nursing staff.

138 ~~(8)-(6)~~ The resident or the resident's legal representative
139 shall serve a copy of a ~~any~~ complaint alleging in whole or in
140 part a violation of any rights specified in this part to the
141 agency ~~for Health Care Administration~~ at the time of filing the
142 initial complaint with the clerk of the court for the county in
143 which the action is pursued. The requirement of providing a copy
144 of the complaint to the agency does not impair the resident's
145 legal rights or ability to seek relief for his or her claim.

146 ~~(9)-(7)~~ An action under this part for a violation of rights
147 or negligence recognized herein is not a claim for medical
148 malpractice, and ~~the provisions of s. 768.21(8)~~ does ~~de~~ not
149 apply to a claim alleging death of the resident.

150 Section 2. Section 400.0237, Florida Statutes, is amended
151 to read:

152 400.0237 Punitive damages; pleading; burden of proof.—

153 (1) A ~~In any action for damages brought under this part, no~~
154 claim for punitive damages may not be brought under this part
155 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by



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156 admissible evidence in the record or proffered by the parties
157 which provides claimant which would provide a reasonable basis
158 for recovery of such damages when the criteria in this section
159 are applied.

160 (a) The claimant may move to amend her or his complaint to
161 assert a claim for punitive damages as allowed by the rules of
162 civil procedure in accordance with evidentiary requirements set
163 forth in this section.

164 (b) The court shall conduct a hearing to determine whether
165 there is sufficient admissible evidence submitted by the parties
166 to ensure that there is a reasonable basis to believe that the
167 claimant, at trial, will be able to demonstrate by clear and
168 convincing evidence that the recovery of such damages is
169 warranted under a claim for direct liability as specified in
170 subsection (2), or a claim for vicarious liability as specified
171 in subsection (3).

172 (c) The rules of civil procedure shall be liberally
173 construed so as to allow the claimant discovery of evidence
174 which appears reasonably calculated to lead to admissible
175 evidence on the issue of punitive damages. ~~No~~ Discovery of
176 financial worth may not shall proceed until ~~after~~ the pleading
177 on concerning punitive damages is approved by the court
178 permitted.

179 (2) A defendant may be held liable for punitive damages
180 only if the trier of fact, by based on clear and convincing
181 evidence, finds that a specific person or corporate defendant
182 actively and knowingly participated in intentional misconduct or
183 engaged in conduct that constitutes gross negligence and
184 contributed to the loss, damages, or injury suffered by the



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185 ~~claimant the defendant was personally guilty of intentional~~
186 ~~misconduct or gross negligence.~~ As used in this section, the
187 term:

188 (a) "Intentional misconduct" means that the defendant
189 against whom punitive damages are sought had actual knowledge of
190 the wrongfulness of the conduct and the high probability that
191 injury or damage to the claimant would result and, despite that
192 knowledge, intentionally pursued that course of conduct,
193 resulting in injury or damage.

194 (b) "Gross negligence" means that a ~~the~~ defendant's conduct
195 was so reckless or wanting in care that it constituted a
196 conscious disregard or indifference to the life, safety, or
197 rights of persons exposed to such conduct.

198 (3) In the case of vicarious liability of an individual,
199 employer, principal, corporation, or other legal entity,
200 punitive damages may not be imposed for the conduct of an
201 employee or agent unless ~~only if~~ the conduct of the employee or
202 agent meets the criteria specified in subsection (2) and an
203 officer, director, or manager of the actual employer,
204 corporation, or legal entity condoned, ratified, or consented to
205 the specific conduct as provided in subsection (2):

206 ~~(a) The employer, principal, corporation, or other legal~~
207 ~~entity actively and knowingly participated in such conduct;~~

208 ~~(b) The officers, directors, or managers of the employer,~~
209 ~~principal, corporation, or other legal entity condoned,~~
210 ~~ratified, or consented to such conduct; or~~

211 ~~(c) The employer, principal, corporation, or other legal~~
212 ~~entity engaged in conduct that constituted gross negligence and~~
213 ~~that contributed to the loss, damages, or injury suffered by the~~



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214 claimant.

215 (4) The plaintiff shall ~~must~~ establish at trial, by clear
216 and convincing evidence, its entitlement to an award of punitive
217 damages. The "greater weight of the evidence" burden of proof
218 applies to a determination of the amount of damages.

219 ~~(5) This section is remedial in nature and shall take~~
220 ~~effect upon becoming a law.~~

221 Section 3. Section 400.024, Florida Statutes, is created to
222 read:

223 400.024 Failure to satisfy a judgment or settlement
224 agreement.-

225 (1) Upon the entry of an adverse final judgment arising
226 from an award, including an arbitration award, from a claim of
227 negligence or violation of residents' rights, in contract or
228 tort, or from noncompliance with the terms of a settlement
229 agreement arising from a claim pursuant to s. 400.023, as
230 determined by a court or arbitration panel, the licensee, as
231 defined in s. 400.023(2), shall pay the judgment creditor the
232 entire amount of the judgment and all accrued interest within 60
233 days after the date such judgment becomes final and subject to
234 execution, unless otherwise mutually agreed to in writing by the
235 parties. Failure to pay shall provide grounds for the agency to
236 suspend a nursing home facility license, deny a license renewal
237 application, or deny a change of ownership application as
238 provided in this section.

239 (2) Upon notification of the existence of an unsatisfied
240 judgment or settlement pursuant to subsection (1), the agency
241 shall notify the licensee by certified mail that it is subject
242 to disciplinary action unless, within 30 days after receipt of



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243 the notification, the licensee:

244 (a) Provides proof that the unsatisfied judgment or
245 settlement has been paid in the amount specified;

246 (b) Provides proof of the existence of a payment plan
247 mutually agreed upon by the parties in writing;

248 (c) Furnishes the agency with a copy of a timely filed
249 notice of appeal;

250 (d) Furnishes the agency with a copy of a court order
251 staying execution of the final judgment; or

252 (e) Provides written proof from a court or an arbitration
253 panel overseeing the action that it is seeking indemnification
254 from an insurance carrier or any other party that it believes is
255 required to pay the award.

256 (3) If, after 30 days, the licensee fails to demonstrate
257 compliance in accordance with subsection (2), the agency shall
258 issue an emergency order finding that the nursing home facility
259 lacks financial ability to operate and that the agency is in the
260 process of suspending the facility's license.

261 (4) Following or during the period of suspension, an
262 individual or entity identified as having a controlling interest
263 in the facility whose license is being suspended, as identified
264 on the facility's licensee application, may not file an
265 application for licensure of the facility at issue. Further, if
266 a judgment at trial or arbitration occurs, the agency may not
267 approve a change of ownership application to a related party
268 until the requirements of subsection (1) or subsection (2) are
269 met.

270 Section 4. Section 400.145, Florida Statutes, is amended to
271 read:



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272 (Substantial rewording of section. See
273 s. 400.145, F.S., for present text.)
274 400.145 Copies of records of care and treatment of
275 resident.—
276 (1) Upon receipt of a written request that complies with
277 the federal Health Insurance Portability and Accountability Act
278 of 1996 (HIPAA) and this section, a nursing home facility shall
279 furnish to a competent resident or to a representative of that
280 resident who is authorized to make requests for the resident's
281 records under HIPAA or subsection (2) copies of the resident's
282 paper and electronic records that are in possession of the
283 facility. Such records must include any medical records and
284 records concerning the care and treatment of the resident
285 performed by the facility, except for progress notes and
286 consultation report sections of a psychiatric nature. The
287 facility shall provide the requested records within 14 working
288 days after receipt of a request relating to a current resident
289 or within 30 working days after receipt of a request relating to
290 a former resident.
291 (2) Requests for a deceased resident's medical records
292 under this section may be made by:
293 (a) Any person appointed by a court to act as the personal
294 representative, executor, administrator, or temporary
295 administrator of the deceased resident's estate.
296 (b) If a judicial appointment has not been made as provided
297 in paragraph (a), any person designated by the resident to act
298 as his or her representative in a legally valid will; or
299 (c) If there is no judicially appointed representative or
300 person designated by the resident in a valid will, by only the



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301 following individuals:

302 1. A surviving spouse;

303 2. If there is no surviving spouse, a surviving child of
304 the resident;

305 3. If there is no surviving spouse or child, a parent of
306 the resident.

307 (3) All requests for a deceased resident's records made by
308 a person authorized under:

309 (a) Paragraph (2) (a) must include a copy of the court order
310 appointing such person as the representative of the resident's
311 estate.

312 (b) Paragraph (2) (b) must include a copy of the will
313 designating the person as the resident's representative.

314 (c) Paragraph (2) (c) must be accompanied by a letter from
315 the person's attorney verifying the person's relationship to the
316 resident and the absence of a court-appointed representative and
317 will.

318 (4) A nursing home facility may charge a reasonable fee for
319 the copying of resident records. Such fee may not exceed \$1 per
320 page for the first 25 pages and 25 cents per page for each
321 additional page. The facility shall allow a person who is
322 authorized to act on behalf of the resident to examine the
323 original records, microfilms, or other suitable reproductions of
324 the records in its possession upon any reasonable terms imposed
325 by the facility to ensure that the records are not damaged,
326 destroyed, or altered.

327 (5) If a nursing home facility determines that disclosure
328 of the records to the resident would be detrimental to the
329 physical or mental health of the resident, the facility may



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330 refuse to furnish the record; however, upon such refusal, the
331 resident's record shall, upon written request by the resident,
332 be furnished to any other medical provider designated by the
333 resident.

334 (6) A nursing home facility that in good faith and in
335 reliance upon this section releases copies of records shall be
336 indemnified by the requesting party, and may not be found to
337 have violated any criminal or civil laws, and is not civilly
338 liable to the resident, the resident's estate, or any other
339 person for any damages resulting from such release.

340 (7) A nursing home facility is not required to provide
341 copies of a resident's records requested pursuant to this
342 section more than once per month, except that copies of
343 physician reports in the resident's records must be provided as
344 often as necessary to allow the effective monitoring of the
345 resident's condition.

346 (8) A nursing home facility may not be cited by the agency
347 through the survey process for any alleged or actual
348 noncompliance with any of the requirements of this section.

349 Section 5. The amendments to ss. 400.023 and 400.0237 made
350 by this act apply to causes of action accruing on or after the
351 effective date of this act.

352 Section 6. This act shall take effect upon becoming a law.

353
354 ===== T I T L E A M E N D M E N T =====

355 And the title is amended as follows:

356 Delete everything before the enacting clause
357 and insert:

358 A bill to be entitled



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359 An act relating to nursing home litigation; amending
360 s. 400.023, F.S.; specifying that a cause of action
361 for negligence or violation of residents' rights
362 alleging direct or vicarious liability for the injury
363 or death of nursing home resident may be brought
364 against a licensee, its management or consulting
365 company, its managing employees, and any direct
366 caregiver employees; providing that a cause of action
367 may not be asserted against other individuals or
368 entities except under certain circumstances; revising
369 related judicial procedures; defining terms; amending
370 s. 400.0237, F.S.; providing that a claim for punitive
371 damages may not be brought unless there is a showing
372 of evidence that provides a reasonable basis for
373 recovery of such damages when certain criteria are
374 applied; requiring the court to conduct a hearing to
375 determine whether there is sufficient evidence to
376 demonstrate that the recovery of punitive damages is
377 warranted; requiring the trier of fact to find that a
378 specific person or corporate defendant participated in
379 or engaged in conduct that constituted gross
380 negligence and contributed to the damages or injury
381 suffered by the claimant before a defendant may be
382 held liable for punitive damages; requiring an
383 officer, director, or manager of the employer,
384 corporation, or legal entity to condone, ratify, or
385 consent to certain specified conduct before holding
386 such person or entity vicariously liable for punitive
387 damages; creating s. 400.024, F.S.; authorizing the



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388 Agency for Health Care Administration to suspend the
389 license of a nursing home facility that fails to pay a
390 judgment or settlement agreement; providing
391 exceptions; providing agency procedures for
392 suspension; prohibiting certain parties from applying
393 for a license for an affected facility; amending s.
394 400.145, F.S.; revising procedures for obtaining the
395 records of a resident; specifying which records may be
396 obtained and who may obtain them; providing immunity
397 from liability to a facility that provides such
398 records in good faith; providing that the agency may
399 not cite a facility that does not meet these records
400 requirements; providing applicability; providing an
401 effective date.

By Senator Thrasher

6-00672-14

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1 A bill to be entitled
 2 An act relating to nursing home litigation; amending
 3 s. 400.023, F.S.; providing that a nursing home
 4 resident who alleges negligence or a violation of
 5 residents' rights has a cause of action against the
 6 nursing home licensee or its management company and
 7 the licensee's direct caregiver employees; declaring
 8 that ss. 400.023-400.0238, F.S., provide the exclusive
 9 remedy against a nursing home licensee or its
 10 management company for a cause of action for recovery
 11 of damages arising out of negligence or a violation of
 12 residents' rights; providing that a cause of action
 13 may not be asserted against certain specified persons
 14 or entities; providing exceptions; amending s.
 15 400.0237, F.S.; providing that a claim for punitive
 16 damages may not be brought unless there is a showing
 17 of admissible evidence submitted by the parties which
 18 provides a reasonable basis for recovery of punitive
 19 damages when certain criteria are applied; requiring
 20 the court to conduct a hearing to determine whether
 21 there is sufficient admissible evidence to ensure that
 22 there is a reasonable basis to believe that the
 23 claimant will be able to demonstrate by clear and
 24 convincing evidence that the recovery of punitive
 25 damages is warranted; requiring the trier of fact to
 26 find by clear and convincing evidence that a specific
 27 person or corporate defendant actively and knowingly
 28 participated in intentional misconduct or engaged in
 29 conduct that constituted gross negligence and

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30 contributed to the loss, damages, or injury suffered
 31 by the claimant before a defendant may be held liable
 32 for punitive damages; requiring an officer, director,
 33 or manager of the employer, corporation, or legal
 34 entity to condone, ratify, or consent to certain
 35 specified conduct before holding the licensee
 36 vicariously liable for punitive damages; providing an
 37 effective date.
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Section 400.023, Florida Statutes, is amended to
 42 read:
 43 400.023 Civil enforcement.—
 44 (1) A Any resident who alleges negligence or a violation of
 45 whose rights as specified under in this part has are violated
 46 shall have a cause of action against the licensee or its
 47 management company, as specifically identified in the nursing
 48 home's application for licensure, and the licensee's direct
 49 caregiver employees.
 50 (a) Sections 400.023-400.0238 provide the exclusive remedy
 51 against a licensee or its management company for a cause of
 52 action for the recovery of damages for the personal injury or
 53 death of a nursing home resident arising out of negligence or a
 54 violation of residents' rights specified in s. 400.022. The
 55 action may be brought by the resident or his or her guardian, by
 56 a person or organization acting on behalf of a resident with the
 57 consent of the resident or his or her guardian, or by the
 58 personal representative of the estate of a deceased resident

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59 regardless of the cause of death.

60 (b) If the action alleges a violation of residents' claim
 61 ~~for the resident's rights or for negligence that caused the~~
 62 ~~death of the resident, the claimant shall be required to elect~~
 63 ~~either~~ survival damages pursuant to s. 46.021 or wrongful death
 64 damages pursuant to s. 768.21. If the action alleges a violation
 65 of residents' claim for the resident's rights or for negligence
 66 that did not cause the death of the resident, the personal
 67 representative of the estate may recover damages for the
 68 negligence that caused injury to the resident.

69 (c) The action may be brought in any court of competent
 70 jurisdiction to enforce such rights and to recover actual and
 71 punitive damages for the any violation of the rights of a
 72 resident or for negligence.

73 (d) Any resident who prevails in seeking injunctive relief
 74 or ~~a claim for~~ an administrative remedy is entitled to recover
 75 the costs of the action, and a reasonable attorney attorney's
 76 fee assessed against the defendant of up to not to exceed
 77 \$25,000. Fees shall be awarded solely for the injunctive or
 78 administrative relief and not for any claim or action for
 79 damages whether such claim or action is brought ~~together~~ with a
 80 request for an injunction or administrative relief or as a
 81 separate action, except as provided under s. 768.79 or the
 82 Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238~~
 83 ~~provide the exclusive remedy for a cause of action for recovery~~
 84 ~~of damages for the personal injury or death of a nursing home~~
 85 ~~resident arising out of negligence or a violation of rights~~
 86 ~~specified in s. 400.022.~~

87 (e) This section does not preclude theories of recovery not

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88 arising out of negligence or s. 400.022 which are available to a
 89 resident or to the agency. ~~The provisions of Chapter 766 does de~~
 90 not apply to a any cause of action brought under ss. 400.023-
 91 400.0238.

92 (2) A cause of action may not be asserted against a person
 93 or entity other than those identified in subsection (1) unless,
 94 following an evidentiary hearing at which such person or entity
 95 has been given sufficient notice and an opportunity to defend,
 96 the court determines there is sufficient evidence in the record
 97 or proffered by the claimant to establish a reasonable basis for
 98 finding that:

99 (a) The person or entity owed a specific legal duty to the
 100 resident and the person or entity breached that duty; and

101 (b) The breach of that duty is the legal cause of actual
 102 loss, injury, damage, or death to the resident.

103 (3)(2) In a any claim brought pursuant to this part
 104 alleging a violation of residents' resident's rights or
 105 negligence causing injury to or the death of a resident, the
 106 claimant has shall have the burden of proving, by a
 107 preponderance of the evidence, that:

108 (a) The defendant owed a duty to the resident;

109 (b) The defendant breached the duty to the resident;

110 (c) The breach of the duty is a legal cause of loss,
 111 injury, death, or damage to the resident; and

112 (d) The resident sustained loss, injury, death, or damage
 113 as a result of the breach.

114
 115 ~~Nothing in~~ This part does not shall be interpreted to create
 116 strict liability. A violation of the rights set forth in s.

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117 400.022, ~~or~~ in any other standard or guidelines specified in
 118 this part, or in any applicable administrative standard or
 119 guidelines of this state or a federal regulatory agency is shall
 120 ~~be~~ evidence of negligence but is shall not ~~be~~ considered
 121 negligence per se.

122 ~~(4)(3)~~ In a ~~any~~ claim brought pursuant to this section, a
 123 licensee, person, or entity has shall have a duty to exercise
 124 reasonable care. Reasonable care is that degree of care which a
 125 reasonably careful licensee, person, or entity would use under
 126 like circumstances.

127 ~~(5)(4)~~ In a ~~any~~ claim for a residents' ~~resident's~~ rights
 128 violation or negligence by a nurse licensed under part I of
 129 chapter 464, such nurse has shall have the duty to exercise care
 130 consistent with the prevailing professional standard of care for
 131 a nurse. The prevailing professional standard of care for a
 132 nurse is shall be that level of care, skill, and treatment
 133 which, in light of all relevant surrounding circumstances, is
 134 recognized as acceptable and appropriate by reasonably prudent
 135 similar nurses.

136 ~~(6)(5)~~ A licensee is shall not ~~be~~ liable for the medical
 137 negligence of any physician rendering care or treatment to the
 138 resident except for the administrative services of a medical
 139 director as required under in this part. ~~Nothing in~~ This
 140 subsection does not shall be construed to protect a licensee,
 141 person, or entity from liability for failure to provide a
 142 resident with appropriate observation, assessment, nursing
 143 diagnosis, planning, intervention, and evaluation of care by
 144 nursing staff.

145 ~~(7)(6)~~ The resident or the resident's legal representative

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146 shall serve a copy of a ~~any~~ complaint alleging in whole or in
 147 part a violation of any rights specified in this part to the
 148 agency ~~for Health Care Administration~~ at the time of filing the
 149 initial complaint with the clerk of the court for the county in
 150 which the action is pursued. The requirement of providing a copy
 151 of the complaint to the agency does not impair the resident's
 152 legal rights or ability to seek relief for his or her claim.

153 ~~(8)(7)~~ An action under this part for a violation of rights
 154 or negligence recognized herein is not a claim for medical
 155 malpractice, and ~~the provisions of s. 768.21(8) does de~~ not
 156 apply to a claim alleging death of the resident.

157 Section 2. Section 400.0237, Florida Statutes, is amended
 158 to read:

159 400.0237 Punitive damages; pleading; burden of proof.—

160 (1) A In any action for damages brought under this part, no
 161 claim for punitive damages may not be brought under this part
 162 shall be permitted unless there is a reasonable showing of
 163 admissible by evidence submitted in the record or proffered by
 164 the parties which provides claimant which would provide a
 165 reasonable basis for recovery of such damages when the criteria
 166 in this section are applied.

167 (a) The claimant may move to amend her or his complaint to
 168 assert a claim for punitive damages as allowed by the rules of
 169 civil procedure in accordance with evidentiary requirements set
 170 forth in this section.

171 (b) The court shall conduct a hearing to determine whether
 172 there is sufficient admissible evidence submitted by the parties
 173 to ensure that there is a reasonable basis to believe that the
 174 claimant, at trial, will be able to demonstrate by clear and

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175 convincing evidence that the recovery of such damages is
 176 warranted.

177 ~~(c) A The rules of civil procedure shall be liberally~~
 178 ~~construed so as to allow the claimant discovery of evidence~~
 179 ~~which appears reasonably calculated to lead to admissible~~
 180 ~~evidence on the issue of punitive damages. No discovery of~~
 181 ~~financial worth may not shall proceed until after the pleading~~
 182 ~~on concerning punitive damages is approved by the court~~
 183 ~~permitted.~~

184 (2) A defendant may be held liable for punitive damages
 185 only if the trier of fact, by based on clear and convincing
 186 evidence, finds that a specific person or corporate defendant
 187 actively and knowingly participated in intentional misconduct or
 188 engaged in conduct that constitutes gross negligence and
 189 contributed to the loss, damages, or injury suffered by the
 190 claimant the defendant was personally guilty of intentional
 191 misconduct or gross negligence. As used in this section, the
 192 term:

193 (a) "Intentional misconduct" means that the defendant
 194 against whom punitive damages are sought had actual knowledge of
 195 the wrongfulness of the conduct and the high probability that
 196 injury or damage to the claimant would result and, despite that
 197 knowledge, intentionally pursued that course of conduct,
 198 resulting in injury or damage.

199 (b) "Gross negligence" means that the defendant's conduct
 200 was so reckless or wanting in care that it constituted a
 201 conscious disregard or indifference to the life, safety, or
 202 rights of persons exposed to such conduct.

203 (3) In the case of vicarious liability of an employer,

6-00672-14

2014670__

204 principal, corporation, or other legal entity, punitive damages
 205 may not be imposed for the conduct of an employee or agent
 206 unless only if the conduct of a specifically identified the
 207 employee or agent meets the criteria specified in subsection (2)
 208 and an officer, director, or manager of the actual employer,
 209 corporation, or legal entity condoned, ratified, or consented to
 210 the specific conduct as provided in subsection (2). A state or
 211 federal survey report of nursing facilities may not be used to
 212 establish an entitlement to punitive damages under this section.

213 ~~(a) The employer, principal, corporation, or other legal~~
 214 ~~entity actively and knowingly participated in such conduct;~~

215 ~~(b) The officers, directors, or managers of the employer,~~
 216 ~~principal, corporation, or other legal entity condoned,~~
 217 ~~ratified, or consented to such conduct; or~~

218 ~~(c) The employer, principal, corporation, or other legal~~
 219 ~~entity engaged in conduct that constituted gross negligence and~~
 220 ~~that contributed to the loss, damages, or injury suffered by the~~
 221 ~~claimant.~~

222 (4) The plaintiff shall must establish at trial, by clear
 223 and convincing evidence, its entitlement to an award of punitive
 224 damages. The "greater weight of the evidence" burden of proof
 225 applies to a determination of the amount of damages.

226 (5) This section is remedial in nature and takes shall take
 227 effect upon becoming a law.

228 Section 3. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOHN THRASHER
6th District

January 31, 2014

MEMORANDUM

To: Senator Aaron Bean, Chairman
Senate Health Policy Committee

Fm: Senator John Thrasher

Re: Senate Bill 670 relating to nursing home litigation

It will be appreciated if you will agenda my Senate Bill 670 for a hearing by the Senate Health Policy Committee at your earliest convenience.

Thank you for your consideration of this request.

REPLY TO:

- 113 Nature Walk Parkway, Suite 106, St. Augustine, Florida 32092 (904) 287-4222 FAX: 1-888-263-3475
- 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date: 2/17/14

Topic: Nursing Home Litigation

Name: Carol Berkowitz

Job Title: SR. Director

Address: 1812 Riggins Rd, Tallahassee, FL 32308

Phone: 850.671.3700

E-mail: cberkowitz@leadingageflorida.org

Speaking: For Against Information

Representing: Leading Age Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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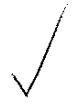
S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/18/14
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



Topic _____

Bill Number 670
(if applicable)

Name BRECHT HEUCHAN

Amendment Barcode 441096
(if applicable)

Job Title LOBBYIST

Address 118 E SIXTH AVE

Phone (850) 762-0144

Street
TALLAHASSEE, FL 32303
City State Zip

E-mail _____

Speaking: For Against Information

Representing WILKES & MCHUGH

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

18 FEB 2014
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic NURSING HOME LIABILITY

Bill Number 670
(if applicable)

Name PAUL JESS

Amendment Barcode 441096
(if applicable)

Job Title _____

Address 218 S. MONROE ST

Phone _____

Street
TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14
Meeting Date

Topic Nursing Home Bill

Bill Number 670
(if applicable)

Name Brian Lee

Amendment Barcode 441096
(if applicable)

Job Title Executive Director

Address PO Box 982
Street

Phone 850 224 3322

TLH FL 32302
City State Zip

E-mail brian@familiesforbettercare.ca

Speaking: For Against Information

Representing Families for Better Care

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14
Meeting Date

Topic NURSING HOME TORT REFORM

Bill Number 670
(if applicable)

Name JACK McRAY

Amendment Barcode 441096
(if applicable)

Job Title _____

Address 200 W. COLLEGE ST., # 304
Street

Phone 850-577-5187

TLH FL 32301
City State Zip

E-mail jmcray@aarp.org

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



2-18-14

Meeting Date

Topic Nursing Home Tort. Reforms

Bill Number SB670 (if applicable)

Name Rochelle Salcido

Amendment Barcode 441096 (if applicable)

Job Title C.N.A.

Address Street

Phone

City State Zip

E-mail

Speaking: [] For [X] Against [] Information

Representing 1199SEIU

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



2-18-14

Meeting Date

Topic Nursing Home Tort. Reform

Bill Number SB670 (if applicable)

Name Verna Nelson

Amendment Barcode 441096 (if applicable)

Job Title Dietary Employee

Address Street

Phone

City State Zip

E-mail

Speaking: [] For [X] Against [] Information

Representing 1199SEIU Healthcare Workers

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2014

Meeting Date

Topic _____

Bill Number 670
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02.18.14

Meeting Date

Topic Nursing Home Litigation

Bill Number 670  
*(if applicable)*

Name William Large

Amendment Barcode 441096  
*(if applicable)*

Job Title President

Address 210 South Monroe Street  
*Street*

Phone 850-222-0170

Tallahassee FL 32301  
*City State Zip*

E-mail William@fljustice.org

Speaking:  For  Against  Information

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



2/18/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB670 <sup>Strike All Amendment</sup>  
(if applicable)

Name Bob Asztalos

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Chief Lobbyist

Address 307 W Park Ave  
Street

Phone 850-284-1166

Tallahassee FL 32301  
City State Zip

E-mail bAsztalos@fhs.org

Speaking:  For  Against  Information

Representing Florida Health Care Assn

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14  
Meeting Date

Topic Nursing Home

Bill Number SB670 <sup>Strike All Amendment</sup>  
(if applicable)

Name BRIAN BURSA

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney

Address 3812 Coconut Palm Ave  
Street

Phone 813-739-1900

Tampa FL 33619  
City State Zip

E-mail bbursa@LbbsLaw.com

Speaking:  For  Against  Information

Representing Florida Health Care Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14  
Meeting Date

Topic Nursing Home Litigation

Bill Number SB 670  
(if applicable)

Name David Christian

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title VP - Gov't Affairs

Address 136 S. Bronough St.

Phone 850/521-1211

Tallahassee, FL 32301  
City State Zip

E-mail dchristian@flchamber.com

Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18

Meeting Date

Topic Nursing Home Litigation

Bill Number SB 670  
(if applicable)

Name Brewster Bevis

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Tallahassee FL 32312  
City State Zip

E-mail bbevis@aif.com

Speaking:  For  Against  Information

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02.18.14

*Meeting Date*

Topic Nursing Home Litigation Bill Number 670  
*(if applicable)*  
Name William Large Amendment Barcode \_\_\_\_\_  
*(if applicable)*  
Job Title President

Address 210 South Monroe Street Phone 850-222-0170  
*Street*  
Tallahassee FL 32301  
*City State Zip*  
E-mail William@fljustice.org

Speaking:  For  Against  Information

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

---

BILL: SB 260

INTRODUCER: Senator Latvala

SUBJECT: Unaccompanied Youth

DATE: February 10, 2014

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Sanford</u> | <u>Hendon</u>  | <u>CF</u> | <b>Favorable</b> |
| 2. | <u>Lloyd</u>   | <u>Stovall</u> | <u>HP</u> | <b>Favorable</b> |
| 3. | _____          | _____          | <u>JU</u> | _____            |

---

**I. Summary:**

SB 260 provides that an unaccompanied certified homeless youth 16 years of age or older may consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment for himself or herself and for his or her child under specified circumstances.

Florida had the third largest number of homeless people reported nationally in 2013. Many of these homeless persons are minors, and a substantial number of the minors are unaccompanied by parents or guardians. Without legislative or court approval, an unwed minor cannot consent to medical treatment for himself or herself, except in limited circumstances, such as pregnancy. This bill will enable the unaccompanied certified homeless youth to provide consent to his or her own medical treatment without regard to pregnancy status and for treatment of his or her child without the necessity of obtaining a court order.

The bill does not affect the requirements of section 390.01114, Florida Statutes, the Parental Notice of Abortion Act.

SB 260 is not expected to have a fiscal impact and has an effective date of July 1, 2014.

**II. Present Situation:**

**Definitions Relating to Homeless Children and Youth**

Federal law authorizes a number of programs for homeless people<sup>1</sup> and provides a definition for the term “homeless children and youths.” The term means<sup>2</sup> individuals who lack a fixed, regular, and adequate nighttime residence. The term also includes:

---

<sup>1</sup> See, for example, the McKinney-Vento Homeless Assistance Act, Pub. Law No. 100-77, H.R. 558, 100th Cong. (July 22, 1987), 101 Stat. 482; 42 U.S.C. s. 11301 et seq.

<sup>2</sup> 42 U.S.C. s. 11434a.

- Children and youths who are: sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; abandoned in hospitals; or awaiting foster care placement;
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and,
- Migratory children who are living in circumstances described above.

The term “unaccompanied youth” means a youth not in the physical custody of a parent or guardian.<sup>3</sup>

Florida law includes special provisions for homeless youth and defines terms.

Section 1003.01(12), Florida Statutes, defines the term “children and youths who are experiencing homelessness” to have the same meaning as “homeless children and youths” under federal law. A “certified homeless youth” means a minor who is a homeless child or youth, including an unaccompanied youth, as those terms are defined in 42 U.S.C. s. 11434a, and who has been certified as homeless or unaccompanied by: (a) a school district homeless liaison; (b) the director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director’s designee; or (c) the director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director’s designee.<sup>4</sup>

## Demographics

The number of homeless youth is difficult to ascertain, since homeless youth are less likely to spend time in the same places as older homeless people.<sup>5</sup> The National Alliance to End Homelessness estimates that nationwide there were approximately 380,000 youth under the age of 18 who were homeless and who were unaccompanied by a parent or legal guardian in 2013.<sup>6</sup> Florida had the third highest number of homeless people reported nationally in 2013, after only California and New York.<sup>7</sup> According to the Florida Department of Education, the homeless count for children in the 2011-2012 school year, the latest data available, was 63,685 homeless students, 6,798 of whom were unaccompanied youth.<sup>8</sup> During this same time period, 1,166,339 homeless children and youth were enrolled in public school nationwide.<sup>9</sup> The education numbers

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<sup>3</sup> *Id.*

<sup>4</sup> Section 382.002(3), F.S.

<sup>5</sup> National Alliance to End Homelessness, *Youth*, <http://www.endhomelessness.org/pages/youth> (last visited Feb. 11, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> U.S. Department of Housing and Urban Development, *The 2013 Annual Homeless Assessment Report (AHAR) to Congress, Part I Point in Time Estimates*, <https://www.onecpd.info/resources/documents/AHAR-2013-Part1.pdf> (last visited Feb. 11, 2014).

<sup>8</sup> Florida Department of Education, Bureau of Federal Educational Programs, *2011-2012 Final Survey 5 Homeless Counts* (As of Oct. 5, 2012), <http://fldoe.org/bsa/title1/pdf/1112HomelessStudentsCount.pdf> (last visited Jan. 24, 2014).

<sup>9</sup> National Association for the Education of Homeless Children and Youth, *Facts and Resources about the Education of Children and Youth Experiencing Homelessness*, quoting from the U.S. Department of Education, Federal Data Collection 2011-2012, <http://www.naehcy.org/sites/default/files/dl/homeless-ed-101.pdf> (last visited January 24, 2014).

underestimate the actual numbers of homeless and homeless unaccompanied youth, since many of these youth are not registered in school.

Research shows a high prevalence of depression, suicide initiations, and other mental health disorders among youth who are homeless. Chronic physical health conditions are common, as are high rates of substance abuse disorders.<sup>10</sup>

While details about unaccompanied homeless youth are difficult to obtain, the Amherst H. Wilder Foundation, a non-profit social services organization, has done an analysis of this population in Minnesota.<sup>11</sup> Although not directly applicable to Florida, the findings are at least illustrative of the characteristics of this population. The point-in-time study, conducted on October 25, 2012, counted 1,151 youth 21 years of age and under, of whom 146 were 17 years of age and younger. According to this study, high proportions of homeless youth have physical, mental, and chemical health problems. Slightly over one-third (36 percent) have a chronic physical health condition, most often high blood pressure (10 percent) or chronic lung or respiratory problems (7 percent). Nine percent of the minors in the study had children; of these, 21 percent had their children with them. Most had only one child (77 percent) and three-quarters of the children were 2 years of age or younger.

### **Emancipation of Minors**

All states have laws dealing with the “emancipation” of minors, which specify when and under what conditions children become independent of their parents for legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law, most states allow for the possibility of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.<sup>12</sup>

Emancipation is the removal of “disability of nonage.” Legally, in most instances, children lack the capacity that adults are assumed to have to perform certain activities, such as entering into binding contracts, making certain purchases, and being held responsible in the same way as adults for criminal offenses. This lack of capacity is termed the “disability of nonage.” Emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents. Emancipated minors lose the right to have their parents provide for them and the protection of the Department of Children and Families.<sup>13</sup>

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<sup>10</sup> U.S. Interagency Council on Homelessness, *Homelessness Among Youth*, [http://usich.gov/usich\\_resources/fact\\_sheets/opening\\_doors\\_homelessness\\_among\\_youth](http://usich.gov/usich_resources/fact_sheets/opening_doors_homelessness_among_youth) (last visited on Feb. 11, 2014).

<sup>11</sup> Wilder Research, *Homelessness in Minnesota*, <http://www.wilder.org/Wilder-Research/Research-Areas/Homelessness/Pages/default.aspx> (last visited on Feb. 11, 2014).

<sup>12</sup> A substantial portion of this paragraph was taken from: Cornell University of Law, Legal Information Institute, *Emancipation of Minors*, [http://www.law.cornell.edu/wex/emancipation\\_of\\_minors](http://www.law.cornell.edu/wex/emancipation_of_minors) (last visited Jan. 21, 2014).

<sup>13</sup> A substantial portion of this paragraph was taken from: Volusia County Law Library, *Emancipation in Florida Research Guide*, [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf) (last visited Jan. 21, 2014).

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is 16 years of age or older residing in Florida upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. Subsequent to July 1, 2012, the petition may also be filed by the minor him or herself if the minor is a certified homeless and unaccompanied minor over the age of 16. The petition must contain the following information:<sup>14</sup>

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor's parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.

In addition, the law provides that:

- If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage;
- If the petition is filed by the guardian ad litem or next friend, service of process must be perfected on the natural parents;
- If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the non-petitioning parent;<sup>15</sup>
- The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition;
- If the court determines that removal of the disabilities of nonage is in the minor's best interest, it must enter an order to that effect. An order removing the disabilities of nonage has the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and authorizes the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older; and,
- The judgment must be recorded in the county in which the minor resides, and a certified copy must be received as evidence of the removal of disabilities of nonage for all matters in all courts.<sup>16</sup>

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<sup>14</sup> Section 743.015, F.S.

<sup>15</sup> Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.

<sup>16</sup> Section 743.015, F.S.

### **Recent Legislative Action**

The 2012 Legislature passed HB 1351,<sup>17</sup> which provided a mechanism for a homeless minor to become a “certified homeless youth,” and, if the minor is 16 years of age or older, to petition the court for removal of the disabilities of nonage.

### **Other Related Statutes**

The Legislature has granted to selected groups of youth the powers of adulthood. Some grants are limited, some are not. Some require a court order; others do not. See, for example:

- Married minors (no court order required; all powers of adults), s. 743.01, F.S.;
- Persons entitled to benefits under the “Home, Farm and Business Loans Act” (no court order required; limited powers), s. 743.04, F.S.;
- Foster children executing agreements for depository financial services (court order required; limited powers), s. 743.044, F.S.;
- Foster children executing contracts for a residential lease (court order required; limited powers), s. 743.045, F.S.;
- Foster children executing agreements for utility services (court order required; limited powers), s. 743.046, F.S.;
- Minors borrowing money for educational purposes (no court order required; limited powers), s. 743.05, F.S.;
- Minors donating blood (no court order required; limited powers), s. 743.06, F.S.;
- Unwed pregnant minors providing consent for medical services relating to the pregnancy for themselves and unwed minor mother providing consent for children (no court order required; limited powers), s. 743.065, F.S.;
- Children adjudicated as adults for most medical services (no separate court order required; limited powers), s. 743.066, F.S.;
- Minors entering into contracts for artistic or creative services (court order required; limited powers), s. 743.08, F.S.; and,
- Minors entering into sports contracts (court order required; limited powers), s. 743.09, F.S.

### **Medicaid Policy**

The Agency for Health Care Administration (AHCA) has established policies under the Florida Medicaid program that specify when a legal guardian must consent in order for services provided to a minor be eligible for reimbursement. Medicaid will reimburse for family planning services for a minor (under the age of 18) without parental consent if:

- Is married;
- Is a parent;
- Is pregnant; or,

---

<sup>17</sup> Chapter 2012-186, Laws of Fla.

- Will suffer from probable health hazards if such services are not provided as determined by the practitioner, based on sexual activity or other medical reasons.<sup>18</sup>

Additional exceptions for parental consent are also provided for mental health or substance abuse services for a Medicaid recipient under the age of 18.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** authorizes certified homeless youth, if 16 years of age or older, to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397, for himself or herself without the necessity of a court order or the removal of the disability of nonage. The bill also authorizes the certified homeless youth to provide consent to the same procedures for his or her child, if the youth is unmarried, is the parent of the child, and has actual custody of the child. The bill states that these rights do not change the requirements of the Parental Notice of Abortion Act.<sup>20</sup>

**Section 2** provides an effective date of July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

<sup>18</sup> Agency for Health Care Administration, *Florida Medicaid Practitioner Services Coverage and Limitations Handbook- "Family Planning Services"* [http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL\\_12\\_12-12-01\\_Practitioner\\_Services\\_Handbook.pdf](http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_12_12-12-01_Practitioner_Services_Handbook.pdf) (last visited Feb. 11, 2014).

<sup>19</sup> Agency for Health Care Administration, *2014 Agency Legislative Bill Analysis - SB 260* (January 2, 2014) p. 3, on filed with Committee on Senate Health Policy.

<sup>20</sup> Section 390.01114, F.S.

**C. Government Sector Impact:**

The AHCA reports that rules relating to Florida Medicaid Handbooks for the following services would need to be modified to incorporate the changes in SB 260:

- Birth Center and Licensed Midwife Services;
- County Health Department Services;
- Federally Qualified Health Center Services;
- Rural Health Clinic Services; and,
- Community Behavioral Health Services.

The AHCA indicates that the fiscal impact is negligible to incorporate handbook modifications. Medicaid currently provides a means for youths under the age of 18 to obtain family planning services under Medicaid.

**VI. Technical Deficiencies:**

A certified homeless youth who is 16 years of age or older may consent to these services for his or her child if, among other things, the youth has actual custody of the child. In this context it is unclear whether actual custody refers to physical custody, legal custody, or something else.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 743.067 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Latvala

20-00258A-14

2014260\_\_

1 A bill to be entitled  
 2 An act relating to unaccompanied youth; amending s.  
 3 743.067, F.S.; authorizing certain unaccompanied  
 4 youths to consent to medical, dental, psychological,  
 5 substance abuse, and surgical diagnosis and treatment  
 6 for themselves and for their children in certain  
 7 circumstances; providing that such consent does not  
 8 affect the requirements of the Parental Notice of  
 9 Abortion Act; providing an effective date.

10  
 11 Be It Enacted by the Legislature of the State of Florida:

12  
 13 Section 1. Section 743.067, Florida Statutes, is amended to  
 14 read:

15 743.067 Unaccompanied youths.—

16 (1) An unaccompanied youth, as defined in 42 U.S.C. s.  
 17 11434a, who is also a certified homeless youth, as defined in s.  
 18 382.002, and who is 16 years of age or older may:

19 (a) Petition the circuit court to have the disabilities of  
 20 nonage removed under s. 743.015. The youth shall qualify as a  
 21 person not required to prepay costs and fees as provided in s.  
 22 57.081. The court shall advance the cause on the calendar.

23 (b) Consent to medical, dental, psychological, substance  
 24 abuse, and surgical diagnosis and treatment, including  
 25 preventative care and care by a facility licensed under chapter  
 26 394, chapter 395, or chapter 397, for:

27 1. Himself or herself; or

28 2. His or her child, if the unaccompanied youth is  
 29 unmarried, is the parent of the child, and has actual custody of

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

20-00258A-14

2014260\_\_

30 the child.  
 31 (2) This section does not affect the requirements of s.  
 32 390.01114.  
 33 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



SENATOR JACK LATVALA  
20th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Ethics and Elections, Chair  
Budget - Subcommittee on General Government  
Appropriations  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

February 4, 2014

The Honorable Senator Aaron Bean, Chair  
Senate Committee on Health Policy  
530 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100


Dear Chair Bean,

I respectfully request that Senate Bill 260 pertaining to Unaccompanied Youth be placed on the agenda of the Senate Committee on Health Policy at your earliest convenience. The bill was favorably referred from the Senate Committee on Children, Families and Elder Affairs on February 4, 2014.

I have filed this legislation in order to allow minors without a parent or legal guardian to access vital health care services that will make them healthier, more productive citizens.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

  
Jack Latvala  
State Senator  
District 20  
Cc: Sandra Stovall, Staff Director; Celia Georgiades, Administrative Assistant

REPLY TO:  
□ 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797  
□ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020  
Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

Don Gaetz  
President of the Senate

Garrett Richter  
President Pro Tempore

THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2014  
Meeting Date

Topic Unaccompanied Youth Bill Number SB 260  
Name Dana Farmer Amendment Barcode \_\_\_\_\_  
(if applicable) (if applicable)

Job Title Director of Legislative & Public Affairs

Address 2728 Centerview Dr, Ste. 102 Phone (850) 488-9071  
Street danfo  
Tallahassee FL 32301 E-mail disabilityrightsflorida.org  
City State Zip

Speaking:  For  Against  Information  
Representing DISABILITY RIGHTS FLORIDA

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.** S-001 (10/20/11)

THE FLORIDA SENATE  
**COMMITTEE APPEARANCE RECORD**

(Submit to Committee Chair or Administrative Assistant)

2-18-2014

Date

260

Bill Number

Name BRIAN PITTS

Phone 727/897-9291

Address 8119 Newton Ave S.

E-mail justice2jesus@yahoo.com

Street

St Petersburg

FL  
State

33705  
Zip

Job Title Trustee

Speaking:  For  Against  Information

Appearing at request of Chair

Subject \_\_\_\_\_

Representing Justice-2-Jesus

Lobbyist registered with Legislature:  Yes  No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from \_\_\_\_\_ .m. to \_\_\_\_\_ .m.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 694

INTRODUCER: Senators Garcia and Flores

SUBJECT: Diabetes Advisory Council

DATE: February 14, 2014

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------|----------------|-----------|------------------|
| 1. | Peterson | Stovall        | HP        | <b>Favorable</b> |
| 2. |          |                | GO        |                  |
| 3. |          |                | AHS       |                  |
| 4. |          |                | AP        |                  |

---

**I. Summary:**

SB 694 directs the Diabetes Advisory Council, in conjunction with the Department of Health (DOH), the Agency for Health Care Administration (AHCA), and the Department of Management Services (DMS), to prepare a report regarding the impact of diabetes on state-funded or operated programs, including Medicaid, the State Group Insurance Program, and public health programs. Required components of the report include: the health consequences and financial impact of diabetes; the effectiveness of diabetes programs implemented by each agency; a description of the coordination among the agencies; development and ongoing revision of an action plan for reducing and controlling the incidence of diabetes; and, a detailed budget request necessary to implement the plan.

The report is due to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 10 of each odd-numbered year.

**II. Present Situation:**

Diabetes is a disease in which the body produces too little insulin,<sup>1</sup> is unable to use the insulin efficiently, or both. When diabetes is not controlled, glucose and fats remain in the blood and, over time, damage vital organs.

The most common forms of diabetes are:

- **Type 1:** usually first diagnosed in children and young adults and accounts for about 5 percent of all diagnosed cases. Type 1 diabetes is an autoimmune disease that may be caused by

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<sup>1</sup> Insulin is a hormone that allows glucose (sugar) to enter cells and be converted to energy.

genetic, environmental, or other risk factors. At this time, there are no known ways to prevent type 1 diabetes and treatment requires the use of insulin by injection or pump.

- **Type 2:** accounts for about 95 percent of diagnosed diabetes in adults and is usually associated with older age, obesity and physical inactivity, family history, or a personal history of gestational diabetes. Studies have shown that healthy eating, regular physical activity, and weight loss can prevent or delay the onset of type 2 diabetes.
- **Gestational diabetes:** develops and is diagnosed as a result of pregnancy in 2 to 10 percent of pregnant women. Gestational diabetes can cause health problems during pregnancy for both the child and mother. Children whose mothers have gestational diabetes have an increased risk of developing obesity and type 2 diabetes.

Complications of diabetes include: heart disease and stroke, high blood pressure (hypertension), blindness and eye problems, kidney disease, nervous system disease, and amputations. Death rates for heart disease and the risk of stroke are about 2 to 4 times higher among adults with diabetes than among those without diabetes. However, diabetes and its potential health consequences can be managed through physical activity and diet, self-management training, and, when necessary, medication.

People with “prediabetes” are at high risk of developing type 2 diabetes, heart disease, and stroke. Their blood glucose levels are higher than normal, but not high enough to be classified as diabetes. Although an estimated 33 percent of U.S. adults have prediabetes, less than 10 percent of them report having been told they have the condition. Thus, awareness of the risk is low. People with prediabetes who lose 5 to 7 percent of their body weight and get at least 150 minutes per week of moderate physical activity can reduce the risk of developing type 2 diabetes by 58 percent.<sup>2</sup>

Minorities have a higher prevalence of diabetes than whites, and some minorities have higher rates of diabetes-related complications and death. Studies have found that African Americans are from 1.4 to 2.2 times more likely to have diabetes than whites. Hispanic Americans have a higher prevalence of diabetes than non-Hispanic people, with the highest rates for type 2 diabetes among Puerto Ricans and Hispanic people living in the Southwest and the lowest rate among Cubans.<sup>3</sup>

Currently, 25.8 million people in the United States (8.3 percent of the population) have diabetes. Of these, 7.0 million have undiagnosed diabetes. The CDC estimates that if current trends continue, one in three adults in the United States will have diabetes by 2050.<sup>4</sup> According to the DOH, 10.4 percent of adults with diabetes living in Florida have received a diagnosis. Approximately 767,666 are undiagnosed.<sup>5</sup>

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<sup>2</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Diabetes Report Card* (2012), available at <http://www.cdc.gov/diabetes/pubs/reportcard.htm> (last visited Feb. 12, 2014).

<sup>3</sup> Agency for Healthcare Research and Quality, *Diabetes Disparities Among Racial and Ethnic Minorities* <http://www.ahrq.gov/research/findings/factsheets/diabetes/diabdisp/index.html>.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> Florida Department of Health, *Florida State Health Improvement Plan 2012 – 2015* (April 2012), available at: <http://www.floridahealth.gov/public-health-in-your-life/about-the-department/documents/state-health-improvement-plan.pdf> (last visited Feb. 12, 2014).

In 1994, 25 states had prevalence<sup>6</sup> of diagnosed diabetes among adults aged 18 years of age or older of less than 4.5 percent, 24 states, including Florida, had prevalence of 4.5 to 6.0 percent, and only one state had prevalence greater than 6.0 percent. In 2010, all states had prevalence greater than 6.0 percent, 15 of these exceeded 9.0 percent.<sup>7</sup> In 2012, prevalence of diagnosed diabetes in Florida adults is estimated at 11.4 percent, or 1.7 million people.<sup>8</sup> Diabetes is the sixth leading cause of death in Florida.<sup>9</sup>

The American Diabetes Association has recently released a report updating its earlier studies (2002, 2007) estimating the economic burden of diagnosed diabetes. In 2012, the total estimated cost of diagnosed diabetes in the United States was \$245 billion, including \$176 billion in direct medical costs and \$69 billion in reduced productivity. This represents a 41 percent increase over the 2007 estimate. The largest components of these costs are hospital inpatient care (43 percent) and medications to treat complications (18 percent). People with diagnosed diabetes incur average medical costs of about \$13,700 per year, of which about \$7,900 is attributed to diabetes. Care for people with diagnosed diabetes accounts for more than one in five dollars spent on health care in the United States, and more than half of that is attributable to diabetes. Overall, average medical expenses for a person with diabetes are 2.3 times higher than they are for a person without diabetes.<sup>10</sup>

### **Diabetes Advisory Council**

The Diabetes Advisory Council (Council) was created to guide statewide policy on diabetes prevention, diagnosis, education, care, treatment, impact, and costs. It serves in an advisory capacity to the DOH, other agencies, and the public. The Council consists of 26 members appointed by the Governor who have experience related to diabetes. Twenty-one of the members are representatives of a broad range of health and public health-related interests. The remaining five members are representatives of the general public, at least three of whom are affected by diabetes. The Council meets annually with the Surgeon General to make recommendations regarding the public health aspects of the prevention and control of diabetes.<sup>11</sup>

### **Florida Diabetes Prevention and Control**

The Bureau of Chronic Disease Prevention and Health Promotion (Bureau) within the DOH was established in 1998 to improve individual and community health by preventing and reducing the impact of chronic diseases and disabling conditions, including diabetes. Diabetes-related activities of the Bureau include:

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<sup>6</sup> Percentage of the specified population with the condition.

<sup>7</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Maps of Trends in Diagnosed Diabetes* (Nov. 2011), available at [http://www.cdc.gov/diabetes/statistics/slides/maps\\_diabetesobesity\\_trends.pdf](http://www.cdc.gov/diabetes/statistics/slides/maps_diabetesobesity_trends.pdf) (last visited Feb. 12, 2014).

<sup>8</sup> E-mail from Trina Thompson, Florida Department of Health, to Bryan Wendel, Government Analyst, Florida Department of Health (Feb. 12, 2014) (on file with the Senate Health Policy Committee). County-level data, including information about risk factors, is posted on *Florida Charts*, <http://www.floridacharts.com/charts/ChronicDiseases/> (last visited Feb. 13, 2014).

<sup>9</sup> *Florida Mortality Atlas*, <http://www.floridacharts.com/charts/MortAtlas.aspx> (last visited Feb. 13, 2014).

<sup>10</sup> American Diabetes Association, *Economic Costs of Diabetes in the U.S. in 2012*, *Diabetes Care* 36: 1033 – 146, 2013, available at <http://care.diabetesjournals.org/content/36/4/1033.full.pdf+html> (last visited Feb. 12, 2014).

<sup>11</sup> Section 385.203, F.S. The 2013 recommendations of the Council are on file with the Senate Health Policy Committee.

- Providing support to the Diabetes Advisory Council and the Florida Alliance for Diabetes Prevention and Care.
- Compiling, analyzing, translating, and distributing diabetes data.
- Increasing access to diabetes self-management education.
- Increasing access to diabetes medical care by advocating for the use of community health workers.
- Preventing diabetes in populations disproportionately affected by diabetes.
- Increasing diagnosis and treatment for prediabetes.
- Managing the Insulin Distribution Program.<sup>12</sup>

The Office of Minority Health administers the Closing the Gap grant program, which seeks to improve health outcomes and eliminate racial and ethnic health disparities in Florida by providing grants to increase community-based health promotion and disease prevention activities, including diabetes prevention.<sup>13</sup>

### **Medicaid**

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.3 million Floridians are currently enrolled in Medicaid and the program's estimated expenditures for the 2012-2013 fiscal year were approximately \$21 billion.<sup>14</sup> The statutory authority for the Medicaid program is contained in ch. 409, F.S.

In 2011, the Legislature passed HB 7107<sup>15</sup> creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance Program (MMAP) and Long Term Care Program. To implement MMAP, the law requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits for the delivery of primary and acute care.<sup>16</sup> The enabling statute requires statewide implementation of MMAP to be completed by October 1, 2014.

### **State Group Insurance Program**

Section 110.123, Florida Statutes, creates the State Group Insurance Program. As implemented by the DMS, the program offers four types of health plans from which an eligible employee may choose: a standard statewide Preferred Provider Organization (PPO) Plan, a Health Investor PPO Plan, a standard Health Maintenance Organization (HMO) Plan, or a Health Investor HMO Plan.

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<sup>12</sup> Florida Department of Health, *Resource Manual for the Florida Department of Health* (fiscal year 2012-2013) (on file with the Senate Health Policy Committee).

<sup>13</sup> Sections 381.7353 – 381.7356, F.S.

<sup>14</sup> Agency for Health Care Administration, *Florida Medicaid*, <http://ahca.myflorida.com/Medicaid/index.shtml> (last visited Feb. 13, 2014).

<sup>15</sup> See ch. 2011-134, L.O.F.

<sup>16</sup> Health and Human Services Committee, Fla. House of Representatives, *PCB HHSC 11-01 Staff Analysis*, 25 (Mar. 25, 2011).

In the 2012-2013 fiscal year, the State Group Insurance Program covered 169,804 employees at a cost of \$1.4 billion.<sup>17</sup>

### III. Effect of Proposed Changes:

The bill directs the Diabetes Advisory Council, in conjunction with the DOH, the AHCA, and the DMS, to submit a report by January 10 in each odd-numbered year to the Governor, the President of the Senate, and the Speaker of the House of Representatives, regarding the impact of diabetes on state funded or operated programs. Specifically, the report must include:

- Information on the public health consequences and financial impact of diabetes and its complications on the state, including the number of persons covered by Medicaid and the State Group Insurance Program, and the number of persons impacted by state diabetes programs and activities;
- A description and assessment of the effectiveness of diabetes programs and activities implemented by the agencies, the amount and source of their funding, and the cost savings they achieve;
- A description of the coordination among the agencies of programs, activities, and communications related to diabetes prevention and treatment;
- A detailed action plan for reducing and controlling the number of new cases of diabetes, including action steps to reduce its impact, expected outcomes of the plan, and benchmarks;
- A detailed budget request that identifies the needs, costs, and resources necessary to implement the plan, including actionable items for consideration by the Governor and Legislature.

The bill has an effective date of July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>17</sup> Florida Department of Management Services, Division of State Group Insurance, *State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook* (Dec. 13, 2013), available at <http://edr.state.fl.us/Content/conferences/healthinsurance/HealthInsuranceOutlook.pdf> (last visited Feb. 14, 2014).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None

**C. Government Sector Impact:**

SB 694 will have an indeterminate fiscal impact on the DOH in its capacity as staff support to the Diabetes Advisory Council, and a lesser, but still indeterminate, impact on the DOH, the AHCA and the DMS, in staff time needed to collect the data required by the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 385.203 of the Florida Statutes.

**IX. Additional Information: Florida Statutes:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Garcia

38-00863-14

2014694\_\_

A bill to be entitled

An act relating to the Diabetes Advisory Council; amending s. 385.203, F.S.; requiring the council, in conjunction with the Department of Health, the Agency for Health Care Administration, and the Department of Management Services, to develop plans to manage, treat, and prevent diabetes; requiring a report to the Governor and Legislature; providing for contents of the report; providing an effective date.

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

Section 1. Present paragraph (c) of subsection (1) of section 385.203, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

385.203 Diabetes Advisory Council; creation; function; membership.—

(1) To guide a statewide comprehensive approach to diabetes prevention, diagnosis, education, care, treatment, impact, and costs thereof, there is created a Diabetes Advisory Council that serves as the advisory unit to the Department of Health, other governmental agencies, professional and other organizations, and the general public. The council shall:

(c) In conjunction with the department, the Agency for Health Care Administration, and the Department of Management Services, submit by January 10 of each odd-numbered year to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report containing the following

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

38-00863-14

2014694\_\_

information:

1. The public health consequences and financial impact on the state from all types of diabetes and resulting health complications, including the number of persons with diabetes covered by Medicaid, the number of persons with diabetes who are insured by the Division of State Group Insurance, and the number of persons with diabetes who are impacted by state agency diabetes programs and activities.

2. A description and an assessment of the effectiveness of the diabetes programs and activities implemented by each state agency, the amount and source of funding for such programs and activities, and the cost savings realized as a result of the implementation of such programs and activities.

3. A description of the coordination among state agencies of programs, activities, and communications designed to manage, treat, and prevent all types of diabetes.

4. The development of and revisions to a detailed action plan for reducing and controlling the number of new cases of diabetes and identification of proposed action steps to reduce the impact of all types of diabetes, identification of expected outcomes if the plan is implemented, and establishment of benchmarks for preventing and controlling diabetes.

5. A detailed budget request that identifies the needs, costs, and resources required to implement the action plan, including a list of actionable items for consideration by the Governor and Legislature.

Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Communications, Energy, and Public Utilities, Vice  
Chair  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and Human  
Services  
Transportation  
Health Policy  
Agriculture  
Transportation

**JOINT COMMITTEE:**  
Joint Committee on Administrative Procedures, Chair

**SENATOR RENE GARCIA**  
38th District

January 29, 2014

The Honorable Aaron Bean  
Chair, Health Policy Committee  
302 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Bean:

This letter should serve as a request to have my bill *SB 694 Diabetes Advisory Council*  
heard at the next possible committee meeting. If there is any other information needed  
please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García  
District 38  
RG:dm

CC: Sandra Stovall, Staff Director

**REPLY TO:**

- 1490 West 68 St., Suite 201 Hialeah, FL 33014 (305) 364-3100
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Health Policy

---

BILL: SPB 7028

INTRODUCER: For consideration by the Health Policy Committee

SUBJECT: Telemedicine

DATE: January 24, 2014

REVISED: \_\_\_\_\_

---

| ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION             |
|----------|----------------|-----------|--------------------|
| 1. Lloyd | Stovall        | HP        | <b>Pre-meeting</b> |

---

**I. Summary:**

SPB 7028 creates the Florida Telemedicine Act (the act) and defines the key components for the practice of telemedicine. The act establishes a registration process for out of state, non-Florida licensed health care practitioners with a biennial fee and exemptions from registration for limited annual consultations, emergency services, and practitioner-to-practitioner consultations without the patient present.

The standard of care for telemedicine service coincides with health care services provided in-person. The nonemergency prescribing of a legend drug based solely on an online questionnaire is specifically prohibited and a controlled substance may not be prescribed through telemedicine for chronic, non-malignant pain.

Regulatory boards, or the Department of Health (department) if there is not an applicable board, may adopt rules to administer the act. Rules prohibiting telemedicine that are inconsistent with this act must be repealed.

The act requires a telemedicine provider to be responsible for the quality of any equipment or technology and to maintain records in accordance with federal and state laws.

Under the act, if a health insurer or health plan covers telemedicine services, then remuneration must equal the amount that would have been paid for in-person services. The amount of the reimbursement is to be determined by the individual telemedicine provider and the health insurer or health plan. The act allows a health plan or health insurer to impose a deductible, copayment or co-insurance if the amount charged does not exceed the amount charged for a non-telemedicine service. Health plans and health insurers may limit telemedicine coverage to in-network providers.

SPB 7028 authorizes the executive directors of the regulatory boards, along with the department to negotiate one or more interstate compacts to allow for the practice of telemedicine across state

lines. An annual report of any negotiated compacts is due to the Governor and Legislature on December 31, for ratification by the Legislature during the next session.

The Medicaid program must reimburse providers for telemedicine services in the same manner as provided for in-person services. Reimbursement amounts must be negotiated between the parties, to the extent permitted under federal law. Regardless of the amount negotiated, reimbursement for both the originating and the distant site should be considered based on the services provided during the encounter. A process for discontinuation of reimbursement for a Medicaid service through telemedicine is provided if the Agency for Health Care Administration (AHCA) can document a specific telemedicine service is not cost effective or does not meet the clinical needs of Medicaid recipients. The Medicaid provisions sunset on June 30, 2017.

The AHCA is required to submit a report on the usage and costs, including any savings, of telemedicine services provided to Medicaid recipients by January 1, 2017 to the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the House and Senate.

The proposed bill's effective date is July 1, 2014.

## II. Present Situation:

Telemedicine utilizes various advances in communication technology to provide healthcare services through a variety of electronic mediums. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided through telemedicine include:<sup>1</sup>

- **Primary Care and Specialist Referral Services** - involves a primary care or allied health professional providing consultation with a patient or specialist assisting the primary care physician with a diagnosis. The process may involve live interactive video or the use of store and forward transmission of diagnostic images, vital signs, and/or video clips with patient data for later review.
- **Remote patient monitoring** - includes home telehealth, using devices to remotely collect and send data to home health agencies or remote diagnostic testing facilities.
- **Consumer medical and health information** - offers consumers specialized health information and online discussion groups for peer to peer support.
- **Medical education** - provides continuing medical education credits.

The term telehealth is also sometimes used interchangeably with telemedicine. Telehealth, however, generally refers to a wider range of health care services that may or may not include clinical services.<sup>2</sup> Telehealth often collectively defines the telecommunications equipment and

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<sup>1</sup> American Telemedicine Association, *What is Telemedicine?*, <http://www.americantelemed.org/learn/what-is-telemedicine> (last visited Jan. 6, 2014).

<sup>2</sup> Majerowicz, Anita; Tracy, Susan, "Telemedicine: Bridging Gaps in Healthcare Delivery," *Journal of AHIMA* 81, no. 5, (May 2010): 52-53, 56, [http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1\\_047324.hcsp?dDocName=bok1\\_047324](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_047324.hcsp?dDocName=bok1_047324) (last visited Jan. 27, 2014).

technology that is utilized to collect and transmit the data for a telemedicine consultation or evaluation.

### **Board of Medicine Rulemaking**

Florida's Board of Medicine recently convened a Telemedicine Workgroup to review its rules on telemedicine which had not been amended since 2003. The 2003 rule focused on standards for the prescribing of medicine via the internet. A recently proposed revision to the telemedicine rule defines telemedicine, establishes a standard of care, prohibits the prescription of controlled substances, permits the establishment of a doctor-patient relationship via telemedicine, and exempts emergency medical services from the rule.<sup>3</sup>

### **Interstate Medical Licensure Compact**

The Federation of State Medical Boards (FSMB), a non-profit organization representing state medical boards that license and discipline allopathic and osteopathic physicians has drafted eight consensus principles aimed at addressing the process of licensing and regulating physicians who practice across state lines. Under an interstate compact, the participating state medical boards would retain their licensing and disciplining authority but would share essential information to streamline the process for those physicians who practice across state lines, including telemedicine.<sup>4</sup> The draft development of the Interstate Medical Licensure Compact, which would be voluntary on the part of both physicians and states, is expected in early Spring or Summer of 2014.<sup>5</sup>

### **Telemedicine in Other States**

As of January 2014, at least 20 states and the District of Columbia have mandated that private insurance plans cover telemedicine services at reimbursement rates equal to an in-person consultation.<sup>6</sup> Forty-four states reimburse under Medicaid for limited services, some restricting reimbursement to only rural or low provider access areas.<sup>7</sup> The breadth of state telemedicine laws vary from the very limited of authorizing store and forward services to mandating private insurance coverage and payment equivalency between face-to-face visits and telemedicine encounters. While nine states specifically issue a special-telemedicine-only license or certificate, several others may allow physicians from contiguous states to practice under certain conditions.<sup>8</sup>

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<sup>3</sup> See Notice of Proposed Rule 64B8-9.0141, F.A.C., published January 15, 2014.

<sup>4</sup> Federation of State Medical Boards, *Interstate Compact for Physician Licensure Moves Forward with Consensus Principles* (October 7, 2013), [http://www.fsmb.org/pdf/nr\\_interstate\\_compact.pdf](http://www.fsmb.org/pdf/nr_interstate_compact.pdf) (last visited Jan. 24, 2014).

<sup>5</sup> Federation of State Medical Boards, *State Medical Board Effort to Streamline Medical Licensing Gains Support in U.S. Senate* (January 14, 2014), [http://www.fsmb.org/pdf/interstate\\_compact\\_senators\\_january13C.pdf](http://www.fsmb.org/pdf/interstate_compact_senators_january13C.pdf) (last visited Jan. 24, 2014).

<sup>6</sup> American Telemedicine Association, *2014 State Telemedicine Legislative Tracking*, <http://www.americantelemed.org/docs/default-source/policy/state-telemedicine-legislation-matrix.pdf> (last visited Jan. 24, 2014).

<sup>7</sup> Id.

<sup>8</sup> Center for Connected Health Policy, *State Telehealth Laws and Reimbursement Policies*, (November 2013), p.6, <http://telehealthpolicy.us/sites/telehealthpolicy.us/files/uploader/50%20State%20Medicaid%20Update%20Nov.%202013%20-%20Rev.%2012-20.pdf> (last visited Jan. 24, 2014).

States have used telemedicine in correctional systems to eliminate the need to transport inmates in both Colorado and Wyoming.<sup>9</sup> In some cases, the health care professional is located in another location at the same facility and is able to interact with the inmate. This option addresses situations with violent inmates or handicap accessibility issues. Some jails use this same technology for online visits in place of face-to-face visitation, including the Alachua County jail in Florida.<sup>10</sup>

Rural counties have utilized telemedicine to fill the void for specialty care in their emergency rooms and to avoid costly and time consuming transfers of patients from smaller hospitals to the larger tertiary centers for care. In a California project, the rural hospitals' emergency rooms received video conference equipment to facilitate the telemedicine consultations as part of the study. The rural hospital physicians, nurses and parents were linked with pediatric critical care medicine specialists at the University of California, Davis.<sup>11</sup> Researchers at the university found that parents' satisfaction and perception of the quality of care received was significantly greater with telemedicine than with telephone guidance.<sup>12</sup>

### **Federal Provisions for Telemedicine**

Federal laws and regulations address telemedicine from several angles, from prescribing controlled substances and setting hospital emergency room guidelines, to establishing reimbursement guidelines for the Medicare program.

#### ***Prescribing Via the Internet***

Federal law specifically prohibits the issue of controlled substances prescribed via the internet without an in-person evaluation. The federal regulation under 21 CFR §829 specifically states:

No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.<sup>13</sup> However, the Ryan Haight Online Pharmacy Consumer Protection Act,<sup>14</sup> signed into law in October 2008, created an exception for the in-person medical evaluation for telemedicine practitioners. The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

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<sup>9</sup> Government Computing News, *Prisons Turn to Telemedicine for Treating Inmates*, (May 21, 2013), <http://gcn.com/blogs/pulse/2013/05/prisons-telemedicine-treating-inmates.aspx> (last visited Jan. 28, 2014)

<sup>10</sup> Gainesville, Sun, *Now You Can Visit an Inmate From Home*, (Jan. 9, 2014), <http://www.gainesville.com/article/20140109/ARTICLES/140109711?p=1&tc=pg#gsc.tab=0> (last visited Jan. 28, 2014).

<sup>11</sup> *In Rural ERs, Kids Get Better Care with Telemedicine*, <http://www.futurity.org/in-rural-ers-kids-get-better-care-with-telemedicine> (last visited Jan. 28, 2014).

<sup>12</sup> *Id.*

<sup>13</sup> 21 CFR §829(e)(2).

<sup>14</sup> Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April of 2009 as required under the Haight Act.<sup>15</sup> The federal regulatory definition of telemedicine under the DEA includes, but is not limited to, the following elements:

- The patient and the practitioner are located in separate locations;
- Patient and practitioner communicate via a telecommunications system;
- The practitioner must meet other registration requirements for the dispensing of controlled substance via the Internet; and,
- Certain practitioners (Department of Veterans Affairs' employees, for example) or practitioners in certain situations (public health emergencies) may be exempted from registration requirements.<sup>16</sup>

### *Medicare Coverage*

Specific telehealth services delivered at designated sites are covered under Medicare. The federal Centers for Medicare and Medicaid Services' regulations require both a distant site (location of physician delivering the service via telecommunications) and a separate originating site (location of the patient) under their definition of telehealth. Asynchronous "store and forward" activities are only reimbursed under Medicaid in federal demonstration projects.<sup>17</sup>

To qualify for Medicare reimbursement, the originating site must meet one of these qualifications:

- Located in a federally defined rural county;
- Designated rural health professional shortage area;<sup>18</sup> or,
- Identified as a participant in a federal telemedicine demonstration project as of December 21, 2000.<sup>19</sup>

Federal requirements provide additional qualifications for an originating site once one of the initial elements above has been satisfied. An originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A critical access hospital;
- A rural health clinic;
- A federally qualified health center;
- A hospital;
- A hospital-based or critical access hospital-based renal dialysis center (including satellites);
- A skilled nursing facility; and,

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<sup>15</sup> Id., at sec. 3(j).

<sup>16</sup> 21 CFR §802(54).

<sup>17</sup> Only two states have a federal demonstration project that meets these qualifications, Hawaii and Alaska.

<sup>18</sup> The rural definition was expanded through a final federal regulation released on December 10, 2013 to include health professional shortage areas located in rural census tracts of urban areas as determined by the Office of Rural Health Policy. See 78 FR 74229, 74400-74402, 74812 (December 10, 2013).

<sup>19</sup> See 42 U.S.C. sec. 1395(m)(m)(4)(C)(i).

- A community mental health center.<sup>20</sup>

Reimbursement for the distant site is established as “an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system.”<sup>21</sup>

Federal law also provides for a facility fee for the originating site that started and remained at \$20 through December 31, 2002 and then, by law, is subsequently increased each year by the percentage increase in the Medicare Economic Index or MEI. For calendar year 2014, the originating fee was 80 percent of the lesser of the actual charge or \$24.63.<sup>22</sup>

Telehealth services covered under Medicare include professional consultations, office visits, and office psychiatry services within certain health care procedure codes.<sup>23</sup> Practitioners eligible to bill for telehealth services include physicians, nurse practitioners, physician assistants, nurse midwives, clinical nurse specialists, clinical psychologists, clinical social workers, and registered dietitians or nutrition specialists who are licensed to provide the service under state law.<sup>24</sup>

### **Telemedicine Services in Florida**

The University of Miami (UM) initiated telehealth services in 1973 and claims the first telehealth service in Florida, the first use of nurse practitioners in telemedicine in the nation, and the first telemedicine program in correctional facilities.<sup>25</sup> Today, UM has several initiatives in the areas of tele-dermatology, tele-trauma, humanitarian and disaster response relief telehealth, school telehealth services, and acute teleneurology or telestroke.<sup>26</sup> While some of the UM’s activities reach their local community, others reach outside of Florida including providing Haiti earthquake relief and teledermatology to cruise line employees. Telehealth communications are also used for monitoring patients in the hospital and conducting training exercises.

The UM also utilizes telemedicine to research the effectiveness of telemedicine in different trauma situations with the United States military. The research utilizes a robot which is operated from a control station using a joystick. The control station is on a laptop that allows the provider to operate the robot from any location with a wireless connection.<sup>27</sup> Lessons learned from this

<sup>20</sup> See 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

<sup>21</sup> See 42 U.S.C. sec. 1395(m)(m)(2)(A).

<sup>22</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM8533(December 20, 2013)*, <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/MM8533.pdf> (last visited: Jan 28, 2014).

<sup>23</sup> See 42 U.S.C. sec. (m)(m)(4)(F) for statutory authority and visit <http://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/> for additional federal guidance.

<sup>24</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services - Rural Health Fact Sheet Series*, December 2012, <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcfsht.pdf> (last visited Jan. 27, 2014).

<sup>25</sup> University of Miami, Miller School of Medicine, *UM Telehealth - Our History*, <http://telehealth.med.miami.edu/about-us/our-history> (last visited Jan. 31, 2014).

<sup>26</sup> University of Miami, Miller School of Medicine, *UM Telehealth*, <http://telehealth.med.miami.edu/featured/teledermatology> (last visited Jan. 28, 2014).

<sup>27</sup> University of Miami, Miller School of Medicine, *UM Telehealth - Teletrauma*, <http://telehealth.med.miami.edu/featured/teletrauma> (last visited Jan. 31, 2014).

research are intended to provide assistance to deployed surgeons on the battlefield treating injured soldiers.

The UM along with other designated trauma centers participate in the Florida Emergency Trauma Telemedicine Network (FETTN). Coordinated by the department, the FETTN, facilitates the treatment of trauma patients between trauma centers and community or rural hospitals.<sup>28</sup> The FETTN allows for multiple interface options and currently 7 out of 25 trauma centers are part of the network.<sup>29</sup> In 2011-12, the seven Level 1 or Level 2 trauma centers that participated as a hub site, known as the location where the consulting physician is delivering the services, were Holmes Regional Medical Center, Tallahassee Memorial Hospital, Sacred Heart Hospital, University of Miami, Shands-Gainesville, Shands-Jacksonville, and Orlando Health.<sup>30</sup>

According to the department, the trauma centers and their satellites as well as the rural hospitals that currently participate in the FETTN are not reimbursed for the consultation and treatment services provided within the telemedicine network.

### ***Florida Medicaid Program***

Florida's Medicaid program reimburses for a limited number of telemedicine services by designated practitioners.<sup>31</sup> Audio only, email messages, facsimile transmissions, or communications with an enrollee through another mechanism other than the spoke site, known as the site where the patient is located, are not covered under Florida Medicaid.

Telemedicine is currently covered by Medicaid for the following services and settings:<sup>32</sup>

- Behavioral Health
  - Tele-psychiatry services for psychiatric medication management by practitioners licensed under s. 458 or 459, F.S.
  - Tele-behavioral health services for individual and family behavioral health therapy services by qualified practitioners licensed under chs. 490 or 491, F.S.
- Dental Services
  - Video conferencing between a registered dental hygienist employed by and under contract with a Medicaid-enrolled group provider and under the supervision of a supervising dentist.
  - Services include oral prophylaxis, topical fluoride, and oral hygiene instructions.
- Physician Services
  - Services provided using audio and video equipment that allow for two-way, real time interactive communication between physician and patient.

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<sup>28</sup> Florida Department of Health, *2014 Agency Legislative Bill Analysis of SB 70*, p.2, on file with the Senate Health Policy Committee (August 26, 2013).

<sup>29</sup> *Id.*, at .3.

<sup>30</sup> Florida Department of Health, *Long Range Program Plan* (September 28, 2012), on file with the Senate Health Policy Committee.

<sup>31</sup> Agency for Health Care Administration, *Highlights of Practitioner Services Coverage and Limitations Handbook Presentation*, Bureau of Medicaid Services, Summer 2013, p.30.

<sup>32</sup> Agency for Health Care Administration, *2014 Legislative Bill Analysis of SB 70*, November 7, 2013, p. 3, on file with the Senate Health Policy Committee.

- State plan waiver specifically authorizes reimbursement for specialty physician services for Children’s Medical Services Network.
- Physicians may bill for consultation services only provided via telemedicine.

The distant or hub site, where the provider is located, is eligible for reimbursement; the spoke site, where the patient is located, is not eligible for reimbursement unless a separate service is performed on the same day. Medicaid also requires that the referring physician and the patient be present during the consultation.<sup>33</sup>

Medicaid requires the following specific clinical records documentation to qualify for reimbursement as a telemedicine service:<sup>34</sup>

- A brief explanation of why services were not provided face-to-face;
- Documentation of telemedicine services, including results of assessment; and,
- A signed statement from the patient (or parent or guardian, if a child), indicating their choice to receive services through telemedicine.

Medicaid services are reimbursable only in the hospital outpatient, inpatient and physician office settings. During the 2013 Legislative Session, Medicaid provider enrollment requirements were revised to allow the enrollment of physicians actively licensed in Florida to interpret diagnostic testing results through telecommunications and information technology provided from a distance.<sup>35</sup>

Since 2006, the Children’s Medical Services Network (CMS Network) has been authorized to provide specified telemedicine services under Florida’s 1915(b) Medicaid Managed Care waiver. Authorized services include physician office visits (evaluation and management services) and consultation services already covered by the Medicaid state plan in select rural counties. Currently, the CMS Network provides telemedicine services in 57 of Florida’s 67 counties.<sup>36</sup>

The CMS Network works with the University of Florida’s (UF) pediatric endocrinology staff to provide telehealth services for enrollees with diabetes and other endocrinology diseases in the Daytona Beach service area.<sup>37</sup> Additional partnerships with the Institute for Child Health Policy at UF include referring children with special health care needs to community health centers for consults via telehealth for nutritional, neurological, and orthopedics in Southeast Florida.<sup>38</sup>

### ***Child Protection Teams***

The Child Protection Team (CPT) program under Children’s Medical Services utilizes a telemedicine network to perform child assessments. The CPT is a medically directed multi-disciplinary program that works with local Sheriff’s offices and the Department of Children and

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<sup>33</sup> Agency for Health Care Administration, *supra*, note 31, at 34.

<sup>34</sup> *Id.* at p.36.

<sup>35</sup> See Chapter 2013-150, L.O.F., sec. 1.

<sup>36</sup> Florida Department of Health, *supra*, note 28, at 2.

<sup>37</sup> Florida Department of Health, *Maternal and Child Health Block Grant Narrative for 2013*, <http://www.floridahealth.gov/healthy-people-and-families/womens-health/pregnancy/mch-fl-2013-1narrative.pdf>, p.21, (last visited: Jan. 31, 2014).

<sup>38</sup> *Id.*

Families in cases of child abuse and neglect to supplement investigative activities.<sup>39</sup> The CPT patient is seen at a remote site and a registered nurse assists with the medical exam. A physician or Advanced Registered Nurse Practitioner (ARNP) is located at the hub site and has responsibility for directing the exam.

Hub sites are comprehensive medical facilities that offer a wide range of medical and interdisciplinary staff whereas the remote sites tend to be smaller facilities that may lack medical diversity. In 2013, CPT telehealth services were available at 14 sites and 437 children were provided medical or other assessments via telemedicine technology.<sup>40</sup>

#### ***Other Department of Health Initiatives***

The department utilizes tele-radiology through the Tuberculosis (TB) Physician's Network.<sup>41</sup> The ability to read electronic chest X-Rays remotely can lead to a faster diagnosis, treatment and a reduction in the spread of the disease, according to the department. This service is not currently reimbursed by Medicaid.

#### **Compliance with Health Insurance Portability and Accountability Act (HIPAA)**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Privacy rules were initially issued in 2000 by the Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information as well as create standards for privacy rights. Additional privacy and security measures were adopted in 2009 with the Health Information Technology for Economic Clinical Health (HITECH) Act.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:

- Health plans;
- Health care providers;
- Health care clearinghouses; and,
- Business Associates.

While not a covered entity as an individual, the patient still maintains his or her privacy and confidentiality rights regardless of the method in which the medical service is delivered. The HITECH Act specifically identified telemedicine as an area for review and consideration and funding was provided, in part, to strengthen infrastructure and tools to promote telemedicine.<sup>42</sup>

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in telemedicine is required to meet the same technical and physical HIPAA and HITECH requirements as would be required for a physical office visit. These requirements include ensuring that the equipment and technology is HIPAA compliant.

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<sup>39</sup> Florida Department of Health, *Child Protection Teams*, [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) (last visited Jan. 7, 2014).

<sup>40</sup> Florida Department of Health, *supra* note 37, at 21.

<sup>41</sup> Florida Department of Health, *supra* note 28, at 2.

<sup>42</sup> Public Law 111-5, sec. 3002(b)(2)(C)(iii) and sec. 3011(a)(4).

### III. Effect of Proposed Changes

**Section 1** designates ss. 465.4501-465.4507, F.S., as the “Florida Telemedicine Act.”

**Section 2** provides definitions for the Florida Telemedicine Act, including:

- Act
- Advanced Communications Technology
- Distant Site
- Encounter
- Health Care Provider
- In Person
- Originating Site
- Patient Presenter
- Store and forward
- Telemedicine
- Telemedicine provider

**Section 3** creates s. 456.4503, F.S., to establish a new registration process for an out of state health care practitioner who holds an active, unrestricted license in his or her state of residency in order to provide telemedicine services to a patient physically located in Florida. The registration process includes a biennial fee set by the applicable regulatory board in an amount not to exceed \$50.

The registration process for each health care practitioner type will be established by the applicable regulatory board for that profession, or if there is no regulatory board, then the department. Registration under this act will be treated the same as a license for disciplinary purposes and the health care provider must agree to make available any pertinent records upon the request of the applicable board, the department or any other federal or state regulatory authority. Failure to comply with a records request may result in revocation of the out of state practitioner’s registration or a fine, as established by the applicable board or the department, as applicable.

Registration under this act is only required for those health care practitioners who engage in telemedicine across state lines more than 10 times per calendar year. Emergency physician consultations are exempt from the registration requirements. Licensure is also not required for consultations between an out of state practitioner and an in-state practitioner for the transmission and review of digital images, pathology specimens, test results or other medical data related to a patient in this state.

A Health care practitioner acting within the scope of his or her practice may utilize telemedicine within his or her practice or act under the direction or supervision of an authorized practitioner. A health care practitioner or patient presenter using telemedicine technology at the direction and supervision of a physician may not be interpreted as practicing medicine without a license. Providers, however, are required to be trained and knowledgeable about the equipment being utilized. Failure to acquire appropriate training and knowledge is grounds for disciplinary action.

The regulatory boards, or the department if there is no board, may adopt rules to implement this act and are directed to repeal any rules that prohibit the practice of telemedicine. The boards may also adopt rules regarding patient presenters but may not require the use of a presenter, if special skills and training are not needed for the patient to participate in the encounter.

**Section 4** creates s. 456.4504, F.S., to specify that the standard of care for the delivery of telemedicine services shall be the same as if the services were delivered in person.

The proposed bill references the standard of care in s. 766.102, F.S. That section of law addresses medical negligence and provides:

The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

The telemedicine provider is responsible for the quality of the telemedicine equipment and technology and its safe use. Telemedicine equipment must be able to provide the health care provider the same information, at a minimum, that would have been obtained in an in-person encounter. The equipment and technology must enable the telemedicine provider to meet or exceed the prevailing standard of care for the practitioner's profession.

The health care provider is not required to conduct a patient history or physical exam before the telemedicine encounter as long as the telemedicine evaluation meets the community standard of care for the services provided.

The act prohibits prescribing a legend drug based solely on an electronic questionnaire without a visual examination. To do so is a failure to practice medicine with the level of care, skill and treatment recognized by the reasonably prudent practitioner and is not authorized under this act. Additionally, a practitioner may not prescribe a controlled substance through the use of telemedicine for chronic, non-malignant pain.

Medical record-keeping requirements must be kept in the same manner as an in-person encounter under federal and state law. All records generated, including audio, video, electronic or other means must conform to confidentiality and record-keeping laws of this state, regardless of the patient's location. Telemedicine technology must be encrypted and include a record-keeping program to verify each interaction.

If a third party vendor is used by a telemedicine provider, a business associate agreement is required. The act requires that the third party vendor comply with the HITECH Act. For patient owned technology, the telemedicine provider is responsible for ensuring that the equipment meets the same requirements under the HITECH Act and is appropriate for the medical services being rendered.

**Section 5** creates s. 456.4505, F.S., to establish reimbursement guidelines for telemedicine services reimbursed through health insurance policies or health plans. Mandatory coverage for

telemedicine services under health insurance plans and policies is not required under the act; however, if covered, then the services must be paid in an amount equal to the amount the health care provider would have received had the services been provided without the use of telemedicine services. The level of reimbursement for telemedicine services is to be determined between the health care provider and the health insurance plan.

A health plan or health insurer may impose a deductible, copay, or a coinsurance for telemedicine as long as that cost does not exceed the amount charged for an in-person encounter for the same health care service. A health insurance policy or plan may also limit telemedicine coverage to only those providers within the insurer's network, without regard to the provisions of ss. 627.6471 and 627.6472, F.S.

**Section 6** creates s. 456.4506, F.S., to authorize the executive directors of the various regulatory boards for health care professions and the department to negotiate interstate compacts for the provision of telemedicine services across state lines. Annually, the department is required to present a status report to the Governor, the President of the Senate, and the Speaker of the House of Representatives of any negotiated compacts for potential ratification by the Legislature. The report is due each December 31.

**Section 7** creates s. 456.4507, F.S., to establish a requirement for the AHCA to reimburse for telemedicine services under Medicaid. Telemedicine services are to be reimbursed in the same manner and in an equivalent amount to Medicaid services provided in-person under parts III (Medicaid) and IV (Medicaid Managed Care) of ch. 409, F.S. An exception to this requirement is provided if the AHCA determines a service that is delivered through telemedicine is not cost effective or does not meet the clinical needs of recipients. If, after implementation, the AHCA documents this determination, then coverage for that particular service may be discontinued.

Under this section, reimbursement for Medicaid services delivered via telemedicine shall be negotiated between the parties; however, both the originating site and distant site should receive compensation based on the services rendered.

The AHCA is also required to submit a usage and cost report on telemedicine services in the Medicaid program. The report is due to the President of the Senate, Speaker of the House of Representatives, and the minority leaders by January 1, 2017.

This section relating to telemedicine services under the Medicaid program sunsets on June 30, 2017.

**Section 8** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Out of state practitioners not currently licensed to practice in Florida would pay a biennial fee of \$50 to register to provide professional services via telemedicine to patients in the state. It is unknown how many out of state practitioners would register under this act.

The potential expansion of telemedicine reimbursement opportunities under both private insurance coverage and Medicaid could facilitate a growth in health care provider fees for private sector health care providers, especially those providers that are currently providing these services now and not receiving any reimbursement.

Additionally, health care technology companies that provide the equipment for these services may see an increase in demand from health care practitioners for new equipment and maintenance needs of any existing equipment.

C. Government Sector Impact:

For SB 70, which had a similar provision for telemedicine coverage of Medicaid services, the AHCA provided an indeterminate fiscal impact because the rulemaking in SB 70 had been delegated to the department and both costs and savings would be associated with the bill's provisions. The expected savings were based on possible efficiencies, improvements in disease management, and improved patient outcomes that resulted from telemedicine services.<sup>43</sup>

An increase in the services covered by telemedicine could also lead to an indeterminate increase in utilization and costs. SPB 7028 broadens the number of services available through telemedicine.<sup>44</sup>

The department indicated in its analysis of SB 70 that a potential increase in Medicaid reimbursement funds for consultation and treatment under Medicaid could be achieved

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<sup>43</sup> Agency for Health Care Administration, *supra*, note 32, at 7.

<sup>44</sup> *Id.*, p. 8.

for the TB project. According to the department, the estimated revenue impact to the state would be \$103,190.<sup>45</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

There are numerous other sections of state law that refer to “in person” or “face to face” requirements for certain medical services or health care related activities. While SPB 7028 defines “in person” for purposes of the Florida Telemedicine Act, there are other usages of this phrase in statute.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 456.4501, 456.4502, 456.4503, 456.4504, 456.4505, 456.4506, and 456.4507.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>45</sup> Florida Department of Health, *supra* note 28, at 5.



484228

LEGISLATIVE ACTION

Senate

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House

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The Committee on Health Policy (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

456.4501 Short title.—Sections 465.4501-465.4506 may be  
cited as the "Florida Telemedicine Act."



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9 Section 2. Section 456.4502, Florida Statutes, is created  
10 to read:

11 456.4502 Definitions.—As used in this act, the term:

12 (1) "Act" means the Florida Telemedicine Act.

13 (2) "Advanced communications technology" means:

14 (a) Compressed digital interactive video, audio, or data  
15 transmissions;

16 (b) Real-time synchronous video- or web-conferencing  
17 communications;

18 (c) Secure web-based communications;

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

20 (e) Health care service transmissions supported by mobile  
21 devices (mHealth); or

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

24 (3) "Distant site" means the location at which the  
25 telemedicine provider delivering the health care service is  
26 located at the time the service is provided via telemedicine.

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

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

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

35 (7) "Originating site" means the location of the patient  
36 receiving telemedicine services which site meets the standards  
37 of this act as verified by the telemedicine provider.



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38       (8) "Patient presenter" means an individual who has  
39 clinical background training in the use of advanced  
40 communications technology equipment and who is available at the  
41 originating site to present the patient, manage the cameras or  
42 equipment, and perform any hands-on activity necessary to  
43 successfully complete the telemedicine encounter under the  
44 direction and supervision of a telemedicine provider.

45       (9) "Store and forward" means the type of telemedicine  
46 encounter that uses still digital images of patient data for  
47 rendering a medical opinion or diagnosis. The term includes the  
48 asynchronous transmission of clinical data from one site to  
49 another.

50       (10) "Telehealth" means the use of advanced communications  
51 technology to provide access to health assessment, diagnosis,  
52 intervention, consultation, supervision, and information across  
53 distances. The term includes the use of remote patient  
54 monitoring devices that are used to collect and transmit data  
55 for telemonitoring and interpretation.

56       (11) "Telemedicine" means the use of advanced  
57 communications technology by a health care provider or by a  
58 health care provider acting under an appropriate delegation or  
59 supervision as may be required by the appropriate board, or the  
60 department if there is no board, to provide a health care  
61 service. Services provided through telemedicine may include  
62 patient assessment, diagnosis, consultation, treatment,  
63 prescription of medicine, transfer of medical data, or other  
64 medical-related services. The term does not include audio-only  
65 calls, e-mail messages, or facsimile transmissions. Telemedicine  
66 includes telehealth and telemonitoring.



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67           (12) "Telemedicine provider" means a health care  
68 practitioner who provides telemedicine services, or an out-of-  
69 state health care provider who provides telemedicine services to  
70 a patient physically located in this state and who meets the  
71 requirements of s. 456.4503, as applicable.

72           Section 3. Section 456.4503, Florida Statutes, is created  
73 to read:

74           456.4503 Telemedicine requirements.—

75           (1) An out-of-state health care provider who provides  
76 telemedicine across state lines to a patient physically located  
77 in this state must have a Florida license to practice a health  
78 care profession, except as provided under subsection (2).

79           (2) An out-of-state physician who does not meet the  
80 requirements of subsection (1) may provide telemedicine services  
81 across state lines to patients located in this state if the  
82 physician:

83           (a) Holds an unrestricted active license to practice  
84 allopathic or osteopathic medicine in the state of the distant  
85 site and that state's licensure requirements meet or exceed  
86 those of this state under chapter 458 or chapter 459, as  
87 determined by the appropriate board;

88           (b) Maintains professional liability coverage that includes  
89 coverage for telemedicine services, in an amount and manner  
90 consistent with s. 458.320 and appropriate to the physician's  
91 scope of practice and location;

92           (c) Has at least one of the following:

93           1. Privileges at or is on the medical staff of an out-of-  
94 state hospital that is a certified Medicare provider;

95           2. Affiliation with an out-of-state health insurer or



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96 health plan that is also licensed in this state and that uses  
97 credentialing requirements that are equivalent to those used in  
98 this state; and

99 (d) Practices in a state that allows Florida-licensed  
100 physicians to provide telemedicine services to patients located  
101 in that state without having to be licensed to practice medicine  
102 in that state.

103 (3) An out-of-state physician provider authorized under  
104 subsection (2) to provide telemedicine services to patients in  
105 this state is subject to appropriate disciplinary action by a  
106 regulatory entity in this state which has regulatory  
107 jurisdiction over the hospital, insurer, or health plan  
108 affiliated with the physician as described in paragraph (2)(c).  
109 Such affiliated hospital, insurer, or health plan shall be held  
110 responsible by the appropriate state regulatory entities and  
111 other legal and regulatory authorities in this state, as  
112 applicable, for the actions of their affiliated physician  
113 providers providing telemedicine services to patients in this  
114 state.

115 (4) The telemedicine provider and any affiliated hospital,  
116 insurer, or health plan described under paragraph (2)(c), if  
117 applicable, shall make any pertinent records available upon  
118 request of the board, the department, or other regulatory  
119 authority as applicable. Failure to comply with such request may  
120 result in the revocation of a health care practitioner's license  
121 or imposition of a fine by the applicable board, or department  
122 if there is no board; or in the case of an affiliated hospital,  
123 insurer or health plan, a fine, a license restriction, or  
124 revocation of an affiliated entity's authorization to conduct



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125 business in this state.

126 (5) Venue for a civil or administrative action initiated by  
127 the telemedicine recipient, the department, or the appropriate  
128 board shall be based on the location of the patient or shall be  
129 in Leon County.

130 (6) Physician consultations that occur on an emergency  
131 basis and that are conducted via telemedicine are exempt from  
132 subsections (1) and (2). Emergency services and care provided to  
133 relieve an emergency medical condition have the same meaning as  
134 defined under s. 395.002.

135 (7) This section does not prohibit consultations between an  
136 out-of-state health care provider and a health care practitioner  
137 in this state or for the transmission and review of digital  
138 images, pathology specimens, test results, or other medical data  
139 by an out-of-state health care provider or other qualified  
140 providers related to the care of a patient in this state.

141 (8) This section does not preclude a health care provider  
142 who acts within the scope of his or her Florida professional  
143 license from using the technology of telemedicine within his or  
144 her practice or under the direction and supervision of another  
145 health care provider whose scope of practice includes the use of  
146 such technology. A health care provider or patient presenter  
147 acting under the direction and supervision of a physician  
148 through the use of telemedicine may not be interpreted as  
149 practicing medicine without a license. However, a health care  
150 provider must be trained in, educated on, and knowledgeable  
151 about the procedure and technology and may not perform duties  
152 for which the practitioner does not have sufficient training,  
153 education, and knowledge. Failure to have adequate training,



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154 education, and knowledge is grounds for disciplinary action by  
155 the appropriate board, or the department if there is no board,  
156 or the affiliated regulatory entity for affiliated providers.

157 (9) The boards, or the department if there is no board, may  
158 adopt rules to administer the requirements of this act and must  
159 repeal rules that are inconsistent with this act, including  
160 rules that prohibit the use of telemedicine in this state. The  
161 appropriate board, or the department if there is no board, may  
162 also develop standards and adopt rules relating to requirements  
163 for patient presenters. Such rules may not require the use of  
164 patient presenters in telemedicine services if special skills or  
165 training is not needed for a patient to participate in the  
166 encounter.

167 (10) A health care practitioner who engages in telemedicine  
168 services must complete 2 hours of continuing education credit  
169 related to the provision of services through telemedicine during  
170 each license renewal period.

171 Section 4. Section 456.4504, Florida Statutes, is created  
172 to read:

173 456.4504 Telemedicine standards.—

174 (1) The standard of care as provided in s. 766.102 is the  
175 same regardless of whether a health care provider provides  
176 health care services in person or by telemedicine. The  
177 applicable board for each health care provider, or the  
178 department if there is no board, may adopt rules specifically  
179 related to the standard of care for telemedicine.

180 (2) A telemedicine provider providing telemedicine services  
181 under this act is responsible for the quality of the equipment  
182 and technology employed and for its safe use. Telemedicine



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183 equipment and advanced communications technology must, at a  
184 minimum, be able to provide the same information to the  
185 telemedicine provider as the information that would be obtained  
186 in an in-person encounter with a health care provider and enable  
187 the telemedicine provider to meet or exceed the prevailing  
188 standard of care for the practice of the profession.

189 (3) The telemedicine provider is not required to conduct a  
190 patient history or physical examination of the patient before  
191 engaging in a telemedicine encounter if the telemedicine  
192 provider conducts a patient evaluation sufficient to meet the  
193 prevailing standard of care for the services provided.

194 (4) Before each telemedicine encounter, the identification  
195 and location of the telemedicine provider and any other  
196 individuals present via advanced communications technology who  
197 will view the patient or the patient's information must be  
198 identified to the patient.

199 (5) For the purposes of this act, the nonemergency  
200 prescribing of a legend drug based solely on an electronic  
201 questionnaire without a visual examination is considered a  
202 failure to practice medicine with the level of care, skill, and  
203 treatment which is recognized by a reasonably prudent physician  
204 or other authorized practitioner and is not authorized under  
205 this act.

206 (6) A controlled substance may not be prescribed through  
207 the use of telemedicine.

208 (7) Medical records must be kept by each telemedicine  
209 provider that participates in a patient telemedicine encounter  
210 to the same extent as required for an in-person encounter under  
211 state and federal law. Telemedicine providers are encouraged to



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212 create electronic health records to document the encounter and  
213 to transmit information in the most efficient manner possible.

214 (8) Any medical records generated, including records  
215 maintained via video, audio, electronic, or other means, due to  
216 a telemedicine encounter must conform to the confidentiality and  
217 recordkeeping requirements of federal law, nationally recognized  
218 health care accreditation organizations, and the laws and rules  
219 of this state regardless of where the medical records of a  
220 patient in this state are maintained.

221 (9) Telemedicine technology used by a telemedicine provider  
222 must be encrypted and must use a recordkeeping program to verify  
223 each interaction.

224 (10) In those situations in which a telemedicine provider  
225 uses telemedicine technology provided by a third-party vendor,  
226 the telemedicine provider must:

227 (a) Require a business associate agreement with the third-  
228 party vendor; and

229 (b) Ensure that the third-party vendor complies with the  
230 administrative, physical, and technical safeguards and standards  
231 set forth by the Health Information Technology for Economic and  
232 Clinical Health (HITECH) Act and by federal regulations  
233 implemented pursuant to HITECH.

234 (11) If a patient provides any of the telemedicine  
235 technology, such as a patient-owned smartphone, tablet, laptop,  
236 desktop computer, or video equipment, the telemedicine provider  
237 must take steps to ensure that such technology:

238 (a) Complies with the administrative, physical, and  
239 technical safeguards set forth by HITECH and by federal  
240 regulations implemented pursuant to HITECH; and



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241 (b) Is appropriate for the medical discipline for which the  
242 technology is provided.

243 Section 5. Section 456.4505, Florida Statutes, is created  
244 to read:

245 456.4505 Interstate compacts for telemedicine.—The  
246 Legislature finds that lack of access to high-quality,  
247 affordable health care services is an increasing problem, both  
248 in this state and nationwide. The Legislature finds that this  
249 problem could be alleviated by greater interstate cooperation  
250 among, and by the mobility of, health care providers through the  
251 use of telemedicine. Therefore, the executive directors of the  
252 boards, together with the department, may participate in the  
253 development of one or more interstate compacts for the provision  
254 of telemedicine services across state lines. The department  
255 shall annually submit a report on the status of any pending  
256 compacts for legislative consideration to the Governor, the  
257 President of the Senate, and the Speaker of the House of  
258 Representatives. Any finalized compacts shall be submitted by  
259 December 31 for consideration by the Legislature during the next  
260 regular legislative session. A compact negotiated or proposed by  
261 a board or the department is not valid until enacted by the  
262 Legislature.

263 Section 6. Section 456.4506, Florida Statutes, is created  
264 to read:

265 456.4506 Telemedicine services under Medicaid.—

266 (1) The Agency for Health Care Administration shall  
267 reimburse for Medicaid services provided through telemedicine in  
268 the same manner and equivalent to Medicaid services provided in  
269 person under parts III and IV of chapter 409, except as provided



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270 in subsection (7).

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

273 (3) Except as provided in subsection (7), the agency may  
274 not require in-person contact between a health care provider and  
275 Medicaid recipient as a prerequisite for payment for services  
276 appropriately provided through telemedicine in accordance with  
277 generally accepted health care practices and standards  
278 prevailing in the applicable health care community at the time  
279 the services are provided.

280 (4) Before receipt of telemedicine services, a Medicaid  
281 recipient or the legal representative of a Medicaid recipient  
282 must provide informed consent for telemedicine services. A  
283 Medicaid recipient shall also be provided the opportunity to  
284 receive the same service through an in-person encounter.

285 (5) A Medicaid service that is provided through a fee-for-  
286 service or managed care program may not be denied as a  
287 creditable Medicaid service solely because that service is  
288 provided through telemedicine.

289 (6) Reimbursement of telemedicine services under Medicaid  
290 shall be the amount negotiated between the parties involved to  
291 the extent permitted under state and federal law. Regardless of  
292 the reimbursement methodology or amount, telemedicine providers  
293 located at the originating site and the distant site should both  
294 receive reimbursement based on the services rendered, if any,  
295 during the telemedicine encounter.

296 (7) If, after implementation, the agency determines that  
297 the delivery of a particular service through telemedicine is not  
298 cost-effective or does not adequately meet the clinical needs of



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299 recipients and the determination has been documented, the agency  
300 may discontinue Medicaid reimbursement for that telemedicine  
301 service.

302 (8) The agency shall submit a report on the usage and  
303 costs, including savings, if any, associated with the provision  
304 of health care services through telemedicine under the Medicaid  
305 program by January 1, 2017, to the President of the Senate, the  
306 Speaker of the House of Representatives, and the minority  
307 leaders of the Senate and House of Representatives.

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

309 Section 7. Paragraph (i) is added to subsection (1) of  
310 section 458.311, Florida Statutes, to read:

311 458.311 Licensure by examination; requirements; fees.—

312 (1) Any person desiring to be licensed as a physician, who  
313 does not hold a valid license in any state, shall apply to the  
314 department on forms furnished by the department. The department  
315 shall license each applicant who the board certifies:

316 (i) For an applicant who graduates from medical school  
317 after October 1, 2015, has completed at least 2 credit hours of  
318 medical education related to telemedicine.

319 Section 8. Paragraph (n) is added to subsection (1) of  
320 section 459.0055, Florida Statutes, to read:

321 459.0055 General licensure requirements.—

322 (1) Except as otherwise provided herein, any person  
323 desiring to be licensed or certified as an osteopathic physician  
324 pursuant to this chapter shall:

325 (n) For an applicant who graduates from medical school  
326 after October 1, 2015, have completed at least 2 credit hours of  
327 medical education related to telemedicine.



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328 Section 9. This act shall take effect October 1, 2014.

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330 ===== T I T L E A M E N D M E N T =====

331 And the title is amended as follows:

332 Delete everything before the enacting clause

333 and insert:

334 A bill to be entitled

335 An act relating to telemedicine; creating s. 456.4501,

336 F.S.; providing a short title; creating s. 456.4502,

337 F.S.; defining terms applicable to the act; creating

338 s. 456.4503, F.S.; requiring health care providers

339 providing telemedicine services to patients in this

340 state to be licensed in this state; providing

341 alternative requirements for out-of-state physicians;

342 providing for disciplining out-of-state physicians

343 through affiliated entities operating in this state;

344 requiring pertinent records to be made available upon

345 request; establishing venue; providing exceptions for

346 emergency services; providing applicability;

347 authorizing the health care boards and the Department

348 of Health to adopt rules; creating s. 456.4504, F.S.;

349 providing standards and prohibitions for the provision

350 of telemedicine services; creating s. 456.4505, F.S.;

351 providing legislative findings; authorizing the

352 regulatory boards and the department to participate in

353 the development of interstate compacts for the

354 provision of telemedicine services; requiring an

355 annual report to the Governor and the Legislature on

356 the status of such compacts; requiring legislative



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357 enactment of such compacts; creating s. 456.4506,  
358 F.S.; providing requirements for reimbursement of  
359 telemedicine services under the Medicaid program;  
360 requiring a report to the Legislature on the usage and  
361 costs of telemedicine in Medicaid by a certain date;  
362 providing for future repeal; amending ss. 458.311 and  
363 459.0055, F.S.; requiring an applicant for licensure  
364 as a physician who graduates after a certain date to  
365 complete 2 credit hours of medical education related  
366 to telemedicine; providing an effective date.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Health Policy (Galvano) recommended the following:

1       **Senate Substitute for Amendment (484228) (with title**  
2 **amendment)**

3  
4       Delete everything after the enacting clause  
5 and insert:

6       Section 1. Section 456.4501, Florida Statutes, is created  
7 to read:

8       456.4501 Short title.—Sections 465.4501-465.4506 may be  
9 cited as the "Florida Telemedicine Act."

10       Section 2. Section 456.4502, Florida Statutes, is created



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11 to read:

12 456.4502 Definitions.—As used in this act, the term:

13 (1) "Act" means the Florida Telemedicine Act.

14 (2) "Advanced communications technology" means:

15 (a) Compressed digital interactive video, audio, or data  
16 transmissions;

17 (b) Real-time synchronous video- or web-conferencing  
18 communications;

19 (c) Secure web-based communications;

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

21 (e) Health care service transmissions supported by mobile  
22 devices (mHealth); or

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

25 (3) "Distant site" means the location at which the  
26 telemedicine provider delivering the health care service is  
27 located at the time the service is provided via telemedicine.

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

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

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

36 (7) "Originating site" means the location of the patient  
37 receiving telemedicine services which site meets the standards  
38 of this act as verified by the telemedicine provider.

39 (8) "Patient presenter" means an individual who has



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40 clinical background training in the use of advanced  
41 communications technology equipment and who is available at the  
42 originating site to present the patient, manage the cameras or  
43 equipment, and perform any hands-on activity necessary to  
44 successfully complete the telemedicine encounter under the  
45 direction and supervision of a telemedicine provider.

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

50 (10) "Telehealth" means the use of advanced communications  
51 technology to provide access to health assessment, diagnosis,  
52 intervention, consultation, supervision, and information across  
53 distances. The term includes the use of remote patient  
54 monitoring devices that are used to collect and transmit data  
55 for telemonitoring and interpretation.

56 (11) "Telemedicine" means the practice of medicine through  
57 the use of advanced communications technology by a telemedicine  
58 provider at a distant site in compliance with federal and state  
59 privacy and confidentiality requirements and encryption  
60 standards. Services provided through telemedicine may include  
61 patient assessment, diagnosis, consultation, treatment,  
62 prescription of medicine, transfer of medical data, or other  
63 medical-related services. The term does not include audio-only  
64 calls, e-mail messages, or facsimile transmissions. Telemedicine  
65 includes telehealth and telemonitoring.

66 (12) "Telemedicine provider" means a physician licensed  
67 under chapter 458 or chapter 459 who provides telemedicine  
68 services, or an out-of-state physician who provides telemedicine



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69 services to a patient physically located in this state and who  
70 meets the requirements of s. 456.4503, as applicable.

71 Section 3. Section 456.4503, Florida Statutes, is created  
72 to read:

73 456.4503 Telemedicine requirements.—

74 (1) An out-of-state physician who provides telemedicine  
75 across state lines to a patient physically located in this state  
76 must have a Florida license to practice medicine as provided  
77 under chapter 458 or chapter 459, except as provided under  
78 subsection (2).

79 (2) An out-of-state physician who does not meet the  
80 requirements of subsection (1) may provide telemedicine services  
81 across state lines to patients located in this state if the  
82 physician:

83 (a) Holds an unrestricted active license to practice  
84 allopathic or osteopathic medicine in the state of the distant  
85 site and that state's licensure requirements meet or exceed  
86 those of this state under chapter 458 or chapter 459, as  
87 determined by the appropriate board;

88 (b) Maintains professional liability coverage that includes  
89 coverage for telemedicine services, in an amount and manner  
90 consistent with s. 458.320 and appropriate to the physician's  
91 scope of practice and location;

92 (c) Has one of the following:

93 1. Privileges at or is on the medical staff of an out-of-  
94 state hospital affiliated with a Florida hospital licensed under  
95 chapter 395; or

96 2. Affiliation with an out-of-state health insurer or  
97 health plan that is also authorized to conduct business in this



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98 state pursuant to chapter 627 or chapter 641; and

99 (d) Practices in a state that allows Florida-licensed  
100 physicians to provide telemedicine services to patients located  
101 in that state without having to be licensed to practice medicine  
102 in that state.

103 (3) An out-of-state physician authorized under subsection  
104 (2) to provide telemedicine services to patients in this state  
105 is subject to appropriate disciplinary action by a regulatory  
106 entity in this state which has regulatory jurisdiction over the  
107 hospital, insurer, or health plan affiliated with the physician  
108 as described in paragraph (2)(c). Such affiliated hospital,  
109 insurer, or health plan shall be held responsible by the  
110 appropriate state regulatory entities and other legal and  
111 regulatory authorities in this state, as applicable, for the  
112 actions of their affiliated physicians providing telemedicine  
113 services to patients in this state.

114 (4) The telemedicine provider and any affiliated hospital,  
115 insurer, or health plan described under paragraph (2)(c), if  
116 applicable, shall make any pertinent records available upon  
117 request of the board, the department, or other regulatory  
118 authority as applicable. Failure to comply with such request may  
119 result in the revocation of the physician's license or  
120 imposition of a fine by the applicable board or department; or,  
121 in the case of an affiliated hospital, insurer, or health plan,  
122 a fine, a license restriction, or revocation of the affiliated  
123 entity's authorization to conduct business in this state.

124 (5) Venue for a civil or administrative action initiated by  
125 the telemedicine recipient, the department, or the appropriate  
126 board shall be based on the location of the patient or shall be



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127 in Leon County.

128 (6) Physician consultations that occur on an emergency  
129 basis and that are conducted via telemedicine are exempt from  
130 subsections (1) and (2). Emergency services and care provided to  
131 relieve an emergency medical condition have the same meaning as  
132 provided in s. 395.002.

133 (7) This section does not prohibit consultations between an  
134 out-of-state health care provider and a health care practitioner  
135 in this state or for the transmission and review of digital  
136 images, pathology specimens, test results, or other medical data  
137 by an out-of-state health care provider or other qualified  
138 providers related to the care of a patient in this state.

139 (8) The boards, or the department if there is no board, may  
140 adopt rules to administer the requirements of this act and must  
141 repeal rules that are inconsistent with this act, including  
142 rules that prohibit the use of telemedicine in this state. The  
143 appropriate board, or the department if there is no board, may  
144 also develop standards and adopt rules relating to requirements  
145 for patient presenters. Such rules may not require the use of  
146 patient presenters in telemedicine services if special skills or  
147 training is not needed for a patient to participate in the  
148 encounter.

149 (9) A health care practitioner who participates in  
150 telemedicine services must complete 2 hours of continuing  
151 education credit related to the provision of services through  
152 telemedicine during each license renewal period.

153 Section 4. Section 456.4504, Florida Statutes, is created  
154 to read:

155 456.4504 Telemedicine standards.-



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156       (1) The standard of care as provided in s. 766.102 is the  
157 same regardless of whether the physician provides health care  
158 services in person or by telemedicine. The applicable board may  
159 adopt rules specifically related to the standard of care for  
160 telemedicine.

161       (2) A telemedicine provider providing telemedicine services  
162 under this act is responsible for the quality of the equipment  
163 and technology employed and for its safe use. Telemedicine  
164 equipment and advanced communications technology must, at a  
165 minimum, be able to provide the same information to the  
166 telemedicine provider as the information that would be obtained  
167 in an in-person encounter with a physician and must enable the  
168 telemedicine provider to meet or exceed the prevailing standard  
169 of care for the practice of the profession.

170       (3) The telemedicine provider is not required to conduct a  
171 patient history or physical examination of the patient before  
172 engaging in a telemedicine encounter if the telemedicine  
173 provider conducts a patient evaluation sufficient to meet the  
174 prevailing standard of care for the services provided.

175       (4) Before each telemedicine encounter, the identification  
176 and location of the telemedicine provider and all other  
177 individuals present via advanced communications technology who  
178 will view the patient or the patient's information must be  
179 identified to the patient.

180       (5) For the purposes of this act, the nonemergency  
181 prescribing of a legend drug based solely on an electronic  
182 questionnaire without a visual examination is considered a  
183 failure to practice medicine with the level of care, skill, and  
184 treatment which is recognized by a reasonably prudent physician



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185 or other authorized practitioner and is not authorized under  
186 this act.

187 (6) A controlled substance may not be prescribed through  
188 the use of telemedicine.

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

195 (8) Any medical records generated, including records  
196 maintained via video, audio, electronic, or other means, due to  
197 a telemedicine encounter must conform to the confidentiality and  
198 recordkeeping requirements of federal law and nationally  
199 recognized health care accreditation organizations and the laws  
200 and rules of this state, regardless of where the medical records  
201 of a patient in this state are maintained.

202 (9) Telemedicine technology used by a telemedicine provider  
203 must be encrypted and must use a recordkeeping program to verify  
204 each interaction.

205 (10) In those situations in which a telemedicine provider  
206 uses telemedicine technology provided by a third-party vendor,  
207 the telemedicine provider must:

208 (a) Require a business associate agreement with the third-  
209 party vendor; and

210 (b) Ensure that the third-party vendor complies with the  
211 administrative, physical, and technical safeguards and standards  
212 set forth by the Health Information Technology for Economic and  
213 Clinical Health (HITECH) Act and by federal regulations



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214 implemented pursuant to HITECH.

215 (11) If a patient provides any of the telemedicine  
216 technology, such as a patient-owned smartphone, tablet, laptop,  
217 desktop computer, or video equipment, the telemedicine provider  
218 must take steps to ensure that such technology:

219 (a) Complies with the administrative, physical, and  
220 technical safeguards set forth by HITECH and by federal  
221 regulations implemented pursuant to HITECH; and

222 (b) Is appropriate for the medical discipline for which the  
223 technology is provided.

224 Section 5. Section 456.4505, Florida Statutes, is created  
225 to read:

226 456.4505 Interstate compacts for telemedicine.—The  
227 Legislature finds that lack of access to high-quality,  
228 affordable health care services is an increasing problem, both  
229 in this state and nationwide. The Legislature finds that this  
230 problem could be alleviated by greater interstate cooperation  
231 among, and by the mobility of, health care providers through the  
232 use of telemedicine. Therefore, the executive directors of the  
233 boards, together with the department, may participate in the  
234 development of one or more interstate compacts for the provision  
235 of telemedicine services across state lines. The department  
236 shall annually submit a report on the status of any pending  
237 compacts for legislative consideration to the Governor, the  
238 President of the Senate, and the Speaker of the House of  
239 Representatives. Any finalized compacts shall be submitted by  
240 December 31 for consideration by the Legislature during the next  
241 regular legislative session. A compact negotiated or proposed by  
242 a board or the department is not valid until enacted by the



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243 Legislature.

244 Section 6. Section 456.4506, Florida Statutes, is created  
245 to read:

246 456.4506 Telemedicine services under Medicaid.-

247 (1) The Agency for Health Care Administration shall  
248 reimburse for Medicaid services provided through telemedicine in  
249 the same manner and equivalent to Medicaid services provided in  
250 person under parts III and IV of chapter 409, except as provided  
251 in subsection (7).

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

254 (3) Except as provided in subsection (7), the agency may  
255 not require in-person contact between a physician and Medicaid  
256 recipient as a prerequisite for payment for services  
257 appropriately provided through telemedicine in accordance with  
258 generally accepted health care practices and standards  
259 prevailing in the applicable health care community at the time  
260 the services are provided.

261 (4) Before receipt of telemedicine services, a Medicaid  
262 recipient or the legal representative of a Medicaid recipient  
263 must provide informed consent for telemedicine services. A  
264 Medicaid recipient shall also be provided the opportunity to  
265 receive the same service through an in-person encounter.

266 (5) A Medicaid service that is provided through a fee-for-  
267 service or managed care program may not be denied as a  
268 creditable Medicaid service solely because that service is  
269 provided through telemedicine.

270 (6) Reimbursement of telemedicine services under Medicaid  
271 shall be the amount negotiated between the parties involved to



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272 the extent permitted under state and federal law. Regardless of  
273 the reimbursement methodology or amount, telemedicine providers  
274 located at the originating site and the distant site should both  
275 receive reimbursement based on the services rendered, if any,  
276 during the telemedicine encounter.

277 (7) If, after implementation, the agency determines that  
278 the delivery of a particular service through telemedicine is not  
279 cost-effective or does not adequately meet the clinical needs of  
280 recipients and the determination has been documented, the agency  
281 may discontinue Medicaid reimbursement for that telemedicine  
282 service.

283 (8) The agency shall submit a report on the usage and  
284 costs, including savings, if any, associated with the provision  
285 of health care services through telemedicine under the Medicaid  
286 program by January 1, 2017, to the President of the Senate, the  
287 Speaker of the House of Representatives, and the minority  
288 leaders of the Senate and the House of Representatives.

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

290 Section 7. Paragraph (i) is added to subsection (1) of  
291 section 458.311, Florida Statutes, to read:

292 458.311 Licensure by examination; requirements; fees.—

293 (1) Any person desiring to be licensed as a physician, who  
294 does not hold a valid license in any state, shall apply to the  
295 department on forms furnished by the department. The department  
296 shall license each applicant who the board certifies:

297 (i) For an applicant who graduates from medical school  
298 after October 1, 2015, has completed at least 2 credit hours of  
299 medical education related to telemedicine.

300 Section 8. Paragraph (n) is added to subsection (1) of



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301 section 459.0055, Florida Statutes, to read:

302 459.0055 General licensure requirements.—

303 (1) Except as otherwise provided herein, any person  
304 desiring to be licensed or certified as an osteopathic physician  
305 pursuant to this chapter shall:

306 (n) For an applicant who graduates from medical school  
307 after October 1, 2015, have completed at least 2 credit hours of  
308 medical education related to telemedicine.

309 Section 9. This act shall take effect October 1, 2014.

310

311 ===== T I T L E A M E N D M E N T =====

312 And the title is amended as follows:

313 Delete everything before the enacting clause  
314 and insert:

315 A bill to be entitled  
316 An act relating to telemedicine; creating s. 456.4501,  
317 F.S.; providing a short title; creating s. 456.4502,  
318 F.S.; defining terms applicable to the act; creating  
319 s. 456.4503, F.S.; requiring physicians providing  
320 telemedicine services to patients in this state to be  
321 licensed in this state; providing alternative  
322 requirements for out-of-state physicians; providing  
323 for disciplining out-of-state physicians through  
324 affiliated entities operating in this state; requiring  
325 pertinent records to be made available upon request;  
326 establishing venue; providing exceptions for emergency  
327 services; providing applicability; authorizing the  
328 licensing boards and the Department of Health to adopt  
329 rules; creating s. 456.4504, F.S.; providing standards



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330 and prohibitions for the provision of telemedicine  
331 services; prohibiting nonemergency prescribing of a  
332 legend drug without a physical examination;  
333 prohibiting the prescription of a controlled substance  
334 using telemedicine; creating s. 456.4505, F.S.;;  
335 providing legislative findings; authorizing the  
336 regulatory boards and the department to participate in  
337 the development of interstate compacts for the  
338 provision of telemedicine services; requiring an  
339 annual report to the Governor and the Legislature on  
340 the status of such compacts; requiring legislative  
341 enactment of such compacts; creating s. 456.4506,  
342 F.S.;; providing requirements for reimbursement of  
343 telemedicine services under the Medicaid program;  
344 requiring a report to the Legislature on the usage and  
345 costs of telemedicine in Medicaid by a certain date;  
346 providing for future repeal; amending ss. 458.311 and  
347 459.0055, F.S.;; requiring an applicant for licensure  
348 as a physician who graduates after a certain date to  
349 complete 2 credit hours of medical education related  
350 to telemedicine; providing an effective date.  
351

FOR CONSIDERATION By the Committee on Health Policy

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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, the "Florida  
 4 Telemedicine Act"; creating s. 456.4502, F.S.;  
 5 defining terms applicable to the act; creating s.  
 6 456.4503, F.S.; creating licensure and registration  
 7 requirements; providing applicability; authorizing the  
 8 health care boards and the Department of Health to  
 9 adopt rules; creating s. 456.4504, F.S.; providing  
 10 standards and prohibitions for the provision of  
 11 telemedicine; creating s. 456.4505, F.S.; providing  
 12 health insurer and health plan reimbursement  
 13 requirements for telemedicine; creating s. 456.4506,  
 14 F.S.; providing legislative findings; authorizing the  
 15 regulatory boards and the department to negotiate  
 16 interstate compacts for telemedicine; requiring an  
 17 annual report to the Governor and the Legislature on  
 18 the status of such compacts; requiring legislative  
 19 ratification of such compacts; creating s. 456.4507,  
 20 F.S.; providing requirements for reimbursement of  
 21 telemedicine services under the Medicaid program;  
 22 requiring a report to the Legislature on the usage and  
 23 costs of telemedicine in Medicaid by a certain date;  
 24 providing for future repeal; providing an effective  
 25 date.  
 26  
 27 Be It Enacted by the Legislature of the State of Florida:  
 28  
 29 Section 1. Section 456.4501, Florida Statutes, is created

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30 to read:  
 31 456.4501 Short title.—Sections 465.4501-465.4507 may be  
 32 cited as the "Florida Telemedicine Act."  
 33 Section 2. Section 456.4502, Florida Statutes, is created  
 34 to read:  
 35 456.4502 Definitions.— As used in this act, the term:  
 36 (1) "Act" means the Florida Telemedicine Act.  
 37 (2) "Advanced communications technology" means:  
 38 (a) Compressed digital interactive video audio, or data  
 39 transmissions;  
 40 (b) Real-time synchronous video or web-conferencing  
 41 communications;  
 42 (c) Secure web-based communications;  
 43 (d) Still-image capture or asynchronous store and forward;  
 44 (e) Health care service transmissions supported by mobile  
 45 devices (mHealth); or  
 46 (f) Other technology that facilitates access to health care  
 47 services or medical specialty expertise.  
 48 (3) "Distant site" means the location at which the  
 49 telemedicine provider delivering the health care service is  
 50 located at the time the service is provided via telemedicine.  
 51 (4) "Encounter" means an examination, consultation,  
 52 monitoring, or other health care service.  
 53 (5) "Health care provider" means a health care practitioner  
 54 or out-of-state licensed individual who provides health care  
 55 services within the scope of his or her professional license.  
 56 (6) "In person" means that a patient is in the physical  
 57 presence of the health care provider without regard to whether  
 58 portions of the encounter are conducted by other providers.

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59 (7) "Originating site" means the location of the patient at  
 60 the time a health care service is being furnished via  
 61 telemedicine. The originating site may also mean the location at  
 62 which the advanced communications technology equipment that  
 63 facilitates the provision of telemedicine is located, with or  
 64 without the patient being present. An originating site is one of  
 65 the following:

66 (a) The office of a health care provider.

67 (b) A critical access hospital as defined in s. 1861(mm) (1)  
 68 of the Social Security Act.

69 (c) A rural health clinic as defined in s. 1861(aa) (2) of  
 70 the Social Security Act.

71 (d) A federally qualified health center as defined in s.  
 72 1861(aa) (4) of the Social Security Act.

73 (e) A hospital as defined in s. 1861(e) of the Social  
 74 Security Act.

75 (f) A hospital-based or critical access hospital-based  
 76 renal dialysis center, including satellites.

77 (g) A community mental health center as defined in s.  
 78 1861(ff) (3) (B) of the Social Security Act.

79 (h) A correctional facility.

80 (i) If the security and privacy of the advanced  
 81 communications technology can be verified by the distant site,  
 82 the patient's home.

83 (8) "Patient presenter" means an individual who has  
 84 clinical background training in the use of advanced  
 85 communications technology equipment and who is available at the  
 86 originating site to present the patient, manage the cameras or  
 87 equipment, and perform any hands-on activity necessary to

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88 successfully complete the telemedicine encounter.

89 (9) "Store and forward" means the type of telemedicine  
 90 encounter that uses still digital images of patient data for  
 91 rendering a medical opinion or diagnosis. The term includes the  
 92 asynchronous transmission of clinical data from one site to  
 93 another.

94 (10) "Telemedicine" means the use of advanced  
 95 communications technology by a health care provider or by a  
 96 health care provider acting under an appropriate delegation or  
 97 supervision as may be required by the appropriate board, or the  
 98 department if there is no board, to provide a health care  
 99 services. Services provided through telemedicine may include  
 100 patient assessment, diagnosis, consultation, treatment,  
 101 prescription of medicine, transfer of medical data, or other  
 102 medical-related services. The term does not include audio-only  
 103 calls, e-mail messages, or facsimile transmissions. Telemedicine  
 104 also includes telehealth and telemonitoring.

105 (11) "Telemedicine provider" means a health care provider  
 106 who provides telemedicine services to a patient physically  
 107 located in this state.

108 Section 3. Section 456.4503, Florida Statutes, is created  
 109 to read:

110 456.4503 Licensure and registration requirements.—

111 (1) An out-of-state health care provider who provides  
 112 telemedicine across state lines to a patient physically located  
 113 in this state must have a Florida license to practice a health  
 114 care profession or must meet the following telemedicine  
 115 requirements:

116 (a) Hold an unrestricted active license to practice his or

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117 her profession in the health care provider's state of residency;  
 118 and

119 (b) Complete telemedicine registration with the department  
 120 through a procedure established by the appropriate board for the  
 121 health care provider's area of practice, or the department if  
 122 there is no board; and

123 (c) Pay a biennial registration fee set by the applicable  
 124 board, not to exceed \$50.

125 (2) A registration issued under this section, regardless of  
 126 the location of the telemedicine provider, shall be treated as a  
 127 license for disciplinary action by the appropriate board in this  
 128 state, or the department if there is no board. A telemedicine  
 129 provider licensed in this state or registered to practice  
 130 telemedicine in accordance with this act is subject to this act,  
 131 the jurisdiction of this state's applicable board, other legal  
 132 and regulatory authorities in this state, as applicable, and the  
 133 jurisdiction of the courts of this state. The telemedicine  
 134 provider shall also make available any pertinent records upon  
 135 request of the board, the department, or the regulatory  
 136 authority. Failure to comply with such request may result in  
 137 revocation of the telemedicine provider's license or  
 138 registration at the discretion of the applicable board, or the  
 139 department if there is no board, or a fine as established by the  
 140 applicable board or the department, as applicable.

141 (3) Registration as a telemedicine provider is required  
 142 only for those out-of-state health care providers who engage in  
 143 the practice of telemedicine across state lines more than 10  
 144 times per calendar year. Physician consultations that occur on  
 145 an emergency basis are exempt from registration requirements.

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146 (4) This section does not prohibit or require licensure or  
 147 registration for consultations between an out-of-state health  
 148 care provider and a health care practitioner in this state or  
 149 for the transmission and review of digital images, pathology  
 150 specimens, test results, or other medical data by an out-of-  
 151 state health care provider or other qualified providers related  
 152 to the care of a patient in this state.

153 (5) This section does not preclude a health care provider  
 154 who acts within the scope of his or her practice from using the  
 155 technology of telemedicine within his or her practice or under  
 156 the direction and supervision of another health care provider  
 157 whose scope of practice includes the use of such technology. A  
 158 health care provider or patient presenter acting under the  
 159 direction and supervision of a physician through the use of  
 160 telemedicine may not be interpreted as practicing medicine  
 161 without a license. However, a health care provider must be  
 162 trained in, educated on, and knowledgeable about the procedure  
 163 and technology and may not perform duties for which the  
 164 practitioner does not have sufficient training, education, and  
 165 knowledge. Failure to have adequate training, education, and  
 166 knowledge is grounds for disciplinary action by the appropriate  
 167 board or the department if there is no board.

168 (6) The boards, or the department if there is no board, may  
 169 adopt rules to administer the requirements of this act and must  
 170 repeal rules that are inconsistent with this act, including  
 171 rules that prohibit the use of telemedicine in this state. The  
 172 appropriate board, or the department if there is no board, may  
 173 also develop standards and adopt rules relating to requirements  
 174 for patient presenters. Such rules may not require the use of

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175 patient presenters in telemedicine services if special skills or  
 176 training is not needed for a patient to participate in the  
 177 encounter.

178 Section 4. Section 456.4504, Florida Statutes, is created  
 179 to read:

180 456.4504 Telemedicine standards.-

181 (1) The standard of care as provided in s. 766.102 is the  
 182 same regardless of whether a health care provider provides  
 183 health care services in person or by telemedicine. The  
 184 applicable board for each health care provider, or the  
 185 department if there is no board, may adopt rules specifically  
 186 related to the standard of care for telemedicine.

187 (2) A telemedicine provider providing telemedicine services  
 188 under this act is responsible for the quality of the equipment  
 189 and technology employed and for its safe use. Telemedicine  
 190 equipment and advanced communications technology must, at a  
 191 minimum, be able to provide the same information to the  
 192 telemedicine provider as the information that would be obtained  
 193 in an in-person encounter with a health care provider which  
 194 enables the telemedicine provider to meet or exceed the  
 195 prevailing standard of care for the practice of the profession.

196 (3) The telemedicine provider is not required to conduct a  
 197 patient history or physical examination of the patient before  
 198 engaging in a telemedicine encounter if the telemedicine  
 199 provider conducts a patient evaluation sufficient to meet the  
 200 community standard of care for the services provided.

201 (4) For the purposes of this act, the nonemergency  
 202 prescribing of a legend drug based solely on an electronic  
 203 questionnaire without a visual examination is considered a

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204 failure to practice medicine with the level of care, skill, and  
 205 treatment which is recognized by a reasonably prudent physician  
 206 or other authorized practitioners and is not authorized under  
 207 this act.

208 (5) A controlled substance may not be prescribed through  
 209 the use of telemedicine for chronic, nonmalignant pain.

210 (6) Medical records must be kept by each telemedicine  
 211 provider that participates in a patient telemedicine encounter  
 212 to the same extent as required for an in-person encounter under  
 213 state and federal law. Telemedicine providers are encouraged to  
 214 create electronic health records to record the encounter and to  
 215 transmit information in the most efficient manner possible.

216 (7) Any medical records generated, including records  
 217 maintained via video, audio, electronic, or other means, due to  
 218 a telemedicine encounter must conform to the confidentiality and  
 219 recordkeeping requirements of federal law, nationally recognized  
 220 health care accreditation organizations, and the laws and rules  
 221 of this state regardless of where the medical records of a  
 222 patient in this state are maintained.

223 (8) Telemedicine technology used by a telemedicine provider  
 224 must be encrypted and must use a recordkeeping program to verify  
 225 each interaction.

226 (9) In those situations in which a telemedicine provider  
 227 uses telemedicine technology provided by a third-party vendor,  
 228 the telemedicine provider must:

229 (a) Require a business associate agreement with the third-  
 230 party vendor; and

231 (b) Ensure that the third-party vendor complies with the  
 232 administrative, physical, and technical safeguards and standards

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233 set forth by the Health Information Technology for Economic and  
 234 Clinical Health (HITECH) Act and by federal regulations  
 235 implemented pursuant to HITECH.

236 (10) If a patient provides any of the telemedicine  
 237 technology, such as a patient-owned smartphone, tablet, laptop,  
 238 desktop computer, or video equipment, the telemedicine provider  
 239 must take steps to ensure that such technology:

240 (a) Complies with the administrative, physical, and  
 241 technical safeguards set forth by HITECH and by federal  
 242 regulations implemented pursuant to HITECH; and

243 (b) Is appropriate for the medical discipline for which the  
 244 technology is provided.

245 Section 5. Section 456.4505, Florida Statutes, is created  
 246 to read:

247 456.4505 Requirements for reimbursement.—

248 (1) If health care services provided through telemedicine  
 249 are an included benefit in a health insurance policy or health  
 250 plan coverage, such services must be paid in an amount equal to  
 251 the amount that a health care provider would have been paid had  
 252 such services been furnished without the use of advanced  
 253 communications technology.

254 (2) Reimbursement amounts for telemedicine providers at the  
 255 distant site and the originating site and any originating fees  
 256 are to be determined between the individual telemedicine  
 257 provider and the health insurer or health plan.

258 (3) This section does not preclude a health insurer or  
 259 health plan from imposing a deductible, a copayment, or a  
 260 coinsurance requirement for a health care service provided  
 261 through telemedicine if the deductible, copayment, or

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262 coinsurance does not exceed the amount applicable to an in-  
 263 person encounter for the same health care service.

264 (4) A health insurance policy or health plan may limit  
 265 coverage for health care services that are provided through  
 266 telemedicine to telemedicine providers that are in a network  
 267 approved by the health insurer or health plan without regard to  
 268 s. 627.6471 or s. 627.6472.

269 Section 6. Section 456.4506, Florida Statutes, is created  
 270 to read:

271 456.4506 Interstate compacts for telemedicine.—The  
 272 Legislature finds that lack of access to high-quality,  
 273 affordable health care services is an increasing problem, both  
 274 in this state and nationwide. The Legislature finds that this  
 275 problem could be alleviated by greater interstate cooperation  
 276 among, and by the mobility of, health care providers through the  
 277 use of telemedicine. Therefore, the executive directors of the  
 278 boards, together with the department, may negotiate one or more  
 279 interstate compacts for the provision of telemedicine services  
 280 across state lines. The department shall annually submit a  
 281 report on the status of any negotiated compacts to the Governor,  
 282 the President of the Senate, and the Speaker of the House of  
 283 Representatives. Any negotiated compacts shall be submitted by  
 284 December 31 for ratification by the Legislature during the next  
 285 regular legislative session.

286 Section 7. Section 456.4507, Florida Statutes, is created  
 287 to read:

288 456.4507 Telemedicine services under Medicaid.—

289 (1) The Agency for Health Care Administration shall  
 290 reimburse Medicaid services provided through telemedicine in the

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291 same manner and equivalent to Medicaid services provided in  
 292 person under parts III and IV of chapter 409, except as provided  
 293 in subsection (6).

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

296 (3) Except as provided in subsection (6), the agency may  
 297 not require in-person contact between a health care provider and  
 298 Medicaid recipient as a prerequisite for payment for services  
 299 appropriately provided through telemedicine in accordance with  
 300 generally accepted health care practices and standards  
 301 prevailing in the applicable health care community at the time  
 302 the services are provided.

303 (4) A Medicaid service that is provided through a fee-for-  
 304 service or managed care program may not be denied as a  
 305 creditable Medicaid service solely because that service is  
 306 provided through telemedicine.

307 (5) Reimbursement of telemedicine services under Medicaid  
 308 shall be the amount negotiated between the parties involved to  
 309 the extent permitted under state and federal law. Regardless of  
 310 the reimbursement methodology or amount, telemedicine providers  
 311 located at the originating site and the distant site should both  
 312 receive reimbursement based on the services rendered, if any,  
 313 during the telemedicine encounter.

314 (6) If, after implementation, the agency determines that  
 315 the delivery of a particular service through telemedicine is not  
 316 cost-effective or does not adequately meet the clinical needs of  
 317 recipients and the determination has been documented, the agency  
 318 may discontinue Medicaid reimbursement for that telemedicine  
 319 service.

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320 (7) The agency shall submit a report on the usage and  
 321 costs, including savings, if any, associated with the provision  
 322 of health care services through telemedicine under the Medicaid  
 323 program by January 1, 2017, to the President of the Senate, the  
 324 Speaker of the House of Representatives, and the minority  
 325 leaders of the Senate and House of Representatives.

326 (8) This section is repealed June 30, 2017.

327 Section 8. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14  
Meeting Date

Topic Telehealth

Bill Number 7028  
(if applicable)

Name David Christian

Amendment Barcode 484228  
(if applicable)

Job Title VP - Gov't Affairs

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Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14  
Meeting Date

Topic Telemedicine

Bill Number SB 7028  
(if applicable)

Name Layne Smith

Amendment Barcode 484228  
(if applicable)

Job Title Director, State Government Relations

Address 4500 San Pablo Road

Phone 904-953-7334

Jacksonville FL 32224  
City State Zip

E-mail smith.layne@mayo.edu

Speaking:  For  Against  Information

Representing Mayo Clinic

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/18/14

Meeting Date

Topic Telemedicine Bill Number 702F  
Name DANIEL BENDETOWIUS Amendment Barcode 484228  
Job Title PHYSICIAN (if applicable)  
Address 15750 NEW HAMPSHIRE ST "D" Phone 239 985 1050  
FORT MYERS FL 33908 E-mail \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/18/2014

Meeting Date

Topic \_\_\_\_\_ Bill Number 7028  
Name BRIAN PITTS Amendment Barcode \_\_\_\_\_  
Job Title TRUSTEE (if applicable)  
Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291  
SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM  
City State Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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Meeting Date \_\_\_\_\_

Topic Telemedicine Bill: SPB 7028 Bill Number 7028  
(if applicable)  
Name Kim Landry Amendment Barcode \_\_\_\_\_  
(if applicable)  
Job Title Emergency Physician  
Address 405 Waterford Lane Phone 850-982-9384  
Street  
Gulf Breeze, Florida 32561 E-mail Kim.Landry@LifeGuardAmbulance.com  
City State Zip  
Speaking:  For  Against  Information  
Representing Emergency Physicians  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Telemedicine Bill Number 7028  
(if applicable)  
Name Stan Whittaker Amendment Barcode \_\_\_\_\_  
(if applicable)  
Job Title Chair Florida Association Nurse Practitioners  
Address 6294 NW Torrey A Pt Rd Phone \_\_\_\_\_  
Street  
Bristol, Fla 32321 E-mail \_\_\_\_\_  
City State Zip  
Speaking:  For  Against  Information  
Representing FL Association Nurse Practitioners  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

# CourtSmart Tag Report

Room: KN 412  
Caption: Senate Health Policy

Case:  
Judge:

Type:

Started: 2/18/2014 2:07:16 PM  
Ends: 2/18/2014 3:12:16 PM Length: 01:05:01

2:07:17 PM Meeting Called to Order  
2:07:48 PM Chair Bean delivers opening remarks  
2:09:01 PM Roll Call  
2:09:21 PM (Tab 1) SB 670- Nursing Home Litigation  
2:09:36 PM Sen. Thrasher explains bill  
2:14:50 PM Barcode 441096 Strike All AM  
2:15:06 PM Sen. Joyner asks question  
2:15:33 PM Sen. Thrasher responds  
2:16:58 PM Testimony by Carol Berkowitz, Leading Age Florida  
2:17:47 PM Testimony by Brecht Heuchan, Wilkes and McHugh  
2:19:04 PM Chair Bean asks question  
2:19:13 PM Mr. Heuchan responds  
2:22:48 PM Testimony by Paul Jess, FL Justice Association  
2:23:51 PM Sen. Joyner asks question  
2:24:06 PM Mr. Jess responds  
2:25:02 PM Testimony by Brian Lee, Families for Better Care  
2:28:42 PM Sen. Braynon asks question  
2:29:08 PM Mr. Lee responds  
2:29:33 PM Sen. Joyner asks question  
2:29:53 PM Mr. Lee responds  
2:30:26 PM Sen. Sobel asks question  
2:30:42 PM Mr. Lee responds with regard to what he would like to see in the bill  
2:31:19 PM Sen. Sobel asks question  
2:31:30 PM Mr. Lee responds  
2:32:04 PM Testimony by Jack McRay, AARP  
2:32:35 PM Testimony by Rochelle Salcido, 1199SEIU  
2:34:18 PM Testimony by Verna Nelson, 1199SEIU Healthcare Workers  
2:36:09 PM Testimony by Brian Pitts, Justice-2-Jesus  
2:40:09 PM William Large, FL Justice Reform Institute waives in support  
2:40:29 PM Testimony by Bob Asztalos, FL health Care Assn.  
2:42:04 PM Testimony by Brian Bursa, FL Health Care Association  
2:43:24 PM Testimony by David Christian, FL Chamber of Commerce waives in support  
2:43:51 PM Associated Industries of FL waives in support  
2:43:59 PM Chair Bean asks for questions/objections on strike all  
2:44:11 PM Strike all is adopted  
2:44:17 PM Sen. Braynon debates bill  
2:47:33 PM Sen. Galvano poses comment in debate  
2:48:15 PM Sen. Sobel makes comment about compromise  
2:50:02 PM Sen. Joyner makes comment  
2:52:56 PM Chair Bean makes closing comments  
2:53:19 PM Sen. Thrasher closes the bill  
2:57:01 PM Roll Call on committee substitute 670  
2:57:23 PM SB passes favorably  
2:57:52 PM SB 260- Unaccompanied Youth  
2:58:16 PM Sen. Latvala's assistant explains bill  
2:58:56 PM Testimony by Dana Farmer, Disability Rights Florida waives in support  
2:59:14 PM Brian Pitts waives in support  
2:59:18 PM Chair Bean asks for questions/debate  
2:59:24 PM Roll Call on SB 260  
2:59:45 PM Recorded favorably  
2:59:51 PM (Tab 3) SB 694 Diabetes Advisory Council  
3:00:25 PM Bill is explained by Sen. Garcia's aide

3:01:13 PM Chair Bean asks question  
3:01:26 PM Sen. Brandes asks question  
3:02:05 PM Speaker responds  
3:02:24 PM Sen. Galvano asks question regarding cost  
3:03:15 PM Chair Bean asks for debate/further questions  
3:03:24 PM Sen. Garcia makes comment  
3:04:45 PM Roll Call on SB 694  
3:05:02 PM SB 694 recorded favorably  
3:05:30 PM Chair Bean temporarily postpones SPB 7028  
3:06:55 PM Testimony by Kim Landry, Emergency Physicians  
3:09:46 PM Chair Bean responds  
3:10:01 PM Sen. Sobel asks question  
3:11:02 PM Dr. Landry responds with regard to the 72 hour rule  
3:12:09 PM Motion to Rise