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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2014	.	
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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