FOR CONSIDERATION By the Committee on Health Policy

A bill to be entitled
An act relating to telemedicine; creating s. 456.4501, F.S.; providing a short title, the “Florida Telemedicine Act”; creating s. 456.4502, F.S.; defining terms applicable to the act; creating s. 456.4503, F.S.; creating licensure and registration requirements; providing applicability; authorizing the health care boards and the Department of Health to adopt rules; creating s. 456.4504, F.S.; providing standards and prohibitions for the provision of telemedicine; creating s. 456.4505, F.S.; providing health insurer and health plan reimbursement requirements for telemedicine; creating s. 456.4506, F.S.; providing legislative findings; authorizing the regulatory boards and the department to negotiate interstate compacts for telemedicine; requiring an annual report to the Governor and the Legislature on the status of such compacts; requiring legislative ratification of such compacts; creating s. 456.4507, F.S.; providing requirements for reimbursement of telemedicine services under the Medicaid program; requiring a report to the Legislature on the usage and costs of telemedicine in Medicaid by a certain date; providing for future repeal; providing an effective date.

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

Section 1. Section 456.4501, Florida Statutes, is created

CODING: Words stricken are deletions; words underlined are additions.
to read:

456.4501 Short title.—Sections 465.4501-465.4507 may be cited as the “Florida Telemedicine Act.”

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

456.4502 Definitions.— As used in this act, the term:
(1) “Act” means the Florida Telemedicine Act.
(2) “Advanced communications technology” means:
(a) Compressed digital interactive video audio, or data transmissions;
(b) Real-time synchronous video or web-conferencing communications;
(c) Secure web-based communications;
(d) Still-image capture or asynchronous store and forward;
(e) Health care service transmissions supported by mobile devices (mHealth); or
(f) Other technology that facilitates access to health care services or medical specialty expertise.
(3) “Distant site” means the location at which the telemedicine provider delivering the health care service is located at the time the service is provided via telemedicine.
(4) “Encounter” means an examination, consultation, monitoring, or other health care service.
(5) “Health care provider” means a health care practitioner or out-of-state licensed individual who provides health care services within the scope of his or her professional license.
(6) “In person” means that a patient is in the physical presence of the health care provider without regard to whether portions of the encounter are conducted by other providers.
(7) “Originating site” means the location of the patient at the time a health care service is being furnished via telemedicine. The originating site may also mean the location at which the advanced communications technology equipment that facilitates the provision of telemedicine is located, with or without the patient being present. An originating site is one of the following:

(a) The office of a health care provider.

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

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

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

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

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

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

(h) A correctional facility.

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

(8) “Patient presenter” means an individual who has clinical background training in the use of advanced communications technology equipment and who is available at the originating site to present the patient, manage the cameras or equipment, and perform any hands-on activity necessary to
successfully complete the telemedicine encounter.

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

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

(11) “Telemedicine provider” means a health care provider who provides telemedicine services to a patient physically located in this state.

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

456.4503 Licensure and registration requirements.—

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

(a) Hold an unrestricted active license to practice his or
her profession in the health care provider’s state of residency; and

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

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

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

(3) Registration as a telemedicine provider is required only for those out-of-state health care providers who engage in the practice of telemedicine across state lines more than 10 times per calendar year. Physician consultations that occur on an emergency basis are exempt from registration requirements.
(4) This section does not prohibit or require licensure or registration for consultations between an out-of-state health care provider and a health care practitioner in this state or for the transmission and review of digital images, pathology specimens, test results, or other medical data by an out-of-state health care provider or other qualified providers related to the care of a patient in this state.

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

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

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

456.4504 Telemedicine standards.—
(1) The standard of care as provided in s. 766.102 is the same regardless of whether a health care provider provides health care services in person or by telemedicine. The applicable board for each health care provider, or the department if there is no board, may adopt rules specifically related to the standard of care for telemedicine.

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

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

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

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

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

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

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

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

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

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

(10) If a patient provides any of the telemedicine technology, such as a patient-owned smartphone, tablet, laptop, desktop computer, or video equipment, the telemedicine provider must take steps to ensure that such technology:
(a) Complies with the administrative, physical, and technical safeguards set forth by HITECH and by federal regulations implemented pursuant to HITECH; and
(b) Is appropriate for the medical discipline for which the technology is provided.

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

456.4505 Requirements for reimbursement.—
(1) If health care services provided through telemedicine are an included benefit in a health insurance policy or health plan coverage, such services must be paid in an amount equal to the amount that a health care provider would have been paid had such services been furnished without the use of advanced communications technology.

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

(3) This section does not preclude a health insurer or health plan from imposing a deductible, a copayment, or a coinsurance requirement for a health care service provided through telemedicine if the deductible, copayment, or
coinsurance does not exceed the amount applicable to an in-
person encounter for the same health care service.

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

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

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

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

456.4507 Telemedicine services under Medicaid.—
(1) The Agency for Health Care Administration shall
reimburse Medicaid services provided through telemedicine in the
same manner and equivalent to Medicaid services provided in person under parts III and IV of chapter 409, except as provided in subsection (6).

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

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

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

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

(6) If, after implementation, the agency determines that the delivery of a particular service through telemedicine is not cost-effective or does not adequately meet the clinical needs of recipients and the determination has been documented, the agency may discontinue Medicaid reimbursement for that telemedicine service.
(7) The agency shall submit a report on the usage and costs, including savings, if any, associated with the provision of health care services through telemedicine under the Medicaid program by January 1, 2017, to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and House of Representatives.

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

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