

**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: CS/SB 1686

INTRODUCER: Health Policy Committee and Senators Bean and Joyner

SUBJECT: Telehealth

DATE: January 26, 2016

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Lloyd   | Stovall        | HP        | <b>Fav/CS</b> |
| 2. |         |                | AHS       |               |
| 3. |         |                | AP        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1686 creates a Telehealth Task Force within the Agency for Health Care Administration (AHCA), authorizes healthcare practitioners in Florida to provide telehealth services, and defines telehealth.

The task force is chaired by the Secretary of the AHCA or his or her designee, the State Surgeon General and 17 other members, including other health care practitioners, providers, telehealth services providers and sellers, and facilities.

The bill requires the task force to compile data and submit a report by June 30, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives that analyzes:

- Frequency and extent of the use of telehealth nationally and in this state;
- Costs and cost savings associated with using telehealth;
- Types of telehealth services available;
- Extent of available health insurance coverage available for telehealth services; and
- Barriers to implementing the use of, using, or accessing telehealth services.

The bill requires the task force to hold its first meeting by September 1, 2016, and to meet as frequently as necessary to complete its work. The AHCA must support the task force within existing resources and its members serve without compensation or per diem reimbursement. The section of law creating the task force is repealed December 1, 2017.

The act has no fiscal impact and an effective date of July 1, 2016.

## II. Present Situation:

The term telehealth is 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>1</sup> Telehealth often collectively defines the telecommunications equipment and technology that is used to collect and transmit the data for a telemedicine consultation or evaluation.

The federal Centers for Medicare & Medicaid Services (CMS) defines telehealth as:

The use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance. Telehealth includes such technologies such as telephones, facsimile machines, electronic mail systems, and remote patient monitoring devices which are used to collect and transmit data for monitoring and interpretation.<sup>2</sup>

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>3</sup>

- Primary care and specialist referral services that involve a primary care or allied health professional providing consultation with a patient or specialist assisting the primary care physician with a diagnosis;
- Remote patient monitoring;
- Consumer medical and health information that offers consumers specialized health information and online discussion groups for peer-to-peer support; and
- Medical education that provides continuing medical education credits.

### Board of Medicine Rulemaking

Florida's Board of Medicine (board) convened a Telemedicine Workgroup in 2013 to review its rules on telemedicine, which had not been amended since 2003. The 2003 rules focused on standards for the prescribing of medicine via the Internet. On March 12, 2014, the board's new Telemedicine Rule, 64B8-9.0141, became effective for Florida-licensed physicians. The new rule defined telemedicine, established standards of care, prohibited the prescription of controlled

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<sup>1</sup> Anita Majerowicz and Susan Tracy, "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. 14, 2016).

<sup>2</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telemedicine*, <http://www.medicare.gov/medicaid-chip-program-information/by-topics/delivery-systems/telemedicine.html> (last visited Jan. 14, 2016).

<sup>3</sup> American Telemedicine Association, *What is Telemedicine?* <http://www.americantelemed.org/about-telemedicine/what-is-telemedicine#.Vpf-P03ot9A> (last visited Jan. 14, 2016).

substances, permitted the establishment of a doctor-patient relationship via telemedicine, and exempted emergency medical services.<sup>4</sup>

An emergency rule followed shortly after the initial rule's implementation to address concerns that the prohibition on physicians ordering controlled substances may also preclude physicians from prescribing controlled substances via telemedicine for hospitalized patients. The board indicated such a prohibition was not intended.<sup>5</sup> The emergency rule went into effect on April 30, 2014, and was later incorporated during the regular rulemaking process.

Additional changes followed to clarify medical record requirements and the relationship between consulting or cross-coverage physicians. On December 4, 2015, the board proposed another rule change to allow controlled substances to be prescribed through telemedicine for the limited treatment of psychiatric disorders.<sup>6</sup> The proposed rule amendment, Rule 64B8-9.0141-Standards for Telemedicine Practice, has been noticed by the Board of Medicine and if requested within 21 days of its first publication date in the Florida Administrative Registrar (FAR), a public hearing on the rule amendment, would be held on the rule and announced at a later date in the FAR. The first publication date was December 18, 2015; no public hearing notice has been published, yet.

### **Telemedicine in Other States**

As of May 2015, 24 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>7</sup> Such laws require insurance companies and health plans to reimburse providers the same amount for the same visit regardless of whether the visit was conducted face-to-face or via electronic communications.

Forty-eight state Medicaid programs also reimburse for some form of telemedicine via live video.<sup>8</sup> A smaller number of states offer reimbursement for other types of telemedicine services, such as store-and-forward activities;<sup>9</sup> facility fees for hosting either the telemedicine provider, patient, or both; and remote patient monitoring. Florida, Idaho, and Montana only provide reimbursement for physician services.<sup>10</sup>

Hospitals in rural counties have utilized telemedicine to provide 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.

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<sup>4</sup> Rule 64B15-14.0081, F.A.C., also went into effect March 12, 2014 for osteopathic physicians.

<sup>5</sup> Florida Board of Medicine, *Latest News - Emergency Rule Related to Telemedicine*, <http://flboardofmedicine.gov/latest-news/emergency-rule-related-to-telemedicine/> (last visited Jan. 14, 2016).

<sup>6</sup> Vol. 42/02, Fla. Admin. Weekly, 22 (Jan. 5, 2016).

<sup>7</sup> American Telemedicine Association, *50 State Telemedicine Gaps Analysis: Coverage & Reimbursement*, p. 2, <http://www.americantelemed.org/docs/default-source/policy/50-state-telemedicine-gaps-analysis---coverage-and-reimbursement.pdf> (last visited Jan. 14, 2016).

<sup>8</sup> *Id.*

<sup>9</sup> Store and forward technology refers to the electronic transmission of medical information and data such as digital images, documents and pre-recorded images for review by a physician or specialist at a later date, not simultaneously with the patient.

<sup>10</sup> *Supra* note 7.

In a California project, rural hospital emergency rooms received video conference equipment to facilitate the telemedicine consultations. The rural hospital physicians and nurses were linked with pediatric critical care medicine specialists at the University of California, Davis.<sup>11</sup> As a *Futurity* article notes, “while 21 percent of children in the United States live in rural areas, only 3 percent of pediatric critical-care medicine specialists practice in such areas.”<sup>12</sup>

### **Federal Provisions for Telemedicine**

Federal laws and regulations address telemedicine from several angles, including prescriptions for controlled substances, hospital emergency room guidelines, and reimbursement rates for the Medicare program.

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

Federal law specifically prohibits the prescribing of controlled substances via the Internet without an in-person evaluation. Federal regulation 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 substances be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April 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 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 substances 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>

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<sup>11</sup> *Futurity*, *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. 14, 2016).

<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).

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

<sup>16</sup> 21 CFR §802(54).

### *Medicare Coverage*

Specific telehealth services delivered at designated sites are covered under Medicare. Regulations of federal CMS require both a distant site (location of physician delivering the service via telecommunications) and an originating site (location of the patient).

To qualify for Medicare reimbursement, the Medicare beneficiary must be located at an originating site that meets one of three qualifications. These three qualifications are:

- A rural health professional shortage area (HPSA) that is either outside of a metropolitan statistical area (MSA) or in a rural census tract;
- A county outside of a MSA; or
- Participation in a federal telemedicine demonstration project approved by the Secretary of Health and Human Services as of December 31, 2000.<sup>17</sup>

Additionally, federal requirements provide that an originating site must be one of the following location types as further defined in federal law and regulation:

- The offices of physicians or practitioners;
- Hospitals;
- Critical access hospitals (CAH);
- Rural health clinics;
- Federally qualified health centers;
- Hospital-based or CAH-based renal dialysis centers (including satellite offices);
- Skilled nursing facilities; and
- Community mental health centers.<sup>18</sup>

Distant site practitioners are limited, subject also to state law, under Medicare to:

- Physicians;
- Nurse practitioners;
- Physician assistants;
- Nurse-midwives;
- Clinical nurse specialists;
- Certified registered nurse anesthetists;
- Clinical psychologists and clinical social workers; and
- Registered dietitians and nutrition professionals.

For 2016, CMS added Certified Registered Nurse Anesthetists to the list of authorized distant site practitioners who can furnish telehealth services.<sup>19</sup>

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<sup>17</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services- Rural Health Fact Sheet* (Dec. 2014), <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf> (last visited Jan. 20, 2016).

<sup>18</sup> See 42 U.S.C. sec. 1395(m)(4)(C)(ii).

<sup>19</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM9476* (Dec. 18, 2015), <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM9476.pdf> (last visited Jan. 14, 2016).

For 2015, Medicare added new services under telehealth:

- Annual wellness visits;
- Psychoanalysis;
- Psychotherapy; and
- Prolonged evaluation and management services.<sup>20</sup>

For 2016, Medicare supplemented those services with two specific prolonged inpatient codes and end-stage renal disease service codes.<sup>21</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>22</sup> Federal law also provides for a facility fee for the originating site of \$20 through December 31, 2002, and then, by law, the facility fee is subsequently increased each year by the percentage increase in the Medicare Economic Index (MEI). For calendar year 2016, the originating fee for telehealth is 80 percent of the lesser of the actual charge or \$25.10.<sup>23</sup>

## **Telemedicine Services in Florida**

### ***University of Miami***

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>24</sup> Today, UM has several initiatives in the area of telehealth, including:

- Tele-dermatology;
- Tele-trauma;
- Humanitarian and disaster response relief;
- School telehealth services; and
- Acute tele-neurology or tele-stroke.

While some of UM’s activities reach its local community, others reach outside of Florida, including providing Haiti earthquake relief and tele-dermatology to cruise line employees. Telehealth communications are also used for monitoring hospital patients and conducting training exercises.

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

Florida’s Medicaid program reimburses only physicians for telemedicine services when there is two-way, real-time interactive communication between the patient and the physician at a distant

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<sup>20</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM9034* (Dec. 24, 2014), <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM9034.pdf> (last visited Jan. 20, 2016).

<sup>21</sup> *Supra*, Note 19.

<sup>22</sup> See 42 U.S.C. s. 1395(m)(m)(2)(A).

<sup>23</sup> *Supra* note 19.

<sup>24</sup> University of Miami, Miller School of Medicine, *UM Telehealth - Our History*, <http://telehealth.med.miami.edu/about-us/our-history> (last visited Jan. 14, 2016).

site.<sup>25</sup> Equipment is also required to meet specific technical safeguards under 45 CFR 164.312, where applicable, which require implementation of procedures for protection of health information, including unique user identifications, automatic log-offs, encryption, authentication of users, and transmission security. Telemedicine services must also comply with all other state and federal laws regarding patient privacy.

For Medicaid, the distant or hub site is where the consulting physician delivering the telemedicine service is located. The spoke site is the location of the Medicaid recipient at the time the service occurs. The spoke site does not receive any reimbursement unless the provider located at the spoke site performs a separate service for the Medicaid recipient on the same day as the telemedicine consultation. The telemedicine referral consultation requires the presence of the referring practitioner and the Medicaid recipient.<sup>26</sup>

Under Medicaid fee-for-service, Medicaid reimbursement for telemedicine services is limited to certain services and settings. The following services are currently covered:<sup>27</sup>

- Behavioral Health
  - Telepsychiatry services for psychiatric medication management by practitioners licensed under ch. 458 or 459, F.S.; and
  - Telebehavioral health services for provision of individual and family behavioral health therapy services by qualified practitioners licensed under ch. 490 or 491, F.S.
- Dental Services
  - Services provided using video conferencing between a registered dental hygienist employed by and under contract with a Medicaid-enrolled group provider and supervising dentist, including oral prophylaxis, topical fluoride application, and oral hygiene instructions.
- Physician Services
  - Services provided using audio and video equipment that allow for two-way, real-time, interactive communication between the physician and patient;
  - Consultation services provided via telemedicine;
  - Interpretation of diagnostic testing results through telecommunications and information technology; and
  - Synchronous emergency services provided under parts III and IV of ch. 409, F.S., using an all-inclusive rate.

Medicaid does not reimburse for the following telemedicine services:

- Telephone conversations;
- Video cell phone conversations;
- E-mail messages;
- Facsimile transmission;
- Telecommunication with recipient at a location other than the spoke; and

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<sup>25</sup> Agency for Health Care Administration, *Practitioner Services Handbook - Telemedicine Services* (April 2014) p. 136, available at [http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/Practitioner%20Services%20Handbook\\_Adoption.pdf](http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/Practitioner%20Services%20Handbook_Adoption.pdf) (last visited Jan. 14, 2016).

<sup>26</sup> Id at 137.

<sup>27</sup> Agency for Health Care Administration, *Senate Bill 478 Analysis* (Feb. 4, 2015) p. 3, (on file with the Senate Committee on Health Policy).

- “Store and forward” consultations that are transmitted after the recipient or physician is no longer available.<sup>28</sup>

Medicaid also does not reimburse providers for the costs of any equipment related to telemedicine services.

Coverage of telemedicine services under Medicaid includes specific documentation requirements. The clinical record must include the following information:

- A brief explanation of why the services were not provided face-to-face;
- Documentation of telemedicine services provided, including the results of the assessment; and
- A signed statement from the recipient (parent or guardian, if a child), indicating his or her choice to receive services through telemedicine.<sup>29</sup>

Under the Managed Medical Assistance (MMA) component of Statewide Medicaid Managed Care, managed care plans may use telemedicine for behavioral health, dental services, and physician services.<sup>30</sup> The AHCA may also approve of other telemedicine services provided by the managed care plans if approval is sought by those plans under the MMA component.

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

The Child Protection Team (CPT) program under the Children’s Medical Services Network 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 Families in cases of child abuse and neglect to supplement investigative activities.<sup>31</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.<sup>32</sup>

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.<sup>33</sup> Twenty-four hub sites throughout the state facilitate these child abuse assessments and the evaluation of suspected cases of child abuse. The University of Florida Child Abuse Protection Team, for example, serves a 12-county area and, for the first 6 months of 2012, provided over 250 telemedicine examinations with medical community partners.<sup>34</sup>

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<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Agency for Health Care Administration, *2012-2015 Medicaid Health Plan Model Agreement Attachment II - Exhibit II-A*, p. 63-64 [http://ahca.myflorida.com/medicaid/statewide\\_mc/pdf/mma/Attachment\\_II\\_Exhibit\\_II-A\\_MMA\\_Model\\_2014-01-31.pdf](http://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Attachment_II_Exhibit_II-A_MMA_Model_2014-01-31.pdf), (last visited Jan. 14, 2016).

<sup>31</sup> Florida Dep’t 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. 14, 2016).

<sup>32</sup> Florida Dep’t of Health, *Children Protection Team - Telemedicine Network* [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/documents/cpt\\_telemedicine\\_fact\\_sheet.pdf](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/documents/cpt_telemedicine_fact_sheet.pdf) (last visited Jan. 14, 2016).

<sup>33</sup> Id.

<sup>34</sup> Sunshine Arnold and Debra Esernio-Jenssen, *Telemedicine: Reducing Trauma in Evaluating Abuse*, pp. 105-107, <http://cdn.intechopen.com/pdfs-wm/41847.pdf> (last visited Jan. 14, 2016).

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

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Privacy rules were initially issued in 2000 by the federal Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information and 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 to, in part, strengthen infrastructure and tools to promote telemedicine.<sup>35</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 are HIPAA compliant.

### **Discount Medical Plans**

Discount medical plans and discount medical plan organizations (DMPOs) are regulated by the Office of Insurance Regulation under part II of ch. 636, F.S. DMPOs offer a variety of health care services to consumers through discount medical plans at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members; instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a DMPO has a contract with a provider network under which the individual providers render the medical services at a discount.

### **III. Effect of Proposed Changes:**

**Section 1** establishes the Telehealth Task Force as a new section of law in s. 408.61, F.S. The task force is created within the AHCA and the AHCA shall use existing resources to administer and support its activities.

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<sup>35</sup> Public Law 111-5, s. 3002(b)(2)(C)(iii) and s. 3011(a)(4).

Task force members will not receive any compensation or reimbursement for per diem for travel expenses. Meetings may be held in person, by conference call, or other electronic means. The Secretary of the AHCA or his or her designee serves as the task force chair and the state Surgeon General or his or her designee also serve along with 17 other members. The Secretary of the AHCA appoints 10 members:

- 3 representatives of hospitals or facilities licensed under chapter 395;
- 3 representatives of health insurers that offer coverage of telehealth services;
- 2 representatives of organizations that represent health care facilities; and
- 2 representatives of entities that create or sell telehealth products.

The State Surgeon General appoints 7 members:

- 5 health care practitioners, each of whom practices in a different area of medicine and
- 2 representatives of organizations that represent health care practitioners.

The bill requires the task force to compile data and submit a report by June 30, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives that analyzes:

- Frequency and extent of the use of telehealth nationally and in this state;
- Costs and cost savings associated with using telehealth technology and equipment;
- Types of telehealth services available;
- Extent of available health insurance coverage available for telehealth services, including:
  - A comparative analysis of such coverage to available coverage for in-person services;
  - A description of payment rates for such telehealth services and whether they are below, equal to, or above payment rates for in-person services;
  - Copayment, coinsurance, and deductible amounts; policy year, calendar year, lifetime, or other durational benefit limitations; and maximum benefits for telehealth and in-person services; and
  - Any unique conditions imposed as a prerequisite to obtaining coverage for telehealth services;
- Barriers to implementing the use of, using, or accessing telehealth services; and
- Consideration of opportunities for interstate cooperation in telehealth.

This section of law is repealed effective December 1, 2017.

**Section 2** creates s. 456.51, F.S., relating to telehealth, which is applicable to healthcare practitioners generally. Telehealth permits a health care practitioner<sup>36</sup> certified under part III of chapter 401,<sup>37</sup> or a person certified under part IV or V of chapter 468<sup>38</sup> who is practicing within the scope of his or her license or certification to provide telehealth services.

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<sup>36</sup> The definition of a “health care practitioner” includes 26 different disciplines: Acupuncture, medical practice, osteopathic medicine, chiropractic medicine, podiatry, naturopathy, optometry, nursing, pharmacy, dentistry, midwifery, speech-language-pathology-audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, orthotics, prosthetics, and pedorthotics, electrolysis, massage, clinical laboratory personnel, medical physicists, dispensing of optical devices and hearing aids, physical therapy, psychological services, and clinical, counseling, and psychotherapy.

<sup>37</sup> Persons certified under chapter 301 are those employed in the emergency medical services field, including emergency medical technicians, paramedics, and registered nurses.

<sup>38</sup> Part IV of Chapter 468 are those individuals certified as radiological personnel, and Part V regulates respiratory therapists.

A practitioner or person who provides telehealth services within the scope of his or her license, but is not a physician, will not be considered to be practicing medicine without a license.

Under this section, “telehealth” is specifically defined to mean:

The use of synchronous or asynchronous telecommunications technology by a health care practitioner, a person certified under part III of chapter 401, or a person certified under part IV of chapter 468 to provide medical or other health care services, including, but not limited to, patient assessment, diagnosis, consultation, treatment, or remote monitoring; the transfer of medical or health data; patient and professional health-related education; the delivery of public health services; and health care administration functions.

**Section 3** - amends the definition of “discount medical plan” under s. 636.202(1), F.S., to provide that telehealth products defined under s. 456.51, F.S., are not included in the definition.

**Section 4** - The act is effective July 1, 2016.

#### **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:

Florida does not currently have a statutory definition for telehealth or telemedicine. Florida TaxWatch has discussed in its report, *Moving Telehealth Forward: The High Costs of Paying Later* the lack of certainty in Florida around telehealth has led to confusion among providers on billing and payment options.<sup>39</sup> Florida Tax Watch

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<sup>39</sup> Florida Tax Watch, *Moving Telehealth Forward: The High Costs of Paying Later*, p. 2, (August 2015).  
[www.floridataxwatch.org](http://www.floridataxwatch.org).

estimated that with more timely access to care through telehealth, a one percent reduction in hospital charges alone could save \$1 billion through hospitalization avoidance costs.<sup>40</sup>

The average estimated cost of a telehealth visit is \$40 to \$50 compared to the average in-person visit of \$136-\$176.<sup>41</sup> With an estimated savings of approximately \$126 per telehealth visit, the report also showed that the participating vendor was able to resolve the patient's issue approximately 83 percent of the time; 60 percent of the time with a prescription.<sup>42</sup> When asked where the patient would have gone to receive care if not via telehealth, the most likely site of care was urgent care (45.8 percent), physician office (30.9 percent), do nothing (12.3 percent), emergency room (5.6 percent) or other clinics (5.4 percent).<sup>43</sup> Other than doing nothing, all of these options would have cost more than the cost of the telehealth visit ranging from the emergency room (\$943 - \$1,595) to other clinics (\$57 - \$83).<sup>44</sup>

### C. Government Sector Impact:

The AHCA is required to use existing resources to support activities of the task force.

The Medicaid program may also be impacted with the definition of standard of care for telehealth to the extent that it may differ from the definition currently used by the program. Higher utilization of telehealth services may result in cost savings in other areas of the Medicaid program if the Florida Medicaid program experiences similar results as seen in other state Medicaid programs, such as New York, Texas and California where telehealth reimbursement parity is mandated.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

### VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 408.61 and 456.51.

### IX. Additional Information:

Committee Substitute – Statement of Changes:

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

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<sup>40</sup> Id at 5.

<sup>41</sup> Dale H. Yamamoto, *Assessment of the Feasibility and Cost of Replacing In-Person Care with Acute Care Telehealth Services*, <http://www.connectwithcare.org/wp-content/uploads/2014/12/Medicare-Acute-Care-Telehealth-Feasibility.pdf> p. 2, (last visited Jan. 14, 2016).

<sup>42</sup> Id at 5.

<sup>43</sup> Id.

<sup>44</sup> Id at 6.

**CS by Health Policy on January 26, 2016:**

The CS makes three modifications to the bill:

- Adds consideration of opportunities for interstate cooperation to the list of items to be reviewed and evaluated by the Telehealth Task Force;
- Includes respiratory therapists to the definition of a telehealth practitioner; and
- Modifies the definition of a “discount medical plan” under s. 636.202, F.S., to specifically exclude telehealth products defined under s. 456.51, F.S.

**B. Amendments:**

None.