A bill to be entitled
An act relating to telehealth; creating s. 220.197, F.S.; providing a tax credit for eligible taxpayers; authorizing an unused tax credit amount to be carried forward for a certain period of time; authorizing the Department of Revenue to perform audits and investigations under certain circumstances; authorizing the department to pursue recovery of tax credits if the taxpayer received such credit for which the taxpayer was not entitled; authorizing the transfer of a tax credit under certain circumstances; authorizing the department and the Office of Insurance Regulation to adopt rules; creating s. 456.47, F.S.; providing definitions; establishing a standard of care for telehealth providers; authorizing telehealth providers to use telehealth to perform patient evaluations; providing that telehealth providers, under certain circumstances, are not required to research a patient's history or conduct physical examinations before providing services through telehealth; authorizing certain telehealth providers to use telehealth to prescribe specified controlled substances under certain circumstances; providing that a nonphysician telehealth provider using telehealth and acting within his or her relevant scope of
practice is not deemed to be practicing medicine
without a license; providing recordkeeping
requirements for telehealth providers; providing
registration requirements for out-of-state telehealth
providers; requiring the Department of Health to
publish certain information on its website;
authorizing a board or the department if there is no
board to revoke a telehealth provider's registration
under certain circumstances; providing venue;
providing exemptions to the registration requirement;
providing rulemaking authority; providing an
appropriation; authorizing positions; amending s.
624.509, F.S.; providing that a health insurer or
health maintenance organization is allowed a tax
credit against a specified tax imposed if it covers
services provided by telehealth; authorizing an unused
tax credit amount to be carried forward for a certain
period of time; authorizing the Department of Revenue
to perform audits and investigations under certain
circumstances; authorizing the department to pursue
recovery of tax credits if the taxpayer received such
credit for which the taxpayer was not entitled;
authorizing the transfer of a tax credit under certain
circumstances; authorizing the department and the
Office of Insurance Regulation to adopt rules;
providing that an insurer claiming the tax credit is not required to pay any additional retaliatory tax; providing definitions; providing an effective date.

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

Section 1. Effective upon this act becoming a law, section 220.197, Florida Statutes, is created to read:

220.197  Telehealth tax credit.—

(1) For tax years beginning on or after January 1, 2020, a credit against the tax imposed by this chapter equal to the credit amount provided in s. 624.509(9)(a) is allowed for taxpayers eligible to receive the tax credit provided in s. 624.509(9)(a), but with insufficient tax liability under s. 624.509 to use such tax credit.

(2) If the credit allowed under this section is not fully used in any single year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years.

(3)(a) In addition to its existing audit and investigation authority, the department may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the taxpayer, to verify eligibility for the allowable credit and to ensure compliance with this section. The Office of Insurance Regulation shall
provide technical assistance when requested by the department on any audits or examinations performed pursuant to this paragraph.

(b) If the department determines, as a result of an audit or examination or from information received from the Office of Insurance Regulation, that a taxpayer received a tax credit pursuant to this section to which the taxpayer was not entitled, the department shall pursue recovery of such funds pursuant to the laws and rules governing the assessment of taxes.

(4) A taxpayer may transfer a credit for which the taxpayer qualifies under subsection (1), in whole or in part, to any taxpayer by written agreement. To perfect the transfer, the transferor shall provide the department with a written transfer statement notifying the department of the transferor's intent to transfer the tax credit to the transferee; the date that the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credit to be transferred. The department shall, upon receipt of the transfer statement, provide the transferee and the office with a certificate reflecting the tax credit amount transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credit.

(5) The department and the Office of Insurance Regulation may adopt rules to provide the administrative guidelines and procedures required to administer this section and prescribe:
(a) Any forms necessary to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(b) The implementation and administration of the provisions to allow a transfer of a tax credit, including reporting requirements, and procedures, guidelines, and requirements necessary to transfer such credit.

Section 2. Section 456.47, Florida Statutes, is created to read:

456.47 Use of telehealth to provide services.—
(1) DEFINITIONS.—As used in this section, the term:
(a) "Telehealth" means the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, patient assessment, diagnosis, consultation, treatment, and monitoring; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) "Telehealth provider" means any individual who provides health care and related services using telehealth and who is licensed or certified under s. 393.17; part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466;
chapter 467; part I, part III, part IV, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or who is registered under and complies with subsection (4).

(2) PRACTICE STANDARDS.—

(a) A telehealth provider has the duty to exercise care consistent with the prevailing professional standard of care for a health care professional who provides in-person health care services to patients in this state.

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

(c) A telehealth provider may not use telehealth to prescribe a controlled substance to treat chronic nonmalignant pain, as defined under s. 456.44, unless the controlled substance is ordered for inpatient treatment at a hospital licensed under chapter 395, is prescribed for a patient receiving hospice services as defined under s. 400.601, or is prescribed for a resident of a nursing home facility as defined under s. 400.021.
(d) A telehealth provider and a patient may be in separate locations when telehealth is used to provide health care services to a patient.

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

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

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

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

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

1. Completes an application in the format prescribed by
the department.

2. Holds an active, unencumbered license for a health care profession listed in paragraph (1)(b) which is issued by another state, the District of Columbia, or a possession or territory of the United States and who has not had disciplinary action taken against him or her in the 5 years preceding the date of submission of the application. The department shall use the National Practitioner Data Bank to verify information submitted by an applicant.

3. Designates a duly appointed registered agent for service of process in this state on a form prescribed by the department.

(c) The website of a telehealth provider registered pursuant to paragraph (b) must prominently display a hyperlink to the department's website containing information required pursuant to paragraph (g).

(d) A health care professional may not register under this subsection if his or her license to provide health care services is subject to a pending disciplinary investigation or action, or has been revoked in any state or jurisdiction. A health care professional registered under this section must notify the appropriate board, or the department if there is no board, of restrictions placed on his or her license to practice, or any disciplinary action taken or pending against him or her, in any state or jurisdiction. The notification must be provided within
5 business days after the restriction is placed or disciplinary action is initiated or taken.

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

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

(g) The department shall publish on its website a list of all registrants and include, to the extent applicable, each registrant’s:

1. Name.

2. Health care occupation.

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

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

5. Florida telehealth provider registration number.


7. Board certification.

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

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

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

(h) The board, or the department if there is no board, may revoke an out-of-state telehealth provider's registration if the registrant:

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

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

3. Violates any of the requirements of this section.

(5) VENUE.—For the purposes of this section, any act that constitutes the delivery of health care services is deemed to occur at the place where the patient is physically located at the time the act is performed.

(6) EXEMPTIONS.—A health care professional who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another state or jurisdiction, and who provides health care services using telehealth to a patient located in this state, is not subject to the registration requirement under this section.
if the services are provided:
   
   (a) In response to an emergency medical condition as defined in s. 395.002; or
   
   (b) In consultation with a health care professional licensed in this state who has ultimate authority over the diagnosis and care of the patient.

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

Section 3. For fiscal year 2019-2020, the sums of $261,389 in recurring funds and $15,020 in nonrecurring funds from the Medical Quality Assurance Trust Fund are appropriated to the Department of Health, and four full-time equivalent positions with associated salary rate of 145,870 are authorized for the purpose of implementing s. 456.47, Florida Statutes, as created by this act.

Section 4. Effective upon this act becoming a law, subsection (9) of section 624.509, Florida Statutes, is renumbered as subsection (10), present subsection (9) is amended, and a new subsection (9) is added to that section, to read:

624.509 Premium tax; rate and computation.—

(9)(a) For tax years beginning on or after January 1, 2020, any health insurer or health maintenance organization that covers services provided by telehealth shall be allowed a credit against the tax imposed by this section equal to 0.001 percent
of total insurance premiums received on accident and health
insurance policies or plans delivered or issued in this state in
the previous calendar year that provide medical, major medical,
or similar comprehensive coverage. The office shall confirm such
coverage to the Department of Revenue following its annual rate
and form review for each health insurance policy or plan.

(b) If the credit allowed pursuant to this subsection is
not fully used in any single year because of insufficient tax
liability on the part of a health insurer or health maintenance
organization and the same health insurer or health maintenance
organization does not use the credit available pursuant to s.
220.197, the unused amount may be carried forward for a period
not to exceed 5 years.

(c)1. In addition to its existing audit and investigation
authority, the Department of Revenue may perform any additional
financial and technical audits and investigations, including
examining the accounts, books, and records of the health insurer
or health maintenance organization, which are necessary to
verify eligibility for the credit allowed under this subsection
and to ensure compliance with this subsection. The office shall
provide technical assistance when requested by the Department of
Revenue on any audits or examinations performed pursuant to this
subparagraph.

2. If the Department of Revenue determines, as a result of
an audit or examination or from information received from the
office, that a taxpayer received a tax credit pursuant to this subsection to which the taxpayer was not entitled, the Department of Revenue shall pursue recovery of such funds pursuant to the laws and rules governing the assessment of taxes.

(d) A health insurer or health maintenance organization may transfer a credit for which it qualifies under paragraph (a), in whole or in part, to any insurer by written agreement. To perfect the transfer, the transferor shall provide the Department of Revenue with a written transfer statement notifying the department of the transferor's intent to transfer the tax credit to the transferee; the date that the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credit to be transferred. The Department of Revenue shall, upon receipt of the transfer statement, provide the transferee and the office with a certificate reflecting the tax credit amount transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credit.

(e) The Department of Revenue and the office may adopt rules to provide the administrative guidelines and procedures required to administer this section and prescribe:

1. Any forms necessary to claim a tax credit under this section, the requirements and basis for establishing an
entitlement to a credit, and the examination and audit procedures required to administer this section.

2. The implementation and administration of the provisions to allow a transfer of a tax credit, including reporting requirements, and specific procedures, guidelines, and requirements necessary to transfer such credit.

   (f) An insurer that claims a credit against tax liability under this subsection is not required to pay any additional retaliatory tax levied under s. 624.5091 as a result of claiming such a credit. Section 624.5091 does not limit such a credit in any manner.

   (10) As used in this section, the term:

   (a) "Health insurer" means an authorized insurer offering health insurance as defined in s. 624.603.

   (b) "Health maintenance organization" has the same meaning as provided in s. 641.19.

   (c) "Insurer" includes any entity subject to the tax imposed by this section.

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

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2019.