

**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 Rules

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BILL: HB 7067

INTRODUCER: Health Quality Subcommittee and Representative Yarborough

SUBJECT: Registration Fees

DATE: April 20, 2019

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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## I. Summary:

HB 7067, which is linked to HB 23, provides that an applicant for registration as an out-of-state telehealth provider must pay an initial registration fee of \$150 and that an out-of-state telehealth provider registrant must pay a biennial registration renewal fee of \$150 with a completed application for renewal.

The Florida Constitution requires that legislation that imposes or authorizes new state taxes or fees,<sup>1</sup> or that raises existing state taxes or fees,<sup>2</sup> must be approved by two-thirds of the membership of each house of the Legislature, and the tax or fee provisions must be passed in a separate bill that contains no other subject.<sup>3</sup> HB 7067 creates and imposes a new fee on out-of-state telehealth providers who register to provide health care services via telehealth to patients in Florida under s. 456.47(4), F.S., as created by HB 23 or similar legislation. As such, the Florida Constitution may require that such a fee provision must be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

The bill has an indeterminate positive fiscal impact on the Department of Health (DOH).

The bill is effective on the same date that HB 23 or similar legislation takes effect.<sup>4</sup>

## II. Present Situation:

### Telehealth

The federal Health Resource Services Administration defines telehealth as the use of electronic information and telecommunications technologies to support and promote long-distance clinical

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<sup>1</sup> FLA. CONST. art. VII, s. 19(a).

<sup>2</sup> FLA. CONST. art. VII, s. 19(b).

<sup>3</sup> FLA. CONST. art. VII, s. 19(e).

<sup>4</sup> As of this writing, HB 23 provides an effective date of July 1, 2019. See: <http://www.flsenate.gov/Session/Bill/2019/00023> (last visited April 20, 2019)

health care, patient, and professional health-related education, public health and health administration. Technologies include videoconferencing, the Internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.<sup>5</sup>

The federal Centers for Medicare & Medicaid Services 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 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>6</sup>

For more information about telehealth in general, see the analysis of SB 1526.<sup>7</sup>

### **Telehealth in Florida**

Florida does not currently have a statutory structure for the delivery of health care services through telehealth. Some health care practitioner regulatory boards<sup>8</sup> within the DOH have adopted rules for the provision of health care services through telehealth, and the state Medicaid program allows for the provision of health care services for Medicaid recipients through telehealth under certain parameters. However, a health care practitioner must be licensed under a health care practice act within Florida law in order to lawfully provide services through telehealth for patients located in Florida.

### **Health Care Practitioner Licensure**

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.<sup>9</sup> The Division of Medical Quality Assurance (MQA) within the DOH has general regulatory authority over Florida health care practitioners.<sup>10</sup> The MQA works in conjunction with 22 boards and four councils to license and regulate seven types

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<sup>5</sup> Hedges, Ron, *Telemedicine, Information Governance and Litigation: The Chicken and the Egg*, IGIQ: A Journal of AHMIA Blog, (Feb. 15, 2018) <https://journal.ahima.org/2018/02/15/telemedicine-information-governance-and-litigation-the-chicken-and-the-egg/> (last visited April 19, 2019)

<sup>6</sup> Department of Health and Human Services, Centers for Medicare & Medicaid Services *Telemedicine*, available at <https://www.medicare.gov/medicaid/benefits/telemmed/index.html> (last viewed April 19, 2019).

<sup>7</sup> See: <http://www.flsenate.gov/Session/Bill/2019/1526/Analyses/2019s01526.ap.PDF> (last visited April 20, 2019)

<sup>8</sup> Under s. 456.001(1), F.S., “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH Division of Medical Quality Assurance.

<sup>9</sup> Section 20.43(1)(g), F.S.

<sup>10</sup> Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

of health care facilities and more than 40 health care professions.<sup>11</sup> Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.

Under current law, the costs of regulation of health care practitioners must be borne by the licensees and licensure applicants.<sup>12</sup> The definition of “license” includes any permit, registration, certificate, or license, including a provisional license, issued by the DOH.<sup>13</sup> Regulatory boards, in consultation with the DOH, must set licensure renewal fees by rule, and renewal fees must be:<sup>14</sup>

- Based on revenue projections prepared using generally accepted accounting procedures;
- Adequate to cover all expenses relating to that board identified in the DOH long-range policy plan;
- Reasonable, fair, and not serve as a barrier to licensure;
- Based on potential earnings from working under the scope of the license;
- Similar to fees imposed on similar licensure types; and
- No more than 10 percent greater than the actual cost to regulate that profession for the previous biennium.

### III. Effect of Proposed Changes:

HB 7067 adds paragraph (i) to s. 456.47(4), F.S., as created by HB 23,<sup>15</sup> to provide that an applicant for registration as an out-of-state telehealth provider must pay an initial registration fee of \$150 and that an out-of-state telehealth provider registrant must pay a biennial registration renewal fee of \$150 with a completed application for renewal.

HB 7067 will be effective on the same date that HB 23 or similar legislation takes effect.

### IV. Constitutional Issues:

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

None.

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

None.

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<sup>11</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2017-2018* 3, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1718.pdf> (last visited April 19, 2019).

<sup>12</sup> Section 456.025(1), F.S.

<sup>13</sup> Section 456.001(5), F.S.

<sup>14</sup> *Supra*, note 12.

<sup>15</sup> HB 23 creates s. 456.47(4), F.S., to require the DOH or the applicable health care practitioner regulatory board to register out-of-state health care providers who meet certain criteria for the purpose of authorizing such registrants to lawfully provide health care services to patients in Florida via telehealth without having to be licensed by Florida as a health care practitioner under the respective practice act.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

HB 7067 creates and imposes a new fee on out-of-state telehealth providers who register to provide health care services via telehealth to patients in Florida. As such, the Florida Constitution may require that such a provision must be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who meet the criteria to become registered as out-of-state telehealth providers and who seek such registration will incur a registration fee of \$150. If such registrants seek renewal of their registrations, they will incur a biennial renewal fee of \$150.

C. Government Sector Impact:

The fiscal impact on the Department of Health is positive but indeterminate and will depend on how many out-of-state health care practitioners seek registration and renewal of their registrations to provide health care services via telehealth to patients in Florida.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.47.<sup>16</sup>

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

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

None.

**B. Amendments:**

None.

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

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<sup>16</sup> Section 456.47, F.S., is created under HB 23, to which HB 7067 is linked.