

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 117 Genetic Counselors Using Telehealth

SPONSOR(S): Silvers and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 218

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 117 passed the House on April 20, 2023 as SB 218.

Telehealth is the remote provision of health care services through the use of technology. Telehealth is not a type of health care service; rather, it is a mechanism for the delivery of health care services. Section 456.74, F.S., regulates the use of telehealth by Florida and out-of-state healthcare providers. The law specifically lists the health care practitioner types and out-of-state practitioners authorized to provide health care services through telehealth. The list includes all health care practitioner types regulated by the Department of Health (DOH) when the statute was enacted in 2019.

Genetic counselors collect personal and family history and use such information to determine how likely it is that an individual or their family member has a genetic condition. Based on such information, a genetic counselor assists an individual in determining if a genetic test is suitable. Genetic test results may diagnose, confirm, or indicate risk for developing a particular condition. A genetic counselor can explain the results of a genetic test, evaluate treatment options, and assist the patient in family and health care planning according to the patient's specific needs.

In 2021, genetic counseling became a licensed health care profession regulated by DOH with the enactment of part III of chapter 483, F.S. However, genetic counselors were not added to the list of health care practitioners authorized to provide services through telehealth in current law. Genetic counselors are the only health care practitioner licensed by DOH that cannot provide services through telehealth under current law.

The bill authorizes genetic counselors licensed or registered as out-of-state providers in Florida to provide services to patients through telehealth.

The bill has an indeterminate, insignificant, negative fiscal impact on DOH which can be absorbed within current resources.

The bill was approved by the Governor on May 25, 2023, ch. 2023-132, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Telehealth

Telehealth is not a type of health care service; rather, it is a mechanism for the delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner; this includes formats such as synchronous live video calls between a patient and provider, and remote patient monitoring which uses a device to collect patient health information and transmit such information to a provider.¹ Formats such as these enable flexibility in the provision of health care services as patients and providers do not have to be in the same location at the time services are rendered. Telehealth is used to provide a wide variety of health care services such as preventative medicine and the treatment of chronic health conditions.²

Section 456.47, F.S., enacted by the Legislature in 2019, authorizes the use of telehealth for all practitioners, within the applicable scope of practice, and regulates the use of telehealth by out-of-state health care providers. A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.³

Current law broadly defines “telehealth” as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:⁴

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;
- Public health services; and
- Health administration.

Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,⁵ or a registered out-of-state-health care provider.⁶ Out-of-state health care providers may provide services to patients in Florida using telehealth upon registering with DOH as an out-of-state telehealth provider.⁷ Out-of-state providers must provide services within their applicable scope of practice as established by Florida law or rule.⁸ The out of-state telehealth provider registration does not expire; however,

¹ U.S. Department of Health and Human Services, *Report to Congress: E-Health and Telemedicine* (August 12, 2016), available at <https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf> (last viewed May 15, 2023).

² *Id.*

³ S. 456.47(2), F.S.

⁴ S. 456.47(1)(a), F.S.

⁵ Florida is a member of the Nurse Licensure Compact. See s. 464.0095, F.S.

⁶ S. 456.47(4), F.S.

⁷ *Id.*

⁸ *Id.*

registered providers must comply with all registration requirements until they request to nullify their registration.⁹

In order to register as an out-of-state telehealth provider, one must:¹⁰

- Submit a completed application in the format prescribed by DOH;
- Maintain an active and unencumbered license, which is substantially similar to a license issued to a Florida practitioner in the same profession, in a U.S. state or jurisdiction;
- Not have been the subject of disciplinary action relating to his or her license during the five-year period preceding the submission of the application;¹¹
- Designate a duly appointed registered agent for the service of process in Florida; and
- Maintain professional liability coverage or financial responsibility for telehealth services provided to patients in Florida in an amount equal to or greater than that required for Florida-licensed practitioners.¹²

Current law authorizes the following licensed health care practitioners to provide services through telehealth:¹³

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|---------------------------------|---------------------------------|
| • Behavioral analyst | • Nurse |
| • Acupuncturist | • Pharmacist |
| • Allopathic physician | • Dentist |
| • Osteopathic physician | • Dental hygienist |
| • Chiropractor | • Midwife |
| • Podiatrist | • Speech therapist |
| • Occupational therapist | • Medical physicist |
| • Radiology technician | • Emergency Medical Technician |
| • Electrologist | • Paramedic |
| • Orthotist | • Massage therapist |
| • Pedorthist | • Optician |
| • Prosthetist | • Hearing aid specialist |
| • Clinical laboratory personnel | • Dietician/Nutritionist |
| • Respiratory therapist | • Athletic trainer |
| • Psychologist | • Clinical social worker |
| • Psychotherapist | • Marriage and family therapist |
| • Optometrist | • Mental health counselor |

This list includes all health care practitioner types regulated by DOH in 2019 when the law authorizing telehealth in Florida was passed.

Genetic Counseling

⁹ Florida Department of Health. Division of Medical Quality Assurance. *Florida Telehealth: Frequently Asked Questions*. Available at <https://flhealthsource.gov/telehealth/faqs/> (last visited May 15, 2023).

¹⁰ S. 456.47(4), F.S.

¹¹ *Id.* Current law requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.

¹² Florida law requires physicians, acupuncturists, chiropractic physicians, dentists, anesthesiologist assistants, advanced practice registered nurses, and licensed midwives to demonstrate \$100,000 per claim and an annual aggregate of \$300,000 of professional responsibility (see ss. 458.320 and 459.0085, F.S.; r. 64B1-12.001, F.A.C.; r. 64B2-17.009, F.A.C.; 64B5-17.0105, F.A.C.; rr. 64B8-31.006 and 64B15-7.006, F.A.C.; r. 64B9-4.002, F.A.C.; and r. 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of \$100,000 (see r. 64B18-14.0072, F.A.C.).

¹³ These are professionals licensed under s. 393.17; part III, ch. 401; ch. 457; ch. 458; ch. 459; ch. 460; ch. 461; ch. 463; ch. 464; ch. 465; ch. 466; ch. 467; part I, part III, part IV, part V, part X, part XIII, and part XIV, ch. 468; ch. 478; ch. 480; part II and part III, ch. 483; ch. 484; ch. 486; ch. 490; or ch. 491.

Genetic counseling provides individuals with information about how genetic conditions may affect them or their families. Genetic counselors collect personal and family history and use such information to determine how likely it is that an individual or their family member has a genetic condition. Based on such information, a genetic counselor assists an individual in determining if a genetic test is suitable. Genetic test results may diagnose, confirm, or indicate risk for developing a particular condition. A genetic counselor can explain the results of a genetic test, evaluate treatment options, and assist the patient in family and health care planning according to the patient's specific needs.¹⁴

Individuals may seek genetic counseling for a wide variety of reasons, including:¹⁵

- Prenatal concerns about factors that might affect a baby during infancy, including genetic conditions and birth defects;
- A child showing signs and symptoms of a genetic disorder, including abnormal newborn screening results, intellectual or developmental disabilities, or birth defects;
- To determine risk of being affected by a health condition, including hereditary breast and ovarian cancer, muscular dystrophy, Huntington's disease, and sickle cell disease.

Genetic counselors have advanced training in medical genetics and counseling to guide and support patients seeking more information about how inherited diseases and conditions might affect them or their families, and to interpret genetic test results based on personal and family history. Genetic counselors may specialize in areas such as obstetrics, pediatrics, oncology, or neurology, among many other specialties.¹⁶ Genetic counselors typically are not physicians; however, they work in conjunction with medical geneticists to provide genetic services.¹⁷ Medical geneticists will order genetic testing and interpret the results and a genetic counselor will provide further education on the results and how they may affect an individual or their family.¹⁸

The profession of genetic counseling is relatively new compared to other medical professions. Scientific advancements over the last two decades have enabled genetic testing to become relatively accessible resulting in a rapid increase in the demand for professionals with specialized training in genetic counseling.¹⁹ Nationally, the genetic counselor workforce grew by 88% between 2006 and 2016.²⁰

Currently, fewer than 5,500 certified genetic counselors practice in the United States; this has led to frequent utilization of telehealth in order to provide services to address increasing demand, lack of access to providers, and health disparities.²¹ Genetic counseling is unique in that evaluating a patient's health and family history with genetic test results could be done almost entirely through telehealth services. Telehealth genetic counseling has been shown to be comparable in quality and outcomes to genetic counseling services rendered in-person.²²

Florida Genetic Counselors

¹⁴ Centers for Disease Control and Prevention, *Genetic Counseling*. Available at https://www.cdc.gov/genomics/gtesting/genetic_counseling.htm (last visited May 15, 2023).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Medical geneticists are physicians who specialize in medical genetics and conduct genetic testing and provide diagnoses. See also, American College of Medical Genetics and Genomics, *Careers in Medical Genetics*. Available at https://www.acmg.net/ACMG/ACMG/Education/Student/Careers_in_Medical_Genetics.aspx (last visited May 15, 2023).

¹⁸ *Supra*, note 14.

¹⁹ Green, S., et al. (2022). *An Evidence-based Practice Guideline of the National Society of Genetic Counselors for Telehealth Genetic Counseling*. Journal of Genetic Counseling. 00, 1-14. <https://doi.org/10.1002/jgc4.1627>

²⁰ American Board of Genetic Counseling, Inc. *Workforce Study Executive Summary*. Available at https://www.abgc.net/abgc/media/documents/Workforce_Study_Executive-Summary_FINAL.pdf (last visited May 15, 2023).

²¹ *Id.*

²² Danylchuk, N.R., et al. (2021). *Telehealth for genetic counseling: A systematic evidence review*. Journal of genetic counseling, 30(5), 1361–1378. <https://doi.org/10.1002/jgc4.1481>

In 2021, the Legislature passed legislation creating part III of Chapter 483, F.S., regulating the profession of genetic counseling.²³ Current law authorizes genetic counselors to advise an individual or a family affected by or at risk of genetic disorders, including:²⁴

- Evaluating individual and family medical histories to determine risk for genetic or medical conditions and diseases;
- Discussing health factors and risk management for genetic or medical conditions and diseases with patients;
- Ordering genetic laboratory tests and diagnostic studies;
- Evaluating laboratory test results and diagnostic studies against individual and family medical history to assess risk factors for genetic or medical conditions and diseases;
- Explaining clinical implications of genetic laboratory tests and diagnostic studies results to patients;
- Evaluating the individual or family and providing client centered counseling and guidance;
- Using community resources that provide medical, educational, financial, and psychosocial support and advocacy;
- Providing written documentation of medical, genetic, and counseling information for individuals, families, and health care professionals; and
- Referring individuals to a physician for diagnosis and treatment.

To be licensed as a genetic counselor, an individual must:²⁵

- Submit an application on a form approved by DOH;
- Be of good moral character;
- Possess:
 - A Master's degree from a genetic counseling program or an equivalent program as determined by the Accreditation Council for Genetic Counseling or its successor or equivalent; or
 - A Doctoral degree from a medical genetics program accredited by the American Board of Genetics and Genomics or the Canadian College of Medical Geneticists.
- Pass the examination for certification as:
 - A genetic counselor by the American Board of Genetic Counseling, the American Board of Genetics and Genomics, or the Canadian Association of Genetic Counselors; or
 - A medical or clinical geneticist by the American Board of Medical Genetics and Genomics or the Canadian College of Medical Geneticists.

Currently, 532 genetic counselors hold a Florida license, of which 107 (20%) live in-state and 425 (80%) live out-of-state.²⁶ However, genetic counselors are the only health care practitioner licensed by DOH that cannot provide services through telehealth under current law, because the telehealth statute was enacted prior to enactment of the genetic counselors licensure act. All of the 31 states regulating licensure for genetic counselors authorize genetic counselors to provide services through telehealth, except Florida.²⁷

Effect of the Bill

The bill authorizes Florida licensed and out-of-state registered genetic counselors to provide services through telehealth.

²³ S. 483.911, F.S.

²⁴ S. 483.913(3), F.S.

²⁵ S. 483.914, F.S.

²⁶ Florida Department of Health. Division of Medical Quality Assurance. *Annual Report and Long-Range Plan. Fiscal Year 2021-2022*. Available at <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-2122.pdf> (last visited May 15, 2023).

²⁷ Florida Department of Health, Agency Analysis of 2023 House Bill 117, p. 2. On file with the Healthcare Regulation Subcommittee.

Subject to the Governor's veto powers, the bill is effective July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, insignificant negative fiscal impact on DOH which can be absorbed within current resources.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For individuals living in areas where genetic counselors are scarce, this bill may provide additional or timelier access to genetic counseling services.

D. FISCAL COMMENTS:

None.

²⁸ *Id.*