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LEGISLATIVE ACTION

Senate

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House

Floor: 1/RE/2R

04/26/2019 02:09 PM

Senator Harrell moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. 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



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12 limited to, assessment, diagnosis, consultation, treatment, and
13 monitoring of a patient; transfer of medical data; patient and
14 professional health-related education; public health services;
15 and health administration. The term does not include audio-only
16 telephone calls, e-mail messages, or facsimile transmissions.

17 (b) "Telehealth provider" means any individual who provides
18 health care and related services using telehealth and who is
19 licensed or certified under s. 393.17; part III of chapter 401;
20 chapter 457; chapter 458; chapter 459; chapter 460; chapter 461;
21 chapter 463; chapter 464; chapter 465; chapter 466; chapter 467;
22 part I, part III, part IV, part V, part X, part XIII, or part
23 XIV of chapter 468; chapter 478; chapter 480; part II or part
24 III of chapter 483; chapter 484; chapter 486; chapter 490; or
25 chapter 491; who is licensed under a multi-state health care
26 licensure compact of which Florida is a member state; or who is
27 registered under and complies with subsection (4).

28 (2) PRACTICE STANDARDS.—

29 (a) A telehealth provider has the duty to practice in a
30 manner consistent with his or her scope of practice and the
31 prevailing professional standard of practice for a health care
32 professional who provides in-person health care services to
33 patients in this state.

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



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41 (c) A telehealth provider may not use telehealth to
42 prescribe a controlled substance unless the controlled substance
43 is prescribed for the following:

- 44 1. The treatment of a psychiatric disorder;
45 2. Inpatient treatment at a hospital licensed under chapter
46 395;
47 3. The treatment of a patient receiving hospice services as
48 defined in s. 400.601; or
49 4. The treatment of a resident of a nursing home facility
50 as defined in s. 400.021.

51 (d) A telehealth provider and a patient may be in separate
52 locations when telehealth is used to provide health care
53 services to a patient.

54 (e) A nonphysician telehealth provider using telehealth and
55 acting within his or her relevant scope of practice, as
56 established by Florida law or rule, is not in violation of s.
57 458.327(1)(a) or s. 459.013(1)(a).

58 (3) RECORDS.—A telehealth provider shall document in the
59 patient's medical record the health care services rendered using
60 telehealth according to the same standard as used for in-person
61 services. Medical records, including video, audio, electronic,
62 or other records generated as a result of providing such
63 services, are confidential pursuant to ss. 395.3025(4) and
64 456.057.

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

66 (a) A health care professional not licensed in this state
67 may provide health care services to a patient located in this
68 state using telehealth if the health care professional registers
69 with the applicable board, or the department if there is no



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70 board, and provides health care services within the applicable
71 scope of practice established by Florida law or rule.

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

75 1. Completes an application in the format prescribed by the
76 department;

77 2. Is licensed with an active, unencumbered license that is
78 issued by another state, the District of Columbia, or a
79 possession or territory of the United States and that is
80 substantially similar to a license issued to a Florida-licensed
81 provider specified in paragraph (1) (b);

82 3. Has not been the subject of disciplinary action relating
83 to his or her license during the 5-year period immediately prior
84 to the submission of the application;

85 4. Designates a duly appointed registered agent for service
86 of process in this state on a form prescribed by the department;
87 and

88 5. Demonstrates to the board, or the department if there is
89 no board, that he or she is in compliance with paragraph (e).

90
91 The department shall use the National Practitioner Data Bank to
92 verify the information submitted under this paragraph, as
93 applicable.

94 (c) The website of a telehealth provider registered under
95 paragraph (b) must prominently display a hyperlink to the
96 department's website containing information required under
97 paragraph (h).

98 (d) A health care professional may not register under this



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99 subsection if his or her license to provide health care services
100 is subject to a pending disciplinary investigation or action, or
101 has been revoked in any state or jurisdiction. A health care
102 professional registered under this subsection must notify the
103 appropriate board, or the department if there is no board, of
104 restrictions placed on his or her license to practice, or any
105 disciplinary action taken or pending against him or her, in any
106 state or jurisdiction. The notification must be provided within
107 5 business days after the restriction is placed or disciplinary
108 action is initiated or taken.

109 (e) A provider registered under this subsection shall
110 maintain professional liability coverage or financial
111 responsibility, that includes coverage or financial
112 responsibility for telehealth services provided to patients not
113 located in the provider's home state, in an amount equal to or
114 greater than the requirements for a licensed practitioner under
115 s. 456.048, s. 458.320, or s. 459.0085, as applicable.

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

120 (g) A pharmacist registered under this subsection may only
121 use a pharmacy permitted under chapter 465, a nonresident
122 pharmacy registered under s. 465.0156, or a nonresident pharmacy
123 or outsourcing facility holding an active permit pursuant to s.
124 465.0158 to dispense medicinal drugs to patients located in this
125 state.

126 (h) The department shall publish on its website a list of
127 all registrants and include, to the extent applicable, each



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128 registrant's:
129 1. Name.
130 2. Health care occupation.
131 3. Completed health care training and education, including
132 completion dates and any certificates or degrees obtained.
133 4. Out-of-state health care license with the license
134 number.
135 5. Florida telehealth provider registration number.
136 6. Specialty.
137 7. Board certification.
138 8. Five-year disciplinary history, including sanctions and
139 board actions.
140 9. Medical malpractice insurance provider and policy
141 limits, including whether the policy covers claims that arise in
142 this state.
143 10. The name and address of the registered agent designated
144 for service of process in this state.
145 (i) The board, or the department if there is no board, may
146 take disciplinary action against an out-of-state telehealth
147 provider registered under this subsection if the registrant:
148 1. Fails to notify the applicable board, or the department
149 if there is no board, of any adverse actions taken against his
150 or her license as required under paragraph (d).
151 2. Has restrictions placed on or disciplinary action taken
152 against his or her license in any state or jurisdiction.
153 3. Violates any of the requirements of this section.
154 4. Commits any act that constitutes grounds for
155 disciplinary action under s. 456.072(1) or the applicable
156 practice act for Florida-licensed providers.



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158 Disciplinary action taken by a board, or the department if there
159 is no board, under this paragraph may include suspension or
160 revocation of the provider's registration or the issuance of a
161 reprimand or letter of concern. A suspension may be accompanied
162 by a corrective action plan as determined by the board, or the
163 department if there is no board, the completion of which may
164 lead to the suspended registration being reinstated according to
165 rules adopted by the board, or the department if there is no
166 board.

167 (5) VENUE.—For the purposes of this section, any act that
168 constitutes the delivery of health care services is deemed to
169 occur at the place where the patient is located at the time the
170 act is performed or in the patient's county of residence. Venue
171 for a civil or administrative action initiated by the
172 department, the appropriate board, or a patient who receives
173 telehealth services from an out-of-state telehealth provider may
174 be located in the patient's county of residence or in Leon
175 County.

176 (6) EXEMPTIONS.—A health care professional who is not
177 licensed to provide health care services in this state but who
178 holds an active license to provide health care services in
179 another state or jurisdiction, and who provides health care
180 services using telehealth to a patient located in this state, is
181 not subject to the registration requirement under this section
182 if the services are provided:

183 (a) In response to an emergency medical condition as
184 defined in s. 395.002; or

185 (b) In consultation with a health care professional



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186 licensed in this state who has ultimate authority over the
187 diagnosis and care of the patient.

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

190 Section 2. Effective January 1, 2020, section 627.42396,
191 Florida Statutes, is created to read:

192 627.42396 Reimbursement for telehealth services.—A contract
193 between a health insurer issuing major medical comprehensive
194 coverage through an individual or group policy and a telehealth
195 provider, as defined in s. 456.47, must be a voluntary contract
196 between the insurer and the provider, must establish mutually
197 acceptable payment rates or payment methodologies for services
198 provided through telehealth, and must give the provider the
199 option to accept a reimbursement for a covered service provided
200 through telehealth in an amount less than the reimbursement the
201 insurer would pay if the service were delivered through an in-
202 person encounter.

203 Section 3. Effective January 1, 2020, subsection (45) is
204 added to section 641.31, Florida Statutes, to read:

205 641.31 Health maintenance contracts.—

206 (45) A contract between a health maintenance organization
207 issuing major medical individual or group coverage and a
208 telehealth provider, as defined in s. 456.47, must be a
209 voluntary contract between the health maintenance organization
210 and the provider, must establish mutually acceptable payment
211 rates or payment methodologies for services provided through
212 telehealth, and must give the provider the option to accept a
213 reimbursement for a covered service provided through telehealth
214 in an amount less than the reimbursement the health maintenance



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215 organization would pay if the service were delivered through an
216 in-person encounter.

217 Section 4. Effective July 1, 2020, the Department of Health
218 shall annually review the amount of any fees collected under
219 section 456.47, Florida Statutes, in the prior fiscal year and
220 shall determine whether such fees are sufficient to enable the
221 department and the boards, as defined in section 456.001,
222 Florida Statutes, to fully implement section 456.47, Florida
223 Statutes. If the department determines that the fees collected
224 are insufficient, the department shall so indicate to the
225 Legislature in its annual legislative budget request and shall
226 recommend appropriate adjustments to the applicable fees.

227 Section 5. For fiscal year 2019-2020, the sums of \$261,389
228 in recurring funds and \$15,020 in nonrecurring funds from the
229 Medical Quality Assurance Trust Fund are appropriated to the
230 Department of Health, and four full-time equivalent positions
231 with associated salary rate of 145,870 are authorized for the
232 purpose of implementing s. 456.47, Florida Statutes, as created
233 by this act.

234 Section 6. Except as otherwise provided, this act shall
235 take effect July 1, 2019.

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237 ===== T I T L E A M E N D M E N T =====

238 And the title is amended as follows:

239 Delete everything before the enacting clause
240 and insert:

241 A bill to be entitled
242 An act relating to telehealth; creating s. 456.47,
243 F.S.; defining terms; establishing standards of



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244 practice for telehealth providers; authorizing
245 telehealth providers to use telehealth to perform
246 patient evaluations; authorizing certain telehealth
247 providers to use telehealth to prescribe certain
248 controlled substances under specified circumstances;
249 providing that a nonphysician telehealth provider
250 using telehealth and acting within his or her relevant
251 scope of practice is not deemed to be practicing
252 medicine without a license; providing recordkeeping
253 requirements for telehealth providers; providing
254 registration requirements for out-of-state telehealth
255 providers; requiring the Department of Health to
256 publish certain information on its website;
257 authorizing a board, or the department if there is no
258 board, to take disciplinary action against a
259 telehealth provider under certain circumstances;
260 providing venue; providing exemptions from telehealth
261 registration requirements; authorizing the applicable
262 board, or the department if there is no board, to
263 adopt rules; creating s. 627.42396, F.S.; providing
264 requirements for a contract between a certain health
265 insurer and a telehealth provider; amending s. 641.31,
266 F.S.; providing requirements for a contract between a
267 certain health maintenance organization and a
268 telehealth provider; requiring the department to
269 annually review the amount of certain collected fees
270 and make a determination relating to the sufficiency
271 of funding to implement specified telehealth
272 provisions; upon making a certain determination,



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273 requiring the department to indicate insufficient
274 funding and recommend fee adjustments in its annual
275 legislative budget request; providing an
276 appropriation; authorizing positions; providing
277 effective dates.