

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 298

INTRODUCER: Senator Boyd

SUBJECT: Telehealth Practice Standards

DATE: April 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Favorable
2.	Moody	Knudson	BI	Favorable
3.	Rossitto-Van Winkle	Twogood	RC	Pre-meeting

I. Summary:

SB 298 amends s. 456.47(1)(a), F.S., to revise the definition of “telehealth.” Under the bill, the use of audio-only telephone calls is no longer excluded from the definition.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Telehealth

Section 456.47, F.S., defines the term “telehealth” as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, 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. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

In a general sense, “synchronous” telehealth happens in live, real-time settings where the patient interacts with a provider, usually via phone or video. Providers and patients communicate directly, often resulting in a diagnosis, treatment plan, or prescription. Synchronous telehealth can include additional at-home devices such as a blood pressure or heart rate monitors,

thermometers, oximeters, cameras, or scales to help the provider more accurately assess the patient's health status.¹

"Asynchronous" telehealth, also known as "store-and-forward," is often used for patient intake or follow-up care. For example, a patient sends a photo of a skin condition that is later reviewed by a dermatologist who recommends treatment.²

Section 456.47, F.S., authorizes Florida-licensed health care providers³ to use telehealth to deliver health care services within their respective scopes of practice. The statute also authorizes out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the applicable regulatory board or the Department of Health (DOH) if there is no applicable board,⁴ and meet certain eligibility requirements.⁵ A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida without first becoming licensed by the state of Florida.

A telehealth provider is defined under s. 456.47, F.S., as an individual who provides health care and related services to patients located in Florida and must be one of the licensed health care practitioners listed below. He or she may be either Florida licensed, licensed under a multi-state health care licensure compact of which Florida is a member state, or registered as an out-of-state telehealth provider:

- Acupuncturist;⁶
- Allopathic physicians or physician assistants;⁷
- Osteopathic physicians or physician assistants;⁸
- Chiropractic physicians, or chiropractic physician assistant;⁹
- Podiatric physicians;¹⁰
- Optometrists;¹¹
- Autonomous advance practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistant;¹²

¹ TELEHEALTH.HHS.GOV, "Synchronous direct-to-consumer telehealth," available at <https://telehealth.hhs.gov/providers/direct-to-consumer/synchronous-direct-to-consumer-telehealth/> (last visited Mar. 3, 2023).

² TELEHEALTH.HHS.GOV, "Asynchronous direct-to-consumer telehealth," available at <https://telehealth.hhs.gov/providers/direct-to-consumer/asynchronous-direct-to-consumer-telehealth/> (last visited Mar. 3, 2023).

³ Section 456.47(1)(b), F.S.

⁴ Under s. 456.001(1), F.S., the term "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 DOH or, in some cases, within DOH's Division of Medical Quality Assurance (MQA).

⁵ Section 456.47(4), F.S.

⁶ Chapter 457, F.S.

⁷ Chapter 458, F.S.

⁸ Chapter 459, F.S.

⁹ Chapter 460, F.S.

¹⁰ Chapter 461, F.S.

¹¹ Chapter 463, F.S.

¹² Chapter 464, F.S.

- Pharmacists;¹³
- Dentists, dental hygienist and dental laboratories;¹⁴
- Midwives;¹⁵
- Speech and language pathologists;¹⁶
- Audiologists;¹⁷
- Occupational therapists;¹⁸
- Radiological Personnel;¹⁹
- Respiratory therapists;²⁰
- Dieticians and nutritionists;²¹
- Athletic trainers;²²
- Orthotists, prosthetists, and pedorthists;²³
- Electrologists;²⁴
- Massage therapists;²⁵
- Clinical laboratory personnel;²⁶
- Medical physicists;²⁷
- Opticians;²⁸
- Hearing aid specialists;²⁹
- Physical therapists;³⁰
- Psychologists and school psychologists;³¹ and
- Clinical social workers, mental health counselors and marriage and family therapists.³²

A telehealth provider has the duty to practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for a health care professional who provides in-person health care services to patients in Florida. 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

¹³ Chapter 465, F.S.

¹⁴ Chapter 466, F.S.

¹⁵ Chapter 467, F.S.

¹⁶ Part I, ch. 468, F.S.

¹⁷ *Id.*

¹⁸ Part III, ch. 468, F.S.

¹⁹ Part IV, ch. 468, F.S.

²⁰ Part V, ch. 468, F.S.

²¹ Part X, ch. 468, F.S.

²² Part XIII, ch. 468, F.S.

²³ Part XIV, ch. 468, F.S.

²⁴ Chapter 478, F.S.

²⁵ Chapter 480, F.S.

²⁶ Part I, ch. 483, F.S.

²⁷ Part II, ch. 483, F.S.

²⁸ Part I, ch. 484, F.S.

²⁹ Part II, ch. 484, F.S.

³⁰ Chapter 486, F.S.

³¹ Chapter 490, F.S.

³² Chapter 491, F.S.

patient's medical history or conduct a physical examination of the patient before using telehealth to provide health care services to the patient.³³

A telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II³⁴ or s. 893.03, F.S., unless the controlled substance is prescribed for the following:

- The treatment of a psychiatric disorder;
- Inpatient treatment at a hospital licensed under ch. 395, F.S.
- The treatment of a patient receiving hospice services as defined in s. 400.601, F.S.; or
- The treatment of a resident of a nursing home facility as defined in s. 400.021, F.S.³⁵

A telehealth provider must 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, F.S.³⁶

The board, or the DOH if there is no board, must register a health care professional not licensed in this state as a telehealth provider if the health care professional:

- Completes a DOH application form;
- Has an active, unencumbered license that is issued by another state, the District of Columbia, or a U.S. possession or territory that is substantially similar to a license issued to a similar Florida-licensed provider;
- Has not been the subject of disciplinary action relating to his or her license during the five-year period immediately prior to the application submission;
- Designates a duly appointed registered agent for service of process in this state on a DOH prescribed form; and
- Demonstrates to the board, or the DOH if there is no board, that he or she maintains professional liability insurance coverage or financial responsibility, that includes coverage or financial responsibility for telehealth services provided to patients not located in the provider's home state, in an amount equal to, or greater than, the requirements for a licensed practitioner under ss. 456.048, 458.320, or 459.0085, F.S., as applicable.³⁷

The website of an out-of-state telehealth provider registered under s. 456.47, F.S., must prominently display a hyperlink to the DOH website, and the DOH website must publish a list of all out-of-state registrants and include the following information for each:

- Name;
- Health care occupation;
- Health care training and education, including completion dates and any certificates or degrees obtained;

³³ Section 456.47(2)(a) and (b), F.S.

³⁴ Schedule II drugs are combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin. *See*: United States Drug Enforcement Administration, *Drug Scheduling, Schedule II*, available at: <https://www.dea.gov/drug-information/drug-scheduling> (last visited Mar. 3, 2023).

³⁵ Section 456.47(2)(c), F.S.

³⁶ Section 456.47(3), F.S.

³⁷ Section 456.47(4)(b) and (e), F.S.

- Out-of-state health care licenses, including license numbers;
- Florida telehealth provider registration number;
- Specialty, if any;
- Board certification, if any;
- Five-years of disciplinary history, including sanctions imposed and board actions;
- Medical malpractice insurance provider and policy limits, including whether the policy covers claims that arise in Florida; and
- The name and address of the registered agent designated for service of process in this state.³⁸

A health care professional may not register under s. 456.47, F.S., 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 as a telehealth provider must notify the appropriate board, or the DOH if there is no board, of any 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 five business days after the restriction is placed or disciplinary action is initiated or taken.³⁹

A health care professional registered as an out-of-state telehealth provider may not open an office in this state and may not provide in-person health care services to patients located in this state.⁴⁰

A pharmacist registered as an out-of-state telehealth provider may only dispense medicinal drugs to patients located in this state using the following pharmacies:

- A pharmacy permitted under ch. 465, F.S.;
- A nonresident pharmacy registered under s. 465.0156, F.S.; or
- A nonresident pharmacy or outsourcing facility holding an active permit pursuant to s. 465.0158, F.S.⁴¹

The board, or the DOH if there is no board, may take disciplinary action against an out-of-state telehealth provider registered under s. 456.47(4), F.S., if the registrant:

- Fails to notify the applicable board, or the DOH if there is no board, of any adverse actions taken against his or her license;
- Has restrictions placed on or disciplinary action taken against his or her license in any state or jurisdiction;
- Violates any of the requirements of s. 456.47, F.S.; or
- Commits any act that constitutes grounds for disciplinary action under s. 456.072(1), F.S, or the Florida practice act that is applicable to the telehealth provider similar to Florida licensees.⁴²

Venue for a civil or administrative action initiated by the DOH, the appropriate board, or a patient who receives telehealth services from an out-of-state telehealth provider may be located

³⁸ Section 456.47(4)(h), F.S.

³⁹ Section 456.47 (4)(d), F.S.

⁴⁰ Section 456.47(4)(f), F.S.

⁴¹ Section 456.47(4)(g), F.S.

⁴² Section 456.47(4)(i), F.S.

in the patient's county of residence or in Leon County.⁴³ A health care professional who is not licensed to provide health care services in Florida but who holds an active license to provide health care services in another state or jurisdiction, and who provides such services using telehealth to a patient located in this state, is not subject to the registration requirement under s. 456.47, F.S., if the services are provided:

- In response to an emergency medical condition;⁴⁴ or
- In consultation with a health care professional licensed in this state who has ultimate authority over the diagnosis and care of the patient.⁴⁵

Audio-only Telephone Calls During the State of Emergency

On March 9, 2020, Governor Ron DeSantis issued Executive Order Number 20-52⁴⁶ declaring a state of emergency related to the 2019 novel coronavirus (COVID-19). During the state of emergency, numerous statutes were set aside in order to better enable the state to respond to the emergency.

On April 3, 2020, the Agency for Health Care Administration (AHCA) issued a Statewide Medicaid Managed Care Policy Transmittal⁴⁷ that addressed Medicaid coverage of telephonic (audio-only) communications as a form of telehealth. Under the transmittal, Medicaid managed care plans were required to expand coverage of telehealth services to include telephone-only communications, only when rendered by licensed physicians (including physician extenders such as advanced practice registered nurses and physician assistants) and licensed behavioral health practitioners.

The state of emergency was extended several times before expiring on June 26, 2021.

III. Effect of Proposed Changes:

SB 298 amends s. 456.47(1)(a), F.S., to revise the definition of “telehealth.” Under the bill, the use of audio-only telephone calls is no longer excluded from the definition.

The bill provides an effective date of July 1, 2023.

⁴³ Section 456.47(5), F.S.

⁴⁴ Section 395.002(8), F.S., defines “emergency medical condition” as (a) a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following: 1. Serious jeopardy to patient health, including a pregnant woman or fetus. 2. Serious impairment to bodily functions. 3. Serious dysfunction of any bodily organ or part. (b) With respect to a pregnant woman: 1. That there is inadequate time to effect safe transfer to another hospital prior to delivery; 2. That a transfer may pose a threat to the health and safety of the patient or fetus; or 3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

⁴⁵ Section 456.47(6), F.S.

⁴⁶ Office of the Governor, *Executive Order Number 20-52*, March 9, 2020, available at: https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Mar. 3, 2023).

⁴⁷ Agency for Health Care Administration, *Statewide Medicaid Managed Care (SMMC) Policy Transmittal: 2020-20*, April 3, 2020, available at: https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/2018-23_plan_comm/PT_2020-20_COVID-19_State-of-Emergency_Telemedicine_Services.pdf (last visited Mar. 3, 2023).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may allow patients without access to video-calling capabilities to have greater access to health care services via telehealth and may reduce out-of-pocket costs by not requiring them to travel to receive care.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.47 of the Florida Statutes.

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.

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