

STORAGE NAME: h1703.hcl

DATE: April 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: HB 1703

RELATING TO: Medical Practice/Telemedicine

SPONSOR(S): Representative Kyle

COMPANION BILL(S): SB 1884(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION
 - (2) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1703 creates, in the Florida Medical Practice Act, s. 458.351, F.S., and identifies the licensure requirements for allopathic physicians not residing in Florida but exercising in the care or diagnosis of a patient located in this state.

The bill requires that out-of-state physicians administering in the treatment and/or diagnosis of a Florida resident must be licensed to practice medicine in Florida. Such physicians are subject to all provisions of the Medical Practice Act prescribed in ch. 458, F.S. However, a physician outside of Florida who provides consultation to a Florida licensed physician and does not exercise primary authority over the care or diagnosis of a patient in Florida is exempt from Florida licensure.

Further, the bill specifies that physicians located outside of Florida providing official authenticated interpretations of radiographic images to any health care practitioner or patient located in Florida through an ongoing regular arrangement are regarded as exercising primary authority over the diagnosis of the patient, and therefore require licensure to practice medicine in Florida.

According to the Department of Health, fiscal impact includes an appropriation for a department full-time regulatory analyst and associated funding to handle the estimated increased workload generated by the provisions contained in the bill.

The bill provides an effective date of January 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

National Interests:

According to the *U.S. Department of Commerce Report to Congress on Telemedicine* published January 31, 1997, there has been a tremendous expansion in the number and scope of "Telemedicine" projects in the last decade. The report recognizes that telemedicine offers the potential to provide health services across vast distances; however, health professionals must be licensed and regulated at the state level. Currently, each state has established a Medical Practice Act that defines the process and procedures for granting licensure, renewing the license, and regulating the medical practice within the state.

The report delineates that historically, interstate physician-to-physician communications have not been subject to licensing requirements. These communications can take a variety of forms, including: the mailing of x-rays; clinical histories and pathological and laboratory specimens for evaluation and interpretation; and oral or written inquiries to another out-of-state physician involved in the patient's care or in the form of a specific consultative request to a physician with specific expertise. In these interstate communications, the consulted physician or other health care professional is regarded either as practicing medicine only in his or her home state or is exempt from licensure under the "consultation exception" in the patient's state.

The report identifies that until recently, few states have addressed issues concerning out-of-state physicians who provide patient health care via electronic communications. Like the state medical practice acts on which they are based, the text of specific telemedicine provisions varies significantly from state to state.

In 1996, the Federation of State Medical Boards (FSMB) produced "A Model Act to Regulate Practice of Telemedicine by Other Means Across State Lines". This report contains legislative language to create a secondary or limited license for telemedicine purposes. Three states, including Alabama, Tennessee, and Texas have enacted legislation consistent with FSMB's philosophy. The American Medical Association (AMA) has opposed the model act produced by FSMB and called for a resolution requiring "full and unrestricted license" in each state for "those who wish to regularly practice telemedicine in that state".

In the past several years, several other states including, Kansas, Nevada, California, Connecticut, Indiana, Oklahoma, and South Dakota have enacted regulations or legislation governing licensure of out-of-state telemedicine health professionals. All of these states, except California, have adopted the AMA's resolution and require an out-of-state physician to obtain a full and unrestricted license before consulting directly with patients in the state.

Interstate Commerce:

The U.S. Supreme Court has long recognized that states pursuant to their police powers under Article X of the Constitution have the authority to regulate their own activities of legitimate local concern, including the regulation of health professionals. However, the Commerce Clause of the Constitution under Article I, prohibits states from erecting barriers against interstate trade. The *U.S. Department of Commerce Report to Congress on Telemedicine* addresses the fact that although the practice of medicine has traditionally been local in nature, the advent of telemedicine automatically introduces a distance independent variable that is by definition, neither local nor traditional.

Further, the report concludes that if asked to examine a restrictive state licensure law, the courts must balance the objective of the state law against the burden on interstate commerce. 22 Courts have upheld state statutes requiring out-of-state entities to obtain a license to engage in the practice of medicine within the state's borders. In these situations, the Court found that the burden of obtaining a license was outweighed by the need to protect important state interest.

Florida:

Medical doctors, or allopathic physicians, seeking to practice medicine in Florida must apply for state licensure. The Department of Health, Board of Medicine is the regulatory agent administering the

Medical Practice Act found in Chapter 458, F.S. The Board of Medicine maintains that "practicing in this state" relates to the location of the patient. Any physician located and licensed in any jurisdiction other than Florida, who has the primary responsibility for the care or diagnosis of a patient residing in Florida, is subject to Florida licensure. Section 458.303, F.S., exempts physicians who are lawfully licensed in another jurisdiction and providing consultation to a Florida physician. This constitutes Florida's "consultation exemption".

Rule 64B8-2.001(B), Florida Administrative Code, defines "consultation" as: an examination of a patient, taking a history and physical, reviewing laboratory tests and x-rays, and making recommendations to a Florida licensed physician with regard to the diagnosis and treatment of a patient. However, "consultation" does not include the performance of any medical procedure or rendering of treatment to a patient.

In 1995, the Legislature passed s. 458.3255, F.S., which states "... only a physician licensed in this state or otherwise authorized to practice medicine in this state may order, from a person outside this state, electronic-communications diagnostic-imaging or treatment services for a person located in this state." The Board of Medicine maintains that this section does not specify that the out-of-state practitioner providing electronic-communications diagnostic imaging or treatment services must be licensed in Florida. Accordingly, as long as the physician ordering the tests and sending them out of the state for interpretation, is a Florida licensed physician, the practice complies with existing law.

For instance, the physician(s) for a large company in South Florida currently have a large number, if not all of their radiologic images sent out of state to be read by physicians located at a University in California. This practice currently complies with existing law. According to the DOH, no documented cases or major problems have occurred because of this arrangement.

Section 458.327, F.S., establishes that the practice of medicine without a license in Florida is a third degree felony. The Department of Health has established an office that handles investigations of unlicensed activity cases and coordinates with prosecutorial actions with the State Attorney.

In 1998, the Department of Health created a Task Force on Telemedicine. The task force is examining regulatory issues, technological issues, and access to care issues relating to Telemedicine. The task force first met on December 11, 1998, and anticipates completing its work by late 1999, concluding with a report to the Secretary of the Department of Health and including recommendations for legislative action for the year 2000 session.

B. EFFECT OF PROPOSED CHANGES:

HB 1703 creates s. 458.351, F.S., of the Medical Practice Act. This section requires a physician, wherever located, to obtain a Florida medical license if he or she has the primary authority over the care or the diagnosis of a patient located in Florida. Such language clarifies that the practice of medicine occurs where the patient is located. The bill requires full licensure for out-of-state physicians and does not establish any abbreviated criteria for telecommunications practice of medicine based on licensure in any other jurisdiction.

The bill also distinguishes between the practice of medicine and consultation. Provisions in the bill outline that out-of-state allopathic physicians who practice medicine on patients located in Florida require Florida licensure. Exemptions include those physicians who engage in consultation with a Florida licensed physician and do not exercise primary authority in the care and diagnosis of a Florida patient.

The bill further distinguishes that in cases of electronic transmission of radiographic images, the physician providing official authenticated interpretations of radiographic images to any health care practitioner or patient located in Florida through an ongoing regular arrangement is regarded as exercising primary authority over the diagnosis of the patient. Therefore, physicians rendering such services are required to be licensed in Florida.

The bill applies only to allopathic physicians licensed under Chapter 458, F.S., and does not apply to other health care disciplines.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?
N/A
- (2) service providers?
N/A
- (3) government employees/agencies?
N/A

D. STATUTE(S) AFFECTED:

Creates s. 458.351, Florida Statutes, of the Medical Practice Act.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 458.351, F.S., to require a physician, wherever located, to obtain a Florida license if he or she has the primary authority over the care or the diagnosis of a patient located in Florida.

Also provides that physicians who engage in consultation with a Florida licensed physician and do not exercise primary authority in the care and diagnosis of a Florida patient are not required to be licensed in Florida.

Further provides that physicians delivering official authenticated interpretations of radiographic images via electronic transmission to any health care practitioner or patient in Florida are regarded as exercising primary authority over the diagnosis of the patient and therefore, require Florida licensure.

Section 2. Provides an effective date of January 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

According to the Department of Health, the following characterized the fiscal impact from this bill:

1. Non-recurring Effects:

| | |
|--------------------------------------|----------------|
| <u>Expenditures:</u> | 1999-00 |
| Department of Health | |
| Expenses | \$2,387 |
| Operating Capital Outlay (OCO) | <u>\$4,177</u> |
| Medical Quality Assurance Trust Fund | <u>\$6,564</u> |

2. Recurring Effects:

| | | |
|---|-----------------|------------------|
| <u>Revenues:</u> | 1999-00 | 2000-01 |
| Department of Health | | |
| \$460 application fee + \$355 license fee X 90 applicants | \$73,350 | |
| 180 applicants | | \$146,700 |
| <u>Expenditures:</u> | | |
| Department of Health | | |
| Salaries & Benefits | \$24,357 | \$ 32,476 |
| (Regulatory Specialist 1) 25% lapse | | |
| Additional Expenses | <u>\$ 4,988</u> | <u>\$ 4,988</u> |
| Medical Quality Assurance Trust Fund | <u>\$29,345</u> | <u>\$ 37,464</u> |

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenues:

| | | |
|----------------------|-----------|-----------|
| Department of Health | \$ 73,350 | \$146,700 |
|----------------------|-----------|-----------|

Expenditures:

| | | |
|----------------------|------------------|------------------|
| Department of Health | (\$35,909) | (\$ 37,464) |
| | <u>\$ 37,441</u> | <u>\$109,236</u> |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

According to the Department of Health, out-of-state physicians desiring to practice in Florida under this bill will be subject to licensure fees which total \$815 for initial licensure, this includes a \$460 application fee and \$355 license fee.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

According to the Department of Health, this bill applies to all out-of-state physicians regardless of their location. The bill provides that physicians who provide regular and ongoing interpretations of radiographic images for patients located in Florida have primary authority over the diagnosis of patients are subject to Florida licensure. Out-of-state physicians providing regular and ongoing interpretations of tests, except radiographic images, are not expressly required to be licensed under Florida law and appear to be providing consultation services.

D. FISCAL COMMENTS:

According to the Department of Health, approximately 2,695 initial applications for medical physician licensure were processed in FY 1997-1998. The current caseload standard for one FTE application processor is 180 applications annually. Assuming that the annual volume of applications increases by 10 to 15 percent, one additional FTE position is required to ensure that applications are processed in compliance with mandatory time frames pursuant to Chapter 120, F.S., the Administrative Procedures Act.

All application and licensure costs are fee supported. Fee revenue in excess of application processing costs is utilized for other licensure regulatory expenses, e.g., investigation and prosecution of disciplinary cases, rule promulgating and distribution, and Board meetings.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

According to the Department of Health, s. 465.003, F.S. allows out-of-state licensed physicians to prescribe medications for patients in Florida under restricted conditions without requiring a Florida license to practice medicine. The department notes that this is contrary to the provisions in this bill.

DOH notes that the Board of Pharmacy also has statutory requirements regarding out-of-state issues. Section 465.003(13), F.S., provides for the dispensing of prescriptions from out-of-state physicians by Florida pharmacists. Out-of-state physicians can prescribe for a chronic or recurrent condition.

DOH also identifies that the bill does not contain any specific rule-making authority to implement the provisions of this legislation. Such rule-making authority may be necessary to further define "ongoing and regular arrangements" as it applies to out-of-state radiologists. The Department of Health has proposed an amendment on page 2, line 2 after the period, insert: "The board shall adopt rules necessary to carry out the provisions in this section".

The department further notes that this bill applies only to allopathic physicians and application to osteopathic and other health care practitioners should be considered, therefore, the same provisions developed in this bill should apply to Chapter 459, F.S., relating to osteopathic physicians.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

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