

STORAGE NAME: h1703z.hcl

DATE: June 21, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

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

BILL #: HB 1703 (Passed as section 175 of HB 2125)

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 YEAS 10 NAYS 1
- (2) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 1703 died in the Committee on Health & Human Services Appropriations. However, the identical language of the study provided for in the amendment by the Committee on Health Care Licensing & Regulation passed as section 175 of HB 2125. HB 2125 was approved by the Governor on June 18, 1999, and was codified as chapter 99-397, Laws of Florida.

II. SUMMARY:

In 1998, the Department of Health created a Task Force on Telemedicine/Telehealth. The task force is examining regulatory issues, technological issues, and access to care issues relating to Telehealth. 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.

HB 1703 as amended, provides statutory backing for the Task Force on Telhealth created by the Department of Health. The amendment provides that a Task Force on Telemedicine/Telehealth is created to research and make recommendations regarding the delivery of health care services across state lines. The task force members will be appointed by the Secretary of Health and a report with the task force findings is due to the Legislature and Governor no later than January 1, 2000.

The Department of Health states that HB 1703 as amended, does not have a fiscal impact on the state, local government, or the private sector in general.

The bill has an effective date of July 1, 1999.

III. 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 currently revised terminology is "**Telehealth, rather than Telemedicine**".

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/Telehealth. The task force is examining regulatory issues, technological issues, and access to care issues relating to Telehealth. 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 as amended provides statutory backing for the Task Force on Telhealth created by the Department of Health. The amendment provides that a Task Force on Telemedicine/Telehealth is created to research and make recommendations regarding the delivery of health care services across state lines. The task force members will be appointed by the Secretary of Health and a report with the task force findings is due to the Legislature and Governor no later than January 1, 2000.

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:

None.

E. SECTION-BY-SECTION ANALYSIS:

HB 1703 relates to only one section of HB 2125, a bill with 208 sections.

Section 175. Provides statutory backing for the Task Force on Telhealth created by the Department of Health. The amendment provides that a Task Force on Telemedicine/Telehealth is created to research and make recommendations regarding the delivery of health care services across state lines. The task force members will be appointed by the Secretary of Health and a report with the task force findings is due to the Legislature and Governor no later than January 1, 2000.

Section 208. Provides an effective date of July 1, 1999, unless otherwise provided herein. .

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

According to the Department of Health, the task force will not have a fiscal impact.

V. 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.

VI. COMMENTS:

None.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 1999, the Committee on Health Care Licensing & Regulation adopted a strike everything amendment for HB 1703. The amendment provides that a Task Force on Telemedicine/Telehealth is created to research and make recommendations regarding the delivery of health care services across state lines. The task force members will be appointed by the Secretary of Health and a report with the task force findings is due to the Legislature and Governor no later than January 1, 2000.

VIII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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