

STORAGE NAME: h0965.brc

DATE: April 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 965

RELATING TO: Nursing

SPONSOR(S): Representative Janegale Boyd

COMPANION BILL(S): SB 2032(s)

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
 - (2) HEALTH CARE LICENSING AND REGULATION
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill defines the term "telehealth" for purposes of the Nurse Practice Act. It provides that the site of service for delivery of health care services via telecommunications shall be considered to be the location of the health care practitioner, rather than the location of the patient.

The bill also prohibits persons from using the title "nurse" unless licensed or certified as such. Violation of this provision would become a first degree misdemeanor.

There is no significant fiscal impact on state or local government, or on the private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Definition of telehealth:

The term "telehealth" is not defined in the Nurse Practice Act, nor is it currently used anywhere in the act. "Telehealth," as it is generally understood, means the use of telecommunication to deliver health care services. Examples of the telecommunications technologies which can be used would be: telephone, computer, interactive video, or teleconferencing. An area of controversy on the subject of telehealth relates to the question of where the service is considered to take place. Do you consider that the activity takes place at the location of the patient, or at the location of the health care provider (doctor, nurse, etc.) providing the advice, instruction, or consultation?

The answer to this question is significant because of at least two factors. One factor is that Medicare uses the location of the service (the "pricing locality") as a partial determinate of the amount it will pay. The second factor relates to health care practitioner licensure requirements. The licensure of health care practitioners is accomplished on a state-by-state basis. Generally speaking, a person must be licensed in any state in which he or she practices, and a person licensed in another state is not allowed to practice in Florida unless he or she is also licensed in Florida.

On the other hand, it is perfectly acceptable (and legal) for a person living in Florida to travel to another state and seek the services of a health care professional licensed in that state (but not in Florida). Therefore, should the provision of telehealth services be considered to take place as if: (1) the out-of-state practitioner has traveled to the in-state patient to deliver the services, or (2) the in-state patient has traveled to the out-of-state practitioner to receive the services?

The decision on which way to look at the health care service transaction between the patient and the practitioner has significant legal implications. If you consider that the transaction of the service is taking place at the patient's location, you will bar virtually all provision of telehealth by out-of-state health care professionals, since it is neither common nor practical for a health care professional to be licensed in multiple of states.

The Board of Nursing has previously taken the position that provision of health care services via telecommunication occurs at the patient's location, not the practitioner's location. However, there is no evidence that the Department of Health has attempted to prosecute any of the health care professionals who engage in the out-of-state provision of telecommunicated health care services, something the Board of Nursing evidently believes is illegal.

The use of the title: "Nurse"

The term "nurse" is not listed as a title restricted to properly licensed professionals. However, the terms "Registered Nurse", "Licensed Practical Nurse", and "Advanced Registered Nurse Practitioner" are reserved to the properly licensed professionals.

B. EFFECT OF PROPOSED CHANGES:

The bill defines telehealth as the use of telecommunication technologies to deliver health care services to a patient "by transporting the patient" to the location of the licensed health care practitioner. Telehealth services are understood to be services such as advice, instruction or consultation delivered by modalities such as telephone, interactive video, or teleconferencing. The change made by the bill has the effect of allowing out-of-state health care professionals licensed in their state to deliver telehealth services into this state, without requiring them to hold a license here.

The bill also prohibits anyone from calling themselves a nurse unless licensed or certified to practice as such.

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?

N/A

4. Individual Freedom:

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

The bill allows a patient in Florida to seek, via telecommunication technology, advice or consultation from a licensed health care professional in another state, without the health care professional having to be licensed in Florida.

- 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:

Sections 464.003, 464.015, and 464.016, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 464.003, F.S., to provide a definition of “telehealth,” and to provide that the location of the provision of the service shall be considered to be at the location of the licensed practitioner, rather than at the location of the patient participating in the telecommunication.

Sections 2 and 3. Amend ss. 464.015, and 464.016, F.S., to add the term “nurse” to the list of titles that are reserved to persons licensed or certified as such. Makes the prohibited use of the term a first degree misdemeanor

Section 4. provides an effective date of July 1, 1999.

III. 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:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

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:

Federal regulations proposed on June 22, 1998 (vol. 63, no. 119, CFR), relating to Medicare payment, state:

The site of service determines the pricing locality to be used for Medicare payment. In our view the use of telecommunications to furnish a medical service effectively transports the patient to the consultant (concept analogous to the traditional delivery of health care, in which the patient travels to the consultant's office). Therefore, we believe that the site of service for a teleconsultation is the location of the practitioner providing the consultation.

The Department of Health has expressed concerns over the bill's current language, and is working with the sponsor on new language which may be offered as an amendment.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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