

STORAGE NAME: h0965.hcl

DATE: April 14, 1999

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

BILL #: HB 965

RELATING TO: Nurse Practice Act/Telehealth Services

SPONSOR(S): Representative Boyd

COMPANION BILL(S): SB 2032 (s)

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

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

HB 965 defines the term "telehealth" for the purposes of the Nurse Practice Act. It provides that the site of service delivery of health services via telecommunications shall be considered to be the location of the health care practitioner, rather than the location of the patient.

Additionally, the bill prohibits individuals from assuming the title of "nurse" unless they are licensed or certified to perform nursing services. The violation for such misrepresentation is a first degree misdemeanor.

The bill does not appear to have a fiscal impact on the state, local government, or the private sector in general.

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

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. The American Nurses Association (ANA) distinguishes telecommunications technologies in providing health care services as being broader than the discipline or practice of medicine. As such, "telehealth" encompasses telemedicine, telenursing, and teleradiology. The mechanisms of telecommunication used include telephones, computers, interactive video, and teleconferencing. ANA recognizes that while the application of this new technology offers the possibility of significant benefits to the health of individuals, it is also important to address the concerns and problems attendant to this technologic advancement.

An area of controversy on the subject of telehealth relates to the question of where the service is considered to take place. Is the delivery of health care construed as an activity that takes place at the location of the patient or at the location of the health care practitioner (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 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, persons who live in Florida have a reasonable and legal option to travel to another state and seek treatment options and services of health care professionals licensed in that state. For obvious reasons, the consulted health care practitioner is not required to obtain a Florida license based upon seeing a Florida patient. 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?

There are significant legal implications in health care service transactions between the patient and the practitioner. If the services are considered to take place where the patient is located, essentially all telehealth services by out-of-state health care professionals would be severely constricted since it is not practical for a health care professional to be licensed in multiple states.

The Board of Nursing has previously taken the position that care occurs where the patient is, not where the practitioner is. 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.

The use of the title: "Nurse"

The term "nurse" is not listed as a protected title in section 464.015, Florida Statutes. However, the terms "Registered Nurse", "Licensed Practical Nurse", and "Advanced Registered Nurse Practitioner" are reserved to the properly licensed professionals. 464.003 (3)(a), F.S., identifies that the "practice of professional nursing" means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to: (1) the observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others; (2) the administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments; and (3) the supervision and teaching of other personnel in the theory and performance of any of the above acts.

Currently, there are health professions that deliver some level of hands-on care other than those designated in the Nurse Practice Act. These include home health aides and certified nursing

assistants. The general nature of such work is to assist the registered nurse and/or licensed practical nurse with patient care in: passive range-of-motion, bathing, and feeding regimes. The training required for a certified nursing assistant is 150 curriculum hours and a competency exam for licensure. The home health aide is required to complete 40-75 hours of training but is not participate in a competency-based examination.

The job market for these types of services is also growing at an exponential rate. According to the Department of Labor and Employment Security, Bureau of Labor Market and Performance Information, home health aides rank fifth in occupations gaining the most jobs in Florida. By 2006, there will be an anticipated 52,171 home health aides, representing a growth of nearly 80 percent. Most of these occupations are based in skilled nursing facilities or in a patient's home.

Since the term "nurse" may appear in the title, there may be some ambiguity with respect to how aides identify themselves to patients. If the aide does not completely outline that they are a "nurses aide" or "nurse assistant", the patient may believe that they are being cared for by a duly trained and licensed nurse.

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 nurses licensed in their state to deliver telehealth services into this state, without requiring them to hold a license in Florida.

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?

This bill may potentially increase health care options of Floridians who receive nursing services from out-of-state nurses since the bill may allow a patient in Florida to seek advice or consultation via telecommunication from a licensed health care professional in another state without requiring 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:

Amends s. 464.003, s. 464.015, and s. 464.016, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 464.003, Florida Statutes, to add the term "telehealth" to the Nurse Practice Act. Permits the use of telecommunication technologies to deliver health care services to a patient by transporting the patient to a licensed health care practitioner's office by use of telecommunications. Also provides that the site of service is the location of the practitioner when practicing through the use of telecommunications, so long as the practitioner has an active license in that location.

Section 2. Amends s. 464.015, Florida Statutes, to include the title of nurse as a protected title under this section. All persons identifying themselves as "nurse" must have the applicable certification or licensure. Provides that a violation is a first degree misdemeanor.

Section 3. Amends s. 464.016, Florida Statutes, to provide that it is a first degree misdemeanor if a person misrepresents him/herself as a nurse and is not duly qualified as such.

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:

According to the Department of Health, Board of Nursing, there does not appear to be a fiscal impact upon state government. However, the board identifies that it is virtually impossible to forecast the decrease in revenue from out-of-state applicants who would no longer require Florida licensure.

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:

Federal regulations proposed on June 22, 1998 (vol. 63, no. 119, C.F.R.), 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 teleconsultation is the location of the practitioner providing the consultation.

The Board of Nursing is opposed to the practice of telehealth services. The problems identified by the board regard the lines of authority and accountability. They also raise the issue that if the place of practice is not in Florida, then the Florida health care boards would be prohibited from protecting the health, safety, and welfare of Florida residents and visitors.

Additionally, the Department of Health has convened a committee to study the implications of providing health care through telecommunications and other technology. The committee is studying interstate telehealth, intrastate telehealth, and technology. This committee includes professionals in which telehealth is foreseen as a possibility or are currently using some form of telehealth.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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