

STORAGE NAME: h0965s1.hcl

DATE: April 16, 1999

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

BILL #: CS/HB 965

RELATING TO: Nurse Practice Act/Telehealth Services

SPONSOR(S): Committee on Health Care Licensing & Regulation & Representative Boyd

COMPANION BILL(S): SB 2032 (s)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 965 establishes a Task Force on Telehealth. The Secretary of Health is directed to appoint the members of this task force. The representation will include persons in the various medical and allied health professions, as well as other affected health care industries.

The task force will review and research the various health care telecommunications and electronic communications providing healthcare information. In addition, the task force will identify laws, regulations, and reimbursement practices relating to telehealth practices.

The bill directs the task force to submit a report of findings and recommendations to the Legislature and Governor by January 1, 2000.

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

The bill is effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 965 establishes the Task Force on Telehealth with a membership to include representatives from the affected medical and allied health professions and other health care industries. These members will be appointed by the Secretary of Health.

The task force is directed to:

- ▶ Identify the various electronic communications or telecommunications technologies currently used within the state and by other states used to provide health care information.
- ▶ Identify laws, regulations, and reimbursement issues in the area of telehealth.
- ▶ Recommend the appropriate level of regulation of health care professionals that would protect the health and safety of patients in this state, while delivering quality health care services.
- ▶ Review and research constitutional issues with respect to telehealth services and interstate regulation.
- ▶ Review and research the effect of telehealth regulations in other states.

- ▶ Review and research other public and private initiatives related to telehealth.
- ▶ Review and research any additional issues relating to telehealth as they pertain to optimizing the health, safety, and welfare of patients.

The findings and recommendations of the Task Force on Telehealth are to be addressed in a report that will be due the Legislature and Governor by 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?

N/A

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:

Section 1. Establishes a Task Force on Telehealth that will review the various aspects of telehealth services and provide recommendations to the Legislature and Governor by January 1, 2000.

Section 2. Provides that the bill will become effective upon becoming law.

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 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:

On Monday, April 12, 1999, the Committee on Health Care Licensing and Regulation voted favorably on HB 1703. This bill establishes a Task Force on Telemedicine and essentially directs this task force to conduct the same analysis as The Task Force on Telehealth.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On Wednesday, April 15, 1999, the Committee on Health Care Licensing and Regulation adopted the Committee Substitute for HB 965. The bill as adopted differs from the bill originally filed in the following manner:

- ◆ CS/HB 965 establishes the Task Force on Telehealth.
- ◆ Members of the task force will be appointed by the Secretary of Health and will review the various aspects of telecommunications and electronic transmission of health care services.
- ◆ The findings recommendations will be addressed in a report due to Governor and Legislature by January 1, 2000.

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- ◆ HB 965 defined “telehealth” for the purposes of the Nurse Practice Act. Specifically, the bill provided that the site of service of health care services via telecommunications was considered to be the location of the health care provider, rather than the location of the patient.
- ◆ HB 965 prohibited individuals from assuming the title of “nurse” unless they were licensed or certified to perform nursing services and any misrepresentation constituted a first degree misdemeanor.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

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Lucretia Shaw Collins