

By the Committee on Health, Aging and Long-Term Care; and  
Senator Campbell

317-2120-00

1                                   A bill to be entitled  
2           An act relating to telehealth; creating s.  
3           455.5641, F.S.; providing legislative findings  
4           and intent; providing a definition; requiring  
5           separate licensure to provide telehealth  
6           services to patients in this state; providing  
7           that telehealth licensure requirements and  
8           responsibilities shall be identical to those  
9           provided for full licensure in the applicable  
10          profession; requiring certain information to be  
11          provided in all telehealth communications;  
12          providing responsibility for confidentiality of  
13          medical records; providing for prosecution of  
14          unlicensed and other criminal activity;  
15          authorizing certain consultative services  
16          without a license; requiring licensure to order  
17          out-of-state electronic communications  
18          diagnostic-imaging or treatment services for  
19          persons in this state; providing exemption from  
20          telehealth licensure for health care  
21          practitioners treating visitors to this state  
22          under certain conditions; providing exemption  
23          from telehealth licensure for registered  
24          nonresident pharmacies and their employees;  
25          providing applicability to regulation of  
26          Florida licensees; providing rulemaking  
27          authority; amending s. 766.102, F.S.;  
28          authorizing the bringing of telehealth  
29          malpractice actions in this state regardless of  
30          provider location; providing an effective date.  
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 455.5641, Florida Statutes, is  
4 created to read:

5 455.5641 Telehealth; findings and intent; licensure.--

6 (1) The Legislature finds that there is a great and  
7 recognizable potential for harm if persons without the  
8 appropriate level of education, training, experience,  
9 supervision, and competence are allowed to provide health care  
10 services to the people of this state. The potential for harm  
11 could arise through substandard care or fraud, or both. The  
12 Legislature further finds that there is a compelling state  
13 interest in protecting the health, safety, and welfare of the  
14 public from incompetent, impaired, or unscrupulous  
15 practitioners and that no less restrictive means are available  
16 to effectively protect the public than through licensure in  
17 this state. Therefore, it is the intent of the Legislature  
18 that the use of untested, ineffective, and potentially harmful  
19 health care services be prohibited and that the delivery of  
20 all health care services to the people of this state be  
21 regulated through the licensure of health care practitioners.

22 (2) The Legislature finds that the methods for  
23 delivering health care services to the people of this state  
24 are rapidly changing due to advances in technology and  
25 telecommunications. However, the Legislature finds that the  
26 compelling state interest in protecting the public health,  
27 safety, and welfare exists regardless of the method of  
28 communication or the method of delivery of services.  
29 Therefore, it is the intent of the Legislature that all health  
30 care practitioners providing health care services to the  
31 people of this state should be regulated in a similar manner

1 regardless of the method of communication or the method of  
2 delivery of services.  
3 (3) For purposes of this section, "health care  
4 services" means providing, attempting to provide, or offering  
5 to provide a diagnosis, treatment plan, prescription,  
6 examination, or any other activity limited to persons licensed  
7 or otherwise legally authorized to practice medicine as  
8 defined in s. 458.305(3), practice osteopathic medicine as  
9 defined in s. 459.003(3), practice chiropractic medicine as  
10 defined in s. 460.403(9), practice podiatric medicine as  
11 defined in s. 461.003(5), practice natureopathy or naturopathy  
12 as defined in s. 462.01(1), practice optometry as defined in  
13 s. 463.002(5), practice professional nursing as defined in s.  
14 464.003(3)(a), practice practical nursing as defined in s.  
15 464.003(3)(b), practice advanced or specialized nursing  
16 practice as defined in s. 464.003(3)(c), practice pharmacy as  
17 defined in s. 465.003(13), practice dentistry as defined in s.  
18 466.003(3), practice dental hygiene as defined in s.  
19 466.003(4), practice midwifery as defined in s. 467.003(8),  
20 practice audiology as defined in s. 468.1125(6)(a), practice  
21 speech-language pathology as defined in s. 468.1125(7)(a),  
22 practice nursing home administration as defined in s.  
23 468.1655(4), practice occupational therapy as defined in s.  
24 468.203(4), practice respiratory care as defined in s.  
25 468.352(5), practice dietetics and nutrition as defined in s.  
26 468.503(4), practice athletic training as defined in s.  
27 468.701(5), practice orthotics as defined in s. 468.80(7),  
28 practice pedorthics as defined in s. 468.80(10), practice  
29 prosthetics as defined in s. 468.80(13), practice electrolysis  
30 or electrology as defined in s. 478.42(5), practice massage as  
31 defined in s. 480.033(3), practice as clinical laboratory

1 personnel as provided in s. 483.803, practice medical physics  
2 as defined in s. 483.901(3)(j), practice opticianry as defined  
3 s. 484.002(3), dispense hearing aids as defined in s.  
4 484.041(3), practice physical therapy as defined in s.  
5 486.021(11), practice psychology as defined in s. 490.003(4),  
6 practice school psychology as defined in s. 490.003(5),  
7 practice clinical social work as defined in s. 491.003(7),  
8 practice marriage and family therapy as defined in s.  
9 491.003(8), and practice mental health counseling as defined  
10 in s. 490.003(9).

11 (4) A person who is not licensed in this state as a  
12 health care practitioner who wishes to provide health care  
13 services, as defined herein, to patients located in this state  
14 by means of telecommunication only, must apply to the  
15 appropriate regulatory board, or the department when there is  
16 no board, for a Florida telehealth license and subsequently  
17 for renewal of such license. The requirements for an initial  
18 telehealth license and subsequent renewal of such license  
19 shall be identical to the requirements for full licensure as  
20 set forth in the appropriate practice act in this state for  
21 the applicable profession, including requirements such as  
22 profiling, credentialing, informed consent, and financial  
23 responsibility and malpractice insurance. Telehealth licensees  
24 must comply with all Florida laws and rules regulating the  
25 practice of that profession.

26 (5) All telehealth communications, including, but not  
27 limited to, Internet web sites, advertisements, e-mail, and  
28 other offers to provide health care services to the people of  
29 this state, must clearly identify the practitioner's Florida  
30 license number and must include a disclaimer which clearly  
31 states that only Florida-licensed health care practitioners

1 may provide health care services directly to persons located  
2 in this state. The disclaimer must also include the  
3 department's mailing and Internet addresses. It is the  
4 responsibility of the health care practitioner to ensure the  
5 confidentiality of electronic medical records as required by  
6 the laws of this state.

7 (6) The provision of telehealth services to patients  
8 in this state without holding an active Florida license to  
9 practice that profession may be prosecuted as unlicensed  
10 activity in accordance with this chapter. In addition, any act  
11 performed through telehealth communication that would  
12 constitute a criminal violation if performed physically in  
13 this state may be prosecuted under Florida law as if the crime  
14 were physically carried out in this state.

15 (7) Notwithstanding any other provision of law to the  
16 contrary, persons holding a valid, active license to practice  
17 in another jurisdiction may provide episodic consultative  
18 services to a Florida licensee without being licensed in this  
19 state so long as the out-of-state practitioner does not  
20 exercise primary authority for the care or diagnosis of the  
21 Florida patient.

22 (8) Only practitioners licensed in this state or  
23 otherwise authorized to practice in this state may order, from  
24 a person located outside this state, electronic communications  
25 diagnostic-imaging or treatment services for a person located  
26 in this state.

27 (9) Nothing in this section shall be construed to  
28 prohibit or restrict a health care practitioner who is not  
29 licensed in this state from providing health care services  
30 through telecommunications to a patient temporarily visiting  
31 this state with whom the health care practitioner has an

1 established practitioner-patient relationship so long as the  
2 treatment provided is for a nonacute chronic or recurrent  
3 illness previously diagnosed and treated by that practitioner  
4 and so long as the practitioner holds an active unrestricted  
5 license to practice in another state or in another recognized  
6 jurisdiction.

7 (10) The provisions of subsection (3) do not apply to  
8 nonresident pharmacies registered pursuant to s. 465.0156 or  
9 the employees thereof.

10 (11) Nothing in this section shall be construed to  
11 prohibit or limit the board, or the department when there is  
12 no board, from regulating Florida licensees regardless of the  
13 location of the patient.

14 (12) The board, or the department when there is no  
15 board, may adopt rules pursuant to ss. 120.536(1) and 120.54  
16 necessary to administer this section.

17 Section 2. Subsection (7) is added to section 766.102,  
18 Florida Statutes, to read:

19 766.102 Medical negligence; standards of recovery.--

20 (7) If the injury or death is alleged to have resulted  
21 from health care provided to a patient located in this state  
22 through means of telecommunications, the action for recovery  
23 of damages may be brought in this state regardless of the  
24 location of the provider alleged to have caused the injury.

25 Section 3. This act shall take effect July 1, 2000.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1718

The committee substitute (CS) replaces the original contents of SB 1218 with provisions relating to "telehealth." The CS provides for the regulation of any person who provides health care services that are delivered or provided to persons in Florida via telecommunications, provides legislative findings and intent, and specifies exceptions to its requirements for persons who must obtain a telehealth license. The CS limits to Florida-licensed health care professionals or those otherwise authorized to practice in Florida, the ability to order, from a person located outside Florida, electronic communications diagnostic-imaging or treatment services for a person located in Florida. The CS provides for the recovery of damages in Florida for any injury or death of a person that results from health care provided to a patient located in Florida through the means of telecommunication. The action may be brought in Florida regardless of the location of the provider.