

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 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 Florida from providing health care services
30 through telecommunications to a patient temporarily visiting
31 Florida with whom the health care practitioner has an

1 established practitioner-patient relationship so long as the
2 treatment provided is for a non-acute 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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