

By Senator Brown-Waite

10-1207-00

See HB 1953

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; requiring separate licensure to
5 provide telehealth services to patients in this
6 state; providing that telehealth licensure
7 requirements and responsibilities shall be
8 identical to those provided for full licensure
9 in the applicable profession; requiring certain
10 information to be provided in all telehealth
11 communications; providing responsibility for
12 confidentiality of medical records; providing
13 for prosecution of unlicensed and other
14 criminal activity; authorizing certain
15 consultative services without a license;
16 requiring licensure to order out-of-state
17 electronic communications diagnostic-imaging or
18 treatment services for persons in this state;
19 providing exemption from telehealth licensure
20 for registered nonresident pharmacies and their
21 employees; providing applicability to
22 regulation of Florida licensees; providing
23 rulemaking authority; amending s. 766.102,
24 F.S.; authorizing the bringing of telehealth
25 malpractice actions in this state regardless of
26 provider location; providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Section 455.5641, Florida Statutes, is
31 created to read:

1 455.5641 Telehealth; findings and intent; licensure.--
2 (1) The Legislature finds that there is a great and
3 recognizable potential for harm if persons without the
4 appropriate level of education, training, experience,
5 supervision, and competence are allowed to provide health care
6 services to the people of this state. The potential for harm
7 could arise through substandard care or fraud, or both. The
8 Legislature further finds that there is a compelling state
9 interest in protecting the health, safety, and welfare of the
10 public from incompetent, impaired, or unscrupulous
11 practitioners and that no less-restrictive means are available
12 to effectively protect the public than through licensure in
13 this state. Therefore, it is the intent of the Legislature
14 that the use of untested, ineffective, and potentially harmful
15 health care services be prohibited and that the delivery of
16 all health care services to the people of this state be
17 regulated through the licensure of health care practitioners.
18 (2) The Legislature finds that the methods for
19 delivering health care services to the people of this state
20 are rapidly changing due to advances in technology and
21 telecommunications. However, the Legislature finds that the
22 compelling state interest in protecting the public health,
23 safety, and welfare exists regardless of the method of
24 communication or the method of delivery of services.
25 Therefore, it is the intent of the Legislature that all health
26 care practitioners providing health care services to the
27 people of this state should be regulated in a similar manner
28 regardless of the method of communication or the method of
29 delivery of services.
30 (3) Persons who wish to provide health care services
31 to patients located in this state must apply to the

1 appropriate regulatory board, or the department when there is
2 no board, for a Florida telehealth license and subsequently
3 for renewal of such license. The requirements for an initial
4 telehealth license and subsequent renewal of such license
5 shall be identical to the requirements for full licensure as
6 set forth in the appropriate practice act in this state for
7 the applicable profession, including requirements such as
8 profiling, credentialing, informed consent, and financial
9 responsibility and malpractice insurance. Telehealth licensees
10 must comply with all Florida laws and rules regulating the
11 practice of that profession.

12 (4) All telehealth communications, including, but not
13 limited to, Internet web sites, advertisements, e-mail, and
14 other offers to provide health care services to the people of
15 this state, must clearly identify the practitioner's Florida
16 license number and must include a disclaimer that clearly
17 states that only Florida-licensed health care practitioners
18 may provide health care services directly to persons located
19 in this state. The disclaimer must also include the
20 department's mailing and Internet addresses. It is the
21 responsibility of the health care practitioner to ensure the
22 confidentiality of electronic medical records as required by
23 the laws of this state.

24 (5) The provision of telehealth services to patients
25 in this state without holding an active Florida license to
26 practice that profession may be prosecuted as unlicensed
27 activity in accordance with this chapter. In addition, any act
28 performed through telehealth communication that would
29 constitute a criminal violation if performed physically in
30 this state may be prosecuted under Florida law as if the crime
31 were physically carried out in this state.

1 (6) Notwithstanding any other provision of law to the
2 contrary, persons holding a valid, active license to practice
3 in another jurisdiction may provide consultative services to a
4 Florida licensee without being licensed in this state so long
5 as the out-of-state practitioner does not exercise primary
6 authority for the care or diagnosis of the Florida patient.

7 (7) Only practitioners licensed in this state or
8 otherwise authorized to practice in this state may order, from
9 a person located outside this state, electronic communications
10 diagnostic-imaging or treatment services for a person located
11 in this state.

12 (8) The provisions of subsection (3) do not apply to
13 nonresident pharmacies registered pursuant to s. 465.0156 or
14 the employees thereof.

15 (9) Nothing in this section shall be construed to
16 prohibit or limit the board, or the department when there is
17 no board, from regulating Florida licensees regardless of the
18 location of the patient.

19 (10) The board, or the department when there is no
20 board, may adopt rules pursuant to ss. 120.536(1) and 120.54
21 necessary to administer this section.

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

24 766.102 Medical negligence; standards of recovery.--

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

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

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LEGISLATIVE SUMMARY

Requires separate licensure to provide telehealth services to patients in this state. Provides that telehealth licensure requirements and responsibilities shall be identical to those provided for full licensure in the applicable profession. Requires certain information to be provided in all telehealth communications. Provides responsibility for confidentiality of medical records. Provides for prosecution of unlicensed and other criminal activity. Authorizes certain consultative services without a license. Requires licensure to order out-of-state electronic communications diagnostic-imaging or treatment services for persons in this state. Exempts registered nonresident pharmacies and their employees from telehealth licensure. Provides that telehealth regulatory provisions shall not be construed to prohibit or limit regulation of Florida licensees, regardless of patient location. Provides rulemaking authority to the applicable regulatory board or the Department of Health when there is no board. Authorizes the bringing of telehealth malpractice actions in this state regardless of provider location. (See bill for details.)