

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1882

INTRODUCER: Senator Garcia

SUBJECT: Telemedicine Coverage

DATE: April 3, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Matiyow	Burgess	BI	<b>Pre-meeting</b>
2.	_____	_____	HR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 1882 requires insurers, HMOs, and self-insured corporations issuing for health care policies, contracts or plans to provide reimbursement for covered services rendered utilizing telemedicine. Medical services rendered using telemedicine must be reimbursed on the same basis that such services are reimbursed when provided through traditional means and may not be subject to a different deductible, copayment, or coinsurance requirement than generally applies to such medical services. Additionally, the health care insurance policy or contract or plan cannot impose different annual or lifetime dollar maximum limits to telemedicine services than are equally imposed upon all terms and services covered by the policy, contract or plan. The bill also requires the state group health insurance plan to provide medical assistance to eligible individuals with chronic conditions as required by the Home Health Model of the Patient Protection Act (42 U.S.C. s. 1396w-4).

This bill creates undesignated sections of the Florida Statutes.

**II. Present Situation:**

**Telemedicine**

Telemedicine utilizes various advances in communication technology to provide healthcare services through a variety of electronic mediums. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided though Telemedicine include:

- **Specialist referral services** typically involves of a specialist assisting a general practitioner in rendering a diagnosis. This may involve a patient "seeing" a specialist over a live, remote consult or the transmission of diagnostic images and/or video along with patient data to a specialist for viewing later.
- **Patient consultations** using telecommunications to provide medical data, which may include audio, still or live images, between a patient and a health professional for use in rendering a diagnosis and treatment plan. This might originate from a remote clinic to a physician's office using a direct transmission link or may include communicating over the Web.
- **Remote patient monitoring** uses devices to remotely collect and send data to a monitoring station for interpretation. Such telemedicine applications might include specific vital sign, such as blood glucose or heart ECG or a variety of indicators for homebound patients.

### **Telemedicine Services in Florida**

The Children's Medical Services Network (CMS Network) provides specified telemedicine services under Florida's 1915(b) Medicaid Managed Care Waiver in compliance with federal and state regulations. Authorized CMS Network telemedicine services include certain evaluation and consultation services already covered by the Medicaid state plan. In December 2010, Florida Medicaid submitted a state plan amendment to the federal Centers for Medicare and Medicaid Services (CMS) to allow for the provision of specified physician, dental, mental health, and substance abuse treatment telemedicine services. The waiver has been requested because Medicaid reimburses only the physician dentist rendering services using telemedicine, not the provider who is with the patient. Current regulations require that the physician must be physically present in the same room as the patient during the visit, which essentially requires a second, uncompensated physician to be present with the patient. This requirement must also be met for Medicaid to pay for services provided to Medicaid eligible patients while in a Medicare or Medicaid certified facility. Representatives from the Agency for Health Care Administration expect approval of the Medicaid waiver.

Florida law allows the Florida Board of Medicine to establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.<sup>1</sup> The board has adopted rule 64B8-9.014 "Standards for Telemedicine Prescribing Practice." The rule prohibits a telemedicine doctor from prescribing medications based solely on an online questionnaire. The rule allows a doctor to prescribe using telemedicine if they do so based on a patient's documented medical history and physical examination, properly filed and maintained records, and after discussing the potential risks of treatment with the patient. The rule exempts emergency situations. Doctors that have prior direct contact with a patient may be involved in treatment when a telemedicine doctor is involved as well for purposes of rendering a second opinion on prescriptions and sharing the duties of caring for a patient or handling patient records.

Some of the major Florida based healthcare providers who provide telemedicine services, include:

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<sup>1</sup> s. 458.331(1)(v), F.S.

- **The University of Florida**, which operates the Center for Telehealth and Healthcare Communications (CTHC) that provides training and education for telemedicine services to health care providers.
- **The University of Miami**, which offers patients telemedicine service at their Miller School of Medicine.
- **The Mayo Clinic in Florida**, which has a telemedicine stroke program. According to their website doctors at the Florida Mayo Clinic have performed more than 60 stroke telemedicine consultations.

### III. **Effect of Proposed Changes:**

**Section 1.** Creates an undesignated statutory section requiring insurers, HMOs, and self-insured corporations issuing for health care policies, contracts or plans to provide reimbursement for covered services rendered utilizing telemedicine.

Telemedicine services are defined as the delivery of health care services using interactive video, audio, or other electronic media used for purposes of diagnosis, consultation, or treatment, including home health video conferencing and remote patient monitoring. Telemedicine services do not include audio-only telephone, electronic mail message, or facsimile transmission.

Medical services rendered using telemedicine must be reimbursed on the same basis that such services are reimbursed when provided through traditional means. Health care services may not be excluded from coverage solely because it is provided through telemedicine. Telemedicine services may not be subject to a different deductible, copayment, or coinsurance requirement than applies to such services generally. Additionally, the health care insurance or contract cannot impose different annual or lifetime dollar maximum limits to telemedicine services than are equally imposed upon all terms and services covered under the health care policy, contract, or plan. However, reimbursement need not be provided for the technological fees or costs associated with providing telemedicine services. The insurer, corporation, or HMO may continue conduct a utilization review. If coverage for telemedicine services is denied, a utilization review must be conducted upon the request of the covered individual or that person's health care provider.

The requirement to provide telemedicine services applies to insurance policies, contracts, and plans issued, reissued, or extended on or after July 1, 2011, if a contract term is changed or a premium adjustment is made. All policies, contracts, and plans must provide coverage for telemedicine services no later than July 1, 2012. The requirement to provide reimbursement for telemedicine services does not apply to short-term travel, accident only, limited or specified disease, individual conversion policies, or contracts designed for Medicare-eligible persons and other similar coverage under state or federal government plans (thus exempting Medicaid plans).

**Section 2.** Creates an undesignated section of statute requiring the state group health insurance plan to provide medical assistance to eligible individuals with chronic conditions as required by the Home Health Model of the Patient Protection Act (42 U.S.C. s. 1396w-4). The constitutionality of the Patient Protection Act is currently in question.

**Section 3.** The act is effective July 1, 2011, except as otherwise provided in the act.

**Other Potential Implications:****IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

United States District Judge Roger Vinson has ruled that the Affordable Care Act is unconstitutional. Should this ruling be upheld, 42 U.S.C. s. 1396w-4 would be repealed, thereby invalidating Section 2 of the bill.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill requires certain insurers, corporations, and HMOs to provide coverage for health care services rendered via telemedicine. It may expand access to care in certain areas such as rural areas. The requirement to provide such services may impact the cost of these health plans.

Insurers, self-insuring corporations, and HMOs may incur additional costs amending their policy and contract forms comply with the bill's requirement to provide reimbursement for telemedicine services.

The bill does not contain requirements regarding the types of providers that may render services through telemedicine. There is a danger that telemedicine techniques may create new avenues for medical insurance fraud as fraudulent medical providers located outside the state may attempt to bill for telemedicine services.

**C. Government Sector Impact:**

Representatives from the Agency for Health Care Administration and the Office of Insurance Regulation state that the bill will not have a fiscal impact on their respective agencies.

**VI. Technical Deficiencies:**

The bill attempts to require employer health plans to provide reimbursement for telemedicine services. Federal law pre-empts state regulation of Employer Retirement Income Security Act employer health insurance plans.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.