

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 Health Regulation Committee

BILL: CS/SB 1600

INTRODUCER: Health Regulation Committee and Senator Storms

SUBJECT: Telebehavioral Health Care Services

DATE: February 1, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill directs the Agency for Health Care Administration (AHCA) to implement telebehavioral health care services, as an optional Medicaid-covered service, for all community-based behavioral health services, except for those services that require physical contact, such as physical exams. These services must be delivered by a person who is: licensed in Florida, under contract with a Medicaid provider that is enrolled in Florida’s Medicaid program, and authorized to provide Medicaid community mental health services. The bill also directs the AHCA to seek federal authorization to allow the delivery of telebehavioral health care services by any person currently authorized by rule to deliver such services.

This bill substantially amends section 409.906 of the Florida Statutes.

II. Present Situation:

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing

facility care and other medical expenses. The Agency for Health Care Administration (AHCA) is responsible for administering the Medicaid program. Medicaid serves approximately 3.19 million people in Florida. Estimated Medicaid expenditures for FY 2011-2012 are approximately \$20.3 billion.

Medicaid reimburses health care providers that have a provider agreement with the AHCA only for goods and services that are covered by the Medicaid program and only for individuals who are eligible for medical assistance from Medicaid. Section 409.905, F.S., identifies those services for which the Medicaid program is required to make payments. Section 409.906, F.S., identifies the services for which Florida has, at its option, decided to make payments under the Medicaid program.

Subsection 409.906(8), F.S., authorizes Medicaid to cover community behavioral health services provided to a recipient by a mental health or substance abuse provider under contract with the AHCA or the Department of Children and Family Services. Community behavioral health services include mental health and substance abuse services. The services include: assessments; treatment planning; medical and psychiatric services; individual, group and family therapies; community support and rehabilitative services; therapeutic behavioral on-site services for children and adolescents; as well as therapeutic foster care and group care services.¹

Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). Florida's Medicaid State Plan is a comprehensive written statement describing the scope and nature of the Medicaid program. The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies to ensure the state program receives matching federal funds under Title XIX of the Social Security Act.

Telemedicine

The AHCA sought and has received approval from the CMS for a state plan amendment for telemedicine. Attachment 3.1-B (page 11) of the state plan² contains a description of telemedicine services under the Florida Medicaid program. Telemedicine services are subject to the specifications, conditions, and limitations set by the State. Telemedicine is defined as the practice of health care delivery by a practitioner who is located at a site other than the site where the patient is located for the purposes of evaluation, diagnosis, or recommendation of treatment.

Providers rendering telemedicine must involve the use of interactive telecommunications equipment that includes, at a minimum, audio and video equipment permitting two-way, real time, interactive communication between the recipient and the practitioner to provide and support care when distance separates participants who are in different geographical locations. Telephone conversations, chart review, electronic mail messages, or facsimile transmissions are not considered telemedicine. All equipment required to provide telemedicine services is the responsibility of the providers.

¹ Florida Medicaid Summary of Services, Fiscal Year 2011-2012, page 51, Agency for Health Care Administration. Found at: <<http://ahca.myflorida.com/Medicaid/flmedicaid.shtml>> (Last visited on January 30, 2012).

² Found at: <http://ahca.myflorida.com/Medicaid/stateplanpdf/attachment_3-1-B.pdf> (Last visited on January 30, 2012).

The following providers are eligible to provide telemedicine services under Medicaid if they are licensed under the applicable Florida licensing statute:

- Physicians,
- Dentists,
- Psychiatric nurses,
- Registered nurses,
- Advanced registered nurse practitioners,
- Physician assistants,
- Clinical social workers,
- Mental health counselors,
- Marriage and family therapists,
- Masters level certified addictions professionals, and
- Psychologists.

Medicaid Telebehavioral Health Care Services

The Florida Medicaid program does not currently cover telebehavioral health care services. However, the AHCA expects to soon promulgate new Medicaid policy and contract amendments under the telemedicine provisions of the state plan that will allow reimbursement for telemedicine delivered by licensed mental health practitioners and psychiatrists. The fees, restrictions, and limitations will mirror the respective service delivered face-to-face to eliminate the possibility of any financial impact on Medicaid.

Currently, the AHCA is promulgating revisions for the *Medicaid Community Behavioral Health Services Coverage and Limitations Handbook* to add telemedicine as an approved service delivery method for several services. In addition, the AHCA is drafting a model amendment for Medicaid managed care plan contracts that will allow plans to cover telemedicine for Medicaid behavioral health services. These services will include telemedicine for behavioral health therapy and for psychiatric medication management. When the handbook and contract amendment are completed, Medicaid will be able to reimburse for *certain* telebehavioral health care services.

III. Effect of Proposed Changes:

The bill amends the list of optional Medicaid services to include telebehavioral health care services by licensed mental health professionals for *all* community-based behavioral health care services, except for those services that require physical contact, such as physical exams. The telebehavioral health care services must be delivered by a person who is: licensed in Florida, under contract with a Medicaid provider that is enrolled in Florida's Medicaid program, and authorized to provide Medicaid community mental health services. The bill requires the AHCA to seek authorization from the CMS to allow the delivery of such services by any person currently authorized by rule to deliver the services.

In implementing telemedicine for Medicaid behavioral health care services, the AHCA has anticipated limiting the coverage to psychiatric medication management and individual behavioral health therapy only. This decision was based on concerns the AHCA had about opening the door to more fraud and abuse by using this service modality to bill for services that

may occur with groups of recipients.³ This bill would potentially allow licensed mental health practitioners to deliver most of the Medicaid community behavioral health services, including those that are allowed for groups of recipients, such as psychosocial rehabilitation services, day treatment, and group therapy, through telemedicine.

The effective date of the bill is July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providers who wish to deliver telebehavioral health care services will have to invest in the necessary equipment.

Providers who deliver telebehavioral health care services may see their costs for reimbursing practitioners' travel (which is not reimbursable under Medicaid) reduced.

C. Government Sector Impact:

The fees, restrictions, and limitations for telebehavioral health care services will mirror the respective service delivered face-to-face to eliminate the possibility of any financial impact on Medicaid.

The potential for, and extent of, fraud and abuse that could occur by including certain services under telemedicine are unknown and the fiscal impact cannot be estimated.

³ See Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for HB 659/SB 1600 – on file with the Senate Health Regulation Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Using telemedicine for services provided in group settings could dilute the benefits of group and peer interactions for recipients. The social dynamics for these services constitute an important component of the treatment.⁴

Using telemedicine for services provided in group settings makes it more difficult to control for the confidentiality of participants. For a group that is addressed face-to-face, the practitioner can control what occurs in the room. Telemedicine delivered to a group does not easily allow for a way to prevent others from viewing or recording information about their peers.⁵

Recipients who participate in psychosocial rehabilitation and day treatment tend to be more vulnerable and less stable. Practitioners using telemedicine will likely experience a loss of clinical details about their recipient's physical status that is reflective of the recipient's mental health. These details include: gait, tremors, affect, dress, cleanliness (self-care), coordination, and evidence of self-injury.⁶

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on January 31, 2012:

The CS requires telebehavioral health care services to be delivered by a person who is: licensed in Florida, under contract with a Medicaid provider that is enrolled in Florida's Medicaid program, and authorized to provide Medicaid community mental health services. The service would no longer have to be provided from a location in Florida.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*