

**By** the Committees on Communications, Energy, and Public Utilities; and Health Policy

579-03542A-14

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1                                   A bill to be entitled  
2       An act relating to telemedicine; creating s. 456.4501,  
3       F.S.; providing a short title; creating s. 456.4502,  
4       F.S.; defining terms applicable to the act; creating  
5       s. s. 456.4503, F.S.; requiring specified  
6       practitioners providing telemedicine services to  
7       patients in this state to be licensed in this state;  
8       providing certain exceptions for emergency services  
9       and consultations; authorizing nonFlorida licensed  
10      physicians to meet alternative requirements; requiring  
11      pertinent records to be made available upon request;  
12      requiring other health care providers to be supervised  
13      by a telemedicine provider; providing continuing  
14      education requirements for telemedicine providers;  
15      establishing venue; providing applicability;  
16      authorizing the licensing boards to adopt rules;  
17      creating s. 456.4504, F.S.; providing standards and  
18      prohibitions for the provision of telemedicine  
19      services; prohibiting nonemergency prescribing of a  
20      legend drug without a physical examination;  
21      prohibiting the prescription of a controlled substance  
22      for chronic nonmalignant pain using telemedicine;  
23      creating s. 456.4505, F.S.; authorizing the use of  
24      telemedicine services in the diagnosis and treatment  
25      of the human eye; providing requirements for the use  
26      of automated equipment; requiring the owner or lessee  
27      of the automated equipment to maintain specified  
28      liability insurance under certain circumstances;  
29      prohibiting prescriptions for spectacles or contact

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30 lens based solely on the use of an autorefractor;  
31 creating s. 456.4506, F.S.; providing requirements for  
32 reimbursement of telemedicine services under the  
33 Medicaid program; requiring a report to the  
34 Legislature on the usage and costs of telemedicine in  
35 Medicaid by a certain date; providing for future  
36 repeal; amending s. 409.967, F.S.; prohibiting a  
37 managed care plan under Medicaid from using  
38 telemedicine providers that are not physicians;  
39 amending ss. 627.645 and 641.185, F.S.; prohibiting  
40 the denial of a claim for payment for medical services  
41 based on a medical necessity determination conducted  
42 via telemedicine unless the determination is made by a  
43 physician; providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Section 456.4501, Florida Statutes, is created  
48 to read:

49 456.4501 Short title.—Sections 456.4501-456.4506 may be  
50 cited as the "Florida Telemedicine Act."

51 Section 2. Section 456.4502, Florida Statutes, is created  
52 to read:

53 456.4502 Definitions.—As used in this act, the term:

54 (1) "Act" means the Florida Telemedicine Act.

55 (2) "Advanced communications technology" means:

56 (a) Compressed digital interactive video, audio, or data  
57 transmissions;

58 (b) Real-time synchronous video- or web-conferencing

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59 communications;

60 (c) Secure web-based communications;

61 (d) Still-image capture or asynchronous store and forward;

62 (e) Health care service transmissions supported by mobile  
63 devices (mHealth); or

64 (f) Other technology that facilitates access to health care  
65 services or medical specialty expertise.

66 (3) "Distant site" means the location at which the  
67 telemedicine provider delivering the health care service is  
68 located at the time the service is provided via telemedicine.

69 (4) "Encounter" means an examination, consultation,  
70 monitoring, or other health care service.

71 (5) "Health care provider" means a health care practitioner  
72 or out-of-state licensed individual who provides health care  
73 services within the scope of his or her professional license.

74 (6) "In person" means that a patient is in the physical  
75 presence of the health care provider without regard to whether  
76 portions of the encounter are conducted by other providers.

77 (7) "Originating site" means the location of the patient  
78 receiving telemedicine services, which site meets the standards  
79 of this act as verified by the telemedicine provider.

80 (8) "Patient presenter" means an individual who has  
81 clinical background training in the use of advanced  
82 communications technology equipment and who is available at the  
83 originating site to present the patient, manage the cameras or  
84 equipment, and perform any hands-on activity necessary to  
85 successfully complete the telemedicine encounter under the  
86 direction and supervision of a telemedicine provider.

87 (9) "Store and forward" means the type of telemedicine

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88 encounter that uses still images of patient data for rendering a  
89 medical opinion or diagnosis. The term includes the asynchronous  
90 transmission of clinical data from one site to another.

91 (10) "Telehealth" means the use of advanced communications  
92 technology to provide access to health assessment, diagnosis,  
93 intervention, consultation, supervision, and information across  
94 distances. The term includes the use of remote patient-  
95 monitoring devices that are used to collect and transmit data  
96 for telemonitoring and interpretation.

97 (11) "Telemedicine" means the practice of medicine through  
98 the use of advanced communications technology by a telemedicine  
99 provider at a distant site in compliance with federal and state  
100 privacy and confidentiality requirements and encryption  
101 standards. Services provided through telemedicine may include  
102 patient assessment, diagnosis, consultation, treatment,  
103 prescription of medicine, transfer of medical data, or other  
104 medical-related services. The term does not include audio-only  
105 calls, e-mail messages, or facsimile transmissions. Telemedicine  
106 includes telehealth and telemonitoring.

107 (12) "Telemedicine provider" means a physician or physician  
108 assistant licensed under chapter 458 or chapter 459, an advanced  
109 registered nurse practitioner licensed under chapter 464, or a  
110 pharmacist licensed under chapter 465 who provides telemedicine  
111 services.

112 Section 3. Section 456.4503, Florida Statutes, is created  
113 to read:

114 456.4503 Telemedicine requirements.—

115 (1) An out-of-state physician, physician assistant,  
116 advanced registered nurse practitioner, or pharmacist who

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117 provides telemedicine across state lines to a patient physically  
118 located in this state must have a Florida license to practice as  
119 provided under chapter 458, chapter 459, chapter 464, or chapter  
120 465.

121 (2) An out-of-state physician, physician assistant,  
122 advanced registered nurse practitioner, or pharmacist is exempt  
123 from subsection (1) if:

124 (a) The out-of-state physician, physician assistant,  
125 advanced registered nurse practitioner, or pharmacist is  
126 consulting with a telemedicine provider licensed to practice in  
127 this state; and

128 (b) The telemedicine provider licensed in this state  
129 retains ultimate authority and responsibility for the diagnosis,  
130 treatment, and care of the patient located within this state.

131 (3) An out-of-state physician is exempt from subsection (1)  
132 if the physician:

133 (a) Holds an unrestricted active license to practice  
134 allopathic or osteopathic medicine in the state of the distant  
135 site and that state's licensure requirements must meet or exceed  
136 those of this state under chapter 458 or chapter 459, as  
137 determined by the appropriate board;

138 (b) Maintains professional liability coverage that includes  
139 coverage for telemedicine services, in an amount and manner  
140 consistent with s. 458.320 and appropriate to the physician's  
141 scope of practice and location;

142 (c) Has privileges at or is on the medical staff of an out-  
143 of-state hospital affiliated with a Florida hospital licensed  
144 under chapter 395, or has an affiliation with an out-of-state  
145 health insurer or health plan that is also authorized to conduct

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146 business in this state pursuant to chapter 627 or chapter 641;  
147 and

148 (d) Practices in a state that authorizes Florida-licensed  
149 physicians to provide telemedicine services to patients located  
150 in that state without having to be licensed to practice medicine  
151 in that state.

152 (4) An out-of-state physician authorized under paragraph  
153 (3) to provide telemedicine services to patients in this state  
154 is subject to appropriate disciplinary action by the Board of  
155 Medicine, the Board of Osteopathic Medicine, or a regulatory  
156 entity in this state which has regulatory jurisdiction over the  
157 hospital, insurer, or health plan affiliated with the physician  
158 as described in subparagraph (3) (c).

159 (5) A telemedicine provider and a hospital, insurer, or  
160 health plan operating in this state which is affiliated with an  
161 out-of-state physician as described in subparagraph (3) (c) shall  
162 make any pertinent records available upon request of the board,  
163 the department, or other regulatory authority as applicable.  
164 Failure to comply with such request may result in the revocation  
165 of the provider's license or imposition of a fine by the  
166 applicable board; or, in the case of an affiliated hospital,  
167 insurer, or health plan, a fine, license restriction, or  
168 revocation of an affiliated entity's authorization to conduct  
169 business in this state.

170 (6) Consultations that occur on an emergency basis and that  
171 are conducted via telemedicine are exempt from subsection (1).  
172 The terms "emergency services and care" and "emergency medical  
173 condition" have the same meanings as provided in s. 395.002.

174 (7) A health care provider or patient presenter acting

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175 under the direction and supervision of a telemedicine provider  
176 through the use of telemedicine may not be interpreted as  
177 practicing without a license. However, the health care provider  
178 must be trained in, educated on, and knowledgeable about the  
179 procedure and technology and may not perform duties for which he  
180 or she does not have sufficient training, education, and  
181 knowledge. Failure to have adequate training, education, and  
182 knowledge is grounds for disciplinary action by the appropriate  
183 board, or the department if there is no board, or the affiliated  
184 regulatory entity for affiliated providers.

185 (8) Upon license renewal, a physician, physician assistant,  
186 advanced registered nurse practitioner, or pharmacist practicing  
187 telemedicine shall:

188 (a) Designate himself or herself as a telemedicine provider  
189 on the practitioner profile; and

190 (b) Submit proof of successful completion of a course and  
191 subsequent examination, approved by the board, on the standards  
192 of practice in telemedicine. The course must consist of 2 web-  
193 based contact hours. The first course and examination must be  
194 offered by July 1, 2014, and shall be conducted at least  
195 annually thereafter. The course and examination shall be  
196 developed and offered by a statewide professional association  
197 accredited to provide educational activities as designated by  
198 the board. The board shall review and approve the content of the  
199 initial course and examination if the board determines that the  
200 course and examination adequately and reliably satisfy the  
201 criteria set forth in this section. Annually thereafter, the  
202 board shall review the course and examination and, if the board  
203 determines that the content continues to adequately and reliably

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204 satisfy the criteria set forth in this section, approve them.  
205 Successful completion of the board-approved course and  
206 examination may be used to satisfy 2 hours of continuing  
207 education requirements for the biennial period during which the  
208 board-approved course and examination are taken. A physician,  
209 physician assistant, advanced registered nurse practitioner, or  
210 pharmacist who does not complete a board-approved course and  
211 examination under this section may not provide telemedicine  
212 services.

213 (9) Venue for a civil or administrative action initiated by  
214 the telemedicine recipient, the department, or the appropriate  
215 board shall be based on the location of the patient or shall be  
216 in Leon County.

217 (10) The boards may adopt rules to administer the  
218 requirements of this act and must repeal rules that are  
219 inconsistent with this act, including rules that prohibit the  
220 use of telemedicine in this state. The appropriate board may  
221 also develop standards and adopt rules relating to requirements  
222 for patient presenters. Such rules may not require the use of  
223 patient presenters in telemedicine services if special skills or  
224 training is not needed for a patient to participate in the  
225 encounter.

226 Section 4. Section 456.4504, Florida Statutes, is created  
227 to read:

228 456.4504 Telemedicine standards.-

229 (1) The standard of care as provided in s. 766.102 is the  
230 same regardless of whether the physician, physician assistant,  
231 advanced registered nurse practitioner, or pharmacist provides  
232 health care services in person or by telemedicine. The



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233 applicable board may adopt rules specifically related to the  
234 standard of care for telemedicine.

235 (2) A telemedicine provider providing telemedicine services  
236 under this act is responsible for the quality of the equipment  
237 and technology employed and for its safe use. Telemedicine  
238 equipment and advanced communications technology must, at a  
239 minimum, be able to provide the same information to the  
240 telemedicine provider as the information that would be obtained  
241 in an in-person encounter with a health care provider and must  
242 enable the telemedicine provider to meet or exceed the  
243 prevailing standard of care for the practice of the profession.

244 (3) The telemedicine provider is not required to conduct a  
245 patient history or physical examination of the patient before  
246 engaging in a telemedicine encounter if the telemedicine  
247 provider conducts a patient evaluation sufficient to meet the  
248 prevailing standard of care for the services provided.

249 (4) Before each telemedicine encounter, the identification  
250 and location of the telemedicine provider and all other  
251 individuals present via advanced communications technology who  
252 will view the patient or the patient's information must be  
253 identified to the patient.

254 (5) For the purposes of this act, the nonemergency  
255 prescribing of a legend drug based solely on an electronic  
256 questionnaire without a visual examination is considered a  
257 failure to practice with the level of care, skill, and treatment  
258 which is recognized by a reasonably prudent physician, physician  
259 assistant, advanced registered nurse practitioner, or pharmacist  
260 and is not authorized under this act.

261 (6) A controlled substance may not be prescribed through

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262 the use of telemedicine for chronic, nonmalignant pain.

263 (7) Medical records must be kept by each telemedicine  
264 provider that participates in a patient telemedicine encounter  
265 to the same extent as required for an in-person encounter under  
266 state and federal law. Telemedicine providers are encouraged to  
267 create electronic health records to document the encounter and  
268 to transmit information in the most efficient manner possible.

269 (8) Any medical records generated, including records  
270 maintained via video, audio, electronic, or other means, due to  
271 a telemedicine encounter must conform to the confidentiality and  
272 recordkeeping requirements of federal law and nationally  
273 recognized health care accreditation organizations and the laws  
274 and rules of this state, regardless of where the medical records  
275 of a patient in this state are maintained.

276 (9) Telemedicine technology used by a telemedicine provider  
277 must be encrypted and must use a recordkeeping program to verify  
278 each interaction.

279 (10) In those situations in which a telemedicine provider  
280 uses telemedicine technology provided by a third-party vendor,  
281 the telemedicine provider must:

282 (a) Require a business associate agreement with the third-  
283 party vendor; and

284 (b) Ensure that the third-party vendor complies with the  
285 administrative, physical, and technical safeguards and standards  
286 set forth by the Health Information Technology for Economic and  
287 Clinical Health (HITECH) Act and by federal regulations  
288 implemented pursuant to HITECH.

289 Section 5. Section 456.4505, Florida Statutes, is created  
290 to read:

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291 456.4505 Telemedicine services to diagnose or treat the  
292 human eye.-

293 (1) The use of automated equipment, including computer-  
294 controlled devices, in the provision of telemedicine services to  
295 diagnose or treat the human eye and its appendages, is  
296 permissible if the following requirements are met at the time  
297 the automated equipment is used:

298 (a) The automated equipment is approved by the United  
299 States Food and Drug Administration for the intended use;

300 (b) The automated equipment is designed and operated in a  
301 manner that provides any accommodation required by the federal  
302 ADA Amendments Act of 2008;

303 (c) The automated equipment and accompanying technology  
304 used for the collection and transmission of information and  
305 data, including photographs and scans, gathers and transmits  
306 protected health information in compliance with the federal  
307 Health Insurance Portability and Accountability Act;

308 (d) The procedure for which the automated equipment is used  
309 has a recognized Current Procedural Terminology (CPT) code  
310 approved by the Centers for Medicare and Medicaid Services;

311 (e) The physical location of the automated equipment  
312 prominently displays the name and Florida license number of the  
313 individual who will read and interpret the diagnostic  
314 information and data, including photographs and scans;

315 (f) Diagnostic information and data, including photographs  
316 and scans, gathered by the automated equipment is read and  
317 interpreted by an optometrist licensed under chapter 463 or a  
318 physician skilled in diseases of the human eye and licensed  
319 under chapter 458 or chapter 459; and

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320 (g) The owner or lessee of the automated equipment  
321 maintains liability insurance in an amount adequate to cover  
322 claims made by individuals diagnosed or treated based on  
323 information and data, including photographs and scans, generated  
324 by the automated equipment.

325 (2) A prescription for spectacles or contact lens may not  
326 be made based on telemedicine services or based solely on the  
327 refractive error of the human eye generated by a computer-  
328 controlled device such as an autorefractor.

329 Section 6. Section 456.4506, Florida Statutes, is created  
330 to read:

331 456.4506 Telemedicine services under Medicaid.—

332 (1) The Agency for Health Care Administration shall  
333 reimburse for Medicaid services provided through telemedicine in  
334 the same manner and equivalent to Medicaid services provided in  
335 person under parts III and IV of chapter 409, except as provided  
336 in subsection (7).

337 (2) Telemedicine services reimbursed under Medicaid must  
338 meet the standards and requirements of this act.

339 (3) Except as provided in subsection (7), the agency may  
340 not require in-person contact between a telemedicine provider  
341 and Medicaid recipient as a prerequisite for payment for  
342 services appropriately provided through telemedicine in  
343 accordance with generally accepted health care practices and  
344 standards prevailing in the applicable health care community at  
345 the time the services are provided.

346 (4) Before receipt of telemedicine services, a Medicaid  
347 recipient or the legal representative of a Medicaid recipient  
348 must provide informed consent for telemedicine services. A

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349 Medicaid recipient shall also be provided the opportunity to  
350 receive the same service through an in-person encounter.

351 (5) A Medicaid service that is provided through a fee-for-  
352 service or managed care program may not be denied as a  
353 creditable Medicaid service solely because that service is  
354 provided through telemedicine.

355 (6) Reimbursement of telemedicine services under Medicaid  
356 shall be the amount negotiated between the parties involved to  
357 the extent permitted under state and federal law. Regardless of  
358 the reimbursement methodology or amount, telemedicine providers  
359 located at the originating site and the distant site should both  
360 receive reimbursement based on the services rendered, if any,  
361 during the telemedicine encounter.

362 (7) If, after implementation, the agency determines that  
363 the delivery of a particular service through telemedicine is not  
364 cost-effective or does not adequately meet the clinical needs of  
365 recipients and the determination has been documented, the agency  
366 may discontinue Medicaid reimbursement for that telemedicine  
367 service.

368 (8) The agency shall submit a report on the usage and  
369 costs, including savings, if any, associated with the provision  
370 of health care services through telemedicine under the Medicaid  
371 program by January 1, 2017, to the President of the Senate, the  
372 Speaker of the House of Representatives, and the minority  
373 leaders of the Senate and the House of Representatives.

374 (9) This section is repealed June 30, 2017.

375 Section 7. Paragraph (c) of subsection (2) of section  
376 409.967, Florida Statutes, is amended to read:

377 409.967 Managed care plan accountability.-

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378 (2) The agency shall establish such contract requirements  
379 as are necessary for the operation of the statewide managed care  
380 program. In addition to any other provisions the agency may deem  
381 necessary, the contract must require:

382 (c) Access.—

383 1. The agency shall establish specific standards for the  
384 number, type, and regional distribution of providers in managed  
385 care plan networks to ensure access to care for both adults and  
386 children. Each plan must maintain a regionwide network of  
387 providers in sufficient numbers to meet the access standards for  
388 specific medical services for all recipients enrolled in the  
389 plan. A plan may not use telemedicine providers as defined in s.  
390 456.4502 to meet this requirement unless the provider is  
391 licensed under chapter 458 or chapter 459. The exclusive use of  
392 mail-order pharmacies may not be sufficient to meet network  
393 access standards. Consistent with the standards established by  
394 the agency, provider networks may include providers located  
395 outside the region. A plan may contract with a new hospital  
396 facility before the date the hospital becomes operational if the  
397 hospital has commenced construction, will be licensed and  
398 operational by January 1, 2013, and a final order has issued in  
399 any civil or administrative challenge. Each plan shall establish  
400 and maintain an accurate and complete electronic database of  
401 contracted providers, including information about licensure or  
402 registration, locations and hours of operation, specialty  
403 credentials and other certifications, specific performance  
404 indicators, and such other information as the agency deems  
405 necessary. The database must be available online to both the  
406 agency and the public and have the capability to compare the

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407 availability of providers to network adequacy standards and to  
408 accept and display feedback from each provider's patients. Each  
409 plan shall submit quarterly reports to the agency identifying  
410 the number of enrollees assigned to each primary care provider.

411 2. Each managed care plan must publish any prescribed drug  
412 formulary or preferred drug list on the plan's website in a  
413 manner that is accessible to and searchable by enrollees and  
414 providers. The plan must update the list within 24 hours after  
415 making a change. Each plan must ensure that the prior  
416 authorization process for prescribed drugs is readily accessible  
417 to health care providers, including posting appropriate contact  
418 information on its website and providing timely responses to  
419 providers. For Medicaid recipients diagnosed with hemophilia who  
420 have been prescribed anti-hemophilic-factor replacement  
421 products, the agency shall provide for those products and  
422 hemophilia overlay services through the agency's hemophilia  
423 disease management program.

424 3. Managed care plans, and their fiscal agents or  
425 intermediaries, must accept prior authorization requests for any  
426 service electronically.

427 Section 8. Subsection (3) is added to section 627.645,  
428 Florida Statutes, to read:

429 627.645 Denial of health insurance claims restricted.—

430 (3) A claim for payment under a health insurance policy for  
431 medical care or treatment may not be denied on the basis of a  
432 medical necessity determination conducted via telemedicine as  
433 defined in s. 456.4502 unless the determination is made by a  
434 physician licensed under chapter 458 or chapter 459.

435 Section 9. Paragraph (m) is added to subsection (1) of

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436 section 641.185, Florida Statutes, to read:

437 641.185 Health maintenance organization subscriber  
438 protections.—

439 (1) With respect to the provisions of this part and part  
440 III, the principles expressed in the following statements shall  
441 serve as standards to be followed by the commission, the office,  
442 the department, and the Agency for Health Care Administration in  
443 exercising their powers and duties, in exercising administrative  
444 discretion, in administrative interpretations of the law, in  
445 enforcing its provisions, and in adopting rules:

446 (m) A health maintenance organization may not deny a claim  
447 for payment for medical care or treatment on the basis of a  
448 medical necessity determination conducted via telemedicine as  
449 defined in s. 456.4502 unless the determination is made by a  
450 physician licensed under chapter 458 or chapter 459.

451 Section 10. This act shall take effect October 1, 2014.