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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
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The Committee on Health Policy (Galvano) recommended the following:

1           **Senate Substitute for Amendment (484228) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. Section 456.4501, Florida Statutes, is created  
7 to read:

8           456.4501 Short title.—Sections 465.4501-465.4507 may be  
9 cited as the "Florida Telemedicine Act."



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10 Section 2. Section 456.4502, Florida Statutes, is created  
11 to read:

12 456.4502 Definitions.—As used in this act, the term:

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

14 (2) "Advanced communications technology" means:

15 (a) Compressed digital interactive video, audio, or data  
16 transmissions;

17 (b) Real-time synchronous video- or web-conferencing  
18 communications;

19 (c) Secure web-based communications;

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

21 (e) Health care service transmissions supported by mobile  
22 devices (mHealth); or

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

25 (3) "Distant site" means the location at which the  
26 telemedicine provider delivering the health care service is  
27 located at the time the service is provided via telemedicine.

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

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

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

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



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39           (8) "Patient presenter" means an individual who has  
40 clinical background training in the use of advanced  
41 communications technology equipment and who is available at the  
42 originating site to present the patient, manage the cameras or  
43 equipment, and perform any hands-on activity necessary to  
44 successfully complete the telemedicine encounter under the  
45 direction and supervision of a telemedicine provider.

46           (9) "Store and forward" means the type of telemedicine  
47 encounter that uses still images of patient data for rendering a  
48 medical opinion or diagnosis. The term includes the asynchronous  
49 transmission of clinical data from one site to another.

50           (10) "Telehealth" means the use of advanced communications  
51 technology to provide access to health assessment, diagnosis,  
52 intervention, consultation, supervision, and information across  
53 distances. The term includes the use of remote patient-  
54 monitoring devices that are used to collect and transmit data  
55 for telemonitoring and interpretation.

56           (11) "Telemedicine" means the practice of medicine through  
57 the use of advanced communications technology by a telemedicine  
58 provider at a distant site in compliance with federal and state  
59 privacy and confidentiality requirements and encryption  
60 standards. Services provided through telemedicine may include  
61 patient assessment, diagnosis, consultation, treatment,  
62 prescription of medicine, transfer of medical data, or other  
63 medical-related services. The term does not include audio-only  
64 calls, e-mail messages, or facsimile transmissions. Telemedicine  
65 includes telehealth and telemonitoring.

66           (12) "Telemedicine provider" means a physician licensed  
67 under chapter 458 or chapter 459 who provides telemedicine



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68 services.

69 Section 3. Section 456.4503, Florida Statutes, is created  
70 to read:

71 456.4503 Telemedicine requirements.-

72 (1) An out-of-state physician who provides telemedicine  
73 across state lines to a patient physically located in this state  
74 must:

75 (a) Have a Florida license to practice medicine as provided  
76 under chapter 458 or chapter 459, except as provided under  
77 subsection (2); or

78 (b) If not licensed in this state:

79 1. Hold an unrestricted active license to practice  
80 allopathic or osteopathic medicine in the state of the distant  
81 site and that state's licensure requirements must meet or exceed  
82 those of this state under chapter 458 or chapter 459, as  
83 determined by the appropriate board;

84 2. Maintain professional liability coverage that includes  
85 coverage for telemedicine services, in an amount and manner  
86 consistent with s. 458.320 and appropriate to the physician's  
87 scope of practice and location;

88 3. Have one of the following:

89 a. Privileges at or be on the medical staff of an out-of-  
90 state hospital affiliated with a Florida hospital licensed under  
91 chapter 395; or

92 b. Affiliation with an out-of-state health insurer or  
93 health plan that is also authorized to conduct business in this  
94 state pursuant to chapter 627 or chapter 641; and

95 4. Practice in a state that authorizes Florida-licensed  
96 physicians to provide telemedicine services to patients located



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97 in that state without having to be licensed to practice medicine  
98 in that state.

99 (2) An out-of-state physician authorized under paragraph  
100 (1)(b) to provide telemedicine services to patients in this  
101 state is subject to appropriate disciplinary action by a  
102 regulatory entity in this state which has regulatory  
103 jurisdiction over the hospital, insurer, or health plan  
104 affiliated with the physician as described in subparagraph  
105 (1)(b)3. Such affiliated hospital, insurer, or health plan shall  
106 be held responsible by the appropriate state regulatory entities  
107 and other legal and regulatory authorities in this state, as  
108 applicable, for the actions of its affiliated physicians  
109 providing telemedicine services to patients in this state.

110 (3) A telemedicine provider and a hospital, insurer, or  
111 health plan operating in this state which is affiliated with an  
112 out-of-state provider as described in subparagraph (1)(b)2.  
113 shall make any pertinent records available upon request of the  
114 board, the department, or other regulatory authority as  
115 applicable. Failure to comply with such request may result in  
116 the revocation of the provider's license or imposition of a fine  
117 by the applicable board; or, in the case of an affiliated  
118 hospital, insurer, or health plan, a fine, license restriction,  
119 or revocation of an affiliated entity's authorization to conduct  
120 business in this state.

121 (4) An out-of-state physician is not required to meet the  
122 requirements of subsection (1) if:

123 (a) The out-of-state physician is consulting with a  
124 physician licensed to practice medicine in this state; and

125 (b) The physician licensed in this state retains ultimate



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126 authority and responsibility for the diagnosis, treatment, and  
127 care of the patient located within this state.

128 (5) Physician consultations that occur on an emergency  
129 basis and that are conducted via telemedicine are exempt from  
130 subsection (1). Emergency services and care provided to relieve  
131 an emergency medical condition have the same meaning as provided  
132 in s. 395.002.

133 (6) A health care provider or patient presenter acting  
134 under the direction and supervision of a physician through the  
135 use of telemedicine may not be interpreted as practicing  
136 medicine without a license. However, the health care provider  
137 must be trained in, educated on, and knowledgeable about the  
138 procedure and technology and may not perform duties for which  
139 the provider does not have sufficient training, education, and  
140 knowledge. Failure to have adequate training, education, and  
141 knowledge is grounds for disciplinary action by the appropriate  
142 board, or the department if there is no board, or the affiliated  
143 regulatory entity for affiliated providers.

144 (7) Upon license renewal, a physician practicing  
145 telemedicine shall:

146 (a) Designate himself or herself as a telemedicine provider  
147 on the physician's practitioner profile; and

148 (b) Submit proof of successful completion of a course and  
149 subsequent examination, approved by the board, on the standards  
150 of practice in telemedicine. The course must consist of 2 web-  
151 based contact hours. The first course and examination must be  
152 offered by July 1, 2014, and shall be conducted at least  
153 annually thereafter. The course and examination shall be  
154 developed and offered by a statewide professional association of



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155 physicians in this state accredited to provide educational  
156 activities designated for an American Medical Association  
157 Physician's Recognition Award (AMA PRA) Category 1 credit. The  
158 board shall review and approve the content of the initial course  
159 and examination if the board determines that the course and  
160 examination adequately and reliably satisfy the criteria set  
161 forth in this section. The board shall annually thereafter  
162 review and approve the course and examination if the board  
163 determines that the content continues to adequately and reliably  
164 satisfy the criteria set forth in this section. Successful  
165 completion of the board-approved course and examination may be  
166 used by a certified physician to satisfy 2 hours of continuing  
167 education requirements for the biennial period during which the  
168 board-approved course and examination are taken. A physician who  
169 does not complete a board-approved course and examination under  
170 this section may not provide telemedicine services.

171 (8) Venue for a civil or administrative action initiated by  
172 the telemedicine recipient, the department, or the appropriate  
173 board shall be based on the location of the patient or shall be  
174 in Leon County.

175 (9) The boards may adopt rules to administer the  
176 requirements of this act and must repeal rules that are  
177 inconsistent with this act, including rules that prohibit the  
178 use of telemedicine in this state. The appropriate board may  
179 also develop standards and adopt rules relating to requirements  
180 for patient presenters. Such rules may not require the use of  
181 patient presenters in telemedicine services if special skills or  
182 training is not needed for a patient to participate in the  
183 encounter.



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184 Section 4. Section 456.4504, Florida Statutes, is created  
185 to read:

186 456.4504 Telemedicine standards.—

187 (1) The standard of care as provided in s. 766.102 is the  
188 same regardless of whether the physician provides health care  
189 services in person or by telemedicine. The applicable board may  
190 adopt rules specifically related to the standard of care for  
191 telemedicine.

192 (2) A telemedicine provider providing telemedicine services  
193 under this act is responsible for the quality of the equipment  
194 and technology employed and for its safe use. Telemedicine  
195 equipment and advanced communications technology must, at a  
196 minimum, be able to provide the same information to the  
197 telemedicine provider as the information that would be obtained  
198 in an in-person encounter with a health care provider and must  
199 enable the telemedicine provider to meet or exceed the  
200 prevailing standard of care for the practice of the profession.

201 (3) The telemedicine provider is not required to conduct a  
202 patient history or physical examination of the patient before  
203 engaging in a telemedicine encounter if the telemedicine  
204 provider conducts a patient evaluation sufficient to meet the  
205 prevailing standard of care for the services provided.

206 (4) Before each telemedicine encounter, the identification  
207 and location of the telemedicine provider and all other  
208 individuals present via advanced communications technology who  
209 will view the patient or the patient's information must be  
210 identified to the patient.

211 (5) For the purposes of this act, the nonemergency  
212 prescribing of a legend drug based solely on an electronic





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213 questionnaire without a visual examination is considered a  
214 failure to practice medicine with the level of care, skill, and  
215 treatment which is recognized by a reasonably prudent physician  
216 or other authorized practitioner and is not authorized under  
217 this act.

218 (6) A controlled substance may not be prescribed through  
219 the use of telemedicine for chronic, nonmalignant pain.

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

226 (8) Any medical records generated, including records  
227 maintained via video, audio, electronic, or other means, due to  
228 a telemedicine encounter must conform to the confidentiality and  
229 recordkeeping requirements of federal law and nationally  
230 recognized health care accreditation organizations and the laws  
231 and rules of this state, regardless of where the medical records  
232 of a patient in this state are maintained.

233 (9) Telemedicine technology used by a telemedicine provider  
234 must be encrypted and must use a recordkeeping program to verify  
235 each interaction.

236 (10) In those situations in which a telemedicine provider  
237 uses telemedicine technology provided by a third-party vendor,  
238 the telemedicine provider must:

239 (a) Require a business associate agreement with the third-  
240 party vendor; and

241 (b) Ensure that the third-party vendor complies with the



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242 administrative, physical, and technical safeguards and standards  
243 set forth by the Health Information Technology for Economic and  
244 Clinical Health (HITECH) Act and by federal regulations  
245 implemented pursuant to HITECH.

246 Section 5. Section 456.4505, Florida Statutes, is created  
247 to read:

248 456.4505 Telemedicine services to diagnose or treat the  
249 human eye.—

250 (1) The use of automated equipment, including computer-  
251 controlled devices, in the provision of telemedicine services to  
252 diagnose or treat the human eye and its appendages, is  
253 permissible if the following requirements are met at the time  
254 the automated equipment is used:

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

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

260 (c) The automated equipment and accompanying technology  
261 used for the collection and transmission of information and  
262 data, including photographs and scans, gathers and transmits  
263 protected health information in compliance with the federal  
264 Health Insurance Portability and Accountability Act;

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

268 (e) The physical location of the automated equipment  
269 prominently displays the name and Florida license number of the  
270 individual who will read and interpret the diagnostic



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271 information and data, including photographs and scans;

272 (f) Diagnostic information and data, including photographs  
273 and scans, gathered by the automated equipment is read and  
274 interpreted by an optometrist licensed under chapter 463 or a  
275 physician skilled in diseases of the human eye and licensed  
276 under chapter 458 or chapter 459; and

277 (g) The owner or lessee of the automated equipment  
278 maintains liability insurance in an amount adequate to cover  
279 claims made by individuals diagnosed or treated based on  
280 information and data, including photographs and scans, generated  
281 by the automated equipment.

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

286 Section 6. Section 456.4506, Florida Statutes, is created  
287 to read:

288 456.4506 Telemedicine services under Medicaid.-

289 (1) The Agency for Health Care Administration shall  
290 reimburse for Medicaid services provided through telemedicine in  
291 the same manner and equivalent to Medicaid services provided in  
292 person under parts III and IV of chapter 409, except as provided  
293 in subsection (7).

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

296 (3) Except as provided in subsection (7), the agency may  
297 not require in-person contact between a telemedicine provider  
298 and Medicaid recipient as a prerequisite for payment for  
299 services appropriately provided through telemedicine in



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300 accordance with generally accepted health care practices and  
301 standards prevailing in the applicable health care community at  
302 the time the services are provided.

303 (4) Before receipt of telemedicine services, a Medicaid  
304 recipient or the legal representative of a Medicaid recipient  
305 must provide informed consent for telemedicine services. A  
306 Medicaid recipient shall also be provided the opportunity to  
307 receive the same service through an in-person encounter.

308 (5) A Medicaid service that is provided through a fee-for-  
309 service or managed care program may not be denied as a  
310 creditable Medicaid service solely because that service is  
311 provided through telemedicine.

312 (6) Reimbursement of telemedicine services under Medicaid  
313 shall be the amount negotiated between the parties involved to  
314 the extent permitted under state and federal law. Regardless of  
315 the reimbursement methodology or amount, telemedicine providers  
316 located at the originating site and the distant site should both  
317 receive reimbursement based on the services rendered, if any,  
318 during the telemedicine encounter.

319 (7) If, after implementation, the agency determines that  
320 the delivery of a particular service through telemedicine is not  
321 cost-effective or does not adequately meet the clinical needs of  
322 recipients and the determination has been documented, the agency  
323 may discontinue Medicaid reimbursement for that telemedicine  
324 service.

325 (8) The agency shall submit a report on the usage and  
326 costs, including savings, if any, associated with the provision  
327 of health care services through telemedicine under the Medicaid  
328 program by January 1, 2017, to the President of the Senate, the



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329 Speaker of the House of Representatives, and the minority  
330 leaders of the Senate and the House of Representatives.

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

332 Section 7. Section 456.4507, Florida Statutes, is created  
333 to read:

334 456.4507 Requirements for private insurer reimbursement.-

335 (1) Each health carrier or health benefit plan that offers  
336 or issues health benefit plans that are delivered, issued for  
337 delivery, continued, or renewed in this state on or after  
338 January 1, 2014, may not deny coverage for a health care service  
339 on the basis that the health care service is provided through  
340 telemedicine if the same service would be covered if provided  
341 through an in-person encounter.

342 (2) A health carrier may not exclude an otherwise covered  
343 health care service from coverage solely because the service is  
344 provided through telemedicine rather than through an in-person  
345 encounter between a health care provider and a patient.

346 (3) A health carrier is not required to reimburse a  
347 telemedicine provider or a consulting provider for originating  
348 site fees or costs for the provision of telemedicine services;  
349 however, subject to correct coding, a health carrier shall  
350 reimburse a health care provider for the diagnosis,  
351 consultation, or treatment of an insured or enrollee if the  
352 health care service is delivered through telemedicine on the  
353 same basis that the health carrier reimburses the service when  
354 it is delivered in person.

355 (4) A health care service provided through telemedicine may  
356 not be subject to a greater deductible, copayment, or  
357 coinsurance amount than would be applicable if the same service



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358 was provided through an in-person diagnosis, consultation, or  
359 treatment.

360 (5) A health carrier may not impose upon any person  
361 receiving benefits under this section any copayment,  
362 coinsurance, or deductible amount or any policy year, calendar  
363 year, lifetime, or other durational benefit limitation or  
364 maximum for benefits or services which is not equally imposed  
365 upon all terms and services covered under the policy, contract,  
366 or health benefit plan.

367 (6) This section does not preclude a health carrier from  
368 conducting a utilization review to determine the appropriateness  
369 of telemedicine as a means of delivering a health care service  
370 if such determination is made in the same manner as would be  
371 made for the same service delivered in person.

372 (7) A health carrier or health benefit plan may limit  
373 coverage for health care services that are provided through  
374 telemedicine to health care providers that are in a network  
375 approved by the plan or the health carrier.

376 (8) This section does not require a health care provider to  
377 be physically present with a patient unless the health care  
378 provider who is providing health care services by means of  
379 telemedicine determines that the presence of a health care  
380 provider is necessary.

381 (9) This section does not apply to a supplemental insurance  
382 policy, including a life care contract, accident-only policy,  
383 specified-disease policy, hospital policy providing a fixed  
384 daily benefit only, Medicare supplement policy, long-term care  
385 policy, or short-term major medical policy of a duration of 6  
386 months or less or any other supplemental policy as determined by



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387 the Office of Insurance Regulation.

388 Section 8. This act shall take effect October 1, 2014.

389

390 ===== T I T L E A M E N D M E N T =====

391 And the title is amended as follows:

392 Delete everything before the enacting clause

393 and insert:

394 A bill to be entitled

395 An act relating to telemedicine; creating s. 456.4501,

396 F.S.; providing a short title; creating s. 456.4502,

397 F.S.; defining terms applicable to the act; creating

398 s. 456.4503, F.S.; requiring physicians providing

399 telemedicine services to patients in this state to be

400 licensed in this state or to meet alternative

401 requirements; providing for disciplining out-of-state

402 physicians through affiliated entities operating in

403 this state; requiring pertinent records to be made

404 available upon request; providing certain exceptions

405 for emergency services and consultations; requiring

406 other health care providers to be supervised by a

407 physician; providing continuing education requirements

408 for telemedicine providers; establishing venue;

409 providing applicability; authorizing the licensing

410 boards to adopt rules; creating s. 456.4504, F.S.;

411 providing standards and prohibitions for the provision

412 of telemedicine services; prohibiting nonemergency

413 prescribing of a legend drug without a physical

414 examination; prohibiting the prescription of a

415 controlled substance using telemedicine; creating s.



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416 456.4505, F.S.; authorizing the use of telemedicine  
417 services in the diagnosis and treatment of the human  
418 eye; providing requirements for the use of automated  
419 equipment; requiring the owner or lessee of the  
420 automated equipment to maintain specified liability  
421 insurance under certain circumstances; prohibiting  
422 prescriptions for spectacles or contact lens based  
423 solely on the use of an autorefractor; creating s.  
424 456.4506, F.S.; providing requirements for  
425 reimbursement of telemedicine services under the  
426 Medicaid program; requiring a report to the  
427 Legislature on the usage and costs of telemedicine in  
428 Medicaid by a certain date; creating s. 456.4507,  
429 F.S.; providing the requirements for the reimbursement  
430 of telemedicine services by private health insurers;  
431 providing applicability; providing an effective date.