

FOR CONSIDERATION By the Committee on Health Policy

588-01505-14

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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, the "Florida
4 Telemedicine Act"; creating s. 456.4502, F.S.;
5 defining terms applicable to the act; creating s.
6 456.4503, F.S.; creating licensure and registration
7 requirements; providing applicability; authorizing the
8 health care boards and the Department of Health to
9 adopt rules; creating s. 456.4504, F.S.; providing
10 standards and prohibitions for the provision of
11 telemedicine; creating s. 456.4505, F.S.; providing
12 health insurer and health plan reimbursement
13 requirements for telemedicine; creating s. 456.4506,
14 F.S.; providing legislative findings; authorizing the
15 regulatory boards and the department to negotiate
16 interstate compacts for telemedicine; requiring an
17 annual report to the Governor and the Legislature on
18 the status of such compacts; requiring legislative
19 ratification of such compacts; creating s. 456.4507,
20 F.S.; providing requirements for reimbursement of
21 telemedicine services under the Medicaid program;
22 requiring a report to the Legislature on the usage and
23 costs of telemedicine in Medicaid by a certain date;
24 providing for future repeal; providing an effective
25 date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 456.4501, Florida Statutes, is created

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30 to read:

31 456.4501 Short title.—Sections 465.4501-465.4507 may be
32 cited as the "Florida Telemedicine Act."

33 Section 2. Section 456.4502, Florida Statutes, is created
34 to read:

35 456.4502 Definitions.— As used in this act, the term:

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

37 (2) "Advanced communications technology" means:

38 (a) Compressed digital interactive video audio, or data
39 transmissions;

40 (b) Real-time synchronous video or web-conferencing
41 communications;

42 (c) Secure web-based communications;

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

44 (e) Health care service transmissions supported by mobile
45 devices (mHealth); or

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

48 (3) "Distant site" means the location at which the
49 telemedicine provider delivering the health care service is
50 located at the time the service is provided via telemedicine.

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

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

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

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59 (7) "Originating site" means the location of the patient at
60 the time a health care service is being furnished via
61 telemedicine. The originating site may also mean the location at
62 which the advanced communications technology equipment that
63 facilitates the provision of telemedicine is located, with or
64 without the patient being present. An originating site is one of
65 the following:

66 (a) The office of a health care provider.

67 (b) A critical access hospital as defined in s. 1861(mm) (1)
68 of the Social Security Act.

69 (c) A rural health clinic as defined in s. 1861(aa) (2) of
70 the Social Security Act.

71 (d) A federally qualified health center as defined in s.
72 1861(aa) (4) of the Social Security Act.

73 (e) A hospital as defined in s. 1861(e) of the Social
74 Security Act.

75 (f) A hospital-based or critical access hospital-based
76 renal dialysis center, including satellites.

77 (g) A community mental health center as defined in s.
78 1861(ff) (3) (B) of the Social Security Act.

79 (h) A correctional facility.

80 (i) If the security and privacy of the advanced
81 communications technology can be verified by the distant site,
82 the patient's home.

83 (8) "Patient presenter" means an individual who has
84 clinical background training in the use of advanced
85 communications technology equipment and who is available at the
86 originating site to present the patient, manage the cameras or
87 equipment, and perform any hands-on activity necessary to

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88 successfully complete the telemedicine encounter.

89 (9) "Store and forward" means the type of telemedicine
90 encounter that uses still digital images of patient data for
91 rendering a medical opinion or diagnosis. The term includes the
92 asynchronous transmission of clinical data from one site to
93 another.

94 (10) "Telemedicine" means the use of advanced
95 communications technology by a health care provider or by a
96 health care provider acting under an appropriate delegation or
97 supervision as may be required by the appropriate board, or the
98 department if there is no board, to provide a health care
99 services. Services provided through telemedicine may include
100 patient assessment, diagnosis, consultation, treatment,
101 prescription of medicine, transfer of medical data, or other
102 medical-related services. The term does not include audio-only
103 calls, e-mail messages, or facsimile transmissions. Telemedicine
104 also includes telehealth and telemonitoring.

105 (11) "Telemedicine provider" means a health care provider
106 who provides telemedicine services to a patient physically
107 located in this state.

108 Section 3. Section 456.4503, Florida Statutes, is created
109 to read:

110 456.4503 Licensure and registration requirements.—

111 (1) An out-of-state health care provider who provides
112 telemedicine across state lines to a patient physically located
113 in this state must have a Florida license to practice a health
114 care profession or must meet the following telemedicine
115 requirements:

116 (a) Hold an unrestricted active license to practice his or

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117 her profession in the health care provider's state of residency;
118 and

119 (b) Complete telemedicine registration with the department
120 through a procedure established by the appropriate board for the
121 health care provider's area of practice, or the department if
122 there is no board; and

123 (c) Pay a biennial registration fee set by the applicable
124 board, not to exceed \$50.

125 (2) A registration issued under this section, regardless of
126 the location of the telemedicine provider, shall be treated as a
127 license for disciplinary action by the appropriate board in this
128 state, or the department if there is no board. A telemedicine
129 provider licensed in this state or registered to practice
130 telemedicine in accordance with this act is subject to this act,
131 the jurisdiction of this state's applicable board, other legal
132 and regulatory authorities in this state, as applicable, and the
133 jurisdiction of the courts of this state. The telemedicine
134 provider shall also make available any pertinent records upon
135 request of the board, the department, or the regulatory
136 authority. Failure to comply with such request may result in
137 revocation of the telemedicine provider's license or
138 registration at the discretion of the applicable board, or the
139 department if there is no board, or a fine as established by the
140 applicable board or the department, as applicable.

141 (3) Registration as a telemedicine provider is required
142 only for those out-of-state health care providers who engage in
143 the practice of telemedicine across state lines more than 10
144 times per calendar year. Physician consultations that occur on
145 an emergency basis are exempt from registration requirements.

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146 (4) This section does not prohibit or require licensure or
147 registration for consultations between an out-of-state health
148 care provider and a health care practitioner in this state or
149 for the transmission and review of digital images, pathology
150 specimens, test results, or other medical data by an out-of-
151 state health care provider or other qualified providers related
152 to the care of a patient in this state.

153 (5) This section does not preclude a health care provider
154 who acts within the scope of his or her practice from using the
155 technology of telemedicine within his or her practice or under
156 the direction and supervision of another health care provider
157 whose scope of practice includes the use of such technology. A
158 health care provider or patient presenter acting under the
159 direction and supervision of a physician through the use of
160 telemedicine may not be interpreted as practicing medicine
161 without a license. However, a health care provider must be
162 trained in, educated on, and knowledgeable about the procedure
163 and technology and may not perform duties for which the
164 practitioner does not have sufficient training, education, and
165 knowledge. Failure to have adequate training, education, and
166 knowledge is grounds for disciplinary action by the appropriate
167 board or the department if there is no board.

168 (6) The boards, or the department if there is no board, may
169 adopt rules to administer the requirements of this act and must
170 repeal rules that are inconsistent with this act, including
171 rules that prohibit the use of telemedicine in this state. The
172 appropriate board, or the department if there is no board, may
173 also develop standards and adopt rules relating to requirements
174 for patient presenters. Such rules may not require the use of

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175 patient presenters in telemedicine services if special skills or
176 training is not needed for a patient to participate in the
177 encounter.

178 Section 4. Section 456.4504, Florida Statutes, is created
179 to read:

180 456.4504 Telemedicine standards.—

181 (1) The standard of care as provided in s. 766.102 is the
182 same regardless of whether a health care provider provides
183 health care services in person or by telemedicine. The
184 applicable board for each health care provider, or the
185 department if there is no board, may adopt rules specifically
186 related to the standard of care for telemedicine.

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

196 (3) The telemedicine provider is not required to conduct a
197 patient history or physical examination of the patient before
198 engaging in a telemedicine encounter if the telemedicine
199 provider conducts a patient evaluation sufficient to meet the
200 community standard of care for the services provided.

201 (4) For the purposes of this act, the nonemergency
202 prescribing of a legend drug based solely on an electronic
203 questionnaire without a visual examination is considered a

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204 failure to practice medicine with the level of care, skill, and
205 treatment which is recognized by a reasonably prudent physician
206 or other authorized practitioners and is not authorized under
207 this act.

208 (5) A controlled substance may not be prescribed through
209 the use of telemedicine for chronic, nonmalignant pain.

210 (6) Medical records must be kept by each telemedicine
211 provider that participates in a patient telemedicine encounter
212 to the same extent as required for an in-person encounter under
213 state and federal law. Telemedicine providers are encouraged to
214 create electronic health records to record the encounter and to
215 transmit information in the most efficient manner possible.

216 (7) Any medical records generated, including records
217 maintained via video, audio, electronic, or other means, due to
218 a telemedicine encounter must conform to the confidentiality and
219 recordkeeping requirements of federal law, nationally recognized
220 health care accreditation organizations, and the laws and rules
221 of this state regardless of where the medical records of a
222 patient in this state are maintained.

223 (8) Telemedicine technology used by a telemedicine provider
224 must be encrypted and must use a recordkeeping program to verify
225 each interaction.

226 (9) In those situations in which a telemedicine provider
227 uses telemedicine technology provided by a third-party vendor,
228 the telemedicine provider must:

229 (a) Require a business associate agreement with the third-
230 party vendor; and

231 (b) Ensure that the third-party vendor complies with the
232 administrative, physical, and technical safeguards and standards

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233 set forth by the Health Information Technology for Economic and
234 Clinical Health (HITECH) Act and by federal regulations
235 implemented pursuant to HITECH.

236 (10) If a patient provides any of the telemedicine
237 technology, such as a patient-owned smartphone, tablet, laptop,
238 desktop computer, or video equipment, the telemedicine provider
239 must take steps to ensure that such technology:

240 (a) Complies with the administrative, physical, and
241 technical safeguards set forth by HITECH and by federal
242 regulations implemented pursuant to HITECH; and

243 (b) Is appropriate for the medical discipline for which the
244 technology is provided.

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

247 456.4505 Requirements for reimbursement.-

248 (1) If health care services provided through telemedicine
249 are an included benefit in a health insurance policy or health
250 plan coverage, such services must be paid in an amount equal to
251 the amount that a health care provider would have been paid had
252 such services been furnished without the use of advanced
253 communications technology.

254 (2) Reimbursement amounts for telemedicine providers at the
255 distant site and the originating site and any originating fees
256 are to be determined between the individual telemedicine
257 provider and the health insurer or health plan.

258 (3) This section does not preclude a health insurer or
259 health plan from imposing a deductible, a copayment, or a
260 coinsurance requirement for a health care service provided
261 through telemedicine if the deductible, copayment, or

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262 coinsurance does not exceed the amount applicable to an in-
263 person encounter for the same health care service.

264 (4) A health insurance policy or health plan may limit
265 coverage for health care services that are provided through
266 telemedicine to telemedicine providers that are in a network
267 approved by the health insurer or health plan without regard to
268 s. 627.6471 or s. 627.6472.

269 Section 6. Section 456.4506, Florida Statutes, is created
270 to read:

271 456.4506 Interstate compacts for telemedicine.—The
272 Legislature finds that lack of access to high-quality,
273 affordable health care services is an increasing problem, both
274 in this state and nationwide. The Legislature finds that this
275 problem could be alleviated by greater interstate cooperation
276 among, and by the mobility of, health care providers through the
277 use of telemedicine. Therefore, the executive directors of the
278 boards, together with the department, may negotiate one or more
279 interstate compacts for the provision of telemedicine services
280 across state lines. The department shall annually submit a
281 report on the status of any negotiated compacts to the Governor,
282 the President of the Senate, and the Speaker of the House of
283 Representatives. Any negotiated compacts shall be submitted by
284 December 31 for ratification by the Legislature during the next
285 regular legislative session.

286 Section 7. Section 456.4507, Florida Statutes, is created
287 to read:

288 456.4507 Telemedicine services under Medicaid.—

289 (1) The Agency for Health Care Administration shall
290 reimburse Medicaid services provided through telemedicine in the

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291 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 (6).

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

296 (3) Except as provided in subsection (6), the agency may
297 not require in-person contact between a health care provider and
298 Medicaid recipient as a prerequisite for payment for services
299 appropriately provided through telemedicine in accordance with
300 generally accepted health care practices and standards
301 prevailing in the applicable health care community at the time
302 the services are provided.

303 (4) A Medicaid service that is provided through a fee-for-
304 service or managed care program may not be denied as a
305 creditable Medicaid service solely because that service is
306 provided through telemedicine.

307 (5) Reimbursement of telemedicine services under Medicaid
308 shall be the amount negotiated between the parties involved to
309 the extent permitted under state and federal law. Regardless of
310 the reimbursement methodology or amount, telemedicine providers
311 located at the originating site and the distant site should both
312 receive reimbursement based on the services rendered, if any,
313 during the telemedicine encounter.

314 (6) If, after implementation, the agency determines that
315 the delivery of a particular service through telemedicine is not
316 cost-effective or does not adequately meet the clinical needs of
317 recipients and the determination has been documented, the agency
318 may discontinue Medicaid reimbursement for that telemedicine
319 service.

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320 (7) The agency shall submit a report on the usage and
321 costs, including savings, if any, associated with the provision
322 of health care services through telemedicine under the Medicaid
323 program by January 1, 2017, to the President of the Senate, the
324 Speaker of the House of Representatives, and the minority
325 leaders of the Senate and House of Representatives.

326 (8) This section is repealed June 30, 2017.

327 Section 8. This act shall take effect July 1, 2014.