HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 751 Telehealth
SPONSOR(S): Select Committee on Health Care Workforce Innovation; Cummings; Jones, M.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Health Care Workforce Innovation	15 Y, 0 N, As CS	McElroy	Calamas
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

CS/HB 751 amends ch. 456, F.S. to create s. 456.47, F.S., relating to the use of telehealth to provide health care services.

The bill authorizes Florida licensed health care professionals to use telehealth to deliver health care services within their respective scopes of practice. The bill also allows out-of-state health care professionals to use telehealth to provide health care services to Florida patients, if they meet certain eligibility requirements. The bill requires out-of-state health care professionals to register with the Department of Health or the applicable board and renew registration annually. It also provides exceptions to the registration requirement for telehealth used in emergencies, infrequently, or in physician to physician consultations.

The bill requires a telehealth provider to use the same standard of care currently applicable to health care health care services provided in-person.

The bill requires an in-person physical examination of the patient prior to providing services through telehealth, unless the telehealth provider conducts a patient evaluation through telehealth sufficient to diagnose and treat the patient.

The bill places no service location limitations on health care professionals or patients. Specifically, a patient receiving services through telehealth may be in any location at the time the services are rendered and a telehealth provider may be in any location when providing services through telehealth to a patient.

The bill requires a telehealth provider to document the telehealth services rendered in the patient's medical records according to the same standard as that required for in-person services. The bill requires those records to be confidential in accordance with the current confidentiality requirements placed upon health care facilities and health care professionals providing in-person services.

The bill authorizes the Department of Health to adopt rules to administer the requirements set forth in the bill.

The bill has an indeterminate fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Health Care Professional Shortage

There is currently a physician shortage in the U.S.[1] This shortage is predicted to continue into the foreseeable future and will likely worsen with the aging and growth of the U.S. population[2] and the passage of the Patient Protection and Affordable Care Act.[3] Aging populations create a disproportionately higher health care demand.[4] Additionally, as more individuals qualify for health care benefits, there will necessarily be a greater demand for more health care professionals to provide these services. There are several other factors which will likely increase the demand for a larger health care workforce. These include: [5]

- Shortage of healthcare professionals being educated, trained and licensed;
- Lack of specialists and health facilities in rural areas;
- Adverse events, injuries and illness at hospitals and physician's offices; and
- Need to improve community and population health.

Florida is not immune to the national problem and is experiencing a health care provider shortage itself. This is evidenced by the fact that there are 908 federally designated Health Professional Shortage Areas (HPSA) within the state. For example, Florida is currently experiencing a shortage of over 900 primary care physicians[6] and an unmet demand of over 1,500 physical therapists.[7]

Numerous solutions have been proposed to combat the health care professional shortage. These proposals seek to address both the current and future shortages. Long-term proposals include the creation of new scholarships and residency programs for emerging health care providers.[8] These proposals address the shortage in the future by creating new health care professionals. Short-term proposals include broadening the scope of practice for certain health care professionals[9] and more efficient utilization of our existing workforce through the expanded use of telehealth.[10]

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[1] For example, as of November 14, 2013, the U.S. Department of Health and Human Services has designated 5,800 Primary Care Health Professional Shortage Area (HPSA) (requiring 7,500 additional primary care physicians to eliminate the shortage), 4,600 Dental HPSAs (requiring 6,600 additional dentists to eliminate the shortage), and 3,700 Mental Health HPSAs (requiring 2,400 additional psychiatrists to eliminate the shortage). This information is available at the U.S. Department of Health and Human Services' Health Resources and Services Administration's website, http://www.hrsa.gov/shortage/ (last visited on February 28, 2014).

[2] There will be a significant increase in the U.S. population, estimated to grow 20 percent (to 363 million) between 2008-2030.

[3] *Department of Health and Human Services Strategic Plan: Goal 5: Strengthen the Nation's Health and Human Service Infrastructure and Workforce*, U.S. Department of Health and Human Services, http://www.hhs.gov/secretary/about/goal5.html (last visited on February 28, 2014).

[4] One analysis measured current primary care utilization (office visits) and projected the impact of population increases, aging, and insured status changes. The study found that the total number of office visits to primary care physicians will increase from 462 million in 2008 to 565 million in 2025, and (because of aging) the average number of visits will increase from 1.60 to 1.66. The study concluded that the U.S. will require 51,880 additional primary care physicians by 2025. Petterson, Stephen M., et al., "Projecting U.S. Primary Care Physician Workforce Needs: 2010-2025", Annals of Family Medicine, vol. 10, No. 6, Nov./Dec. 2012, available at: http://www.annfammed.org/content/10/6/503.full.pdf+html (last visited on February 24, 2014).

[5] *Telemedicine: An Important Force in the Transformation of Healthcare*, Matthew A. Hein, June 25, 2009.

[6] This information is available at the U.S. Department of Health and Human Services' Health Resources and Services Administration's website, http://www.hrsa.gov/shortage/ (last visited on February 28, 2014).

[7] Florida Department of Economic Opportunity's presentation to the Florida House of Representative's Select Committee on Health Care Workforce Innovation, January 15, 2014.

[8] U.S. Department of Health and Human Services, *supra* note 3.

[9] Id.

[10] *Department of Health and Human Services Strategic Plan: Goal 1: Strengthen the Nation's Health and Human Service Infrastructure and Workforce*, U.S. Department of Health and Human Services, http://www.hhs.gov/secretary/about/goal5.html (last visited on February 28, 2014).

Telehealth

There is no universally accepted definition of telehealth. In broad terms telehealth is:

> The delivery of health care services, where distance is a critical factor, by all health care professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment[11] and prevention of disease and injuries[12], research and evaluation, and for the continuing education of health care providers, all in the interests of advancing the health of individuals and their communities.[13]

More specific definitions vary greatly from country to country, as well as between the numerous states authorizing the use of telehealth to deliver health care services. In fact, definitions of telehealth occasionally differ between the various professions within a specific state.[14] There are however common elements among the varied definitions of telehealth.

Telehealth generally consists of synchronous and/or asynchronous transmittal of information.[15] Synchronous refers to the live[16] transmission of information between patient and provider during the same time period.[17] Asynchronous telehealth is the transfer of data over a period of time, and typically in separate time frames.[18] This is commonly referred to as "store and forward". Definitions of telehealth also commonly contain restrictions related to the location where telehealth may be used. For example, the use of the "hub and spoke" model is a common location restriction. A hub site is the location from which specialty or consultative services originate, i.e., the provider. A spoke site is a remote site where the patient is presented during the telehealth encounter. Under this model, health services may be provided through telehealth only if the patient is located at a designated spoke site and the provider is located at a designated hub site.

Telehealth is a broad term which includes telemedicine and telemonitoring. Telemedicine is focused on the delivery of traditional clinical services, like diagnosis and treatment. Telemonitoring is the process of using audio, video, and other telecommunications and electronic information processing technologies to monitor the health status of a patient from a distance.[19] Telehealth more broadly includes non-clinical services, such as patient and professional health-related education, public health and health administration.[20]

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[11] The University of Florida's Diabetes Center of Excellence utilizes telehealth to deliver treatment to children with diabetes and other endocrine problems who live in Volusia County. This allows the children to receive specialized treatment without the necessity of traveling from Volusia County to Gainesville. The Florida Department of Health's Children's Medical Services underwrites the program. https://ufhealth.org/diabetes-center-excellence/telemedicine (last visited on February 28, 2014).

[12] The University of South Florida has partnered with American Well to provide health care services to the residents of the Villages via telehealth. The goal is to reduce hospital admissions, readmission rates, and pharmacy costs, while maintaining Medicare beneficiaries in their homes rather than long-term care settings. http://hscweb3.hsc.usf.edu/blog/2012/06/22/usf-health-and-american-well-to-bring-telehealth-to-seniors-living-at-the-villages/ (last visited on February 28, 2014).

[13] *Telemedicine: Opportunities and Developments in Member States, Global Observatory for Ehealth Series- Volume 2,* Section 1.2, page 9.

[14] *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, November 2013.

[15] The majority of telehealth definitions allow for both synchronous and asynchronous transmittal of information. Some definitions however omit asynchronous from the definition of telehealth.

[16] This is also referred to as "real time" or "interactive" telehealth.

[17] *Telemedicine Nomenclature*, American Telemedicine Association, located at http://www.americantelemed.org/practice/nomenclature#.Uu1G6qNOncs (last visited on February 28, 2014). The use of live video to evaluate and diagnosis a patient would be considered synchronous telehealth.

[18] Id. A common example of synchronous telehealth is the transfer of x-rays or MRI images from one health care provider to another health care provider for review in the future.

[19] *Glossary and Acronyms*, U.S. Department of Health and Human Services http://www.hrsa.gov/ruralhealth/about/telehealth/glossary.html#t (last visited March 1, 2014).

[20] Id.

Telehealth is not a type of health care service but rather is a mechanism for delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner. These services include, among others, primary and specialty care services and health management.

Telehealth, in its modern form,[21] started in the 1960s in large part driven by the military and space technology sectors.[22] Specifically, telehealth was used to remotely monitor physiological measurements of certain military and space program personnel. As this technology became more readily available to the civilian market, telehealth began to be used for linking physicians with patients in remote, rural areas. As advancements were made in telecommunication technology, the use of telehealth became more widespread to include not only rural areas but also urban communities. Due to recent technology advancements and general accessibility, the use of telehealth has spread rapidly and is now becoming integrated into the ongoing operations of hospitals, specialty departments, home health agencies, private physician offices as well as consumer's homes and workplaces.[23] In fact, there are currently about 200 telehealth networks, with 3,500 service sites in the U.S.[24]

Telehealth is used to address several problems in the current health care system. Inadequate access to care is one of the primary obstacles to obtaining quality health care.[25] This occurs in both rural areas and urban communities.[26] Telehealth reduces the impact of this issue by providing a mechanism to deliver quality health care, irrespective of the location of a patient or a health care professional. Cost is another barrier to obtaining quality health care.[27] This includes the cost of travel to and from the health care facility, as well as related loss of wages from work absences. Costs are reduced through telehealth by decreasing the time and distance required to travel to the health care professional. Two more issues addressed through telehealth are the reutilization of health care services and hospital readmission. These often occur due to a lack of proper follow-up care by the patient[28] or a chronic condition.[29] These issues however can potentially be avoided through the use of telehealth and telemonitoring.

Telehealth and Federal Law

Several federal laws and regulations apply to which address the delivery of health care services through telehealth.

[21] Historically, telehealth can be traced back to the mid to late 19th century with one of the first published accounts occurring in the early 20th century when electrocardiograph data were transmitted over telephone wires. *Telemedicine: Opportunities and Developments in Member States, Global Observatory for Ehealth Series- Volume 2,* Section 1.2, page 9.
[22] *Telemedicine: Opportunities and Developments in Member States, supra* note14.
[23] *What is Telemedicine*, American Telemedicine Association, http://www.americantelemed.org/learn/what-is-telemedicine#.Uu6eGqNOncs (last visited on February 28, 2014).
[24] *Telemedicine Frequently Asked Questions*, American Telemedicine Association, http://www.americantelemed.org/learn/what-is-telemedicine/faqs#.Uu5vyaNOnct (last visited on February 22, 2014).
[25] U.S. Department of Health and Human Services, *supra* note 10.
[26] Id.
[27] Id.
[28] Post-surgical examination subsequent to a patient's release from a hospital is a prime example. Specifically, infection can occur without proper follow-up and ultimately leads to a readmission to the hospital.
[29] For example, diabetes is a chronic condition which can benefit by treatment through telehealth.

Prescribing Via the Internet

Federal law specifically prohibits prescribing controlled substances via the internet without an in-person evaluation. The federal regulation under 21 CFR §829 specifically states:

> No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.[30] However, the Ryan Haight Online Pharmacy Consumer Protection Act,[31] signed into law in October 2008, created an exception for the in-person medical evaluation for telehealth practitioners. The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

Medicare Coverage

Specific telehealth[32] services delivered at designated sites are covered under Medicare. The Federal Centers for Medicare and Medicaid Services' regulations require both a distant site and a separate originating site (hub and spoke model) under their definition of telehealth. Asynchronous (store and forward) activities are only reimbursed under Medicare in federal demonstration projects.[33] To qualify for Medicare reimbursement, the originating site must be:

- Located in a federally defined rural county;
- Designated rural;[34] or
- Identified as a participant in a federal telemedicine demonstration project as of December 21, 2000.[35]

In addition, an originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A critical access hospital;
- A rural health clinic;
- A federally qualified health center;
- A hospital;
- A hospital-based or critical access hospital-based renal dialysis center (including satellites);
- A skilled nursing facility; or
- A community mental health center.[36]

Protection of Personal Health Information

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[30] 21 CFR §829(e)(2).

[31] Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).

[32] Medicare covers a broader set of services using the term telehealth. Medicare defines telehealth as the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance.

[33] Only two states have a federal demonstration project that meets these qualifications, Hawaii and Alaska.

[34] The rural definition was expanded through a final federal regulation released on December 10, 2013 to include health professional shortage areas located in rural census tracts of urban areas as determined by the Office of Rural Health Policy. See 78 FR 74229, 74400-74402, 74812 (December 10, 2013).

[35] See 42 U.S.C. sec. 1395(m)(m)(4)(C)(i).

[36] See 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. Privacy rules were initially issued in 2000 by the U.S. Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's personal health information as well as create standards for information security.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.

Covered entities are obligated to meet HIPAA's requirements to ensure privacy and confidentiality personal health information, regardless of the method in which the medical service is delivered.

In 2009, the Health Information Technology for Economic Clinical Health (HITECH) Act was enacted as part of American Recovery and Reinvestment Act (ARRA).[37] The HITECH Act promoted electronic exchange and use of health information by investing $20 billion in health information technology infrastructure and incentives to encourage doctors and hospitals to use health information technology.[38] HITECH was intended to strengthen existing HIPAA security and privacy rules.[39] It expanded HIPAA to entities not previously covered; specifically, "business associates" now includes Regional Health Information Organizations, and Health Information Exchanges.[40] Similarly, it made changes to the privacy rule to better protect personal health information held, transferred, or used by covered entities.[41]

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in the electronic exchange of personal health information are subject to HIPAA and HITECH. These federal laws apply to covered entities in Florida, regardless of whether there is an express reference to them in Florida law.

Interstate Medical Licensure Compact

The Federation of State Medical Boards, a non-profit organization representing state medical boards that license and discipline allopathic and osteopathic physicians, has drafted eight consensus principles aimed at addressing the process of licensing and regulating physicians who practice across state lines. Under an interstate compact, the participating state medical boards would retain their licensing and disciplining authority but would share essential information to streamline the process for those physicians who practice across state lines, including telemedicine.[42] The draft of the Interstate Medical Licensure Compact, which would be voluntary on the part of both physicians and states, is expected to be released in 2014.[43]

Telehealth Barriers

[37] "Complying with the Health Information Technology for Economic and Clinical Health (HITECH) Act, HIPAA, Security and Privacy, and Electronic Health Records", Deloitte, December 2009, available at https://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_lshc_LeadingPracticesandSolutionsforPrivacyandSecurityGuidelines_031710.pdf, last viewed March 1, 2014.
[38] Id.
[39] Id.
[40] Id.
[41] Id.
[42] Federation of State Medical Boards, *Interstate Compact for Physician Licensure Moves Forward with Consensus Principles* (October 7, 2013), http://www.fsmb.org/pdf/nr_interstate_compact.pdf (last visited February 28, 2014).
[43] Federation of State Medical Boards, *State Medical Board Effort to Streamline Medical Licensing Gains Support in U.S. Senate* (January 14, 2014), http://www.fsmb.org/pdf/interstate_compact_senators_january13C.pdf (last visited February 28, 2014).

There are several barriers which impede the use of telehealth. These barriers include:[44]

- Lack of a standard definition for telehealth;
- Lack of standard regulations for the practice of telehealth;
- Licensure requirements which prohibit cross-state practice; and
- Restrictions on the location where telehealth services may be provided.

Standardized Definition

Lack of a standard definition[45] presents a barrier to the use of telehealth. As previously noted, there is no universally accepted definition. A health care professional is left to speculate as to whether the service he or she is providing constitutes telehealth. This can have far-reaching consequences which range from a denial of reimbursement for the services provided to an inquiry as to whether the services provided equate to the unlicensed practice of medicine. Florida law does not define telehealth.

Standardized Regulations

The absence of a uniform regulatory structure governing the use of telehealth presents another barrier to its use. Currently, 13 states[46] do not have a statutory structure for the delivery of health care services through telehealth.[47] This absence places the burden upon individual professionals to determine what is appropriate, and invites health professional licensing boards to fill the regulatory gap. This can lead to an inconsistent regulation of telehealth amongst the varying health care professions and impede the use of telehealth.

For example, a common telehealth regulation is the requirement that a health care professional conduct an in-person examination of the patient prior to providing services via telehealth.[48] Many times an exception is expressly contained within the regulation which allows the in-person requirement to be met through telehealth.[49] This exception however can vary between the differing health care professions in the absence of a uniform regulation. For example, an audiologist may be authorized to conduct the initial evaluation through telehealth while a physical therapist is required to perform an in-person physical examination prior to providing services through telehealth. There may not be any reasonable justification for this disparate treatment.

Licensure

Licensure requirements present one of the greatest barriers to the use of telehealth. States, not the federal government, license and regulate health care professionals.

Currently, 35 states prohibit health care professionals from providing health care services unless he or she is licensed in the state where the patient is located.[50] Most states have exceptions to this requirement, applicable only in certain limited circumstances, which include: [51]

- Physician-to-physician consultations (not between practitioner and patient);

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[44] *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, November 2013.
[45] No two states define telehealth exactly alike, although some similarities exist between certain states. *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, November 2013.
[46] This includes Florida.
[47] *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, November 2013. Even amongst states with telehealth statutory regulations, no two states regulate telehealth in exactly the same manner.
[48] *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, November 2013.
[49] Id.
[50] Id. This includes Florida.
[51] *Licensure and Scope of Practice FAQs,* Telehealth Resource Centers, http://www.telehealthresourcecenter.org/toolbox-module/licensure-and-scope-practice#what-are-the-exceptions-to-state-licensure-require (last visited on February 28, 2014).

- Educational purposes;
- Residency training;
- U.S. Military;
- Public health services; and
- Medical emergencies (Good Samaritan) or natural disasters.

Additionally, special telehealth license or certificate which allows an out-of-state licensed health care professional to provide health care services through telehealth to patients located within that particular state are currently offered in 9 states.[52] Four of these states (Montana, Nevada, Tennessee and Texas) however, only offer the telehealth license to board eligible or board certified specialists.

In the absence of an exception or a state regulation authorizing otherwise, it appears that a health care professional will have to be licensed in the state where the patient is located to provide health care services through telehealth. Requiring health care professionals to obtain multiple state licenses to provide health care services through telehealth may be burdensome and may inhibit the use of telehealth across state borders.

Location Restrictions

Generally, there are essentially two types of location restrictions. The first restricts the use of telehealth to certain designated areas within a state. For example, only individuals in areas designated as a rural area or a medically underserved area may be authorized to receive health care services through telehealth.

The second restriction relates to limitations on the specific location where telehealth services may be provided. The most common example of this type of limitation is the hub and spoke model.[53] Under this model, "hub" refers to the location to where the health care professional must be located while "spoke" refers to the location where the patient must be located.

The two types of restrictions are not mutually exclusive and are commonly used in conjunction. This presents a significant obstacle to access to care by placing arbitrary restrictions on the use of telehealth which inhibits the effectiveness, as well as the use of telehealth to deliver health care services.

<u>Telehealth in Florida</u>

Florida does not have a statutory structure for the delivery of health care services through telehealth. The only reference to telehealth in the Florida Statutes is contained within s. 364.0135, F.S. This statute is related to the promotion of broadband internet services by telecommunication companies and does not define or regulate telehealth in any manner. Further, the only references to telehealth in the Florida Administrative Code relate to the Board of Medicine, Board of Osteopathic Medicine, and the Child Protection Team Program. The Florida Medicaid program also outlines certain requirements relating to telehealth coverage in its rules.[54]

Florida Board of Medicine

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[52] *State Telehealth Laws and Reimbursement Policies*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, November 2013. These states are AL, LA, MN, MT, NM, NV, OH, TN and TX. Additionally, six states (HI, MD, MS, OR, PA and WA) provide exceptions to their state licensure requirements under limited circumstances, i.e. only for radiology or only for border states, or were not telehealth specific exceptions.

[53] Florida's Department of Health's Children's Medical Services Program (CMS) currently uses the hub and spoke model to provide services via telehealth to children enrolled in the program.

[54] *See* Agency for Health Care Administration, Florida Medicaid, "Practitioner Services Coverage and Limitations Handbook," December 2012, pg. 2-119, available at: http://portal.flmmis.com/FLPublic/Tab/125/content/public/handbooks/cl_12_12-12-01_practitioner_services_handbook.pdf.spage (last visited on February 28, 2014).

In 2003, the Florida Board of Medicine (Board) adopted Rule 64B8-9.014, F.A.C., "Standards for Telemedicine Prescribing Practice" (Rule).[55] The Rule sets forth requirements and restrictions for physicians and physician assistants prescribing medications.[56] The Rule also states that telemedicine "shall include, but is not limited to, prescribing legend drugs to patients through the following modes of communication: (a) Internet; (b) Telephone; and (c) Facsimile."[57] The Rule however fails to fully define telemedicine or regulate its use in any other way. The Board only regulates allopathic physicians, so this rule does not apply to any other profession.[58]

The Board recently adopted a new rule[59] setting forth standards for telemedicine.[60] The new rule defines telemedicine as the practice of medicine by a licensed Florida physician or physician assistant where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications.[61] The definition could be interpreted to limit the use of telemedicine to physicians and physician assistants; however, the Board does not have the authority to regulate other professions.[62] The new rule provides that:

- The standard of care is the same as that required for services provided in person;
- A physician-patient relationship may be established through telemedicine;
- A physician or physician assistant is responsible for the quality and safety of the equipment and used to provide services through telemedicine; and
- The same patient confidentiality and record-keeping requirements applicable to in-person services are applicable to services provided through telemedicine.[63]

The new rule however prohibits prescribing controlled substances through telemedicine.[64]

Child Protection Teams

The Child Protection Team (CPT) program under Children's Medical Services utilizes a telehealth network to perform child assessments. Rule 64C-8.001(9), F. A.C., relating to the Child Protection Team, defines telemedicine as "the use of telecommunication and information technology to provide clinical care to individuals at a distance and to transmit the information needed to provide that care." The CPT is a medically directed multi-disciplinary program that works with local Sheriff's offices and the Department of Children and Families in cases of child abuse and neglect to supplement investigative activities.[65] The CPT patient is seen at a "remote site" and a registered nurse assists with the medical exam. A physician or an advanced registered nurse practitioner is located at the "hub site" and has responsibility for directing the exam.

Hub sites are comprehensive medical facilities that offer a wide range of medical and interdisciplinary staff whereas the remote sites tend to be smaller facilities that may lack medical diversity. In 2013, CPT telehealth services were available at 14 sites and 437 children were provided medical or other assessments via telehealth technology.[66]

Florida Medicaid Program

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[55] The current telemedicine rules and regulations for the Board of Medicine and the Board of Osteopathic Medicine are virtually identical. Rules 64B8-9.014 and 64B15-14.008, F.A.C.
[56] Rule 64B8-9.014, F.A.C.
[57] Id.
[58] The Board of Osteopathic Medicine rule only applies to osteopathic physicians.
[59] The Board of Medicine and the Board of Osteopathic Medicine rules for telemedicine are identical.
[60] Rule 64B8-9.0141, F.A.C., which has an effective date of March 12, 2014.
[61] Rule 64B8-9.0141, F.A.C.
[62] The Board of Osteopathic Medicine definition only applies to osteopathic physicians.
[63] Id.
[64] Id.
[65] Florida Department of Health, *Child Protection Teams*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited February 28, 2014).
[66] Florida Department of Health, *Maternal and Child Health Block Grant Narrative for 2013, http://www.floridahealth.gov/healthy-people-and-families/womens-health/pregnancy/mch-fl-2013-1narrative.pdf* p.21, (last visited: February 28, 2014).

Florida's Medicaid program reimburses for a limited number of services provided by designated practitioners using telehealth.[67] Medicaid limits the use of telehealth to behavioral health, dental, and physician services. Audio only, email messages, facsimile transmissions, or communications with an enrollee through another mechanism other than the spoke site, known as the site where the patient is located, are not covered under Florida Medicaid.

The distant or hub site, where the provider is located, is eligible for reimbursement; the spoke site, where the patient is located, is not eligible for reimbursement unless a separate service is performed on the same day. Medicaid also requires that the referring physician and the patient be present during the consultation.[68]

Medicaid services are reimbursable only in the hospital outpatient, inpatient and physician office settings. During the 2013 Legislative Session, Medicaid provider enrollment requirements were revised to allow the enrollment of physicians actively licensed in Florida to interpret diagnostic testing results through telecommunications and information technology provided from a distance.[69]

Under the Medicaid Medical Assistance Program enacted in 2011, the vast majority of Medicaid recipients will be covered through managed care. Newly procured Medicaid contracts contain broader allowance for telehealth. Not only may plans use telehealth for behavioral health, dental, and physician services as before but, upon approval by the Agency for Health Care Administration, may also use telehealth to provide other covered services.[70] The new contract additionally eliminates numerous prior restrictions related to types of services and the type of providers who may utilize telehealth.[71]

Florida Emergency Trauma Telemedicine Network

Various designated trauma centers participate in the Florida Emergency Trauma Telemedicine Network (FETTN). Coordinated by the Department of Health (DOH), the FETTN, facilitates the treatment of trauma patients between trauma centers and community or rural hospitals.[72] The FETTN allows for multiple interface options and currently 7 out of 25 trauma centers are part of the network.[73] In 2011-12, the seven Level 1 or Level 2 trauma centers that participated as a hub site, known as the location where the consulting physician is delivering the services, were Holmes Regional Medical Center, Tallahassee Memorial Hospital, Sacred Heart Hospital, University of Miami, Shands-Gainesville, Shands-Jacksvonille, and Orlando Health.[74]

Other Department of Health Initiatives

The DOH utilizes tele-radiology through the Tuberculosis (TB) Physician's Network.[75] The ability to read electronic chest X-Rays remotely can lead to a faster diagnosis, treatment and a reduction in the spread of the disease, according to the department. This service is not currently reimbursed by Medicaid.

Jurisdiction and Venue

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[67] Section 409.919, F.S.; Agency for Health Care Administration, *Highlights of Practitioner Services Coverage and Limitations Handbook Presentation*, Bureau of Medicaid Services, Summer 2013, p.30.
[68] Id.
[69] *See* Chapter 2013-150, L.O.F., sec. 1.
[70] Model Agreement, Attachment II, Exhibit II A, Medicaid Managed Medical Assistance Program, Agency for Health Care Administration, February, 2014, available at http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#mmaplans (last viewed March 1, 2014).
[71] Id.
[72] Florida Department of Health, 2014 Agency Legislative Bill Analysis of HB 167, on file with the Florida House of Representative's Select Committee on Health Care Workforce Innovation (October 21, 2013).
[73] Id.
[74] Florida Department of Health, *Long Range Program Plan* (September 28, 2012).
[75] Florida Department of Health, *supra* note 72.

A Florida court has jurisdiction over a resident health care professional due to his or her presence in the state. For a nonresident health care professional, a Florida patient must establish in court that:

1) The health care professional subjected himself or herself to jurisdiction through Florida's long-arm statute; and
2) The health care professional had sufficient minimum contacts with the state so that he or she should reasonably anticipate being haled into court in Florida.[76]

Under the long-arm statute any health care professional (irrespective of whether he or she is a resident of the state) who commits certain enumerated acts is subject to the jurisdiction of Florida.[77] These acts include:[78]

- Operating, conducting, engaging in, or carrying on a business or business venture in this state;
- Committing a tortious act within this state;
- Causing injury to persons within this state arising out of an act or omission by a health care professional outside this state, if, at or about the time of the injury, the health care professional was engaged in solicitation or service activities within this state; and
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

"Venue" refers to the geographical area, that is the county or district, where a cause may be heard or tried.[79] For Florida residents, actions may be brought in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located.[80] An action against a non-resident may be brought in any county of the state.[81]

Effect of Proposed Changes

The bill amends ch. 456, F.S., to create s. 456.47, F.S., relating to the use of telehealth to provide health care services.

"Telehealth" is defined in the bill to mean the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services including, but not limited to, patient assessment, diagnosis, consultation, treatment, monitoring and transfer of medical data, patient and professional health-related education, public health and health administration. Thus, health care professionals can use telehealth to provide services to patients through both "live" and "store and forward" methods. It also authorizes the use of telemonitoring. Audio-only telephone calls, e-mail messages, and facsimile transmissions are expressly excluded from the definition of telehealth. The definition does not place any additional limitations on the type of technology that can be used in telehealth. However, both HIPAA and HITECH continue to apply to covered entities.

The bill defines "telehealth provider" as any person who provides health care related services using telehealth and who is licensed as one of the following professions:[82]

- Acupuncturist;
- Allopathic physician;
- Osteopathic physician;
- Chiropractor;

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[76] Venetian Salami Company v. Parthenais, 554 So.2d 499 (Fla. 1989).
[77] Section 48.193, F.S.
[78] Id.
[79] Metnick & Levy v. Seuling, 123 So.3d 639 (Fla. 4th DCA 2013).
[80] Section 47.011, F.S.
[81] Metnick & Levy v. Seuling *supra* note 79. This is subject to the doctrine of forum non conveniens.
[82] These are professionals licensed under ch. 457; ch. 458; ch. 459; ch. 460; ch. 461; ch. 463; ch. 464; ch. 465; ch. 466; ch. 467; part I, part III, part IV, part V, part X, part XIII, and part XIV, ch. 468; ch. 478; ch. 480; part III, ch. 483; ch. 484; ch. 486; ch. 490; or ch. 491.

- Podiatrist;
- Optometrist;
- Nurse;
- Pharmacist;
- Dentist;
- Midwife;
- Speech therapist;
- Occupational therapist;
- Radiology technician;
- Electrologist;
- Orthotist;
- Pedorthist;
- Prosthetist;
- Massage therapist;
- Optician;
- Hearing aid specialist;
- Clinical laboratory personnel;
- Respiratory therapist;
- Physical therapist;
- Psychologist;
- Psychotherapist;
- Dietician/Nutritionist; or
- Athletic trainer.

It also includes out-of-state professionals who meet certain criteria and register annually with the DOH or applicable board. To register a health care professional must:

- Hold an active, unencumbered license in a U.S. state or jurisdiction for one of the telehealth provider professions identified in the bill; and
- Never had his or her license revoked in any U.S. state or jurisdiction.

The bill provides exceptions to the registration requirement for emergencies, infrequent use, or physician to physician consultations. The bill prohibits registered telehealth providers from opening an office in this state and from providing in-person health care services to patients located in Florida. The bill requires registered telehealth providers to immediately notify the appropriate board or DOH of restrictions placed on, or disciplinary action taken against, the health care professional's license to practice in any state or jurisdiction.

The bill establishes that the standard of care for telehealth providers is the same as the standard of care for health care practitioners or health care providers providing in-person health care services to patients. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services.

The bill provides that a telehealth provider is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient. This requirement ensures that the technology utilized by the health care professional is appropriate for the health care service that he or she is providing. The bill also allows the evaluation to be performed using telehealth.

The bill provides that a patient receiving telehealth services may be in any location at the time that the telehealth services are rendered and that a telehealth provider may be in any location when providing telehealth services to a patient.

The bill requires that a telehealth provider document the telehealth services rendered in the patient's medical records according to the same standard as that required for in-person services. The bill

requires that such medical records be kept confidential in accordance with ss. 395.3025(4) and 456.057, F.S. Section 456.057, F.S., relates to all licensed health care professionals while s. 395.3025(4), F.S., relates to all health care facilities licensed under ch. 395 (hospitals, ambulatory surgical centers, and mobile surgical centers). Thus, the same confidentiality requirements placed upon health care facilities and health care practitioners for medical records generated as part of in-person treatment apply to any medical records generated as part of treatment rendered through telehealth.

The bill provides that a non-physician telehealth provider using telehealth and acting within the relevant scope of practice may not be interpreted as practicing medicine without a license.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Creates s. 456.47, F.S., relating to telehealth services.
Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. DOH's Division of Medical Quality Assurance (DOH/MQA) will experience a recurring increase in revenue associated with the required $75 registration fee for certain out-of-state health care practitioners to practice telehealth within the state. It is unknown how many out-of-state health care practitioners will apply for registration; therefore, the fiscal impact cannot be calculated at this time.

2. Expenditures:

   Indeterminate. DOH/MQA will incur a recurring increase in workload and costs associated with the new registration of out-of-state health care practitioners to practice telehealth. It is unknown how many out-of-state health care practitioners will apply for registration; therefore, the fiscal impact cannot be calculated at this time.

   DOH/MQA will incur a non-recurring cost for rulemaking, which current budget authority is sufficient to absorb.

   DOH/MQA will incur non-recurring workload and costs associated with the development of a registration application, yet current resources are adequate to absorb.

   DOH/MQA will incur a recurring increase in workload and indeterminate costs associated with the enforcement of the out-of-state health care practitioners practicing telehealth.

   The DOH's COMPAS licensure database would need to be updated to accommodate the registration requirements in the bill, but DOH's current resources are adequate to absorb any costs associated with the update.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority to DOH to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2014, the Select Committee on Health Care Workforce Innovation adopted an amendment to HB 751. The amendment:

- Broadens the scope of the bill by replacing the term “telemedicine” with the term “telehealth” throughout the bill;
- Authorizes all Florida licensed health care professionals to use telehealth to deliver health care services within their respective scopes of practice;
- Allows out-of-state health care professionals to use telehealth to provide health care services to Florida patients, requires them register with the DOH or the applicable board, and establishes eligibility requirements for registration;
- Provides exceptions to the registration requirement for emergencies, infrequent use, or physician to physician consultations;
- Allows both the patient and the treating health care professional to use telehealth from any location;
- Allows a health care professional to perform a patient evaluation, including the initial evaluation, using telehealth;
- Requires a telehealth provider to use the same standard of care for telehealth as for in-person health care services;
- Requires a telehealth provider to document the services provided via telehealth in the patient's medical records according to the same standard applicable for in-person services;
- Provides that a non-physician telehealth provider using telehealth and acting within the relevant scope of practice may not be interpreted as practicing medicine without a license; and
- Authorizes the DOH to adopt rules to administer the requirements set forth in the bill.

The bill was reported favorably as a Committee Substitute. This analysis is drafted to the Committee Substitute.