The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	SB 280
INTRODUCER:	Senator Bean
SUBJECT:	Telehealth
DATE:	January 12, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Pre-meeting**
2.			HP	
3.			AHS	
4.			AP	

I. Summary:

SB 280 provides specific authorization for the provision of health care services through telehealth. Telehealth is the provision of health care services using telecommunication technologies, which allows licensed practitioners in one location to diagnose and treat patients at a different location. The bill will remove regulatory ambiguity regarding the provision of health care services using this technology because it is not currently addressed in Florida Statutes.

The bill establishes practice standards, addresses the prescribing of controlled substances and ordering of medical marijuana through telehealth, and prescribes recordkeeping and patient consent. Further, the bill authorizes the Agency for Health Care Administration to reimburse for live video conferencing, store and forward service, or remote patient monitoring of covered services delivered by or under the direction of a licensed health care practitioner.

The bill encourages the State Group Insurance program to offer a selection of plans that include coverage of services provided through telehealth. The bill encourages an insurer offering workers' compensation insurance to include in the plan services provided through telehealth. Coverage of services through telehealth is currently not prohibited under current insurance laws.

Expanding the use of telehealth could help Florida address a significant health care provider shortage. This shortage is evidenced by the fact there are 647 federally designated Health Professional Shortage Areas (HPSA) within the state for primary care, dental care and mental health, and it is estimated that an additional 1,609 primary care, 1,169 dental care and 158 mental health practitioners are needed to eliminate these shortage areas in Florida.

Telehealth technology is currently being utilized to provide health care services nationally and in Florida. Telehealth technology can enable real-time communication between patients and health care practitioners (or between multiple practitioners) using live video conferencing; can securely store-

and-forward clinical data to offsite locations for evaluation by health care practitioners; and can support remote monitoring of patients' conditions.

The bill would have an indeterminate fiscal impact on the State Group Insurance program if telehealth services were covered. The bill does not mandate such coverage and current law does not prohibit such coverage.

There is no fiscal impact to the Agency for Health Care Administration or the Department of Health.

II. Present Situation:

Health Care Professional Shortage

There is currently a health care provider shortage in the U.S. Approximately 20 percent of the U.S. residents live in rural areas, but only 9 percent of physicians practice in these areas.[1] As of December 31, 2017, the U.S. Department of Health and Human Services[2] has designated 7,176 Primary Care Health Professional Shortage Area (HPSA), 5,866 Dental HPSA and 5,042 Mental Health HPSA.[3] An estimated 31,449 practitioners are needed to eliminate the shortage nationwide. Florida is experiencing a health care provider shortage. This is evidenced by the fact that there are 647 federally designated Health Professional Shortage Areas (HPSA) within the state for primary care, dental care and mental health,[4] and it would take an estimated 2,936 practitioners to eliminate these shortage areas in Florida.

Telehealth

The term, "telehealth," is sometimes used interchangeably with telemedicine. Telehealth, however, generally refers to a wider range of health care services that may or may not include clinical services.[5] Telehealth often collectively defines the telecommunications equipment and technology that are used to collect and transmit the data for a telemedicine consultation or evaluation. Telemedicine may refer to clinical services that are provided remotely via

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[1] Health Affairs, Health Policy Brief: *Telehealth Parity Laws*, (Aug. 15, 2016) (on file with Banking and Insurance Committee).

[2] *See* U.S. Department of Health and Human Services, Bureau of Health Workforce, Designated Health Professional Shortage Areas Statistics, *First Quarter of Fiscal Year 2018 Designated HPSA Quarterly Summary* (as of Dec. 31, 2017), available at; *https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_SCR50_Qtr_Smry_HTML&rc:Toolbar=false*. (last viewed Jan. 7, 2018).

[3] HPSA designations are used to identify areas and population groups within the U.S. that are experiencing a shortage of health professionals. The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. Federal regulations stipulate that in order for an area to be considered as having a shortage of providers, an area must have a population-to-provider ratio of a certain threshold. For example, for primary medical care, the population to provider ratio must be at least 3,500 to 1 (3,000 to 1 if there are unusually high needs in the community). *See https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D* (last viewed January 7, 2017).

[4] *Id.*

[5] Anita Majerowicz and Susan Tracy, *"Telemedicine: Bridging Gaps in Healthcare Delivery,"* Journal of AHIMA 81, no. 5, (May 2010): 52-53, 56. http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_047324.hcsp?dDocName=bok1_047324 (last viewed Jan. 1, 2018).

telecommunication technologies. There is no consensus among federal programs and health care providers on the definition of either term.

The federal Centers for Medicare & Medicaid Services (CMS) defines telehealth as:

> The use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance. Telehealth includes technologies such as telephones, facsimile machines, electronic mail systems, and remote patient monitoring devises, which are used to collect and transmit data for monitoring and interpretation.[6]

Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association,[7] telemedicine is a significant and rapidly growing component of health care in the U.S. There are currently about 200 telemedicine networks, with 3,500 service sites in the U.S. Nearly, one million Americans are currently using remote cardiac monitors and in 2011, the Veterans Administration delivered over 300,000 remote consultations using telemedicine. Over half of all U.S. hospitals now use some form of telemedicine. Around the world, millions of patients use telemedicine to monitor their vital signs, remain healthy and out of hospitals and emergency rooms. Consumers and physicians download health and wellness applications for use on their cell phones.

Florida Telehealth Advisory Council

In 2016, legislation[8] was enacted that required the Agency for Health Care Administration (agency), with assistance from the Department of Health (DOH) and the Office of Insurance Regulation (OIR), to survey health care practitioners, facilities, and insurers on telehealth utilization and coverage, and submit a report on the survey findings to the Governor, Senate President and Speaker of the House of Representatives by December 31, 2016. The law also created a 15-member Telehealth Advisory Council, and required it to submit a report with recommendations based on the survey findings to the Governor, Senate President and Speaker of the House of Representatives by October 31, 2017.

Summary of the Telehealth Advisory Council Survey Findings[9]

The types of health care services provided via telehealth in the state. The most frequent uses of telehealth reported by licensed health care facilities in Florida include neurology (including stroke care), home health/patient monitoring, primary care, behavioral health, and radiology.

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[6] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telemedicine*, available at https://www.medicaid.gov/medicaid/benefits/telemed/index.html (last viewed Jan. 5, 2018).
[7] *See* https://www.americantelemed.org/about/telehealth-faqs- (last viewed Jan. 5, 2018).
[8] Ch. 2016-240, Laws of Fla. The law designated the Secretary of the Agency for Health Care Administration as the council Chair, and designated the State Surgeon General & Secretary of the Department of Health as a member. The agency's Secretary and the Surgeon General appointed 13 council members representing specific stakeholder groups.
[9] *See* Telehealth Advisory Council website available at http://www.ahca.myflorida.com/SCHS/telehealth/ (last viewed Jan. 8, 2018).

About 44 percent of home health agencies responding to the agency's survey indicated using telehealth to assist with remote patient monitoring.

The extent to which telehealth is used by health care practitioners and health care facilities nationally and in the state. At the national level, an estimated 63 percent of practitioners use some type of telehealth platform to provide services. In contrast, only 6 percent of surveyed practitioners in Florida indicated they use telehealth for the provision of health care services. About 52 percent of hospitals in the U.S. use telehealth, and 45 percent of surveyed Florida hospitals stated they offer care through some form of telehealth. Major factors driving the adoption of telehealth include advancing technologies, an aging population, health practitioner shortage, and greater acceptance of innovative treatment by patients.

The estimated costs and cost savings to provide health care services. Benefits reported from health care facilities and professionals offering telehealth services include improved convenience for both patients and providers, improved efficiencies, and improved patient care outcomes. Financial barriers are the most frequently reported obstacles among health care facilities and providers during both implementation and ongoing operations of telehealth programs. The American Hospital Association notes that direct return on investment for health care providers is limited; particularly when there is limited coverage and reimbursement by health plans for the services offered by telehealth. Twenty five Florida health facilities and practitioners identify costs, reimbursement, and inability to determine a Return on Investment (ROI) as challenges in providing telehealth services.

The extent of insurance coverage for providing health care services via telehealth and how such coverage compares to coverage for in-person services. Some public and private payers limit reimbursement for health services offered through telehealth technology by the type of telehealth service offered and/or by the locations where care is provided and received. Approximately 43 percent of Florida health insurers indicate that they cover some form of telehealth services Companies who offer Medicare Advantage plans were shown as having the largest percentage of plans offering reimbursement to health care providers for service provided through telehealth technologies. Coverage typically is limited to certain delivery types and requires special coding. A majority of health insurers indicate very limited coverage.

As of December 2016, 28 states, and the District of Columbia, have active parity laws, which require private payer coverage and payment for telehealth services to be equitable with coverage and reimbursements for face-to-face health services. Additional states have passed similar parity laws that will become effective in 2017. Of this latter group, Massachusetts is the only state that has regulations exclusively requiring private insurance companies to reimburse for services provided through telehealth. The definition of telehealth in each of these states varies, and some state definitions may include limitations on the telehealth modalities encompassed in required coverage and payment models.

Notable differences in the state regulations include whether telehealth services must be reimbursed at the same rate as in-person services; or whether the state only requires that the same services be covered but allow for variable rates of reimbursement. Florida does not currently have any statutory requirements related to private payer parity for telehealth services. Some private payers in the state have voluntarily opted to provide coverage and reimbursement for telehealth services

According to the survey, 18 states provide Medicaid coverage and reimbursement for telehealth services. At least 17 states have some reimbursement for remote patient monitoring; and nine states reimburse for store and forward services under their Medicaid program.[10] Within each of these reimbursement models, there are variances in the types of services, specialties, providers, and locations that are covered. The Florida Medicaid fee-for-service rules were updated in June 2016 to expand telehealth payments to a broader array of practitioners. Similar to Medicare, Medicaid coverage in Florida is limited to live video conferencing, and pays the practitioner that provides the diagnosis only. With the vast majority of Florida Medicaid beneficiaries enrolled in managed care, Florida's Medicaid Managed Care plans are authorized to cover telehealth services with greater flexibility; however, there is no mandate for coverage. Based on survey responses by Florida health plans, coverage for telehealth is greatest for Medicaid Managed Care and Affordable Care Act Exchange Plans. Florida health care providers indicate very little reimbursement for telehealth services no matter the plan type.

Barriers to using or accessing services through telehealth. The primary issues related to telehealth often cited are financial, interoperability, and licensure. Florida providers and practitioners cited financial issues, such as inadequate reimbursement from payers, insufficient funding capital, and the inability to determine return on investment. An estimated 44 percent of the health plans surveyed noted government regulations and liability as barriers for covering telehealth services. The issue of interstate practice and reimbursement is among the legal issues health plans must consider. For example, health plans must ensure they are reimbursing health providers that are licensed appropriately in the jurisdiction where they are treating patients.[47] Florida facility and practitioner licensees who responded to the survey indicated the top three barriers to implementing telehealth involve finances: inadequate reimbursement from payers, insufficient funding capital, and the inability to determine return on investment.

Summary of Telehealth Advisory Council Recommendations

The report[11] contained the following recommendations:

1. **Create definition of telehealth and replace existing telehealth and telemedicine definitions in Florida statutes and rules.** Telehealth is defined as the mode of providing health care and public health services through synchronous and asynchronous information and communication technology by a Florida licensed health care practitioner, within the scope of his or her practice, who is located at a site other than the site where a recipient (patient or licensed health care practitioner) is located.
2. **Coverage Parity.** A health insurance policy issued, amended, or renewed on or after July 1, 2018, shall provide coverage for services (excluding Medicare plans) provided via telehealth

[10] *See* Center for Connected Health Policy, *50 State Scan of Telehealth Reimbursement Laws and Medicaid Policies-Factsheet* (Mar. 2017) (on file with Banking and Insurance Committee). In their recent state survey[10] of Medicaid telehealth reimbursement laws, they noted 48 states provide reimbursement for some form of live video in Medicaid fee for service; 13 states reimburse for state and forward delivered services; 22 states reimburse for remote patient monitoring; 9 states reimburse for all three of the above services; and 31 states provide a transmission and/or facility fee.

[11] *See* Telehealth Advisory Council, *Expanding Florida's Use and Accessibility of Telehealth* (Oct. 31, 2017), available at http://www.ahca.myflorida.com/SCHS/telehealth/docs/TAC_Report.pdf (last visited January 5, 2017).

to the same extent the services are covered, if provided in-person. An insurer shall not impose any additional conditions for coverage of services provided via telehealth.[12]

3. **Payment Parity.** For the purpose of health insurance payment (excluding Medicare plans), payment rates for services provided via telehealth shall be equivalent to the rates for comparable services provided via in-person consultation or contact contained in the participation agreement between the insurer and the health care practitioner.[13]
4. **Medicaid Reimbursement.** The council recommends the agency modify the Medicaid telehealth fee-for-service rule to include coverage of store-and-forward and remote patient monitoring modalities in addition to the currently reimbursed live video conferencing modality.
5. **Medicaid Network Adequacy.** The council recommends the agency develop a model that would allow Medicaid Managed Care plans to utilize telehealth for meeting network adequacy.
6. **Interstate Licensure.** In order to ensure the best care for Florida patients and maximize available resources and access to care, the council recommends the following:
   - Maintain the requirement of Florida licensure for health practitioners providing patient care in Florida via telehealth. This recommendation requires no change to current regulations and does not inhibit the use of telehealth to treat patients.
   - The legislature adopt laws allowing participation in health care practitioner licensure compacts that have licensure requirements that are equivalent to or more stringent than Florida Law.
7. **Standards of Care.** To ensure clarity for Florida licensed health care practitioners and stakeholders regarding the ability to use telehealth as a modality of care, the council recommends the DOH, healthcare regulatory boards and councils continue to educate and raise awareness among licensees that they may use telehealth modalities to serve patients.
8. **Patient-Practitioner Relationships and Continuity of Care**. The council offers the following language for inclusion in Florida statutes: A health care practitioner-patient relationship may be established through telehealth.
9. **Patient Consent.** The council recommends maintaining current consent laws in Florida.
10. **Telehealth and Prescribing.** The council offers the following language:
    Health care practitioners, authorized by law, may prescribe medications via telehealth to treat a patient as is deemed appropriate to meet the standard of care established by his or her respective health care regulatory board or council. The prescribing of controlled substances through telehealth should be limited to the treatment of psychiatric disorders and emergency medical services. This should not prohibit an authorized, health care practitioner from ordering a controlled substance for an inpatient at a facility licensed under ch. 395, F.S., or a patient of a hospice licensed under ch. 400, F.S.

[12] According to the report, the intent of this recommendation is to ensure appropriate insurance coverage for the use of telehealth in treating patients. Any legislative language developed should not require insurers to add additional service lines or specialties, mandate a fee-for-service arrangement, inhibit value-based payment programs, or limit health care insurers and practitioners from negotiating contractual coverage terms.

[13] According to the report, the intent of this recommendation is to ensure appropriate insurance reimbursement for the use of telehealth in treating patients. Any legislative language developed should not require insurers to add additional service lines or specialties, mandate fee-for-service arrangements, inhibit value-based payment programs, limit health care insurers and practitioners from negotiating contractual coverage terms, or require insurers to pay for facsimiles or audio only communication.

11. **Technology and Health Care Facilities/Practitioners.** The council notes that technology-related barriers for practitioners will decrease as technological advances and market forces drive cost reductions. Barriers remain related to interoperability of health care information systems. The council recommends:
    - The agency identify existing resources for health information exchange to expand interoperability between telehealth technologies and integration into electronic health record (EHR) platforms.
    - The agency continue promotion of existing programs and services available to increase access to technology, access to broadband networks, and improved interoperability.
    - Medical schools, schools of allied health practitioners, and health care associations provide information and educational opportunities related to the utilization to telehealth for serving patients.

Florida Board of Medicine

Florida's Board of Medicine (board) convened a Telemedicine Workgroup in 2013 to review its rules on telemedicine, which had not been amended since 2003. The 2003 rules focused on standards for the prescribing of medicine via the Internet. On March 12, 2014, the board's new Telemedicine Rule, 64B8-9.0141, became effective for Florida-licensed physicians. The new rule defined telemedicine,[14] established standards of care, prohibited the prescription of controlled substances, permitted the establishment of a doctor-patient relationship via telemedicine, and exempted emergency medical services.[15]

Two months after the initial rule's implementation, the board proposed the development of a rule amendment to address concerns that the prohibition on physicians ordering controlled substances may also preclude physicians from prescribing controlled substances via telemedicine for hospitalized patients. The board indicated such a prohibition was not intended.[16] The amended rule took effect July 22, 2014. Additional changes followed to clarify medical record requirements and the relationship between consulting or cross-coverage physicians. On December 18, 2015, the board published another proposed rule change to allow controlled substances to be prescribed through telemedicine for the limited treatment of psychiatric disorders.[17] The proposed rule amendment, Rule 64B8-9.0141-Standards for Telemedicine Practice, became effective March 7, 2016.[18]

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[14] The term, "telemedicine," is defined to mean 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. Telemedicine shall not include the provision of health care services only through an audio only telephone, email messages, text messages, facsimile transmission, U.S. Mail or other parcel service, or any combination thereof.

[15] Rule 64B15-14.0081, F.A.C., also went into effect March 12, 2014, for osteopathic physicians.

[16] Florida Board of Medicine, *Latest News - Emergency Rule Related to Telemedicine,* http://flboardofmedicine.gov/latest-news/emergency-rule-related-to-telemedicine/ (last visited Jan. 14, 2016).

[17] Vol. 41/244, Fla. Admin. Weekly, Dec. 18, 2015, available at https://www.flrules.org/BigDoc/View_Section.asp?Issue=2011&Section=1 (last visited Feb. 8, 2016).

[18] Florida Board of Medicine, Latest News, Feb. 23, 2016, available at http://flboardofmedicine.gov/latest-news/board-revises-floridas-telemedicine-practice-rule/ (last viewed Jan. 7, 2018).

Florida's Medicaid Program[19]

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (agency) oversees the Medicaid program.[20] The Statewide Medicaid Managed Care (SMMC) program is comprised of the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) managed care program. The agency contracts with managed care plans to provide services to eligible enrollees.[21] Under the Managed Medical Assistance (MMA) component of Statewide Medicaid Managed Care, managed care plans may use telemedicine for behavioral health, dental services, and physician services.[22] The AHCA may also approve other telemedicine services provided by the managed care plans if approval is sought by those plans under the MMA component.

Florida Medicaid has adopted a rule on telemedicine, which authorizes services to be delivered via telemedicine. The rule defines telemedicine as the practice of health care delivery by a practitioner who is located at a site other than the site where a recipient is located for the purposes of evaluation, diagnosis, or treatment.[23] Further, telemedicine services must be provided by licensed practitioners operating within their scope of practice and involve the use of interactive telecommunications equipment which includes, at a minimum, audio and video equipment permitting two-way, real time, communication between the enrollee and the practitioner.[24] Additionally, the rule provides that Medicaid reimburses a practitioner rendering services in the fee-for-service delivery system who is providing the evaluation, diagnosis, or treatment recommendation located at a site other than where the recipient located. medically needed consultations for a recipient, independent of telemedicine.

Equipment is also required to meet specific federal technical safeguards, which require implementation of procedures for protection of health information, including unique user identifications, automatic log-offs, encryption, authentication of users, and transmission security.[25] Telemedicine services must also comply with all other state and federal laws regarding patient privacy.

Florida Medicaid and the federal Medicaid statute consider telemedicine to be a delivery system rather than a distinct service; as such, Florida Medicaid does not have reimbursement rates specific to the telemedicine mode of service. In the fee-for-service system, Florida Medicaid reimburses services delivered via telemedicine at the same rate and in the same manner as if the

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[19] *See* Agency for Health Care Administration, *Legislative Analysis of SB 280* (Oct. 9, 2017) (on file with Senate Committee on Banking and Insurance.

[20] Part III of ch. 409, F.S., governs the Medicaid program.

[21] A managed care plan that is eligible to provide services under the SMMC program must have a contract with the agency to provide services under the Medicaid program and must also be a health insurer; an exclusive provider organization or a HMO authorized under ch. 624, 627, or 641, F.S., respectively; a provider service network authorized under s. 409.912(2), F.S., or an accountable care organization authorized under federal law. Section 409.962, F.S.

[22] Agency for Health Care Administration, *2012-2015 Medicaid Health Plan Model Agreement Attachment II - Exhibit II-A,* p. 63-64 http://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Attachment_II_Exhibit_II-A_MMA_Model_2014-01-31.pdf , (last visited Jan. 14, 2016).

[23] *See* Rule 59G-1.057, F.A.C. (Jun. 6, 2016).

[24] *Id.*

[25] 45 CFR s. 164.312

service were delivered face-to-face. Medicaid health plans can negotiate rates with providers, so they have the flexibility to pay different rates for services delivered via telemedicine.

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.[26] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[27] As part of the certification process used by the agency, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.[28]

The Office of Insurance Regulation licenses and regulates workers compensation insurance companies or carriers.[29] Further, the OIR regulates workers' compensation rates pursuant to authority granted under part I of ch. 627, F.S. Florida uses a full rate system, which requires the rate to include benefits, loss adjustment expenses, commissions, taxes, general administrative expenses and profits and contingencies. The OIR must approve or disapprove rates in the voluntary market prior to the rates becoming effective.[30]

Florida Department of Financial Services

Administration of the Workers' Compensation System. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. These functions include the enforcement of coverage requirements, administration of workers' compensation health care delivery system, assisting injured workers, employers, carriers, and providers in fulfilling their responsibilities under ch. 440, F.S. Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.[31] Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.32 Medical services must be provided by a health care provider authorized by the carrier prior to being provided (except for emergency care).[33]

State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a

[26] Section 20.121(3)(a), F.S.
[27] Section 641.21(1), F.S.
[28] Section 641.495, F.S.
[29] Section 20.121(3), F.S.
[30] Section 627.101, F.S.
[31] "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. (s. 440.13(1)(d), F.S.)
[32] Section 440.13(2)(a), F.S.
[33] Section 440.13(3)(a), F.S.

cafeteria plan consistent with s. 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a PBM for the state employees' prescription drug program pursuant to s. 110.12315, F.S. Currently, telehealth benefits are not offered through the program. The program's self-insured and fully insured health plans either have agreements in place with telehealth medicine service providers or have the capability to offer the service through their own internal programs.

Federal Telemedicine Provisions

Federal laws and regulations address telemedicine from several perspectives, including prescriptions for controlled substances, hospital emergency room guidelines, and reimbursement rates for the Medicare program.

Prescribing Via the Internet

Federal law specifically prohibits the prescribing of controlled substances via the Internet without an in-person evaluation. Federal regulation 21 CFR s. 829 provides:

> 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.[34] However, the Ryan Haight Online Pharmacy Consumer Protection Act,[35] signed into law in October 2008, created an exception for the in-person medical evaluation for telemedicine practitioners. The practitioner is still subject to the requirement that all controlled substances be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April 2009, as required under the Haight Act.[36] The federal regulatory definition of telemedicine under the DEA includes, but is not limited to, the following elements:

- The patient and practitioner are located in separate locations;
- Patient and practitioner communicate via a telecommunications system;
- The practitioner must meet other registration requirements for the dispensing of controlled substances via the Internet; and
- Certain practitioners (Department of Veterans Affairs' employees, for example) or practitioners in certain situations (public health emergencies) may be exempted from registration requirements.[37]

[34] 21 CFR s. 829(e)(2).
[35] Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).
[36] Id., at sec. 3(j).
[37] 21 CFR s. 802(54).

Medicare Coverage

Specific telehealth services delivered at designated sites are covered under Medicare. Regulations of federal CMS require both a distant site (location of physician delivering the service via telecommunications) and an originating site (location of the patient).

To qualify for Medicare reimbursement, the Medicare beneficiary must be located at an originating site that meets one of three qualifications. These three qualifications are:

- A rural health professional shortage area (HPSA) that is either outside a metropolitan statistical area (MSA) or in a rural census tract;
- A county outside of an MSA; or
- Participation in a federal telemedicine demonstration project approved by the Secretary of Health and Human Services as of December 31, 2000.[38]

Additionally, federal requirements provide that 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 hospital;
- A critical access hospital (CAH);
- A rural health clinic;
- A federally qualified health center;
- A hospital-based or CAH-based renal dialysis center (including satellite offices);
- A skilled nursing facility; or
- A community mental health center.[39]

Under Medicare, distant site practitioners are limited, subject also to state law, to:

- Physicians;
- Nurse practitioners;
- Physician assistants;
- Nurse-midwives;
- Clinical nurse specialists;
- Certified registered nurse anesthetists;
- Clinical psychologists and clinical social workers; and
- Registered dietitians and nutrition professionals.

For 2015, Medicare added new services under telehealth:

- Annual wellness visits;
- Psychoanalysis;
- Psychotherapy; and

[38] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services- Rural Health Fact Sheet* (Dec. 2014), http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf (last visited Jan. 7, 2018).
[39] *See* 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

- Prolonged evaluation and management services.[40]

Protection of Personal Health Information

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Privacy rules were initially issued in 2000 by the federal Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information and create standards for privacy rights. Additional privacy and security measures were adopted in 2009 with the Health Information Technology for Economic Clinical Health (HITECH) Act.

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 the entities listed above.

While not a covered entity as an individual, the patient still maintains his or her privacy and confidentiality rights regardless of the method in which a medical service is delivered. The HITECH Act specifically identified telemedicine as an area for review and consideration, and funding was provided to, in part, strengthen infrastructure and tools to promote telemedicine.[41]

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in telemedicine is required to meet the same technical and physical HIPAA and HITECH requirements as would be required for a physical office visit. These requirements include ensuring that the equipment and technology are HIPAA compliant.

III. Effect of Proposed Changes:

Section 1 amends s. 110.123(3)(b), F.S., relating to the State Group Insurance program, to encourage the Division of State Group Insurance to offer plans which cover the provision of medical services through telehealth. Currently, such coverage of such services are not prohibited by law.

Section 2 amends s. 409.906, F.S., relating to Medicaid optional services eligible for reimbursement, to provide that the agency may reimburse for live video conferencing, store and forward service, or remote patient monitoring.
- Live Video Conferencing: Florida Medicaid currently reimburses practitioners functioning within their scope of practice for live video conferencing through the existing telemedicine rule (Rule 59G-1.057, F.A.C.). There is no operational or fiscal impact to the Florida Medicaid program, as this service modality is currently reimbursable.
- Store and Forward: Florida Medicaid offers store and forward as a covered benefit, however, it is not included in the Medicaid telemedicine rule, but rather is included in other coverage

[40] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters* (Dec. 24, 2014), http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM9034.pdf (last visited Jan. 7, 2018).
[41] Public Law 111-5, s. 3002(b)(2)(C)(iii) and s. 3011(a)(4).

policies and fee schedules. For example, Florida Medicaid reimburses for laboratory tests, diagnostic tests, and x-rays independent of and in addition to the practitioner's reading, consultation, or diagnosis based upon these items. Additionally, Florida Medicaid reimburses for medically needed consultations for a recipient, independent of telemedicine.

- Remote Patient Monitoring: Florida Medicaid does not currently have the authority to reimburse for remote patient monitoring of a covered service. Remote patient monitoring can include the reporting of vital signs, weight, blood pressure, oxygen levels, heart rate, and blood sugar. Florida Medicaid reimburses for devices such as pulse oximeters and continuous glucose monitors, and this provision would provide authority for the agency to reimburse for the remote monitoring service.

Section 3 creates s. 456.4501, F.S., which addresses the provision of healthcare services through telehealth. The section provides definitions of the terms "information and telecommunications technologies," "store and forward," "synchronous," and "telecommunications system," which are terms used in defining the technological means by which telehealth services may be provided. This subsection also defines the term, "telehealth," as the mode of providing health care services and public health care services by a Florida licensed practitioner, through synchronous and asynchronous information and telecommunication technologies where the practitioner is located at a site other than the site where the receipient, whether a patient or another licensed practitioner, is located. The bill describes the types of allowable telecommunication technologies. Florida Medicaid health plans currently provide text-messaging services as a tool to interact with recipients.

Finally, the subsection defines "telehealth provider" as a person providing health care services and related services through telehealth, and who is licensed under ch. 457, F.S. (acupuncture); ch. 458, F.S. (medical practice); ch. 459, F.S. (osteopathic medicine); ch. 460, F.S. (chiropractic medicine); ch. 461, F.S. (podiatric medicine); ch. 462, F.S. (naturopathy); ch. 463, F.S. (optometry); ch. 464, F.S. (nursing); ch. 465, F.S. (pharmacy); ch. 466, F.S. (dentistry); ch. 467, F.S. (midwifery); part I (speech-language pathology and audiology), part III (occupational therapy), part IV (radiological personnel), part V (respiratory therapy), part X (dietetics and nutrition practice), part XIII (athletics trainers), or part XIV (orthotics, prosthetics, and pedorthics) of ch. 468, F.S.; ch, 478, F.S. (electrolysis); ch. 480, F.S. (massage practice); parts III (clinical lab personnel) and IV (medical physicists) of ch. 483, F.S.; ch. 484, F.S. (dispensing of optical devices and hearing aids); ch. 486, F.S. (physical therapy); ch. 490, F.S. (psychological services); or ch. 491, F.S. (clinical, counseling, and psychotherapy services); or who is certified under s. 393.17, F.S., (behavior analyst) or part III of ch 401, F.S. (medical transportation services).

Subsection (2) contains practice standards for the provision of telehealth services. The standard of care for a telehealth provider is the same as that for an in-person health care provider. However, a telehealth provider is not required to research patient's medical history or conduct a physical examination if a patient evaluation conducted by telehealth is sufficient to diagnose and treat the patient. The bill specifies that the telehealth provider and the patient may be in separate locations and telehealth providers who are not physicians, and who are acting within their relevant scope of practice, are not practicing medicine without a license.

The bill specifically provides that telehealth providers who are licensed to prescribe schedule I through V controlled substances may prescribe those controlled substances through telehealth except that those controlled substances may not be prescribed through telehealth to treat chronic nonmalignant pain or to issue a physician certification for marijuana pursuant to s. 381.986, F.S. This subsection does not apply when prescribing a controlled substance for an inpatient at a facility licensed under ch. 395, F.S., or a patient of a hospice licensed under ch. 400, F.S. The Department of Health, in coordination with the relevant boards, is instructed to develop and disseminate educational materials for licensees on using telehealth modalities to treat patients by January 1, 2019.

Subsection (3) provides that a patient's medical records must be updated by a telehealth provider according to the same standards that apply to an in-person healthcare provider. Finally, subsection (4) of s. 456.4501, F.S., is created to provide that while a patient need not specifically consent to be treated via telehealth, they must still provide consent for treatment as provided under current law. The patient would retain the right to withhold consent for any particular procedure or treatment to be provided through telehealth.

Section 4 amends s. 627.0915, F.S., to encourage insurers who offer rate plans approved under this section to include coverage for services provided through telehealth. Currently such coverage is not prohibited by law.

Section 5 provides that the effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Telehealth offers patients and providers benefits that include reduced healthcare costs, increased patient access to providers, especially in medically underserved areas,

improved quality and continuity of care, and faster and more convenient treatment resulting in reduction of lost work time and travel costs for patients.

The bill would authorize Medicaid to reimburse for the remote patient monitoring of a covered service. Remote monitoring has the potential to increase patients' engagement in maintaining their own health, provider communication, and patient compliance with recommended treatment, all of which could reduce preventable emergency department visits and hospitalizations. Preventing the unnecessary use of intensive services such as emergency department visits improves health outcomes and can reduce overall health care costs.

Some studies have suggested that telehealth may increase access to care but may not decrease spending. One recent study found that 12 percent of consumer telehealth visits replaced visits to other providers and 88 percent represented new utilization.[42] However, it is unclear whether a recent study considered the long-term impact of increased utilization of preventative care, which may keep patients out of the hospital, and prevent conditions that are more serious and more expensive. Therefore, those savings could make up for the costs of extra visits.[43]

C. Government Sector Impact:

Department of Health. The Department of Health anticipates incurring non-recurring increase in workload and costs associated with the development and dissemination of educational materials for licensees on using telehealth modalities to treat patients. The impact is indeterminate at this time, yet it is anticipated that current resources and budget authority are adequate to absorb.[44]

Agency for Health Care Administration. To maintain uniform naming conventions and practice standards throughout the State's policies, the Agency will need to amend the Medicaid state plan, which will require federal approval.

Division of State Group Insurance. Although the bill does not mandate it, the addition of telehealth benefits to the program would result in an increase of administrative costs per enrollee. Telehealth benefits may also result in cost avoidance in the program's current spend on emergency room and urgent care visits, but any such impacts cannot be determined at this time. The Division would have to budget for the new service option and may need to amend the contracts with its health plans. The Division's health plans estimated the following fiscal impacts to the program:

- Aetna: $0.25 per member per month (PMPM) administrative fee plus $3.00 per telehealth consultation.
- AvMed: $0.30 PMPM administrative fee plus $0.33 PMPM in claims cost if 10 percent utilization achieved.

[42] HEALTH AFFAIRS 36, No. 3 (2017): 485-491.
[43] MobiHealthNews, *Why the utilization conversation in telemedicine is bigger than dollars and cents,* (Mar. 9, 2017) available at http://www.mobihealthnews.com/content/why-utilization-conversation-telemedicine-bigger-dollars-and-cents (last viewed Jan. 9, 2017).
[44] Department of Health, *Analysis of SB 280* (Oct. 12, 2017) (on file with Senate Banking and Insurance Committee).

- Capital Health Plan: $0.13 PMPM administrative fee.
- United Healthcare: Indeterminate.
- Florida Blue: $0.65 PMPM administrative fee.[45]

VI. Technical Deficiencies:

Section 1 of the bill encourages the Division of State Group Insurance to offer plans that cover the provision of medical services through telehealth. Currently, it appears such a delivery service is not prohibited by law and can be offered. It is unclear what the section is requiring of the Department of Management Services. Are they required to provide incentives to plans that provide telehealth?

Section 4 amends ch. 627, F.S., relating to ratemaking, encourages insurers who offer workers' compensation rate plans approved under this section to include coverage for services provided through telehealth. However, ch. 440, F.S., governing the provision of workers' compensation medical benefits does not prohibit telehealth as a type of medical service delivery. Any medical service or procedure requires authorization from the carrier. It is unclear what type of incentives would be offered by the Department of Financial Services or the OIR.

The term, "non-physician telehealth provider," at line 139 is not defined.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.123, 409.906, 456.4501, and 627.0915.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[45] Department of Management Services, *Analysis of SB 280* (Jan. 5, 2018) (on file with Senate Banking and Insurance Committee).