

By Senator Harrell

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1 A bill to be entitled
2 An act relating to telehealth; amending s. 409.967,
3 F.S.; prohibiting Medicaid managed care plans from
4 using providers who exclusively provide services
5 through telehealth to achieve network adequacy;
6 deleting obsolete language; creating s. 456.4501,
7 F.S.; defining the terms "telehealth" and "telehealth
8 provider"; establishing certain practice standards for
9 telehealth providers; prohibiting a telehealth
10 provider from using telehealth to prescribe a
11 controlled substance; providing exceptions; clarifying
12 that prescribing medications based solely on answers
13 to an electronic medical questionnaire constitutes a
14 certain failure to practice medicine; specifying
15 equipment and technology requirements for telehealth
16 providers; providing recordkeeping requirements;
17 providing applicability; defining the terms "emergency
18 medical services" and "emergency medical condition";
19 authorizing the applicable board or the Department of
20 Health to adopt rules; creating s. 627.42393, F.S.;
21 providing reimbursement requirements for health
22 insurers relating to telehealth services; amending s.
23 641.31, F.S.; prohibiting a health maintenance
24 organization from requiring a subscriber to receive
25 services via telehealth; creating s. 641.31093, F.S.;
26 providing reimbursement requirements for health
27 maintenance organizations relating to telehealth
28 services; providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Paragraph (c) of subsection (2) of section
33 409.967, Florida Statutes, is amended to read:

34 409.967 Managed care plan accountability.—

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

39 (c) Access.—

40 1. The agency shall establish specific standards for the
41 number, type, and regional distribution of providers in managed
42 care plan networks to ensure access to care for both adults and
43 children. Each plan must maintain a regionwide network of
44 providers in sufficient numbers to meet the access standards for
45 specific medical services for all recipients enrolled in the
46 plan. A plan may not use providers who exclusively provide
47 services through telehealth, as defined in s. 456.4501, to meet
48 this requirement. The exclusive use of mail-order pharmacies may
49 not be sufficient to meet network access standards. Consistent
50 with the standards established by the agency, provider networks
51 may include providers located outside the region. ~~A plan may~~
52 ~~contract with a new hospital facility before the date the~~
53 ~~hospital becomes operational if the hospital has commenced~~
54 ~~construction, will be licensed and operational by January 1,~~
55 ~~2013, and a final order has issued in any civil or~~
56 ~~administrative challenge.~~ Each plan shall establish and maintain
57 an accurate and complete electronic database of contracted
58 providers, including information about licensure or

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59 registration, locations and hours of operation, specialty
60 credentials and other certifications, specific performance
61 indicators, and such other information as the agency deems
62 necessary. The database must be available online to both the
63 agency and the public and have the capability to compare the
64 availability of providers to network adequacy standards and to
65 accept and display feedback from each provider's patients. Each
66 plan shall submit quarterly reports to the agency identifying
67 the number of enrollees assigned to each primary care provider.

68 2. Each managed care plan must publish any prescribed drug
69 formulary or preferred drug list on the plan's website in a
70 manner that is accessible to and searchable by enrollees and
71 providers. The plan must update the list within 24 hours after
72 making a change. Each plan must ensure that the prior
73 authorization process for prescribed drugs is readily accessible
74 to health care providers, including posting appropriate contact
75 information on its website and providing timely responses to
76 providers. For Medicaid recipients diagnosed with hemophilia who
77 have been prescribed anti-hemophilic-factor replacement
78 products, the agency shall provide for those products and
79 hemophilia overlay services through the agency's hemophilia
80 disease management program.

81 3. Managed care plans, and their fiscal agents or
82 intermediaries, must accept prior authorization requests for any
83 service electronically.

84 4. Managed care plans serving children in the care and
85 custody of the Department of Children and Families must maintain
86 complete medical, dental, and behavioral health encounter
87 information and participate in making such information available

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88 to the department or the applicable contracted community-based
89 care lead agency for use in providing comprehensive and
90 coordinated case management. The agency and the department shall
91 establish an interagency agreement to provide guidance for the
92 format, confidentiality, recipient, scope, and method of
93 information to be made available and the deadlines for
94 submission of the data. The scope of information available to
95 the department shall be the data that managed care plans are
96 required to submit to the agency. The agency shall determine the
97 plan's compliance with standards for access to medical, dental,
98 and behavioral health services; the use of medications; and
99 followup on all medically necessary services recommended as a
100 result of early and periodic screening, diagnosis, and
101 treatment.

102 Section 2. Section 456.4501, Florida Statutes, is created
103 to read:

104 456.4501 Use of telehealth to provide services.-

105 (1) DEFINITIONS.-As used in this section, the term:

106 (a) "Telehealth" means the practice of a Florida-licensed
107 telehealth provider's profession in which patient care,
108 treatment, or services are provided through the use of medical
109 information exchanged between one physical location and another
110 through electronic communications. The term does not include
111 audio-only telephone calls, e-mail messages, text messages, U.S.
112 mail or other parcel service, facsimile transmissions, or any
113 combination thereof.

114 (b) "Telehealth provider" means an individual who provides
115 health care and related services using telehealth and who holds
116 a Florida license under chapter 458 or chapter 459, including

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117 providers who become Florida-licensed by way of the Interstate
118 Medical Licensure Compact.

119 (2) PRACTICE STANDARD.—

120 (a) The standard of practice for telehealth providers who
121 provide health care services is the same as the standard of
122 practice for health care professionals who provide in-person
123 health care services to patients in this state. If the standard
124 of practice does not require an in-person physical examination,
125 a telehealth provider may use telehealth to perform a patient
126 evaluation and to provide services to the patient within the
127 provider's scope of practice.

128 (b) A telehealth provider may not use telehealth to
129 prescribe a controlled substance unless the controlled substance
130 is prescribed for the following:

- 131 1. The treatment of a psychiatric disorder;
132 2. Inpatient treatment at a hospital licensed under chapter
133 395;
134 3. The treatment of a patient receiving hospice services as
135 defined in s. 400.601; or
136 4. The treatment of a resident of a nursing home facility
137 as defined in s. 400.021.

138 (c) A telehealth provider and a patient may be in separate
139 locations when telehealth is used to provide health care
140 services to a patient.

141 (d) Prescribing medications solely based on answers to an
142 electronic medical questionnaire constitutes a failure to
143 practice medicine with the level of care, skill, and treatment
144 that a reasonably prudent physician recognizes as being
145 acceptable under similar conditions and circumstances.

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146 (e) Telehealth providers are responsible for the quality of
147 the equipment and technology employed and for the safe use of
148 such equipment and technology. Telehealth equipment and
149 technology must be able to provide, at a minimum, the same
150 information to the physician or physician assistant which will
151 enable them to meet or exceed the standard of practice for the
152 telehealth provider's profession.

153 (3) RECORDS.—A telehealth provider shall document in the
154 patient's medical record the health care services rendered using
155 telehealth according to the same standards used for in-person
156 services. Medical records, including video, audio, electronic,
157 or other records generated as a result of providing telehealth
158 services, are confidential under ss. 395.3025(4) and 456.057.
159 Patient access to personal health information created by
160 telehealth services is granted under ss. 395.3025 and 456.057.

161 (4) APPLICABILITY.—

162 (a) This section does not prohibit consultations between
163 practitioners, to the extent that the practitioners are acting
164 within their scope of practice, or the transmission and review
165 of digital images, pathology specimens, test results, or other
166 medical data related to the care of patients in this state.

167 (b) This section does not apply to emergency medical
168 services provided by emergency physicians, emergency medical
169 technicians, paramedics, or emergency dispatchers. For the
170 purposes of this section, the term "emergency medical services"
171 includes those activities or services designed to prevent or
172 treat a sudden critical illness or injury and to provide
173 emergency medical care and pre-hospital emergency medical
174 transportation to sick, injured, or otherwise incapacitated

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175 persons in this state.

176 (c) This section does not apply to a health care provider
177 who is treating a patient with an emergency medical condition
178 that requires immediate medical care. For the purposes of this
179 section, the term "emergency medical condition" means a medical
180 condition characterized by acute symptoms of sufficient severity
181 that the absence of immediate medical attention will result in
182 serious jeopardy to patient health, serious impairment to bodily
183 functions, or serious dysfunction of a body organ or part.

184 (d) To the extent that a health care provider is acting
185 within his or her scope of practice, this section does not
186 prohibit:

187 1. A practitioner caring for a patient in consultation with
188 another practitioner who has an ongoing relationship with the
189 patient and who has agreed to supervise the patient's treatment,
190 including the use of any prescribed medications; or

191 2. The health care provider from caring for a patient in
192 on-call or cross-coverage situations in which another
193 practitioner has access to patient records.

194 (5) RULEMAKING.—The applicable board, or the department if
195 there is no board, may adopt rules to administer this section.

196 Section 3. Section 627.42393, Florida Statutes, is created
197 to read:

198 627.42393 Requirements for insurer reimbursement of
199 telehealth services.—

200 (1) An individual, group, blanket, or franchise health
201 insurance policy delivered or issued for delivery to any insured
202 person in this state on or after January 1, 2020, may not deny
203 coverage for a covered service on the basis of the service being

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204 provided through telehealth if the same service would be covered
205 if provided through an in-person encounter.

206 (2) A health insurer may not exclude an otherwise covered
207 service from coverage solely because the service is provided
208 through telehealth rather than through an in-person encounter
209 between a health care provider and a patient.

210 (3) A health insurer is not required to reimburse a
211 telehealth provider for originating site fees or costs for the
212 provision of telehealth services. However, a health insurer
213 shall reimburse a telehealth provider for the diagnosis,
214 consultation, or treatment of any insured individual provided
215 through telehealth on the same basis that the health insurer
216 would reimburse the provider if the covered service were
217 delivered through an in-person encounter.

218 (4) A covered service provided through telehealth may not
219 be subject to a greater deductible, copayment, or coinsurance
220 amount than would apply if the same service were provided
221 through an in-person encounter.

222 (5) A health insurer may not impose upon any insured
223 receiving benefits under this section any copayment,
224 coinsurance, or deductible amount or any policy-year, calendar-
225 year, lifetime, or other durational benefit limitation or
226 maximum for benefits or services provided via telehealth which
227 is not equally imposed upon all terms and services covered under
228 the policy.

229 (6) This section does not preclude a health insurer from
230 conducting a utilization review to determine the appropriateness
231 of telehealth as a means of delivering a covered service if such
232 determination is made in the same manner as would be made for

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233 the same service provided through an in-person encounter.

234 (7) A health insurer may limit the covered services that
235 are provided via telehealth to providers who are in a network
236 approved by the insurer.

237 Section 4. Subsection (45) is added to section 641.31,
238 Florida Statutes, to read:

239 641.31 Health maintenance contracts.-

240 (45) A health maintenance organization may not require a
241 subscriber to consult with, seek approval from, or obtain any
242 type of referral or authorization by way of telehealth from a
243 telehealth provider, as defined in s. 456.4501.

244 Section 5. Section 641.31093, Florida Statutes, is created
245 to read:

246 641.31093 Requirements for reimbursement by health
247 maintenance organization for telehealth services.-

248 (1) Each health maintenance organization that offers,
249 issues, or renews a major medical or similar comprehensive
250 contract in this state on or after January 1, 2020, may not deny
251 coverage for a covered service on the basis of the covered
252 service being provided through telehealth if the same covered
253 service would be covered if provided through an in-person
254 encounter.

255 (2) A health maintenance organization may not exclude an
256 otherwise covered service from coverage solely because the
257 service is provided through telehealth rather than through an
258 in-person encounter between a health care provider and a
259 subscriber.

260 (3) A health maintenance organization is not required to
261 reimburse a telehealth provider for originating site fees or

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262 costs for the provision of telehealth services. However, a
263 health maintenance organization shall reimburse a telehealth
264 provider for the diagnosis, consultation, or treatment of any
265 subscriber provided through telehealth on the same basis that
266 the health maintenance organization would reimburse the provider
267 if the service were provided through an in-person encounter.

268 (4) A covered service provided through telehealth may not
269 be subject to a greater deductible, copayment, or coinsurance
270 amount than would apply if the same service were provided
271 through an in-person encounter.

272 (5) A health maintenance organization may not impose upon
273 any subscriber receiving benefits under this section any
274 copayment, coinsurance, or deductible amount or any contract-
275 year, calendar-year, lifetime, or other durational benefit
276 limitation or maximum for benefits or services provided via
277 telehealth which is not equally imposed upon all services
278 covered under the contract.

279 (6) This section does not preclude a health maintenance
280 organization from conducting a utilization review to determine
281 the appropriateness of telehealth as a means of delivering a
282 covered service if such determination is made in the same manner
283 as would be made for the same service provided through an in-
284 person encounter.

285 (7) A health maintenance organization may limit covered
286 services that are provided via telehealth to providers who are
287 in a network approved by the health maintenance organization.

288 Section 6. This act shall take effect July 1, 2019.