

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Eskamani offered the following:

Amendment (with title amendment)

Remove lines 109-336 and insert:

(6) This section is repealed on January 1, 2025, unless reenacted by the Legislature.

Section 2. Section 456.47, Florida Statutes, is created to read:

456.47 Use of telehealth to provide services.-

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

(a) "Telehealth" means the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not

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14 limited to, patient assessment, diagnosis, consultation,
15 treatment, and monitoring; transfer of medical data; patient and
16 professional health-related education; public health services;
17 and health administration. The term does not include audio-only
18 telephone calls, e-mail messages, or facsimile transmissions.

19 (b) "Telehealth provider" means any individual who
20 provides health care and related services using telehealth and
21 who is licensed or certified under s. 393.17; part III of
22 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;
23 chapter 461; chapter 463; chapter 464; chapter 465; chapter 466;
24 chapter 467; part I, part III, part IV, part V, part X, part
25 XIII, or part XIV of chapter 468; chapter 478; chapter 480; part
26 II or part III of chapter 483; chapter 484; chapter 486; chapter
27 490; or chapter 491; or who is registered under and complies
28 with subsection (4).

29 (2) PRACTICE STANDARDS.—

30 (a) A telehealth provider has the duty to exercise care
31 consistent with the prevailing professional standard of care for
32 a health care professional who provides in-person health care
33 services to patients in this state.

34 (b) A telehealth provider may use telehealth to perform a
35 patient evaluation. If a telehealth provider conducts a patient
36 evaluation sufficient to diagnose and treat the patient, the
37 telehealth provider is not required to research a patient's
38 medical history or conduct a physical examination of the patient

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39 before using telehealth to provide health care services to the
40 patient.

41 (c) A telehealth provider may not use telehealth to
42 prescribe a controlled substance to treat chronic nonmalignant
43 pain, as defined under s. 456.44, unless the controlled
44 substance is ordered for inpatient treatment at a hospital
45 licensed under chapter 395, is prescribed for a patient
46 receiving hospice services as defined under s. 400.601, or is
47 prescribed for a resident of a nursing home facility as defined
48 under s. 400.021.

49 (d) A telehealth provider and a patient may be in separate
50 locations when telehealth is used to provide health care
51 services to a patient.

52 (e) A nonphysician telehealth provider using telehealth
53 and acting within the relevant scope of practice, as established
54 by Florida law or rule, is not in violation of s. 458.327(1)(a)
55 or s. 459.013(1)(a).

56 (3) RECORDS.—A telehealth provider shall document in the
57 patient's medical record the health care services rendered using
58 telehealth according to the same standard as used for in-person
59 services. Medical records, including video, audio, electronic,
60 or other records generated as a result of providing such
61 services, are confidential pursuant to ss. 395.3025(4) and
62 456.057.

63 (4) REGISTRATION OF OUT-OF-STATE TELEHEALTH PROVIDERS.—

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64 (a) A health care professional not licensed in this state
65 may provide health care services to a patient located in this
66 state using telehealth if the health care professional registers
67 with the applicable board, or the department if there is no
68 board, and provides health care services within the applicable
69 scope of practice established by Florida law or rule.

70 (b) The board, or the department if there is no board,
71 shall register a health care professional not licensed in this
72 state as a telehealth provider if the health care professional:

73 1. Completes an application in the format prescribed by
74 the department.

75 2. Holds an active, unencumbered license for a health care
76 profession listed in paragraph (1)(b) which is issued by another
77 state, the District of Columbia, or a possession or territory of
78 the United States and who has not had disciplinary action taken
79 against him or her in the 5 years preceding the date of
80 submission of the application. The department shall use the
81 National Practitioner Data Bank to verify information submitted
82 by an applicant.

83 3. Designates a duly appointed registered agent for
84 service of process in this state on a form prescribed by the
85 department.

86 (c) The website of a telehealth provider registered under
87 paragraph (b) must prominently display a hyperlink to the

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88 department's website containing information required under
89 paragraph (g).

90 (d) A health care professional may not register under this
91 subsection if his or her license to provide health care services
92 is subject to a pending disciplinary investigation or action, or
93 has been revoked in any state or jurisdiction. A health care
94 professional registered under this section must notify the
95 appropriate board, or the department if there is no board, of
96 restrictions placed on his or her license to practice, or any
97 disciplinary action taken or pending against him or her, in any
98 state or jurisdiction. The notification must be provided within
99 5 business days after the restriction is placed or disciplinary
100 action is initiated or taken.

101 (e) A health care professional registered under this
102 subsection may not open an office in this state and may not
103 provide in-person health care services to patients located in
104 this state.

105 (f) A pharmacist registered under this subsection may only
106 use a pharmacy permitted under chapter 465, a nonresident
107 pharmacy registered under s. 465.0156, or a nonresident pharmacy
108 or outsourcing facility holding an active permit pursuant to s.
109 465.0158 to dispense medicinal drugs to patients located in this
110 state.

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111 (g) The department shall publish on its website a list of
112 all registrants and include, to the extent applicable, each
113 registrant's:

114 1. Name.

115 2. Health care occupation.

116 3. Completed health care training and education, including
117 completion dates and any certificates or degrees obtained.

118 4. Out-of-state health care license with the license
119 number.

120 5. Florida telehealth provider registration number.

121 6. Specialty.

122 7. Board certification.

123 8. Five-year disciplinary history, including sanctions and
124 board actions.

125 9. Medical malpractice insurance provider and policy
126 limits, including whether the policy covers claims that arise in
127 this state.

128 10. The name and address of the registered agent
129 designated for service of process in this state.

130 (h) The board, or the department if there is no board, may
131 revoke an out-of-state telehealth provider's registration if the
132 registrant:

133 1. Fails to notify the applicable board, or the department
134 if there is no board, of any adverse actions taken against his
135 or her license as required under paragraph (d).

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136 2. Has restrictions placed on or disciplinary action taken
137 against his or her license in any state or jurisdiction.

138 3. Violates any of the requirements of this section.

139 (5) VENUE.—For the purposes of this section, any act that
140 constitutes the delivery of health care services is deemed to
141 occur at the place where the patient is physically located at
142 the time the act is performed.

143 (6) EXEMPTIONS.—A health care professional who is not
144 licensed to provide health care services in this state but who
145 holds an active license to provide health care services in
146 another state or jurisdiction, and who provides health care
147 services using telehealth to a patient located in this state, is
148 not subject to the registration requirement under this section
149 if the services are provided:

150 (a) In response to an emergency medical condition as
151 defined in s. 395.002; or

152 (b) In consultation with a health care professional
153 licensed in this state who has ultimate authority over the
154 diagnosis and care of the patient.

155 (7) RULEMAKING.—The applicable board, or the department if
156 there is no board, may adopt rules to administer this section.

157 Section 3. For fiscal year 2019-2020, the sums of \$261,389
158 in recurring funds and \$15,020 in nonrecurring funds from the
159 Medical Quality Assurance Trust Fund are appropriated to the
160 Department of Health, and four full-time equivalent positions

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161 with associated salary rate of 145,870 are authorized for the
162 purpose of implementing s. 456.47, Florida Statutes, as created
163 by this act.

164 Section 4. Effective upon this act becoming a law,
165 subsection (9) of section 624.509, Florida Statutes, is
166 renumbered as subsection (10), present subsection (9) is
167 amended, and a new subsection (9) is added to that section, to
168 read:

169 624.509 Premium tax; rate and computation.—

170 (9) (a) For tax years beginning on or after January 1,
171 2020, any health insurer or health maintenance organization that
172 covers services provided by telehealth shall be allowed a credit
173 against the tax imposed by this section equal to 0.1 percent of
174 total insurance premiums received on accident and health
175 insurance policies or plans delivered or issued in this state in
176 the previous calendar year that provide medical, major medical,
177 or similar comprehensive coverage. The office shall confirm such
178 coverage to the Department of Revenue following its annual rate
179 and form review for each health insurance policy or plan.

180 (b) If the credit allowed under this subsection is not
181 fully used in any single year because of insufficient tax
182 liability on the part of a health insurer or health maintenance
183 organization and the same health insurer or health maintenance
184 organization does not use the credit available pursuant to s.

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185 220.197, the unused amount may be carried forward for a period
186 not to exceed 5 years.

187 (c)1. In addition to its existing audit and investigation
188 authority, the Department of Revenue may perform any additional
189 financial and technical audits and investigations, including
190 examining the accounts, books, and records of the health insurer
191 or health maintenance organization, which are necessary to
192 verify eligibility for the credit allowed under this subsection
193 and to ensure compliance with this subsection. The office shall
194 provide technical assistance when requested by the Department of
195 Revenue on any audits or examinations performed pursuant to this
196 subparagraph.

197 2. If the Department of Revenue determines, as a result of
198 an audit or examination or from information received from the
199 office, that a taxpayer received a tax credit under this
200 subsection to which the taxpayer was not entitled, the
201 Department of Revenue shall pursue recovery of such funds
202 pursuant to the laws and rules governing the assessment of
203 taxes.

204 (d) A health insurer or health maintenance organization
205 may transfer a credit for which it qualifies under paragraph
206 (a), in whole or in part, to any insurer by written agreement.
207 To perfect the transfer, the transferor shall provide the
208 Department of Revenue with a written transfer statement
209 notifying the department of the transferor's intent to transfer

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210 the tax credit to the transferee; the date that the transfer is
211 effective; the transferee's name, address, and federal taxpayer
212 identification number; the tax period; and the amount of tax
213 credit to be transferred. The Department of Revenue shall, upon
214 receipt of the transfer statement, provide the transferee and
215 the office with a certificate reflecting the tax credit amount
216 transferred. A copy of the certificate must be attached to each
217 tax return for which the transferee seeks to apply such tax
218 credit.

219 (e) The Department of Revenue and the office may adopt
220 rules to provide the administrative guidelines and procedures
221 required to administer this section and prescribe:

222 1. Any forms necessary to claim a tax credit under this
223 section, the requirements and basis for establishing an
224 entitlement to a credit, and the examination and audit
225 procedures required to administer this section.

226 2. The implementation and administration of the provisions
227 to allow a transfer of a tax credit, including reporting
228 requirements, and specific procedures, guidelines, and
229 requirements necessary to transfer such credit.

230 (f) An insurer that claims a credit against tax liability
231 under this subsection is not required to pay any additional
232 retaliatory tax levied under s. 624.5091 as a result of claiming
233 such a credit. Section 624.5091 does not limit such a credit in
234 any manner.

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235 (g) This subsection is repealed on January 1, 2025, unless
236 reenacted by the Legislature.

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238
239 **T I T L E A M E N D M E N T**

240 Remove lines 13-53 and insert:

241 Regulation to adopt rules; providing for the future repeal
242 of the tax credit; creating s. 456.47, F.S.; providing
243 definitions; establishing a standard of care for telehealth
244 providers; authorizing telehealth providers to use
245 telehealth to perform patient evaluations; providing that
246 telehealth providers, under certain circumstances, are not
247 required to research a patient's history or conduct
248 physical examinations before providing services through
249 telehealth; authorizing certain telehealth providers to use
250 telehealth to prescribe specified controlled substances
251 under certain circumstances; providing that a nonphysician
252 telehealth provider using telehealth and acting within his
253 or her relevant scope of practice is not deemed to be
254 practicing medicine without a license; providing
255 recordkeeping requirements for telehealth providers;
256 providing registration requirements for out-of-state
257 telehealth providers; requiring the Department of Health to
258 publish certain information on its website; authorizing a
259 board or the department if there is no board to revoke a

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260 telehealth provider's registration under certain
261 circumstances; providing venue; providing exemptions to the
262 registration requirement; providing rulemaking authority;
263 providing an appropriation; authorizing positions; amending
264 s. 624.509, F.S.; providing that a health insurer or health
265 maintenance organization is allowed a tax credit against a
266 specified tax imposed if it covers services provided by
267 telehealth; authorizing an unused tax credit amount to be
268 carried forward for a certain period of time; authorizing
269 the Department of Revenue to perform audits and
270 investigations under certain circumstances; authorizing the
271 department to pursue recovery of tax credits if the
272 taxpayer received such credit for which the taxpayer was
273 not entitled; authorizing the transfer of a tax credit
274 under certain circumstances; authorizing the department and
275 the Office of Insurance Regulation to adopt rules;
276 providing that an insurer claiming the tax credit is not
277 required to pay any additional retaliatory tax; providing
278 for the future repeal of the tax credit; providing
279 definitions; providing effective dates.

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