

1 A bill to be entitled
2 An act relating to telehealth; creating s. 220.197,
3 F.S.; providing a tax credit for eligible taxpayers;
4 authorizing an unused tax credit amount to be carried
5 forward for a certain period of time; authorizing the
6 Department of Revenue to perform audits and
7 investigations under certain circumstances;
8 authorizing the department to pursue recovery of tax
9 credits if the taxpayer received such credit for which
10 the taxpayer was not entitled; authorizing the
11 transfer of a tax credit under certain circumstances;
12 authorizing the department and the Office of Insurance
13 Regulation to adopt rules; creating s. 456.47, F.S.;
14 providing definitions; establishing a standard of care
15 for telehealth providers; authorizing telehealth
16 providers to use telehealth to perform patient
17 evaluations; providing that telehealth providers,
18 under certain circumstances, are not required to
19 research a patient's history or conduct physical
20 examinations before providing services through
21 telehealth; authorizing certain telehealth providers
22 to use telehealth to prescribe specified controlled
23 substances under certain circumstances; providing that
24 a nonphysician telehealth provider using telehealth
25 and acting within his or her relevant scope of

26 practice is not deemed to be practicing medicine
27 without a license; providing recordkeeping
28 requirements for telehealth providers; providing
29 registration requirements for out-of-state telehealth
30 providers; requiring the Department of Health to
31 publish certain information on its website;
32 authorizing a board or the department if there is no
33 board to revoke a telehealth provider's registration
34 under certain circumstances; providing venue;
35 providing exemptions to the registration requirement;
36 providing rulemaking authority; providing an
37 appropriation; authorizing positions; amending s.
38 624.509, F.S.; providing that a health insurer or
39 health maintenance organization is allowed a tax
40 credit against a specified tax imposed if it covers
41 services provided by telehealth; authorizing an unused
42 tax credit amount to be carried forward for a certain
43 period of time; authorizing the Department of Revenue
44 to perform audits and investigations under certain
45 circumstances; authorizing the department to pursue
46 recovery of tax credits if the taxpayer received such
47 credit for which the taxpayer was not entitled;
48 authorizing the transfer of a tax credit under certain
49 circumstances; authorizing the department and the
50 Office of Insurance Regulation to adopt rules;

51 providing that an insurer claiming the tax credit is
 52 not required to pay any additional retaliatory tax;
 53 providing definitions; providing effective dates.
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55 Be It Enacted by the Legislature of the State of Florida:
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57 Section 1. Effective upon this act becoming a law, section
 58 220.197, Florida Statutes, is created to read:

59 220.197 Telehealth tax credit.—

60 (1) For tax years beginning on or after January 1, 2020, a
 61 credit against the tax imposed by this chapter equal to the
 62 credit amount provided in s. 624.509(9) (a) is allowed for
 63 taxpayers eligible to receive the tax credit provided in s.
 64 624.509(9) (a), but with insufficient tax liability under s.
 65 624.509 to use such tax credit.

66 (2) If the credit allowed under this section is not fully
 67 used in any single year because of insufficient tax liability on
 68 the part of the taxpayer, the unused amount may be carried
 69 forward for a period not to exceed 5 years.

70 (3) (a) In addition to its existing audit and investigation
 71 authority, the department may perform any additional financial
 72 and technical audits and investigations, including examining the
 73 accounts, books, and records of the taxpayer, to verify
 74 eligibility for the allowable credit and to ensure compliance
 75 with this section. The Office of Insurance Regulation shall

76 provide technical assistance when requested by the department on
77 any audits or examinations performed pursuant to this paragraph.

78 (b) If the department determines, as a result of an audit
79 or examination or from information received from the Office of
80 Insurance Regulation, that a taxpayer received a tax credit
81 under this section to which the taxpayer was not entitled, the
82 department shall pursue recovery of such funds pursuant to the
83 laws and rules governing the assessment of taxes.

84 (4) A taxpayer may transfer a credit for which the
85 taxpayer qualifies under subsection (1), in whole or in part, to
86 any taxpayer by written agreement. To perfect the transfer, the
87 transferor shall provide the department with a written transfer
88 statement notifying the department of the transferor's intent to
89 transfer the tax credit to the transferee; the date that the
90 transfer is effective; the transferee's name, address, and
91 federal taxpayer identification number; the tax period; and the
92 amount of tax credit to be transferred. The department shall,
93 upon receipt of the transfer statement, provide the transferee
94 and the office with a certificate reflecting the tax credit
95 amount transferred. A copy of the certificate must be attached
96 to each tax return for which the transferee seeks to apply such
97 tax credit.

98 (5) The department and the Office of Insurance Regulation
99 may adopt rules to provide the administrative guidelines and
100 procedures required to administer this section and prescribe:

101 (a) Any forms necessary to claim a tax credit under this
 102 section, the requirements and basis for establishing an
 103 entitlement to a credit, and the examination and audit
 104 procedures required to administer this section.

105 (b) The implementation and administration of the
 106 provisions to allow a transfer of a tax credit, including
 107 reporting requirements, and procedures, guidelines, and
 108 requirements necessary to transfer such credit.

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

111 456.47 Use of telehealth to provide services.-

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

113 (a) "Telehealth" means the use of synchronous or
 114 asynchronous telecommunications technology by a telehealth
 115 provider to provide health care services, including, but not
 116 limited to, patient assessment, diagnosis, consultation,
 117 treatment, and monitoring; transfer of medical data; patient and
 118 professional health-related education; public health services;
 119 and health administration. The term does not include audio-only
 120 telephone calls, e-mail messages, or facsimile transmissions.

121 (b) "Telehealth provider" means any individual who
 122 provides health care and related services using telehealth and
 123 who is licensed or certified under s. 393.17; part III of
 124 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;
 125 chapter 461; chapter 463; chapter 464; chapter 465; chapter 466;

126 chapter 467; part I, part III, part IV, part V, part X, part
127 XIII, or part XIV of chapter 468; chapter 478; chapter 480; part
128 III of chapter 483; chapter 484; chapter 486; chapter 490; or
129 chapter 491; or who is registered under and complies with
130 subsection (4).

131 (2) PRACTICE STANDARDS.—

132 (a) A telehealth provider has the duty to exercise care
133 consistent with the prevailing professional standard of care for
134 a health care professional who provides in-person health care
135 services to patients in this state.

136 (b) A telehealth provider may use telehealth to perform a
137 patient evaluation. If a telehealth provider conducts a patient
138 evaluation sufficient to diagnose and treat the patient, the
139 telehealth provider is not required to research a patient's
140 medical history or conduct a physical examination of the patient
141 before using telehealth to provide health care services to the
142 patient.

143 (c) A telehealth provider may not use telehealth to
144 prescribe a controlled substance to treat chronic nonmalignant
145 pain, as defined under s. 456.44, unless the controlled
146 substance is ordered for inpatient treatment at a hospital
147 licensed under chapter 395, is prescribed for a patient
148 receiving hospice services as defined under s. 400.601, or is
149 prescribed for a resident of a nursing home facility as defined
150 under s. 400.021.

151 (d) A telehealth provider and a patient may be in separate
152 locations when telehealth is used to provide health care
153 services to a patient.

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

158 (3) RECORDS.—A telehealth provider shall document in the
159 patient's medical record the health care services rendered using
160 telehealth according to the same standard as used for in-person
161 services. Medical records, including video, audio, electronic,
162 or other records generated as a result of providing such
163 services, are confidential pursuant to ss. 395.3025(4) and
164 456.057.

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

166 (a) A health care professional not licensed in this state
167 may provide health care services to a patient located in this
168 state using telehealth if the health care professional registers
169 with the applicable board, or the department if there is no
170 board, and provides health care services within the applicable
171 scope of practice established by Florida law or rule.

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

175 1. Completes an application in the format prescribed by

176 the department.

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

185 3. Designates a duly appointed registered agent for
186 service of process in this state on a form prescribed by the
187 department.

188 (c) The website of a telehealth provider registered under
189 paragraph (b) must prominently display a hyperlink to the
190 department's website containing information required under
191 paragraph (g).

192 (d) A health care professional may not register under this
193 subsection if his or her license to provide health care services
194 is subject to a pending disciplinary investigation or action, or
195 has been revoked in any state or jurisdiction. A health care
196 professional registered under this section must notify the
197 appropriate board, or the department if there is no board, of
198 restrictions placed on his or her license to practice, or any
199 disciplinary action taken or pending against him or her, in any
200 state or jurisdiction. The notification must be provided within

201 5 business days after the restriction is placed or disciplinary
 202 action is initiated or taken.

203 (e) A health care professional registered under this
 204 subsection may not open an office in this state and may not
 205 provide in-person health care services to patients located in
 206 this state.

207 (f) A pharmacist registered under this subsection may only
 208 use a pharmacy permitted under chapter 465, a nonresident
 209 pharmacy registered under s. 465.0156, or a nonresident pharmacy
 210 or outsourcing facility holding an active permit pursuant to s.
 211 465.0158 to dispense medicinal drugs to patients located in this
 212 state.

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

- 216 1. Name.
- 217 2. Health care occupation.
- 218 3. Completed health care training and education, including
 219 completion dates and any certificates or degrees obtained.
- 220 4. Out-of-state health care license with the license
 221 number.
- 222 5. Florida telehealth provider registration number.
- 223 6. Specialty.
- 224 7. Board certification.
- 225 8. Five-year disciplinary history, including sanctions and

226 board actions.

227 9. Medical malpractice insurance provider and policy
 228 limits, including whether the policy covers claims that arise in
 229 this state.

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

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

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

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

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

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

245 (6) EXEMPTIONS.—A health care professional who is not
 246 licensed to provide health care services in this state but who
 247 holds an active license to provide health care services in
 248 another state or jurisdiction, and who provides health care
 249 services using telehealth to a patient located in this state, is
 250 not subject to the registration requirement under this section

251 if the services are provided:

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

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

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

259 Section 3. For fiscal year 2019-2020, the sums of \$261,389
260 in recurring funds and \$15,020 in nonrecurring funds from the
261 Medical Quality Assurance Trust Fund are appropriated to the
262 Department of Health, and four full-time equivalent positions
263 with associated salary rate of 145,870 are authorized for the
264 purpose of implementing s. 456.47, Florida Statutes, as created
265 by this act.

266 Section 4. Effective upon this act becoming a law,
267 subsection (9) of section 624.509, Florida Statutes, is
268 renumbered as subsection (10), present subsection (9) is
269 amended, and a new subsection (9) is added to that section, to
270 read:

271 624.509 Premium tax; rate and computation.—

272 (9) (a) For tax years beginning on or after January 1,
273 2020, any health insurer or health maintenance organization that
274 covers services provided by telehealth shall be allowed a credit
275 against the tax imposed by this section equal to 0.1 percent of

276 total insurance premiums received on accident and health
277 insurance policies or plans delivered or issued in this state in
278 the previous calendar year that provide medical, major medical,
279 or similar comprehensive coverage. The office shall confirm such
280 coverage to the Department of Revenue following its annual rate
281 and form review for each health insurance policy or plan.

282 (b) If the credit allowed under this subsection is not
283 fully used in any single year because of insufficient tax
284 liability on the part of a health insurer or health maintenance
285 organization and the same health insurer or health maintenance
286 organization does not use the credit available pursuant to s.
287 220.197, the unused amount may be carried forward for a period
288 not to exceed 5 years.

289 (c)1. In addition to its existing audit and investigation
290 authority, the Department of Revenue may perform any additional
291 financial and technical audits and investigations, including
292 examining the accounts, books, and records of the health insurer
293 or health maintenance organization, which are necessary to
294 verify eligibility for the credit allowed under this subsection
295 and to ensure compliance with this subsection. The office shall
296 provide technical assistance when requested by the Department of
297 Revenue on any audits or examinations performed pursuant to this
298 subparagraph.

299 2. If the Department of Revenue determines, as a result of
300 an audit or examination or from information received from the

301 office, that a taxpayer received a tax credit under this
302 subsection to which the taxpayer was not entitled, the
303 Department of Revenue shall pursue recovery of such funds
304 pursuant to the laws and rules governing the assessment of
305 taxes.

306 (d) A health insurer or health maintenance organization
307 may transfer a credit for which it qualifies under paragraph
308 (a), in whole or in part, to any insurer by written agreement.
309 To perfect the transfer, the transferor shall provide the
310 Department of Revenue with a written transfer statement
311 notifying the department of the transferor's intent to transfer
312 the tax credit to the transferee; the date that the transfer is
313 effective; the transferee's name, address, and federal taxpayer
314 identification number; the tax period; and the amount of tax
315 credit to be transferred. The Department of Revenue shall, upon
316 receipt of the transfer statement, provide the transferee and
317 the office with a certificate reflecting the tax credit amount
318 transferred. A copy of the certificate must be attached to each
319 tax return for which the transferee seeks to apply such tax
320 credit.

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

324 1. Any forms necessary to claim a tax credit under this
325 section, the requirements and basis for establishing an

326 entitlement to a credit, and the examination and audit
327 procedures required to administer this section.

328 2. The implementation and administration of the provisions
329 to allow a transfer of a tax credit, including reporting
330 requirements, and specific procedures, guidelines, and
331 requirements necessary to transfer such credit.

332 (f) An insurer that claims a credit against tax liability
333 under this subsection is not required to pay any additional
334 retaliatory tax levied under s. 624.5091 as a result of claiming
335 such a credit. Section 624.5091 does not limit such a credit in
336 any manner.

337 (10)~~(9)~~ As used in this section, the term:

338 (a) "Health insurer" means an authorized insurer offering
339 health insurance as defined in s. 624.603.

340 (b) "Health maintenance organization" has the same meaning
341 as provided in s. 641.19.

342 (c) "Insurer" includes any entity subject to the tax
343 imposed by this section.

344 (d) "Telehealth" means the use of synchronous or
345 asynchronous telecommunications technology by a health care
346 provider to provide health care services, including, but not
347 limited to, patient assessment, diagnosis, consultation,
348 treatment, and monitoring; transfer of medical data; patient and
349 professional health-related education; public health services;
350 and health administration. The term does not include audio-only

351 telephone calls, e-mail messages, or facsimile transmissions.

352 Section 5. Except as otherwise expressly provided in this
353 act and except for this section, which shall take effect upon
354 this act becoming a law, this act shall take effect July 1,
355 2019.