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1
2 An act relating to telehealth; creating s. 456.47,
3 F.S.; defining terms; establishing standards of
4 practice for telehealth providers; authorizing
5 telehealth providers to use telehealth to perform
6 patient evaluations; authorizing certain telehealth
7 providers to use telehealth to prescribe certain
8 controlled substances under specified circumstances;
9 providing that a nonphysician telehealth provider
10 using telehealth and acting within his or her relevant
11 scope of practice is not deemed to be practicing
12 medicine without a license; providing recordkeeping
13 requirements for telehealth providers; providing
14 registration requirements for out-of-state telehealth
15 providers; requiring the Department of Health to
16 publish certain information on its website;
17 authorizing a board, or the department if there is no
18 board, to take disciplinary action against a
19 telehealth provider under certain circumstances;
20 providing venue; providing exemptions from telehealth
21 registration requirements; authorizing the applicable
22 board, or the department if there is no board, to
23 adopt rules; creating s. 627.42396, F.S.; providing
24 requirements for a contract between a certain health
25 insurer and a telehealth provider; amending s. 641.31,

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26 F.S.; providing requirements for a contract between a
 27 certain health maintenance organization and a
 28 telehealth provider; requiring the department to
 29 annually review the amount of certain collected fees
 30 and make a determination relating to the sufficiency
 31 of funding to implement specified telehealth
 32 provisions; upon making a certain determination,
 33 requiring the department to indicate insufficient
 34 funding and recommend fee adjustments in its annual
 35 legislative budget request; providing an
 36 appropriation; authorizing positions; providing
 37 effective dates.

38

39 Be It Enacted by the Legislature of the State of Florida:

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41 Section 1. Section 456.47, Florida Statutes, is created to
 42 read:

43 456.47 Use of telehealth to provide services.-

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

45 (a) "Telehealth" means the use of synchronous or
 46 asynchronous telecommunications technology by a telehealth
 47 provider to provide health care services, including, but not
 48 limited to, assessment, diagnosis, consultation, treatment, and
 49 monitoring of a patient; transfer of medical data; patient and
 50 professional health-related education; public health services;

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51 and health administration. The term does not include audio-only
52 telephone calls, e-mail messages, or facsimile transmissions.

53 (b) "Telehealth provider" means any individual who
54 provides health care and related services using telehealth and
55 who is licensed or certified under s. 393.17; part III of
56 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;
57 chapter 461; chapter 463; chapter 464; chapter 465; chapter 466;
58 chapter 467; part I, part III, part IV, part V, part X, part
59 XIII, or part XIV of chapter 468; chapter 478; chapter 480; part
60 II or part III of chapter 483; chapter 484; chapter 486; chapter
61 490; or chapter 491; who is licensed under a multi-state health
62 care licensure compact of which Florida is a member state; or
63 who is registered under and complies with subsection (4).

64 (2) PRACTICE STANDARDS.—

65 (a) A telehealth provider has the duty to practice in a
66 manner consistent with his or her scope of practice and the
67 prevailing professional standard of practice for a health care
68 professional who provides in-person health care services to
69 patients in this state.

70 (b) A telehealth provider may use telehealth to perform a
71 patient evaluation. If a telehealth provider conducts a patient
72 evaluation sufficient to diagnose and treat the patient, the
73 telehealth provider is not required to research a patient's
74 medical history or conduct a physical examination of the patient
75 before using telehealth to provide health care services to the

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76 patient.
 77 (c) A telehealth provider may not use telehealth to
 78 prescribe a controlled substance unless the controlled substance
 79 is prescribed for the following:
 80 1. The treatment of a psychiatric disorder;
 81 2. Inpatient treatment at a hospital licensed under
 82 chapter 395;
 83 3. The treatment of a patient receiving hospice services
 84 as defined in s. 400.601; or
 85 4. The treatment of a resident of a nursing home facility
 86 as defined in s. 400.021.
 87 (d) A telehealth provider and a patient may be in separate
 88 locations when telehealth is used to provide health care
 89 services to a patient.
 90 (e) A nonphysician telehealth provider using telehealth
 91 and acting within his or her relevant scope of practice, as
 92 established by Florida law or rule, is not in violation of s.
 93 458.327(1)(a) or s. 459.013(1)(a).
 94 (3) RECORDS.—A telehealth provider shall document in the
 95 patient's medical record the health care services rendered using
 96 telehealth according to the same standard as used for in-person
 97 services. Medical records, including video, audio, electronic,
 98 or other records generated as a result of providing such
 99 services, are confidential pursuant to ss. 395.3025(4) and
 100 456.057.

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101 (4) REGISTRATION OF OUT-OF-STATE TELEHEALTH PROVIDERS.—
 102 (a) A health care professional not licensed in this state
 103 may provide health care services to a patient located in this
 104 state using telehealth if the health care professional registers
 105 with the applicable board, or the department if there is no
 106 board, and provides health care services within the applicable
 107 scope of practice established by Florida law or rule.
 108 (b) The board, or the department if there is no board,
 109 shall register a health care professional not licensed in this
 110 state as a telehealth provider if the health care professional:
 111 1. Completes an application in the format prescribed by
 112 the department;
 113 2. Is licensed with an active, unencumbered license that
 114 is issued by another state, the District of Columbia, or a
 115 possession or territory of the United States and that is
 116 substantially similar to a license issued to a Florida-licensed
 117 provider specified in paragraph (1) (b);
 118 3. Has not been the subject of disciplinary action
 119 relating to his or her license during the 5-year period
 120 immediately prior to the submission of the application;
 121 4. Designates a duly appointed registered agent for
 122 service of process in this state on a form prescribed by the
 123 department; and
 124 5. Demonstrates to the board, or the department if there
 125 is no board, that he or she is in compliance with paragraph (e).

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127 The department shall use the National Practitioner Data Bank to
128 verify the information submitted under this paragraph, as
129 applicable.

130 (c) The website of a telehealth provider registered under
131 paragraph (b) must prominently display a hyperlink to the
132 department's website containing information required under
133 paragraph (h).

134 (d) A health care professional may not register under this
135 subsection if his or her license to provide health care services
136 is subject to a pending disciplinary investigation or action, or
137 has been revoked in any state or jurisdiction. A health care
138 professional registered under this subsection must notify the
139 appropriate board, or the department if there is no board, of
140 restrictions placed on his or her license to practice, or any
141 disciplinary action taken or pending against him or her, in any
142 state or jurisdiction. The notification must be provided within
143 5 business days after the restriction is placed or disciplinary
144 action is initiated or taken.

145 (e) A provider registered under this subsection shall
146 maintain professional liability coverage or financial
147 responsibility, that includes coverage or financial
148 responsibility for telehealth services provided to patients not
149 located in the provider's home state, in an amount equal to or
150 greater than the requirements for a licensed practitioner under

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151 s. 456.048, s. 458.320, or s. 459.0085, as applicable.

152 (f) A health care professional registered under this
 153 subsection may not open an office in this state and may not
 154 provide in-person health care services to patients located in
 155 this state.

156 (g) A pharmacist registered under this subsection may only
 157 use a pharmacy permitted under chapter 465, a nonresident
 158 pharmacy registered under s. 465.0156, or a nonresident pharmacy
 159 or outsourcing facility holding an active permit pursuant to s.
 160 465.0158 to dispense medicinal drugs to patients located in this
 161 state.

162 (h) The department shall publish on its website a list of
 163 all registrants and include, to the extent applicable, each
 164 registrant's:

- 165 1. Name.
- 166 2. Health care occupation.
- 167 3. Completed health care training and education, including
 168 completion dates and any certificates or degrees obtained.
- 169 4. Out-of-state health care license with the license
 170 number.
- 171 5. Florida telehealth provider registration number.
- 172 6. Specialty.
- 173 7. Board certification.
- 174 8. Five-year disciplinary history, including sanctions and
 175 board actions.

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176 9. Medical malpractice insurance provider and policy
 177 limits, including whether the policy covers claims that arise in
 178 this state.

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

181 (i) The board, or the department if there is no board, may
 182 take disciplinary action against an out-of-state telehealth
 183 provider registered under this subsection if the registrant:

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

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

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

190 4. Commits any act that constitutes grounds for
 191 disciplinary action under s. 456.072(1) or the applicable
 192 practice act for Florida-licensed providers.

193
 194 Disciplinary action taken by a board, or the department if there
 195 is no board, under this paragraph may include suspension or
 196 revocation of the provider's registration or the issuance of a
 197 reprimand or letter of concern. A suspension may be accompanied
 198 by a corrective action plan as determined by the board, or the
 199 department if there is no board, the completion of which may
 200 lead to the suspended registration being reinstated according to

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201 rules adopted by the board, or the department if there is no
 202 board.

203 (5) VENUE.—For the purposes of this section, any act that
 204 constitutes the delivery of health care services is deemed to
 205 occur at the place where the patient is located at the time the
 206 act is performed or in the patient's county of residence. Venue
 207 for a civil or administrative action initiated by the
 208 department, the appropriate board, or a patient who receives
 209 telehealth services from an out-of-state telehealth provider may
 210 be located in the patient's county of residence or in Leon
 211 County.

212 (6) EXEMPTIONS.—A health care professional who is not
 213 licensed to provide health care services in this state but who
 214 holds an active license to provide health care services in
 215 another state or jurisdiction, and who provides health care
 216 services using telehealth to a patient located in this state, is
 217 not subject to the registration requirement under this section
 218 if the services are provided:

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

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

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

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226 Section 2. Effective January 1, 2020, section 627.42396,
 227 Florida Statutes, is created to read:

228 627.42396 Reimbursement for telehealth services.—A
 229 contract between a health insurer issuing major medical
 230 comprehensive coverage through an individual or group policy and
 231 a telehealth provider, as defined in s. 456.47, must be
 232 voluntary between the insurer and the provider and must
 233 establish mutually acceptable payment rates or payment
 234 methodologies for services provided through telehealth. Any
 235 contract provision that distinguishes between payment rates or
 236 payment methodologies for services provided through telehealth
 237 and the same services provided without the use of telehealth
 238 must be initialed by the telehealth provider.

239 Section 3. Effective January 1, 2020, subsection (45) is
 240 added to section 641.31, Florida Statutes, to read:

241 641.31 Health maintenance contracts.—
 242 (45) A contract between a health maintenance organization
 243 issuing major medical individual or group coverage and a
 244 telehealth provider, as defined in s. 456.47, must be voluntary
 245 between the health maintenance organization and the provider
 246 must establish mutually acceptable payment rates or payment
 247 methodologies for services provided through telehealth. Any
 248 contract provision that distinguishes between payment rates or
 249 payment methodologies for services provided through telehealth
 250 and the same services provided without the use of telehealth

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251 must be initialed by the telehealth provider.

252 Section 4. Effective July 1, 2020, the Department of
253 Health shall annually review the amount of any fees collected
254 under section 456.47, Florida Statutes, in the prior fiscal year
255 and shall determine whether such fees are sufficient to enable
256 the department and the boards, as defined in section 456.001,
257 Florida Statutes, to fully implement section 456.47, Florida
258 Statutes. If the department determines that the fees collected
259 are insufficient, the department shall so indicate to the
260 Legislature in its annual legislative budget request and shall
261 recommend appropriate adjustments to the applicable fees.

262 Section 5. For fiscal year 2019-2020, the sums of \$261,389
263 in recurring funds and \$15,020 in nonrecurring funds from the
264 Medical Quality Assurance Trust Fund are appropriated to the
265 Department of Health, and four full-time equivalent positions
266 with associated salary rate of 145,870 are authorized for the
267 purpose of implementing s. 456.47, Florida Statutes, as created
268 by this act.

269 Section 6. Except as otherwise provided, this act shall
270 take effect July 1, 2019.