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 Health Policy

BILL:	SB 312
INTRODUCER:	Senator Diaz
SUBJECT:	Telehealth
DATE:	October 13, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Favorable**
2.			BI	
3.			RC	

I. Summary:

SB 312 removes a provision in the definition of "telehealth" that excludes audio-only telephone calls.

The bill also amends a provision that, in practice, will allow a telehealth provider to issue a renewal prescription for a controlled substance listed in Schedule III, IV, or V of s. 893.03, F.S., through telehealth, within the scope of his or her practice, and in accordance with other state and federal laws. Currently, telehealth providers are prohibited from prescribing controlled substances through telehealth unless the prescription is for: the treatment of a psychiatric disorder, inpatient treatment at a hospital, the treatment of a patient receiving hospice services, or the treatment of a resident in a nursing home facility.[1] The bill narrows this prohibition to prohibit the prescribing of only Schedule II controlled substances through telehealth except under those specific circumstances.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Telehealth

Relevant Terminology

Section 456.47, F.S., defines the term "telehealth" as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health

[1] Section 456.47(2)(c), F.S.

services; and health administration. Section 456.47(1)(a), F.S., provides that the term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

"Synchronous" telehealth refers to the live, real-time, or interactive transmission of information between a patient and a health care provider during the same time period. The use of live video to evaluate and diagnosis a patient would be considered synchronous telehealth.

"Asynchronous" telehealth refers to the transfer of data between a patient and a health care provider over a period of time and typically in separate time frames. This is commonly referred to as "store-and-forward."

Florida Telehealth Providers

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, which created s. 456.47, F.S. The bill became effective on July 1, 2019.[2] It authorized Florida-licensed health care providers[3] to use telehealth to deliver health care services within their respective scopes of practice.

The bill also authorized out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the Department of Health (DOH) or the applicable board[4] and meet certain eligibility requirements.[5] A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.

Telehealth providers who treat patients located in Florida must be one of the licensed health care practitioners listed below[6] and be either Florida-licensed, licensed under a multi-state health care licensure compact of which Florida is a member state, or registered as an out-of-state telehealth provider:

- Behavioral Analyst
- Acupuncturist
- Allopathic physician
- Osteopathic physician
- Chiropractor
- Podiatrist
- Optometrist
- Nurse
- Pharmacist

[2] Chapter 2019-137, s. 6, Laws of Fla.
[3] Section 456.47(1)(b), F.S.
[4] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH's Division of Medical Quality Assurance.
[5] Section 456.47(4), F.S.
[6] Section 456.47(1)(b), F.S. These are professionals licensed under s. 393.17; part III, ch. 401; ch. 457; ch. 458; ch. 459; ch. 460; ch. 461; ch. 463; ch. 464; ch. 465; ch. 466; ch. 467; part I, part III, part IV, part V, part X, part XIII, and part XIV, ch. 468; ch. 478; ch. 480; part II and part III, ch. 483; ch. 484; ch. 486; ch. 490; or ch. 491.

- Dentist
- Dental Hygienist
- Midwife
- Speech Therapist
- Occupational Therapist
- Radiology Technician
- Electrologist
- Orthotist
- Pedorthist
- Prosthetist
- Medical Physicist
- Emergency Medical Technician
- Paramedic
- Massage Therapist
- Optician
- Hearing Aid Specialist
- Clinical Laboratory Personnel
- Respiratory Therapist
- Psychologist
- Psychotherapist
- Dietician/Nutritionist
- Athletic Trainer
- Clinical Social Worker
- Marriage and Family Therapist
- Mental Health Counselor

The Legislature also passed HB 7067 in 2019 that would have required an out-of-state telehealth provider to pay an initial registration fee of $150 and a biennial registration renewal fee of $150, but the bill was vetoed by the Governor and did not become law.[7]

On March 16, 2020, Surgeon General Scott Rivkees executed DOH Emergency Order 20-002 authorizing certain out-of-state physicians, osteopathic physicians, physician assistants, and advanced practice registered nurses to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S.[8] Five days later, the Surgeon General executed DOH Emergency Order 20-003[9] to also authorize certain out-of-state clinical social workers, marriage and family therapists, mental health counselors, and psychologists to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. These

[7] Transmittal Letter from Governor Ron DeSantis to Secretary of State Laurel Lee (June 27, 2019) *available at* https://www.flgov.com/wp-content/uploads/2019/06/06.27.2019-Transmittal-Letter-3.pdf (last visited Oct 21, 2021).
[8] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020) *available at* http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Oct. 21, 2021).
[9] Department of Health, State of Florida, *Emergency Order DOH No. 20-003* (Mar. 21, 2020) *available at* https://s33330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf (last visited Oct. 21, 2021).

emergency orders were extended and expired on June 26, 2021.[10] Out-of-state health care practitioners are no longer authorized to perform telehealth services for patients in Florida unless they become licensed or registered in Florida.

Florida Medicaid Program

The Medicaid program is a joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults and persons with disabilities.[11] The Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians. Florida's program is administered by the AHCA and financed through state and federal funds.[12]

Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the AHCA contracts with private managed care plans for the coordination and payment of services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan. In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program.[13]

Telemedicine Coverage under the Florida Medicaid Program

Florida Medicaid covers telemedicine in both the managed care and fee-for-service delivery systems.

Medicaid health plans have broad flexibility in covering telemedicine services.[14] Beginning on April 3, 2020, and throughout the COVID-19 state of emergency, the AHCA provided for the reimbursement of audio-only telehealth services in the managed care and fee-for-service delivery systems when rendered by licensed physicians (including psychiatrists), advanced practice

[10] Florida Board of Medicine, *Important Updates for Health Care Providers Regarding Expiration of Emergency Orders* (July 1, 2021) *available at* https://r.bulkmail.flhealthsource.gov/mk/mr/JV-U0AMitwBXlP7zcFx3Djqu1KfE1B57JaGN-nnNySmOjEY5xGSsIyII28XjOGeZ4yKv9rWQUryqAibmdrixNZdgE9Q61dmUoHRF1Rnyijg-ewyAl_rZBT8c (last visited Oct. 18, 2021).
[11] Medicaid.gov, *Medicaid*, *available at* https://www.medicaid.gov/medicaid/index.html (last visited Oct. 21, 2021).
[12] Section 20.42, F.S.
[13] *Id.*
[14] Agency for Health Care Administration, Florida Medicaid Health Care Alert, *Medicaid Telemedicine Guidance for Medical and Behavioral Health Providers* (Mar. 18, 2020) *available at* https://ahca.myflorida.com/Medicaid/pdffiles/provider_alerts/2020_03/Medicaid_Telemedicine_Guidance_20200318.pdf (last visited Nov. 1, 2021).

registered nurses, and physician assistants.[15,16] During the state of emergency, Medicaid health plans are required to cover telemedicine services in "parity" with face-to-face services, meaning the health plan must cover services via telemedicine in a manner no more restrictive than the health plan would cover the service face-to-face.[17]

Under the fee-for service delivery system and in times of non-emergency, Florida Medicaid generally reimburses only for synchronous telemedicine services provided through the use of audio-visual equipment.[18] Beginning on April 16, 2020, and throughout the state of emergency, the AHCA provided for the reimbursement of audio-only behavioral health services for Medicaid reimbursement under the fee-for service and managed care delivery systems when video capability was not available.[19] To be reimbursed, a behavioral health provider must have documented that the enrollee did not have access to audio and video technology necessary for the service to be fully provided via telemedicine.[20]

The Federal Health Insurance Portability and Accountability Act (HIPAA)[21]

HIPAA Privacy Rule[22]

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. The HIPAA Privacy Rule sets national standards for when protected health information (PHI) may be used and disclosed.

Only certain entities and their business associates are subject to HIPAA's provisions. These "covered entities" include: health plans, health care providers; and health care clearinghouses.

The Privacy Rule gives individuals privacy and confidentiality rights with respect to their protected PHI, including rights to examine and obtain a copy of their health records in the form and manner they request, and to ask for corrections to their information. Also, the Privacy Rule permits the use and disclosure of health information needed for patient care and other important purposes.

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[15] Agency for Health Care Administration, *Statewide Medicaid Managed Care (SMMC) Policy Transmittal: 2020-20* (Apr. 3, 2020) *available at* https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/2018-23_plan_comm/PT_2020-20_COVID-19_State-of-Emergency_Telemedicine_Services.pdf (last visited Nov. 1, 2021).

[16] 2021 Senate Bill 700 also amended the definition of telehealth in s. 456.47, F.S., to include audio-only telephone calls. Agency for Health Care Administration, *Senate Bill 700 Fiscal Analysis* (Feb. 15, 2021) (on file with the Senate Committee on Health Policy).

[17] *Id.*

[18] Agency for Health Care Administration, *Senate Bill 852 Analysis* (Feb. 1, 2021) (on file with the Senate Committee on health Policy).

[19] Agency for Health Care Administration, Florida Medicaid Health Care Alert, *Medicaid Telemedicine Flexibilities for Behavioral Health Providers During the COVID-19 State of Emergency* (Apr. 16, 2020) *available at* https://ahca.myflorida.com/Medicaid/pdffiles/provider_alerts/2020_03/Medicaid_Telemedicine_Guidance_20200318.pdf (last visited Nov. 1, 2021).

[20] *Id.*

[21] Centers for Medicare & Medicaid Services, *Medicare Learning Network Booklet, HIPAA Basics for Providers: Privacy, Security, and Breach Notification Rules* (May. 2021) *available at* https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/HIPAAPrivacyandSecurity.pdf (last visited Oct. 29, 2021).

[22] 45 C.F.R. Part 160 and Subparts A and E of Part 164.

The Privacy Rule protects PHI held or transmitted by a covered entity or its business associate, in any form, whether electronic, paper, or verbal. PHI includes information that relates to any of the following:

- The individual's past, present, or future physical or mental health or condition;
- The provision of health care to the individual; or
- The past, present, or future payment for the provision of health care to the individual.

HIPAA Security Rule[23]

The HIPAA Security Rule specifies safeguards that covered entities and their business associates must implement to protect electronic PHI (ePHI) confidentiality, integrity, and availability.

Covered entities and business associates must develop and implement reasonable and appropriate security measures through policies and procedures to protect the security of ePHI they create, receive, maintain, or transmit. Each entity must analyze the risks to ePHI in its environment and create solutions appropriate for its own situation. What is reasonable and appropriate depends on the nature of the entity's business as well as its size, complexity, and resources.

Under the Security Rule, covered entities must:

- Ensure the confidentiality, integrity, and availability of all ePHI they create, receive, maintain, or transmit;
- Identify and protect against reasonably anticipated threats to the security or integrity of the ePHI;
- Protect against reasonably anticipated, impermissible uses or disclosures; and
- Ensure compliance by their workforce.

When developing and implementing Security Rule compliant safeguards, covered entities and their business associates may consider all of the following:

- Size, complexity, and capabilities;
- Technical, hardware, and software infrastructure;
- The costs of security measures; and
- The likelihood and possible impact of risks to ePHI.

Covered entities must review and modify security measures to continue protecting ePHI in a changing environment.

HIPAA Breach Notification Rule[24]

The HIPAA Breach Notification Rule requires covered entities to notify affected individuals; the federal HHS; and, in some cases, the media of a breach of unsecured PHI. Generally, a breach is an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of PHI.

[23] 45 C.F.R. Part 160 and Subparts A and C of Part 164.
[24] 45 C.F.R. Subpart D.

The impermissible use or disclosure of PHI is presumed to be a breach unless the covered entity demonstrates a low probability that the PHI has been compromised based on a risk assessment of, at a minimum, the following factors:

- The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- The unauthorized person who used the PHI or to whom the disclosure was made;
- Whether the PHI was actually acquired or viewed; and
- The extent to which the risk to the PHI has been mitigated.

Most notifications must be provided without unreasonable delay and no later than 60 days following the breach discovery. Notifications of smaller breaches affecting fewer than 500 individuals may be submitted to HHS annually. The Breach Notification Rule also requires business associates of covered entities to notify the covered entity of breaches at or by the business associate.

Notification of Enforcement Discretion during Public Health Emergency

Covered health care providers acting in good faith will not be subject to penalties for violations of the HIPAA Privacy Rule, the HIPAA Security Rule, or the HIPAA Breach Notification Rule that occur in the good faith provision of telehealth during the public health emergency.[25]

On March 17, 2020, the federal Department of Health & Human Services (HHS) Office for Civil Rights (OCR) issued a Notification of Enforcement of Discretion, meaning that the OCR may exercise its enforcement discretion and not pursue penalties for HIPPA violations against health care providers that serve patients through everyday communication technologies during the public health emergency.[26] If a provider follows the terms of the Notification and any applicable OCR guidance, it will not face HIPAA penalties if it experiences a hack that exposes protected health information from a telehealth session.[27]

Jurisdiction and Venue for Telehealth-related Actions[28]

For purposes of s. 456.47, F.S., any act that constitutes the delivery of health care services is deemed to occur at the place where the patient is located at the time the act is performed or in the patient's county of residence. Venue for a civil or administrative action initiated by the DOH, the appropriate board, or a patient who receives telehealth services from an out-of-state telehealth provider, may be located in the patient's county of residence or in Leon County.

[25] U.S. Department for Health and Human Services Office for Civil Rights, *FAQs on Telehealth and HIPAA during the COVID-10 nationwide public health emergency* (Mar. 2020) *available at* https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf (last visited Nov. 1, 2021).
[26] Press Release, U.S. Department of Health and Human Services, *OCR Announces Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency* (Mar. 17, 2021) *available at* https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html (last visited Oct. 31, 2021).
[27] *Supra* note 25.
[28] Section 456.47(5), F.S.

Controlled Substance Prescribing through Telehealth

Controlled Substances Generally

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and lysergic acid diethylamide (LSD).
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

Federal Law[29]

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008[30] amended the federal Controlled Substances Act, to prohibit a practitioner from issuing a "valid prescription" for a controlled substance through the Internet without having first conducted at least one in-person medical evaluation, except in certain circumstances. Thereafter, the prescriber may prescribe controlled substances to that patient via Internet or a phone call. The Act offers seven exceptions to the in-person exam. One such exception occurs when the Secretary of the federal Department of Health and Human Services (HHS) has declared a public health emergency.

[29] 21 U.S.C. s. 829.
[30] Public Law No. 110-425 (2008).

Federal Guidance During the COVID-19 Public Health Emergency

On January 31, 2020, the Secretary of HHS issued a public health emergency.[31] On March 16, 2020, the federal Drug Enforcement Agency (DEA) published a COVID-19 Information page on the Diversion Control Division website, authorizing DEA-registered practitioners, authorized designated DEA-registered practitioners to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation during the public health emergency, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
- The evaluation is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable federal and state law.[32]

Florida Law

Under Florida law, controlled substance providers are required to conduct an in-person physical examination prior to issuing a prescription for a controlled substance.[33]

Section 456.44, F.S., as amended during the 2018 legislative session by CS/CS/HB 21,[34] authorizes prescribers to prescribe a three-day supply of a Schedule II opioid[35] or up to a seven-day supply if medically necessary. The prescribing limits on Schedule II opioids do not apply to prescriptions for acute pains related to: cancer, a terminal condition, pain treated with palliative care, or a traumatic injury with an Injury Severity Score of 9 or higher.[36]

That section also requires a prescriber and dispenser to report to and review the Prescription Drug Monitoring Program database known as E-FORCSE (Electronic-Florida Online Reporting Controlled Substance Evaluation) to review a patient's controlled substance dispensing history prior to prescribing or dispensing a Schedule II-IV controlled substance for patients 16 years older.[37] These limitations and requirements apply to practitioners providing services in-person and through telehealth.

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[31] Determination that a Public Health Emergency Exists, Alex M. Azar II, Secretary of U.S. Department of Health and Human Services (January 31, 2020) *available at* https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx (last visited Oct. 31, 2021).

[32] Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, *COVID-19 Information Page*, *available at* https://www.deadiversion.usdoj.gov/coronavirus.html (last visited Nov. 1, 2021). Letter from Thomas Prevoznik, Deputy Assistant Administrator, Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, to DEA Qualifying Practitioners and Other Practitioners, (Mar. 31, 2020) *available at* https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf last visited Nov. 1, 2021).

[33] Section 456.44, F.S.

[34] Chapter 2018-13, Laws of Fla.

[35] All opioids are controlled substances. Opioids range in classification between Schedule I and Schedule V.

[36] Section 456.44(1)(a), F.S.

[37] Section 893.055, F.S.

Section 456.47(2)(c), F.S., as created by 2019 CS/CS/HB 23,[38] prohibits telehealth providers from prescribing any controlled substance unless the controlled substance is prescribed for:

- The treatment of a psychiatric disorder;
- Inpatient treatment at a licensed hospital;
- The treatment of a patient receiving hospice services; or
- The treatment of a resident of a nursing home facility.

Florida DOH Emergency Order No. 20-002

The same day that the HHS Secretary authorized qualified prescribers to prescribe Schedule II-V controlled substances, Surgeon General Rivkees issued DOH Emergency Order No. 20-002,[39] which suspended s. 456.47(2)(c), F.S., and authorized specified Florida-licensed prescribers[40] to issue a renewal prescription for a Schedule II-IV controlled substance only for an existing patient for the purpose of treating chronic nonmalignant pain without conducting another physical examination of the patient. This emergency order was extended[41] and expired on June 26, 2021.[42]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 456.47(1)(a), F.S., to remove a provision in the definition of "telehealth" that excludes audio-only telephone calls. This change does not post a direct impact on Florida Medicaid but would allow Medicaid to elect to reimburse for audio-only telephone calls.

Section 1 of the bill also amends s. 456.47(2)(c), F.S. Currently, telehealth providers are prohibited from prescribing controlled substances through telehealth unless the prescription is for: the treatment of a psychiatric disorder, inpatient treatment at a hospital, the treatment of a patient receiving hospice services, or the treatment of a resident in a nursing home facility. The bill narrows this prohibition to prohibit the prescribing of only Schedule II controlled substances through telehealth except under those specific circumstances. In practice, this change will authorize a telehealth provider to issue a renewal prescription for a controlled substance listed in Schedule III, IV, or V of s. 893.03, F.S., through telehealth, within the scope of his or her practice, and in accordance with other state and federal laws.

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[38] Chapter 2019-137, Laws of Fla.
[39] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020) *available at* http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Nov. 1, 2021).
[40] Physicians, osteopathic physicians, physician assistants, or advanced practice registered nurses that have designated themselves as a controlled substance prescribing practitioner on their practitioner profiles pursuant to s. 456.44, F.S.
[41] Department of Health, State of Florida, *Emergency Order DOH No. 20-011* (June 30, 2020) *available at* https://floridahealthcovid19.gov/wp-content/uploads/2020/06/DOH-Emergency-Order-DOH-No.-20-011.pdf (last visited Nov. 1, 2021).
[42] Florida Board of Medicine, *Important Updates for Health Care Providers Regarding Expiration of Emergency Orders* (July 1, 2021) *available at* https://r.bulkmail.flhealthsource.gov/mk/mr/JV-U0AMitwBXlP7zcFx3Djqu1KfE1B57JaGN-nnNySmOjEY5xGSsIyII28XjOGeZ4yKv9rWQUryqAibmdrixNZdgE9Q61dmUoHRF1Rnyijg-ewyAl_rZBT8c (last visited Oct. 18, 2021).

Under current law, no provider may prescribe a Schedule I drug under any circumstances. Florida law requires a prescriber to perform an in-person physical examination prior to prescribing a controlled substance for the treatment of chronic nonmalignant pain. All prescribers and dispensers of controlled substances must comply with ch. 893, F.S., by consulting and reporting to the Prescription Drug Monitoring Program database.

The applicable board, or the DOH if there is no board, may adopt rules to administer this section of statute.[43]

Section 2 of the bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not pose a direct impact on Florida Medicaid but would allow the AHCA to elect to reimburse for audio-only telephone calls. If the AHCA decides to authorize the

[43] Section 456.47(7), F.S.

reimbursement of audio-only telemedicine services, it will need to update Rule 59G-1.057, F.A.C., and communicate the changes to enrolled providers and health plans, both of which are part of the AHCA's routine business practices.[44] The vast majority of Medicaid recipients are already covered for audio-only telehealth services through the Medicaid health plans, so the bill is unlikely to increase overall costs to the Florida Medicaid program.[45]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 456.47 of the Florida Statutes.

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.

[44] Agency for Health Care Administration, Senate Bill 864 Bill Analysis & Economic Impact Statement (Mar. 11, 2021) (on file with the Senate Committee on Health Policy).
[45] *Supra* note 16.