

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 Rules

BILL: SB 312

INTRODUCER: Senator Diaz

SUBJECT: Telehealth

DATE: January 11, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u>Smith</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

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 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 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.

¹ Section 456.47(2)(c), F.S.

“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 authorized Florida-licensed health care providers² to use telehealth to deliver health care services within their respective scopes of practice. The bill became effective on July 1, 2019.³

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 board⁴ 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 below⁶ 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
- Dentist
- Dental Hygienist
- Midwife
- Speech Therapist

² Section 456.47(1)(b), F.S.

³ Chapter 2019-137, s. 6, Laws of Fla.

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 DOH or, in some cases, within 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.

- 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
- Physical 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. Subsequently, the bill was vetoed by the Governor and did not become law.⁷

On March 16, 2020, Florida 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 20-003⁹ 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 state emergency orders were extended and expired on June 26, 2021.¹⁰ Out-of-state health

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 Nov. 23, 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 Nov. 23, 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 Nov. 23, 2021).

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-U0AMitwBXIP7zcFx3Djqu1KfE1B57JaGN-mnNySmOjEY5xGSsIyII28XjOGeZ4yKv9rWQUryqAibmdrixNZdgE9Q61dmUoHRF1Rnyijg-ewyAl_rZBT8c (last visited Nov. 23, 2021).

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. The Agency for Health Care Administration (AHCA) administers Florida's program and state and federal funds finance the program.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, 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 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 On January 30, 2020, the U.S. Secretary of the Department of Health and Human Services issued the first declaration of a national public health emergency due to COVID-19; and the declaration remains in effect today.¹⁵ Effective April 3, 2020, and throughout the COVID-19 national public health emergency, AHCA will provide for the reimbursement of audio-only telehealth services¹⁶ in the managed care and fee-for-service delivery systems when rendered by licensed physicians

¹¹ Medicaid.gov, *Medicaid*, available at <https://www.medicaid.gov/medicaid/index.html> (last visited Nov. 23, 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/pdf/files/provider_alerts/2020_03/Medicaid_Telemedicine_Guidance_20200318.pdf (last visited Nov. 23, 2021).

¹⁵ U.S. Department of Health and Human Services, Public Health Emergency Declarations (Oct. 15, 2021) available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx> (last visited Nov. 23, 2021). The declaration lasts for the duration of the emergency or 90 days; however the Secretary may extend it.

¹⁶ Agency for Health Care Administration, COVID-19 Medicaid Information, available at [COVID-19 Alerts Medicaid Information \(myflorida.com\)](https://www.myflorida.com/COVID-19Alerts/MedicaidInformation) (last viewed Nov. 23, 2021).

(including psychiatrists), advanced practice registered nurses, and physician assistants.^{17,18} During the public health 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.¹⁹

Under the fee-for service delivery system and in times of non-emergency, Florida Medicaid generally reimburses only for synchronous telemedicine services provided using audio-visual equipment.²⁰ Effective April 16, 2020, and throughout the national public health emergency, AHCA will provide 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 is not available.²¹ As a condition for reimbursement, 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.²²

The Federal Health Insurance Portability and Accountability Act (HIPAA)²³

HIPAA Privacy Rule²⁴

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. In addition, the Privacy Rule permits the use and disclosure of health information needed for patient care and other important purposes.

¹⁷ 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. 23, 2021).

¹⁸ 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 Analysis* (Feb. 15, 2021) (on file with the Senate Committee on Health Policy).

¹⁹ *Id.*

²⁰ Agency for Health Care Administration, *Senate Bill 852 Analysis* (Feb. 1, 2021) (on file with the Senate Committee on Health Policy).

²¹ 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/pdf/files/provider_alerts/2020_03/Medicaid_Telemedicine_Guidance_20200318.pdf (last visited Nov. 23, 2021).

²² *Id.*

²³ 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 Nov. 23, 2021).

²⁴ 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 Rule²⁵

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 Rule²⁶

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.

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:

²⁵ 45 C.F.R. Part 160 and Subparts A and C of Part 164.

²⁶ 45 C.F.R. Subpart D.

- 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.²⁷ 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 HIPAA violations against health care providers that serve patients through everyday communication technologies during the public health emergency.²⁸ 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.²⁹

Jurisdiction and Venue for Telehealth-related Actions³⁰

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.

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

²⁷ 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. 23, 2021).

²⁸ 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 Nov. 23, 2021).

²⁹ *Supra* note 25.

³⁰ Section 456.47(5), F.S.

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 Law³¹

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008³² 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.

Federal Guidance during the COVID-19 Public Health Emergency

On January 31, 2020, the Secretary of HHS issued a public health emergency.³³ 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:

³¹ 21 U.S.C. s. 829.

³² Pub. L. No. 110-425 (2008).

³³ 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 Nov. 23, 2021).

- 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.³⁴

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.³⁵ During the 2018 legislative session, s. 456.44, F.S., was amended³⁶ to authorize prescribers to prescribe a three-day supply of a Schedule II opioid³⁷ 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.³⁸

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.³⁹ These limitations and requirements apply to practitioners providing services in-person and through telehealth.

Section 456.47(2)(c), F.S.,⁴⁰ 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.

³⁴ Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, *COVID-19 Information Page*, available at <https://www.dea diversion.usdoj.gov/coronavirus.html> (last visited Nov. 23, 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.dea diversion.usdoj.gov/GDP/\(DEA-DC-022\)\(DEA068\)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20\(Final\)%20+Esign.pdf](https://www.dea diversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20(Final)%20+Esign.pdf) last visited Nov. 23, 2021).

³⁵ Section 456.44, F.S.

³⁶ Ch. 2018-13, Laws of Fla.

³⁷ All opioids are controlled substances. Opioids range in classification between Schedule I and Schedule V.

³⁸ Section 456.44(1)(a), F.S.

³⁹ Section 893.055, F.S.

⁴⁰ Ch. 2019-137, Laws of Fla.

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. 20-002,⁴¹ which suspended s. 456.47(2)(c), F.S., and authorized specified Florida-licensed prescribers⁴² 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 extended⁴³ and expired on June 26, 2021.⁴⁴

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 impose a direct impact on Florida Medicaid but would allow Medicaid to elect to reimburse for audio-only telephone calls and to continue to reimburse for audio-only telephone calls when the national public health emergency expires.

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 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.

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 DOH if there is no board, may adopt rules to administer this section of statute.⁴⁵

⁴¹ 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. 23, 2021).

⁴² 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.

⁴³ 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. 23, 2021).

⁴⁴ 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-U0AMitwBXIP7zcFxFx3Djqu1KfE1B57JaGN-mnNySmOjEY5xGSsIyII28XjOGeZ4yKv9rWQUryqAibmdrixNZdgE9Q61dmUoHRF1Rnyijg-ewyAl_rZBT8c (last visited Nov. 23, 2021).

⁴⁵ Section 456.47(7), F.S.

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:

According to AHCA, the bill will have an operational impact on the agency that can be absorbed using current resources. Since the bill allows, but does not require, AHCA to reimburse for audio-only telephone calls, there is no fiscal impact to the Florida Medicaid program.⁴⁶

VI. Technical Deficiencies:

None.

⁴⁶ Agency for Health Care Administration, *Senate Bill 312 Bill Analysis*, (Oct. 15, 2021) (on file with the Senate Committee on Banking and Insurance).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
