

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 Judiciary

BILL: SB 218

INTRODUCER: Senator Harrell

SUBJECT: Genetic Counselors Using Telehealth

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Favorable
2.	Collazo	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 218 amends the definition of a telehealth provider in s. 456.47, F.S., to allow licensed genetic counselors to provide healthcare and related services using telehealth.

The bill takes effect on July 1, 2023.

II. Present Situation:

Telehealth

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. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.¹

In a general sense, “synchronous” telehealth happens in live, real-time settings where the patient interacts with a provider, usually via phone or video. Providers and patients communicate directly, often resulting in a diagnosis, treatment plan, or prescription. Synchronous telehealth can include additional at-home devices such as a blood pressure or heart rate monitors, thermometers, oximeters, cameras, or scales to help the provider more accurately assess the patient’s health status.²

¹ Section 456.47(1)(a), F.S.

² TELEHEALTH.HHS.GOV, *Synchronous direct-to-consumer telehealth*, <https://telehealth.hhs.gov/providers/direct-to-consumer/synchronous-direct-to-consumer-telehealth/> (last visited Mar. 2, 2023).

“Asynchronous” telehealth, also known as “store-and-forward,” is often used for patient intake or follow-up care. For example, a patient sends a photo of a skin condition that is later reviewed by a dermatologist who recommends treatment.³

Section 456.47, F.S., also authorizes out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the applicable board,⁴ or the Department of Health if there is no board, 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 such providers are prohibited from opening an office in Florida, and from providing in-person health care services to patients located in Florida, without first becoming licensed by the state.⁶

A telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II⁷ of the state law establishing standards and schedules for controlled substances⁸ unless the controlled substance is prescribed for the following:

- 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.⁹

A telehealth provider must document in the patient’s medical record the health care services rendered using telehealth according to the same standard as used for in-person services. Medical records, including video, audio, electronic, or other records generated as a result of providing such services, are confidential.¹⁰

The website of an out-of-state telehealth provider registered under s. 456.47, F.S., must prominently display a hyperlink to the department’s website, and the department’s website must publish a list of all out-of-state registrants and include the following information for each:

- Name.
- Health care occupation.
- Health care training and education, including completion dates and any certificates or degrees obtained.

³ TELEHEALTH.HHS.GOV, *Asynchronous direct-to-consumer telehealth*, <https://telehealth.hhs.gov/providers/direct-to-consumer/asynchronous-direct-to-consumer-telehealth/> (last visited Mar. 2, 2023).

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 department or, in some cases, within the department’s Division of Medical Quality Assurance (MQA).

⁵ See generally s. 456.47(4), F.S.

⁶ See s. 456.47(4)(f), F.S.

⁷ Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous. Some examples of Schedule II drugs are: combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin. U.S. Drug Enforcement Administration, *Drug Scheduling*, <https://www.dea.gov/drug-information/drug-scheduling> (last visited Mar. 2, 2023).

⁸ Section 893.03, F.S.

⁹ Section 456.47(2)(c), F.S.

¹⁰ Section 456.47(3), F.S. (referencing ss. 395.3025(4) and 456.057, F.S., in connection with confidentiality).

- Out-of-state health care licenses, including license numbers.
- Florida telehealth provider registration number.
- Specialty, if any.
- Board certification, if any.
- Five-year disciplinary history, including sanctions imposed and board actions.
- Medical malpractice insurance provider and policy limits, including whether the policy covers claims that arise in Florida.
- The name and address of the registered agent designated for service of process in Florida.¹¹

A health care professional may not register under s. 456.47, F.S., if his or her license to provide health care services is subject to a pending disciplinary investigation or action, or has been revoked in any state or jurisdiction. A registered health care professional must notify the appropriate board, or the department if there is no board, of any restrictions placed on his or her license to practice, or any disciplinary action taken or pending against him or her, in any state or jurisdiction. This notification must be provided within 5 business days after the restriction is placed or the disciplinary action is initiated or taken.¹²

The board, or the department if there is no board, may take disciplinary action against an out-of-state telehealth provider registered under s. 456.47, F.S., if the registrant:

- Fails to notify the applicable board, or the department if there is no board, of any adverse actions taken against his or her license;
- Has restrictions placed on, or disciplinary action taken against, his or her license in any state or jurisdiction;
- Violates any of the requirements of s. 456.47, F.S.; or
- Commits any act that constitutes grounds for disciplinary action for Florida-licensed providers.¹³

Disciplinary action taken by the applicable board, or the department if there is no board, may include suspension or revocation of the provider's registration, or the issuance of a reprimand or letter of concern. A suspension may be accompanied by a corrective action plan as determined by the board, or the department if there is no board, the completion of which may lead to the suspended registration being reinstated according to rules adopted by the board, or the department if there is no board.¹⁴

Venue for civil or administrative actions initiated by the department, 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.¹⁵

A health care professional who is not licensed to provide health care services in Florida, but who holds an active license to provide health care services in another state or jurisdiction, and who

¹¹ Section 456.47(4)(c) and (4)(h), F.S.

¹² Section 456.47 (4)(d), F.S.

¹³ Section 456.47(4)(i), F.S. (referencing s. 456.072(1), F.S. or the applicable practice act, as the grounds for disciplinary action).

¹⁴ *Id.*

¹⁵ Section 456.47(5), F.S.

provides such services using telehealth to a patient located in Florida, is not subject to the registration requirement under s. 456.47, F.S., if the services are provided:

- In response to an emergency medical condition; or
- In consultation with a health care professional licensed in Florida who has ultimate authority over the diagnosis and care of the patient.¹⁶

Genetic Counselors

In 2021, the Legislature established a new licensed and regulated practice, genetic counseling, within the department in chapter 483, part III, F.S., and authorized the new practice act to be cited as the “Genetic Counseling Workforce Act” (Act).¹⁷ The Legislature also amended state law to include genetic counselors in the definition of “health care practitioner.”¹⁸

The Act includes legislative findings and intent to establish the new practice of genetic counseling.¹⁹ With respect to the scope of that practice, the Act defines it as the process of advising an individual or a family affected by, or at risk of, genetic disorders in the following ways:

- Obtaining and evaluating individual, family, and medical histories to determine the genetic risk for genetic or medical conditions and diseases in a patient, his or her offspring, and other family members;
- Discussing the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases;
- Identifying, ordering, and coordinating genetic laboratory tests and other diagnostic studies as appropriate for a genetic assessment;
- Integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases;
- Explaining the clinical implications of genetic laboratory tests and other diagnostic studies and their results;
- Evaluating the client’s or family’s responses to the condition or risk of recurrence and providing client-centered counseling and anticipatory guidance;
- Identifying and using community resources that provide medical, educational, financial, and psychosocial support and advocacy;
- Providing written documentation of medical, genetic, and counseling information for families and health care professionals; and
- Referring patients to a physician for diagnosis and treatment.²⁰

A person desiring to be licensed as a genetic counselor must apply to the department, and the department must issue a two-year license to each applicant who:

¹⁶ Section 456.47(6), F.S. (referencing s. 395.002, F.S., in connection with emergency medical conditions).

¹⁷ Ch. 2021-133, Laws of Fla.; ss. 483.911-483.919, F.S. Notably, however, genetic counselling is not listed as one of the department’s divisions or boards in s. 20.43, F.S., pursuant to which the department derives its general regulatory authority. *See* s. 20.43, F.S.

¹⁸ Ch. 2021-133, s. 2, Laws of Fla.; s. 465.001(4), F.S.

¹⁹ Section 483.912, F.S.

²⁰ Section 483.913(3)(a)-(i), F.S.

- Is of good moral character.
- Provides satisfactory documentation of having earned:
 - A master’s degree from a genetic counseling training program or its equivalent as determined by the Accreditation Council of Genetic Counseling or its successor or an equivalent entity; or
 - A doctoral degree from a medical genetics training program accredited by the American Board of Medical Genetics and Genomics or the Canadian College of Medical Geneticists.
- Has passed the examination for certification as:
 - A genetic counselor by the American Board of Genetic Counseling, Inc., the American Board of Medical Genetics and Genomics, or the Canadian Association of Genetic Counsellors; or
 - A medical or clinical geneticist by the American Board of Medical Genetics and Genomics or the Canadian College of Medical Geneticists.²¹

The Act also establishes grounds for disciplinary action and penalties²² and creates exemptions from genetic counseling regulation for:

- Commissioned medical officers of the U.S. Armed Forces or Public Health Service while on active duty or while acting within the scope of their military or public health responsibilities.
- Health care practitioners, other than genetic counselors, who are practicing within the scope of their education, training, and licensure.²³

The Act includes a “conscience clause” allowing a genetic counselor to refuse to participate in counseling that conflicts with his or her deeply held moral or religious beliefs. The license of a genetic counselor may not be contingent upon participation in such counseling. A genetic counselor’s refusal to participate in counseling that conflicts with his or her deeply held moral or religious beliefs may also not form the basis for any claim of damages or for any disciplinary action against a genetic counselor, provided:

- The genetic counselor informs the patient that he or she will not participate in such counseling; and
- Offers to direct the patient to the online health care practitioner license verification database maintained by the department.²⁴

Genetic Counseling and Telehealth

According to the Division of Medical Quality Assurance 2021-2022 Annual Report, since the genetic counseling program’s inception, the department has licensed 532 genetic counselors with 107 (20%) active licensees living in-state and 425 (80%) active licenses living out-of-state.²⁵

²¹ Section 483.914(2), F.S.

²² Section 483.917, F.S.

²³ Section 483.919, F.S. (referencing s. 456.001(4), F.S., for the definition of health care practitioner under state law).

²⁴ Section 483.918, F.S.

²⁵ Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan: Fiscal Year 2021-22*, 14 (Table 1: Summary of Licensed Practitioners), available at <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/index.html>.

There are 31 states, including Florida, regulating licensure for genetic counselors and 13 states with bills in progress. All other states regulating the profession authorize genetic counselors to provide telehealth services.²⁶

The profession of genetic counseling is young compared to other medical specialties. For this reason, there are only a few thousand genetic counselors employed in the U.S., which makes telehealth a common practice for the profession. Genetic counseling is unique in that evaluating a patient's health and family history with genetic test results could be done almost entirely through telehealth services. According to the department, genetic counselors could conceivably deliver equally effective services whether someone is in-person or several time zones away.²⁷

III. Effect of Proposed Changes:

SB 218 amends the definition of a telehealth provider in s. 456.47, F.S., to include licensed genetic counselors so that they may practice their profession using telehealth.

The bill provides an effective date of July 1, 2023.

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.

²⁶ Department of Health, *2023 Agency Legislative Bill Analysis for SB 218* (Jan. 11, 2023), 2-3 (on file with the Senate Committee on Judiciary).

²⁷ *Id.*

B. Private Sector Impact:

The bill may reduce the costs to patients receiving genetic counseling services by not requiring patients to travel long distances to receive test results or follow-up counseling.

C. Government Sector Impact:

The department anticipates there will be a minimal increase in revenues collected at initial application in the amount of \$5.00 per applicant. There will also be an impact to the department's workload due to the bill, but the department anticipates that it will be minimal and can be absorbed by the department's existing budget.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

Genetic counseling is not listed as one of the department's divisions or boards in s. 20.43, F.S., under which the department derives its general regulatory authority from the Legislature. This may create a technical issue as to whether or not the department has been given authority by the Legislature to regulate genetic counselling.

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.

²⁸ *Id.* at 5.