

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 267 Telehealth Practice Standards

SPONSOR(S): Fabricio and others

TIED BILLS: **IDEN./SIM. BILLS:** HB 79, SB 298

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 267 passed the House on April 26, 2023, and subsequently passed the Senate on May 4, 2023.

Telehealth is the remote provision of health care services through the use of advanced technology. Telehealth is not a type of health care service; rather, it is a mechanism for delivering of health care services. Section 456.47, F.S., authorizes the use of telehealth for all practitioners, within the applicable scope of practice, and regulates the use of telehealth by out-of-state health care providers. This licensure statute clarifies that the use of telehealth is not limited to physicians. As a licensure statute, it does not address insurance coverage for, or other payment for, services provided via telehealth.

Current law expressly authorizes the use of advanced telecommunications technology for telehealth. However, it specifically excludes certain types of less advanced communication from being considered "telehealth" and thus subject to the requirements of s. 456.47, F.S.: audio-only telephone calls, email messages, and facsimile transmission.

HB 267 revises the definition of telehealth to include telephone calls in the telehealth technology authorization statute. This is not expected to have a significant impact on health care practice, as health care providers currently commonly provide services telephonically, and current law does not prevent them from doing so. This change does not affect whether health insurers will reimburse health care practitioners for services provided through telephone calls.

The bill has no fiscal impact on state or local government.

The bill was approved by the Governor on May 11, 2023, ch. 2023-63, L.O.F., and will become effective July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Telehealth

Telehealth is the remote provision of health care services through the use of technology. Telehealth is not a type of health care service; rather, it is a mechanism for delivering of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner; this includes formats such as synchronous live video calls between a patient and provider, and remote patient monitoring which uses a device to collect patient health information and transmit such information to a provider.¹ Formats such as these enable flexibility in the provision of health care services as patients and providers do not have to be in the same location at the time services are rendered. Telehealth is used to provide a wide variety of health care services such as preventative medicine and the treatment of chronic health conditions.²

Section 456.47, F.S., enacted by the Legislature in 2019, authorizes the use of telehealth for all practitioners, within the applicable scope of practice, and regulates the use of telehealth by out-of-state health care providers. This licensure statute clarifies that the use of telehealth is not limited to physicians. As a licensure statute, it does not address insurance coverage for, or other payment for, services provided via telehealth.

Current health care practitioner licensure law broadly defines “telehealth” as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:³

- 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(2), F.S., sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care regardless of the modality used by the health care professional to deliver the services.⁴

Current law expressly authorizes the use of advanced telecommunications technology for telehealth. However, it specifically excludes certain types of less advanced communication from being considered “telehealth” and thus subject to the requirements of s. 456.47, F.S.: audio-only telephone calls, email messages, and facsimile transmission. This exclusion does not prohibit a health care provider from communicating with patients by telephone.

Telehealth Providers

¹ U.S. Department of Health and Human Services, *Report to Congress: E-Health and Telemedicine* (August 12, 2016), available at <https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf> (last visited May 8, 2023).

² *Id.*

³ S. 456.47(1)(a), F.S.

⁴ S. 456.47(2), F.S.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,⁵ or a registered out-of-state-health care provider.⁶ Out-of-state health care providers may provide services to patients in Florida using telehealth upon registering with the Department of Health (DOH) as an out-of-state telehealth provider.⁷ Out-of-state providers must provide services within their applicable scope of practice as established by Florida law or rule.⁸ The out of-state telehealth provider registration does not expire; however, registered providers must comply with all registration requirements until they request to nullify their registration.⁹

To register as an out-of-state telehealth provider, one must:¹⁰

- Submit a completed application in the format prescribed by DOH;
- Maintain an active and unencumbered license, which is substantially similar to a license issued to a Florida practitioner in the same profession, in a U.S. state or jurisdiction;
- Not have been the subject of disciplinary action relating to his or her license during the five-year period preceding the submission of the application;¹¹
- Designate a duly appointed registered agent for the service of process in Florida; and
- Maintain professional liability coverage or financial responsibility for telehealth services provided to patients in Florida in an amount equal to or greater than that required for Florida-licensed practitioners.¹²

Current law authorizes the following licensed health care practitioners to provide services through telehealth:¹³

- Behavioral analyst
- Acupuncturist
- Allopathic physician
- Osteopathic physician
- Chiropractor
- Podiatrist
- Occupational therapist
- Radiology technician
- Electrologist
- Orthotist
- Pedorthist
- Prosthetist
- Clinical laboratory personnel
- Respiratory therapist
- Nurse
- Pharmacist
- Dentist
- Dental hygienist
- Midwife
- Speech therapist
- Medical physicist
- Emergency Medical Technician
- Paramedic
- Massage therapist
- Optician
- Hearing aid specialist
- Dietician/Nutritionist
- Athletic trainer

⁵ Florida is a member of the Nurse Licensure Compact. See s. 464.0095, F.S.

⁶ S. 456.47(4), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Florida Department of Health, Division of Medical Quality Assurance, *Florida Telehealth: Frequently Asked Questions*, available at <https://flhealthsource.gov/telehealth/faqs/> (last visited May 8, 2023).

¹⁰ S. 456.47(4), F.S.

¹¹ Current law requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.

¹² Florida law requires physicians, acupuncturists, chiropractic physicians, dentists, anesthesiologist assistants, advanced practice registered nurses, and licensed midwives to demonstrate \$100,000 per claim and an annual aggregate of \$300,000 of professional responsibility (see ss. 458.320 and 459.0085, F.S.; r. 64B1-12.001, F.A.C.; r. 64B2-17.009, F.A.C.; 64B5-17.0105, F.A.C.; rr. 64B8-31.006 and 64B15-7.006, F.A.C.; r. 64B9-4.002, F.A.C.; and r. 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of \$100,000 (see r. 64B18-14.0072, F.A.C.).

¹³ 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.

- Psychologist
- Psychotherapist
- Optometrist
- Clinical social worker
- Marriage and family therapist
- Mental health counselor

Insurance Coverage for Telephone Calls

In response to the COVID-19 pandemic, on April 3, 2020, the Agency for Health Care Administration (AHCA) issued a Statewide Medicaid Managed Care Policy Transmittal that addressed Medicaid coverage of telephonic (audio-only) communications as a form of telehealth.¹⁴ Under the transmittal, Medicaid managed care plans were required to expand coverage of the use of telehealth to include telephone-only communications when rendered by licensed physicians, physician assistants, advanced practice registered nurses, and behavioral health practitioners.

A later Statewide Medicaid Managed Care Policy Transmittal published on April 20, 2020, specified that audio-only telephone calls should only be used as a modality for behavioral health services as a last resort and when a patient does not have access to audio/video technology.¹⁵ This coverage applied until the end of the state of emergency as declared in Executive Order Number 20-52.¹⁶ The state of emergency was extended several times before expiring on June 26, 2021.

Current law does not expressly authorize or prohibit insurance coverage of health care services provided via telehealth, or telephonically. The coverage of such services by commercial insurers and health maintenance organizations is subject to contract negotiation between these private entities and health care providers.

Effect of the Bill

HB 267 revises the definition of telehealth to include telephone calls in the telehealth technology licensure statute, thus expressly authorizing health care providers to talk to patients on the phone.

This appears to have little impact on health care practice, as health care providers currently commonly provide services telephonically, and current law does not prevent them from doing so. Similarly, this change does not affect whether health insurers will reimburse health care practitioners for services provided through telephone calls.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁴ Agency for Health Care Administration, *Statewide Medicaid Managed Care Policy Transmittal 2020-20* (April 3, 2020), available at https://ahca.myflorida.com/content/download/8001/file/PT_2020-20_COVID-19_State-of-Emergency_Telemedicine_Services.pdf (last visited May 8, 2023).

¹⁵ Agency for Health Care Administration, *Statewide Medicaid Managed Care Policy Transmittal 2020-25* (April 20, 2020), available at https://ahca.myflorida.com/content/download/8009/file/PT_2020-25_COVID-19_BehavHealthTelemedRequire_04-21-2020.pdf (last visited May 8, 2023).

¹⁶ Executive Office of the Governor, Executive Order 20-25, Emergency Management - COVID-19 Public Health Emergency, March 9, 2020, available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited May 8, 2023).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.