

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 387 Physician Certifications for the Medical Use of Marijuana

**SPONSOR(S):** Health & Human Services Committee, Healthcare Regulation Subcommittee, Roach and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	16 Y, 0 N, As CS	McElroy	McElroy
2) Health & Human Services Committee	20 Y, 0 N, As CS	McElroy	Calamas

### SUMMARY ANALYSIS

Section 381.986, F.S., authorizes patients with certain debilitating medical conditions to obtain medical marijuana from Medical Marijuana Treatment Centers (MMTC). Under current law, to obtain medical marijuana a qualified patient must have a physician certification from a qualified physician and an identification card from the Department of Health (DOH). To certify a patient for medical use of marijuana, a qualified physician must perform a physical examination of the patient and determine that the patient has a qualifying medical condition and that medical marijuana would likely outweigh the health risks to the patient. A qualified physician must be physically present in the same room when conducting the examination and must conduct an examination before the initial certification and any subsequent renewal certifications.

Telehealth is the remote provision of health care services through the use of technology. Telehealth is not a type of health care service but rather is a mechanism for delivery of health care services.

In Florida, telehealth may be used by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member, or a registered out-of-state-health care provider. Out-of-state telehealth providers must register biennially with DOH or the applicable board to provide telehealth services, within the relevant scope of practice established by Florida law and rule, to patients in this state. Current law required health care providers to adhere to the same standard of care for telehealth as is required for in-person treatment.

In response to the COVID-19 pandemic, on March 16, 2020, the State Surgeon General issued Emergency Order 20-002, authorizing qualified physicians to conduct examinations using telehealth to renew physician certifications of existing qualified patients. The Emergency Order expired on June 30, 2020, thus requiring in-person examinations for renewal of physician certifications.

CS/CS/HB 387 authorizes a qualified physician who performs an in-person examination of a patient for the initial physician certification to use telehealth to conduct subsequent examinations of that patient for renewal physician certifications. The bill also authorizes DOH to suspend the registration of a qualified physician for up to 2 years if the qualified physician violates the requirements of s. 381.986, F.S., or provides, advertises, or markets telehealth services before July 1, 2023.

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

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Marijuana for Medical Use

Section 381.986, F.S., authorizes patients with any of the following debilitating medical conditions to obtain medical marijuana from Medical Marijuana Treatment Centers (MMTC):

- Cancer
- Epilepsy
- Glaucoma
- Positive status for human immunodeficiency virus
- Acquired immune deficiency syndrome
- Post-traumatic stress disorder
- Amyotrophic lateral sclerosis
- Crohn's disease
- Parkinson's disease
- Multiple sclerosis
- Medical conditions of the same kind or class as or comparable to those enumerated above

To obtain marijuana for medical use from a MMTC, and maintain the immunity from criminal prosecution, the patient must obtain a physician certification from a qualified physician<sup>1</sup> and an identification card from DOH.

To certify a patient for medical use of marijuana, a qualified physician must conduct a physical examination of the patient and determine that the patient has a qualifying medical condition and that medical marijuana would likely outweigh the health risks to the patient.<sup>2</sup> A qualified physician must be physically present in the same room when conducting the examination on a qualified patient.<sup>3</sup> The physician must evaluate an existing patient at least once every 30 weeks before issuing a renewal physician certification.<sup>4</sup> Under current law, the physician must conduct the in-person<sup>5</sup> physical examination of the patient to issue the initial certification and any subsequent renewal certifications.<sup>6</sup>

In response to the COVID-19 pandemic, on March 16, 2020, the State Surgeon General issued Emergency Order 20-002, authorizing qualified physicians to conduct examinations using telehealth to renew physician certifications of existing qualified patients. The Emergency Order expired on June 30, 2020, thus requiring in-person examinations for renewal of physician certifications.

As of February 24, 2023, there are 2,565 qualified physicians and 792,153 qualified patients.<sup>7</sup>

##### Telehealth

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<sup>1</sup> To certify patients for medical use of marijuana, a physician must hold an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and comply with certain physician education requirements. See ss. 381.986(1)m, F.S. and 381.986(3)(a), F.S.

<sup>2</sup> S. 381.986, F.S.

<sup>3</sup> S. 381.986(a), F.S.

<sup>4</sup> S. 381.986(4)(g), F.S.

<sup>5</sup> This means that the physician must be physically present and in the same room as the patient. S. 381.986(4)(a)1, F.S.

<sup>6</sup> S. 381.986, F.S.

<sup>7</sup> Department of Health, *Office of Medical Marijuana Use Weekly Updates, February 24, 2023*, available at [https://knowthefactsmmj.com/wp-content/uploads/ommu\\_updates/2023/022423-OMMU-Update.pdf](https://knowthefactsmmj.com/wp-content/uploads/ommu_updates/2023/022423-OMMU-Update.pdf) (last visited March 2, 2023).

Telehealth is not a type of health care service but rather is a mechanism for delivery of health care services using information and communication technologies to exchange valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation.<sup>8</sup>

Under current law, telehealth is defined as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:<sup>9</sup>

- 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.

### *Service Providers*

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,<sup>10</sup> or a registered out-of-state-health care provider.<sup>11</sup> Out-of-state telehealth providers must register biennially with DOH or the applicable board to provide telehealth services, within the relevant scope of practice established by Florida law and rule, to patients in this state.

### *Standards of Practice*

Current law 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 irrespective of the modality used by the health care professional to deliver the services. A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.<sup>12</sup>

Practitioners may perform a patient evaluation using telehealth. A practitioner using telehealth is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider is capable of conducting a patient evaluation in a manner consistent with the applicable standard of care sufficient to diagnose and treat the patient when using telehealth.

### **Effect of the Bill**

CS/CS/HB 387 authorizes a qualified physician who performs an in-person examination of a patient for the initial physician certification to use telehealth to conduct subsequent examinations of that patient for renewal physician certifications. The bill also authorizes DOH to suspend the registration of a qualified physician for up to 2 years if the qualified physician violates the requirements of s. 381.986, F.S., or provides, advertises, or markets telehealth services before July 1, 2023.

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

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 381.986, F.S.; relating to medical use of marijuana.

**Section 2:** Provides an effective date of July 1, 2023.

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<sup>8</sup> World Health Organization, *Telemedicine: Opportunities and Developments in Member States, Global Observatory for Ehealth Series-Volume 2*, Section 1.2, page 9 (2010), available at [http://www.who.int/goe/publications/goe\\_telemedicine\\_2010.pdf](http://www.who.int/goe/publications/goe_telemedicine_2010.pdf) (last visited March 2, 2023).

<sup>9</sup> S. 456.47(1), F.S.

<sup>10</sup> Florida is a member of the Nurse Licensure Compact. See s. 464.0095, F.S.

<sup>11</sup> S. 456.47(4), F.S.

<sup>12</sup> S. 456.47(2), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 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.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

#### 2. Other:

Not applicable. This bill does not appear to affect county or municipal governments.

### B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Healthcare Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment authorizes DOH to suspend the registration of a qualified physician for up to 2 years if the qualified physician violates the requirements of s. 381.986, F.S., or provides, advertises, or markets telehealth services before July 1, 2023.

On March 17, 2023, the Health and Human Services Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment authorizes a qualified physician who performs an

in-person examination of a patient for the initial physician certification to use telehealth to conduct subsequent examinations of that patient for renewal physician certifications.

This analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.