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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/11/2014	.	
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Appropriations Subcommittee on Health and Human Services (Bean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 456.4501, Florida Statutes, is created  
to read:

456.4501 Short title.—Sections 456.4501-456.4506 may be  
cited as the “Florida Telemedicine Act.”

Section 2. Section 456.4502, Florida Statutes, is created  
to read:



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11 456.4502 Definitions.—As used in this act, the term:

12 (1) "Act" means the Florida Telemedicine Act.

13 (2) "Advanced communications technology" means:

14 (a) Compressed digital interactive video, audio, or data  
15 transmissions;

16 (b) Real-time synchronous video- or web-conferencing  
17 communications;

18 (c) Secure web-based communications;

19 (d) Still-image capture or asynchronous store and forward;

20 (e) Health care service transmissions supported by mobile  
21 devices (mHealth); or

22 (f) Other technology that facilitates access to health care  
23 services or medical specialty expertise.

24 (3) "Distant site" means the location at which the  
25 telemedicine provider delivering the health care service is  
26 located at the time the service is provided via telemedicine.

27 (4) "Encounter" means an examination, consultation,  
28 monitoring, or other health care service.

29 (5) "Health care provider" means a health care practitioner  
30 or out-of-state licensed individual who provides health care  
31 services within the scope of his or her professional license.

32 (6) "In person" means that a patient is in the physical  
33 presence of the health care provider without regard to whether  
34 portions of the encounter are conducted by other providers.

35 (7) "Originating site" means the location of the patient  
36 receiving telemedicine services, which site meets the standards  
37 of this act as verified by the telemedicine provider.

38 (8) "Patient presenter" means an individual who has  
39 clinical background training in the use of advanced



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40 communications technology equipment and who is available at the  
41 originating site to present the patient, manage the cameras or  
42 equipment, and perform any hands-on activity necessary to  
43 successfully complete the telemedicine encounter under the  
44 direction and supervision of a telemedicine provider.

45 (9) "Store and forward" means the type of telemedicine  
46 encounter that uses still images of patient data for rendering a  
47 medical opinion or diagnosis. The term includes the asynchronous  
48 transmission of clinical data from one site to another.

49 (10) "Telehealth" means the use of advanced communications  
50 technology to provide access to health assessment, diagnosis,  
51 intervention, consultation, supervision, and information across  
52 distances. The term includes the use of remote patient-  
53 monitoring devices that are used to collect and transmit data  
54 for telemonitoring and interpretation.

55 (11) "Telemedicine" means the use of advanced  
56 communications technology by a telemedicine provider at a  
57 distant or originating site in compliance with federal and state  
58 privacy and confidentiality requirements and encryption  
59 standards. Services provided through telemedicine may include  
60 patient assessment, diagnosis, consultation, treatment,  
61 prescription of medicine, transfer of medical data, or other  
62 medical-related services. The term does not include audio-only  
63 calls, e-mail messages, or facsimile transmissions. Telemedicine  
64 includes telehealth and telemonitoring.

65 (12) "Telemedicine provider" means a health care  
66 practitioner licensed or certified in this state who provides  
67 telemedicine services.

68 Section 3. Section 456.4503, Florida Statutes, is created



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69 to read:

70 456.4503 Telemedicine requirements.-

71 (1) A health care provider who provides telemedicine across  
72 state lines to a patient physically located in this state must  
73 be licensed or certified in this state.

74 (2) An out-of-state health care provider is exempt from  
75 subsection (1) if:

76 (a) The out-of-state health care provider is consulting  
77 with a telemedicine provider licensed to practice in this state;

78 (b) The telemedicine provider licensed in this state  
79 retains ultimate authority and responsibility for the diagnosis,  
80 treatment, and care of the patient located within this state;  
81 and

82 (c) The out-of-state health care provider has privileges at  
83 or is on the medical staff of an out-of-state hospital  
84 affiliated with a Florida hospital licensed under chapter 395,  
85 or has an affiliation with an out-of-state health insurer or  
86 health plan that is also authorized to conduct business in this  
87 state pursuant to chapter 627 or chapter 641.

88 (3) An out-of-state health care provider authorized under  
89 subsection (2) to provide telemedicine services to patients in  
90 this state is subject to appropriate disciplinary action by the  
91 appropriate board in this state or other regulatory entity in  
92 this state which has regulatory jurisdiction over the hospital,  
93 insurer, or health plan affiliated with the health care  
94 practitioner as described in paragraph (2) (c).

95 (4) A telemedicine provider and a hospital, insurer, or  
96 health plan operating in this state which is affiliated with an  
97 out-of-state health care practitioner as described in paragraph



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98 (2) (c) shall make any pertinent records available upon request  
99 of the appropriate board, the department, or other regulatory  
100 authority as applicable. Failure to comply with such request may  
101 result in the revocation of the provider's license or  
102 certification or imposition of a fine by the applicable board  
103 or, in the case of an affiliated hospital, insurer, or health  
104 plan, a fine, license restriction, or revocation of an  
105 affiliated entity's authorization to conduct business in this  
106 state.

107 (5) Consultations that occur on an emergency basis and that  
108 are conducted via telemedicine are exempt from subsection (1).  
109 As used in this subsection, the term "emergency basis" refers to  
110 the provision of emergency services and care for an emergency  
111 medical condition, as those terms are defined in s. 395.002.

112 (6) A health care practitioner or patient presenter acting  
113 under the direction and supervision of a telemedicine provider  
114 through the use of telemedicine may not be interpreted as  
115 practicing without a license. However, the health care  
116 practitioner must be trained in, educated on, and knowledgeable  
117 about the procedure and technology and may not perform duties  
118 for which he or she does not have sufficient training,  
119 education, and knowledge. Failure to have adequate training,  
120 education, and knowledge is grounds for disciplinary action by  
121 the appropriate board, or department if there is no board, or  
122 the affiliated regulatory entity for affiliated providers.

123 (7) Upon license or certification renewal, the health care  
124 practitioner practicing telemedicine shall:

125 (a) Designate himself or herself as a telemedicine provider  
126 on the practitioner's profile, if applicable; and



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127       (b) Submit proof of successful completion of a course and  
128 subsequent examination, approved by the applicable regulatory  
129 board, or the department if there is no board, on the standards  
130 of practice in telemedicine. The course must consist of 2 web-  
131 based contact hours. The first course and examination must be  
132 offered by October 1, 2014, and shall be conducted at least  
133 annually thereafter. The course and examination shall be  
134 developed and offered by a statewide professional association  
135 accredited to provide educational activities as designated by  
136 the board. The board shall review and approve the content of the  
137 initial course and examination if the board determines that the  
138 course and examination adequately and reliably satisfy the  
139 criteria set forth in this section. Annually thereafter, the  
140 applicable regulatory board shall review the course and  
141 examination and, if the board determines that the content  
142 continues to adequately and reliably satisfy the criteria set  
143 forth in this section, approve them. Successful completion of an  
144 approved course and examination may be used to satisfy 2 hours  
145 of continuing education requirements for the biennial period  
146 during which the approved course and examination are taken. A  
147 health care practitioner who does not complete an approved  
148 course and examination under this section may not provide  
149 telemedicine services.

150       (8) Venue for a civil or administrative action initiated by  
151 the telemedicine recipient, the department, or the appropriate  
152 board shall be based on the location of the patient or shall be  
153 in Leon County.

154       (9) The boards may adopt rules to administer the  
155 requirements of this act and must repeal rules that are



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156 inconsistent with this act, including rules that prohibit the  
157 use of telemedicine in this state. The appropriate board may  
158 also develop standards and adopt rules relating to requirements  
159 for patient presenters. Such rules may not require the use of  
160 patient presenters in telemedicine services if special skills or  
161 training is not needed for a patient to participate in the  
162 encounter.

163 Section 4. Section 456.4504, Florida Statutes, is created  
164 to read:

165 456.4504 Telemedicine standards.-

166 (1) The standard of care as provided in s. 766.102 is the  
167 same regardless of whether the health care practitioner provides  
168 health care services in person or by telemedicine. The  
169 applicable board may adopt rules specifically related to the  
170 standard of care for telemedicine.

171 (2) A telemedicine provider providing telemedicine services  
172 under this act is responsible for the quality of the equipment  
173 and technology employed and for its safe use. Telemedicine  
174 equipment and advanced communications technology must, at a  
175 minimum, be able to provide the same information to the  
176 telemedicine provider as the information that would be obtained  
177 in an in-person encounter with a health care provider and must  
178 enable the telemedicine provider to meet or exceed the  
179 prevailing standard of care for the practice of the profession.

180 (3) The telemedicine provider is not required to conduct a  
181 patient history or physical examination of the patient before  
182 engaging in a telemedicine encounter if the telemedicine  
183 provider conducts a patient evaluation sufficient to meet the  
184 prevailing standard of care for the services provided.



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185       (4) Before each telemedicine encounter, the identification  
186 and location of the telemedicine provider and all other  
187 individuals present via advanced communications technology who  
188 will view the patient or the patient's information must be  
189 identified to the patient.

190       (5) For the purposes of this act, the nonemergency  
191 prescribing of a legend drug based solely on an electronic  
192 questionnaire without a visual examination is considered a  
193 failure to practice with the level of care, skill, and treatment  
194 which is recognized by a reasonably prudent health care  
195 practitioner and is not authorized under this act.

196       (6) A controlled substance may not be prescribed through  
197 the use of telemedicine for chronic, nonmalignant pain.

198       (7) Medical records must be kept by each telemedicine  
199 provider that participates in a patient telemedicine encounter  
200 to the same extent as required for an in-person encounter under  
201 state and federal law. Telemedicine providers are encouraged to  
202 create electronic health records to document the encounter and  
203 to transmit information in the most efficient manner possible.

204       (8) Any medical records generated, including records  
205 maintained via video, audio, electronic, or other means, due to  
206 a telemedicine encounter must conform to the confidentiality and  
207 recordkeeping requirements of federal law and nationally  
208 recognized health care accreditation organizations and the laws  
209 and rules of this state, regardless of where the medical records  
210 of a patient in this state are maintained.

211       (9) Telemedicine technology used by a telemedicine provider  
212 must be encrypted and must use a recordkeeping program to verify  
213 each interaction.



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214 (10) In those situations in which a telemedicine provider  
215 uses telemedicine technology provided by a third-party vendor,  
216 the telemedicine provider must:

217 (a) Require a business associate agreement with the third-  
218 party vendor; and

219 (b) Ensure that the third-party vendor complies with the  
220 administrative, physical, and technical safeguards and standards  
221 set forth by the Health Information Technology for Economic and  
222 Clinical Health (HITECH) Act and by federal regulations  
223 implemented pursuant to HITECH.

224 Section 5. Section 456.4505, Florida Statutes, is created  
225 to read:

226 456.4505 Telemedicine services to diagnose or treat the  
227 human eye.—

228 (1) The use of automated equipment, including computer-  
229 controlled devices, in the provision of telemedicine services to  
230 diagnose or treat the human eye and its appendages, is  
231 permissible if the following requirements are met at the time  
232 the automated equipment is used:

233 (a) The automated equipment is approved by the United  
234 States Food and Drug Administration for the intended use;

235 (b) The automated equipment is designed and operated in a  
236 manner that provides any accommodation required by the federal  
237 ADA Amendments Act of 2008;

238 (c) The automated equipment and accompanying technology  
239 used for the collection and transmission of information and  
240 data, including photographs and scans, gathers and transmits  
241 protected health information in compliance with the federal  
242 Health Insurance Portability and Accountability Act;



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243 (d) The procedure for which the automated equipment is used  
244 has a recognized Current Procedural Terminology (CPT) code  
245 approved by the Centers for Medicare and Medicaid Services;

246 (e) The physical location of the automated equipment  
247 prominently displays the name and Florida license number of the  
248 individual who will read and interpret the diagnostic  
249 information and data, including photographs and scans;

250 (f) Diagnostic information and data, including photographs  
251 and scans, gathered by the automated equipment is read and  
252 interpreted by an optometrist licensed under chapter 463 or a  
253 physician skilled in diseases of the human eye and licensed  
254 under chapter 458 or chapter 459; and

255 (g) The owner or lessee of the automated equipment  
256 maintains liability insurance in an amount adequate to cover  
257 claims made by individuals diagnosed or treated based on  
258 information and data, including photographs and scans, generated  
259 by the automated equipment.

260 (2) A prescription for spectacles or contact lens may not  
261 be made based on telemedicine services or based solely on the  
262 refractive error of the human eye generated by a computer-  
263 controlled device such as an autorefractor.

264 Section 6. Section 456.4506, Florida Statutes, is created  
265 to read:

266 456.4506 Telemedicine services under Medicaid.-

267 (1) The Agency for Health Care Administration may reimburse  
268 for Medicaid services provided through telemedicine in the same  
269 manner and equivalent to Medicaid services provided in-person  
270 under parts III and IV of chapter 409, except as provided in  
271 subsection (7).



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272 (2) Telemedicine services reimbursed under Medicaid must  
273 meet the standards and requirements of this act.

274 (3) Except as provided in subsection (7), the agency may  
275 not require in-person contact between a telemedicine provider  
276 and Medicaid recipient as a prerequisite for payment for  
277 services appropriately provided through telemedicine in  
278 accordance with generally accepted health care practices and  
279 standards prevailing in the applicable health care community at  
280 the time the services are provided.

281 (4) Before receipt of telemedicine services, a Medicaid  
282 recipient or the legal representative of a Medicaid recipient  
283 must provide informed consent for telemedicine services. A  
284 Medicaid recipient shall also be provided the opportunity to  
285 receive the same service through an in-person encounter.

286 (5) A Medicaid service that is provided through a fee-for-  
287 service or managed care program may not be denied as a  
288 creditable Medicaid service solely because that service is  
289 provided through telemedicine.

290 (6) Reimbursement of telemedicine services under Medicaid  
291 shall be the amount negotiated between the parties involved to  
292 the extent permitted under state and federal law. Regardless of  
293 the reimbursement methodology or amount, telemedicine providers  
294 located at the originating site and the distant site should both  
295 receive reimbursement based on the services rendered, if any,  
296 during the telemedicine encounter.

297 (7) If, after implementation, the agency determines that  
298 the delivery of a particular service through telemedicine is not  
299 cost-effective or does not adequately meet the clinical needs of  
300 recipients and the determination has been documented, the agency



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301 may discontinue Medicaid reimbursement for that telemedicine  
302 service.

303 (8) The agency shall submit a report on the usage and  
304 costs, including savings, if any, associated with the provision  
305 of health care services through telemedicine under the Medicaid  
306 program by January 1, 2017, to the President of the Senate, the  
307 Speaker of the House of Representatives, and the minority  
308 leaders of the Senate and the House of Representatives.

309 (9) This section is repealed June 30, 2017.

310 Section 7. This act shall take effect October 1, 2014.

311  
312 ===== T I T L E A M E N D M E N T =====

313 And the title is amended as follows:

314 Delete everything before the enacting clause  
315 and insert:

316 A bill to be entitled  
317 An act relating to telemedicine; creating s. 456.4501,  
318 F.S.; providing a short title; creating s. 456.4502,  
319 F.S.; defining terms applicable to the act; creating  
320 s. 456.4503, F.S.; requiring specified practitioners  
321 providing telemedicine services to patients in this  
322 state to be licensed in this state; providing certain  
323 exceptions for emergency services and consultations;  
324 requiring pertinent records to be made available upon  
325 request; requiring other health care providers to be  
326 supervised by a telemedicine provider; providing  
327 continuing education requirements for telemedicine  
328 providers; establishing venue; authorizing the  
329 licensing boards to adopt rules; creating s. 456.4504,



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330 F.S.; providing standards and prohibitions for the  
331 provision of telemedicine services; prohibiting  
332 nonemergency prescribing of a legend drug without a  
333 physical examination; prohibiting the prescription of  
334 a controlled substance for chronic, nonmalignant pain  
335 using telemedicine; establishing a method for  
336 disciplinary action of out-of-state health providers;  
337 requiring a telemedicine provider to keep medical  
338 records of a patient; requiring the records to conform  
339 to certain requirements; providing duties for a  
340 telemedicine provider that uses telemedicine  
341 technology provided by a third-party vendor; creating  
342 s. 456.4505, F.S.; authorizing the use of telemedicine  
343 services in the diagnosis and treatment of the human  
344 eye; providing requirements for the use of automated  
345 equipment; requiring the owner or lessee of the  
346 automated equipment to maintain specified liability  
347 insurance under certain circumstances; prohibiting  
348 prescriptions for spectacles or contact lens based  
349 solely on the use of an autorefractor; creating s.  
350 456.4506, F.S.; providing requirements for  
351 reimbursement of telemedicine services under the  
352 Medicaid program; requiring a report to the  
353 Legislature on the usage and costs of telemedicine  
354 services under the Medicaid program by a certain date;  
355 providing for future repeal; providing an effective  
356 date.