

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 849 Veterinary Practices
SPONSOR(S): Killebrew and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1040

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

HB 849 passed the House on February 1, 2024. The bill was amended in the Senate on March 4, 2024, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 6, 2024.

In Florida, the practice of "veterinary medicine" means the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals. Veterinarians are regulated by the Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) pursuant to ch. 474, F.S., relating to the veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for the safe practice of veterinary medicine and to protect public health and safety.

Current law defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment. Veterinarians are permitted to prescribe drugs in the course of veterinary practice; however, the veterinarian must be either personally acquainted with the keeping and caring of the animal and have recently seen the animal, or have made medically appropriate and timely visits to the premises where the animal is kept before prescribing drugs in the course of practice.

The use of electronic communications to facilitate patient health care (telehealth) is not addressed in the practice act and is not specifically prohibited or authorized in Florida. However, medical doctors may practice telehealth in Florida and may establish a patient relationship with a patient evaluation via telehealth under certain circumstances.

The bill creates the Providing Equity in Telehealth Services (PETS) Act, which authorizes the practice of veterinary telehealth, as follows:

- Authorizes veterinarians practicing telehealth to perform an initial patient evaluation to establish the VCPR if the evaluation is conducted using synchronous, audiovisual communication.
- Specifies that if a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth.
- Specifies that if the initial patient evaluation is performed using veterinary telehealth, the veterinarian is required to provide the client with a statement containing certain contact and follow-up care information.
- Authorizes telehealth based prescription timeframes of up to 1 month for flea and tick control drugs and 14 days for other animal drugs.
- Requires prescriptions based solely on a telehealth evaluation to be renewed with an in-person examination.
- Prohibits prescribing certain drugs and controlled substances unless the veterinarian has conducted an in-person physical examination, or made medically appropriate and timely visits to the premises where the animal is kept.
- Prohibits veterinarians practicing veterinary telehealth from prescribing drugs or other medications for use on horses under certain circumstances.
- Prohibits veterinarians from using veterinary telehealth to issue certain certificates of veterinary inspection.

The bill does not appear to have a fiscal impact on state or local government, and may have a positive fiscal impact on the private sector.

Subject to the Governor's veto powers, the bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Practice of Veterinary Medicine

The Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practices to protect public health and safety.¹

A “veterinarian” is a health care practitioner licensed by the Board to engage in the practice of veterinary medicine in Florida² and they are subject to disciplinary action from the Board for various violations of the practice act.³

The practice of “veterinary medicine” is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.⁴

Veterinary medicine includes, with respect to animals:⁵

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);⁶ and
- Other branches or specialties of veterinary medicine.

The practice act does not apply to the following categories of persons:

- Veterinary aides, nurses, laboratory technicians, preceptors,⁷ or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision⁸ of a licensed veterinarian;
- Certain non-Florida licensed veterinarians who are consulting upon request of a Florida-licensed veterinarian on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.
- Faculty veterinarians when they have assigned teaching duties at accredited⁹ institutions;

¹ S. 474.201, F.S.

² S. 474.202(11), F.S.

³ Ss. 474.213 & 474.214, F.S.

⁴ See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

⁵ See s. 474.202(13), F.S. S. 474.202(1), F.S., defines “animal” as “any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead.”

⁶ Theriogenology is a branch of veterinary medicine concerned with veterinary obstetrics and with the diseases and physiology of animal reproductive systems. See <https://www.merriam-webster.com/medical/theriogenology> (last visited Jan. 5, 2024).

⁷ A preceptor is a skilled practitioner or faculty member who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. See also <https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary> (last visited Jan. 5, 2024).

⁸ The term “responsible supervision” is defined in s. 474.202(10), F.S., as the “control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services” delegated to unlicensed personnel.

⁹ Ss. 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates.

- Certain graduated intern/resident veterinarians of accredited institutions;
- Certain students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors;
- Certain doctors of veterinary medicine employed by a state agency or the United States Government;
- Persons or their employees caring for the persons' own animals, as well as certain part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks; and
- Certain entities or persons¹⁰ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.¹¹

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by DBPR.¹² Each person to whom a veterinary license or premises permit is issued must conspicuously display such document in her or his office, place of business, or place of employment in a permanent or mobile veterinary establishment or clinic.¹³

By virtue of accepting a license to practice veterinary medicine in Florida, a veterinarian consents to:

- Render a handwriting sample to an agent of the department and, further, to have waived any objections to its use as evidence against her or him.
- Waive the confidentiality and authorize the preparation and release of medical reports pertaining to the mental or physical condition of the licensee when the department has reason to believe that a violation of this chapter has occurred and when the department issues an order, based on the need for additional information, to produce such medical reports for the time period relevant to the complaint.¹⁴

For Fiscal Year 2021-2022, there were 12,360 actively licensed veterinarians in Florida. DBPR received 568 complaints, which resulted in 26 disciplinary actions.¹⁵

Veterinarian/Client/Patient Relationship

The practice act defines a “patient” as any animal for which the veterinarian practices veterinary medicine.¹⁶

The practice act defines a “veterinarian/client/patient relationship” (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.¹⁷

Veterinarians are permitted to prescribe drugs in the course of veterinary practice, but may be disciplined by the Board for certain related violations, including ordering, prescribing, or making

¹⁰ See s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof....”

¹¹ See s. 474.203, F.S.

¹² S. 474.215(1), F.S.

¹³ S. 474.216, F.S.

¹⁴ S. 474.2185, F.S.

¹⁵ Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2021-2022*, <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Jan. 5, 2024).

¹⁶ S. 474.202(8), F.S.

¹⁷ S. 474.202(12), F.S.

available medicinal drugs or drugs¹⁸ or controlled substances¹⁹ for use other than for the specific treatment of animal patients for which there is a documented VCPR and without:

- Having sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept;
- Being available to provide for follow-up care and treatment in case of adverse reactions or failure of the regimen of therapy; and
- Maintaining records which document patient visits, diagnosis, treatment, and other relevant information required under the practice act.²⁰

Veterinary Telemedicine

The use of electronic communications to facilitate patient health care (veterinary telemedicine) is not addressed in the practice act and is not specifically prohibited or authorized for practitioners of veterinary medicine in Florida.²¹

According to research conducted by the American Veterinary Medical Association (AVMA), almost one-third of all pets in the U.S. do not regularly see a veterinarian.²² The reasons for this include cost of veterinary care, logistical obstacles, and a shortage of licensed veterinarians.²³

Veterinary telemedicine has been found to “help pet owners avoid additional expenses related to unnecessary time off work or transportation and may provide cost-effective options. Telemedicine can also address problems with bringing pets to clinics that may be faced by many pet owners, such as seniors, disabled individuals, those without transportation, and owners of fearful, large, or potentially aggressive pets.”²⁴

“Interest in veterinary telemedicine has grown significantly in recent years, driven in part by a critical shortage of veterinary professionals in the workforce and boosted by COVID-19 pandemic emergency orders that temporarily suspended legal barriers to veterinary telemedicine.”²⁵

Expanding access to veterinary telemedicine may alleviate some of these problems, including, “industry problems with workforce shortages of veterinary professionals, increased caseloads, and limited work-life balance.”²⁶

In the human health setting, a 50 state survey conducted by the AVMA found that “all states allow a physician to establish a relationship with a new patient over telemedicine.”²⁷ However, the same approach does not appear to exist with veterinary medicine.

¹⁸ S. 465.003(8), F.S.

¹⁹ S. 893.02(4), F.S.

²⁰ S. 474.214(1)(y), F.S.

²¹ R. 64B8-9.0141, F.A.C. Currently, medical doctors may practice telemedicine in Florida in a patient relationship with a patient evaluation, under certain circumstances.

²² Malinda Larkin, *New, Old Challenges Beg for Radical Change in Veterinary Profession*, JAVMA News (Dec. 3, 2020), <https://www.avma.org/javma-news/2020-12-15/new-old-challenges-beg-radical-change-veterinary-profession> (last visited Jan. 9, 2024).

²³ The Veterinary Care Accessibility Project, *Veterinary Care Accessibility Score*, <https://www.accesstovetcare.org/> (last visited Jan. 9, 2024).

²⁴ Camille DeClementi, Jennifer Hobgood, and Diana Ferguson, *IN THE CARDS: BETTING ON VETERINARY TELEMEDICINE LEGAL REFORM*, Florida Bar Journal, (Dec. 2022), <https://www.floridabar.org/the-florida-bar-journal/in-the-cards-betting-on-veterinary-telemedicine-legal-reform/> (last visited Jan. 9, 2024).

²⁵ *Id.*

²⁶ *Id.*

²⁷ American Medical Association, *50-State Survey: Establishment of a Patient-Physician Relationship Via Telemedicine*, <https://www.ama-assn.org/system/files/2018-10/ama-chart-telemedicine-patient-physician-relationship.pdf> (last visited Jan. 9, 2024).

Opponents of veterinary telemedicine argue that animals cannot articulate symptoms like humans, making physical examinations necessary to diagnose animal ailments. However, it has been found that “while animals cannot verbally communicate, they provide behavioral signals, which can potentially be more informative than seeing an animal in an unfamiliar place where the animal is not behaving as it customarily would. In a clinic setting, dogs and cats may become extremely fearful and withdrawn, and, in a situation that they perceive as threatening, animals may mask their pain as a survival mechanism.”²⁸

Historically, physicians resisted expansion of telemedicine in human medicine for similar reasons. By the 1990s, resistance in the medical community had largely subsided.²⁹

Veterinary Telemedicine During the Pandemic

On March 24, 2020, the U.S. Food and Drug Administration (FDA) announced that it would temporarily suspend enforcement of certain prescription limitations in order to allow veterinarians to better utilize telemedicine to address animal health needs during the COVID-19 pandemic. Specifically, the FDA provided guidance related to suspending the enforcement of the animal examination and premises visit VCPR requirements relevant to FDA regulations governing **Extra-label Drug Use in Animals**³⁰ and **Veterinary Feed Directive Drugs**.³¹ This allowed veterinarians to prescribe or authorize the use of drugs without direct examination or making visits to patients, in an effort to limit human-to-human interaction and potential spread of COVID-19 in the community.³²

According to the FDA, veterinarians are licensed by their state veterinary licensing board and must meet the requirements of the licensing board to practice in that state. FDA regulates the devices and drugs that veterinarians use, and the conditions under which veterinarians may **prescribe drugs for extra-label uses**. When an approved drug is used in a manner other than what is stated on the label, it is an extra-label use. This is commonly called an “off-label” use because the drug is used in a way that is “off the label.”³³

On March 27, 2020, DBPR issued emergency order EO 2020-04, which suspended any restriction of ch. 474, F.S., or ch. 61G-18, F.A.C., which would prohibit an active Florida-licensed veterinarian from practicing telemedicine on a patient. The order specified that attending veterinarians must be comfortable assessing the patient remotely and feel able to exercise good clinical judgment to assist the patient.³⁴

The FDA withdrew its temporary guidance suspending the enforcement of the animal examination and premises visit VCPR requirements on February 21, 2023.³⁵

²⁸ Mark Epstein, et al., *2015 AAHA/AAFP Pain Management Guidelines for Dogs and Cats*, American Animal Hospital Association (2015), https://www.aaha.org/globalassets/02-guidelines/pain-management/2015_aaha_aafp_pain_management_guidelines_for_dogs_and_cats.pdf (last visited Jan. 9, 2024).

²⁹ Mary Ann Liebert, *History of Telemedicine 15-16* (NY 2009).

³⁰ 21 C.F.R. part 530.

³¹ 21 C.F.R. s. 558.6.

³² U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic*, <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-helps-facilitate-veterinary-telemedicine-during-pandemic> (last visited Jan. 5, 2024).

³³ U.S. Food and Drug Administration, *What FDA Does and Does Not Regulate*, <https://www.fda.gov/animal-veterinary/animal-health-literacy/what-fda-does-and-does-not-regulate#top> (last visited Jan. 5, 2024).

³⁴ Department of Business and Professional Regulation, *Emergency Order EO 2020-04*, Mar. 27, 2020, http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited Jan. 5, 2024).

³⁵ 87 C.F.R. 78111.

DBPR's emergency order allowing Florida-licensed veterinarians to practice telemedicine ended with the expiration of Florida's COVID-19 state of emergency (EO 20-52) on Saturday June 26, 2021.³⁶

Veterinary Telemedicine in Other States

The use of telemedicine by veterinarians varies by state. Some states allow telemedicine to be used at the veterinarian's discretion, others allow it after the establishment of a VCPR, some do not allow it at all, and others limit telemedicine for purposes of prescribing medication or controlled substances.

According to the Veterinary Virtual Care Association, state laws relating to veterinary telemedicine generally fall within the following categories: 25 states and the District of Columbia require the provider to have "seen" or become "acquainted with" the animal; 10 states require a physical examination for a VCPR; 5 states allow telemedicine to create a VCPR; 1 state allows telemedicine to create a VCPR except for prescriptions; 1 state does not reference and therefore does not define or use the term VCPR; and 9 states expressly prohibit using telemedicine to establish a VCPR.³⁷

Virginia allows veterinarians to practice telemedicine. In addition, it allows a veterinarian who performs or has performed an appropriate examination of a patient to prescribe certain controlled substances to a patient via the practice of telemedicine. The Virginia Board of Veterinary Medicine adopted guidance effective September 17, 2020, for telehealth in the practice of veterinary medicine, which indicates that:

"Using telehealth technologies in veterinary practice is considered a method of service delivery. The current, applicable regulations apply to all methods of service delivery, including telehealth. The licensee is responsible for using professional judgment to determine if the type of service can be delivered via telehealth at the same standard of care as in-person service."³⁸

The Idaho Board of Veterinary Medicine provides the following guidance on telehealth:

"The veterinarian must employ sound profession judgment to determine whether using Telehealth is appropriate in particular circumstances each and every time animal care is provided and only provide medical advice or treatment via Telehealth to the extent that it is possible without a hands on examination. A veterinarian using Telehealth must take appropriate steps to obtain Informed Consent, establish the VCPR and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of Telehealth as a component of, or in lieu of, hands on medical care, while others are not."³⁹

The state of Oklahoma only allows a veterinarian to prescribe drugs via telemedicine under the following conditions:

"The veterinarian assumes responsibility for making medical judgments regarding the health of the animal based on a current thorough medical knowledge of the animal, such knowledge is gained by recently seeing or being personally acquainted with the keeping and care of the animal to the extent necessary to properly make appropriate medical decisions."⁴⁰

³⁶ On March 9, 2020, Governor DeSantis issued Executive Order 20-52 which declared a state of emergency for the entire state due to COVID-19. The Executive Order was extended several times. Executive Order 21-94 extended the state of emergency for sixty days from April 27, 2021. The sixtieth day was Saturday June 26, 2021, and the order was not renewed by the Governor.

³⁷ Veterinary Virtual Care Association, *Veterinary Telemedicine Regulatory Map*, <https://vvca.org/telemedicine-map/> (last visited Jan. 5, 2024).

³⁸ Virginia Board of Veterinary Medicine, *Guidance for Telehealth in the Practice of Veterinary Medicine, Guidance Document: 150-25*, <https://www.dhp.virginia.gov/media/dhpweb/docs/vet/guidance/150-25.pdf> (last visited Jan. 5, 2024).

³⁹ Idaho Board of Veterinary Medicine, *Policy Number 2018-02 Telemedicine (Oct. 15, 2021)*, <https://dopl.idaho.gov/wp-content/uploads/2023/07/Telemed-Policy-6-8-18-with-Revision-10-15-21.pdf> (last visited Jan. 5, 2024).

⁴⁰ Oklahoma State Board of Veterinary Medical Examiners, *Veterinarian-Client-Patient-Relationship-VCPR*, <https://www.okvetboard.com/veterinarian-faq/95-board-telemedicine-telehealth-position-statement> (last visited Mar. 6, 2023).

The state of Washington only allows telemedicine after a VCPR has been established:

“The veterinarian shall not establish a veterinary-client-patient relationship solely by telephonic or other electronic means. However, once established, a veterinary-client-patient relationship may be maintained between medically necessary examinations via telephone or other types of consultations.”⁴¹

Michigan recently repealed the need for an **in-person** exam prior to practicing telemedicine. Effective April 15, 2021, a veterinarian providing a “telehealth service” is required to have sufficient knowledge of the animal patient by having recently examined the animal patient in person or obtained current knowledge of the animal patient through the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically, or have conducted medically appropriate and timely visits to the premises where the group of animal patients is kept.⁴²

Telehealth for Medical Doctors

Current 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:⁴³

- 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.

Telehealth does not include e-mail messages, or facsimile transmission under Florida law.⁴⁴ No express authority is needed to communicate using these methods.

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,⁴⁵ or a registered out-of-state-health care provider.⁴⁶

Out-of-state telehealth providers must register biennially with the Department of Health (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. To register or renew registration as an out-of-state telehealth provider, the health care professional must:

- Hold 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 and
- Not have been subject to licensure disciplinary action during the five years before submission of the registration application;⁴⁷
- Not be subject to a pending licensure disciplinary investigation or action;
- Not have had license revoked in any state or jurisdiction;
- Designate a registered agent in this state for the service of process;

⁴¹ Wash. Rev. Code § 246-933-200(2).

⁴² Mich. Gen. R. 338.4901a.

⁴³ S. 456.47(1)(a), F.S.

⁴⁴ *Id.*

⁴⁵ Florida is a member of the Nurse Licensure Compact. *See* s. 464.0095, F.S.

⁴⁶ S. 456.47(4), F.S.

⁴⁷ The bill requires DOH to consult the National Practitioner Data Bank to verify whether adverse information is available for the registrant.

- Maintain professional liability coverage or financial responsibility, which covers services provided to patients not located in the provider's home state, in the same amount as required for Florida-licensed practitioners;⁴⁸ and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.⁴⁹

Telehealth 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.⁵⁰

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.

Emergency Orders

On January 31, 2020, the U.S. Secretary of HHS issued a public health emergency.⁵¹ On March 16, 2020, the DEA published a COVID-19 Information page on the Diversion Control Division website, authorizing DEA-registered practitioners to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation, provided all of the following conditions are met:

- 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.⁵²

Controlled Substances – Florida Law

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,

⁴⁸ 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.; r. 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.).

⁴⁹ S. 456.47(4), F.S.

⁵⁰ S. 456.47(2), F.S.

⁵¹ U.S. Department of Health & Human Services, *Determination that a Public Health Emergency Exists*, (Jan. 31, 2020)

<https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx#:~:text=A%20of%20Health,January%202020%20nationwide>. (last visited Jan. 5, 2024).

⁵² U.S. Drug Enforcement Administration, *DEA's response to COVID-19*, <https://www.dea.gov/press-releases/2020/03/20/dea-response-covid-19> (last visited Jan. 5, 2024); 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) [https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-022\)\(DEA068\)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20\(Final\)%20+Esign.pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20(Final)%20+Esign.pdf) (last visited Jan. 5, 2024).

distribution, preparation, and dispensing of the substances. The scheduling of 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.

Controlled Substances – Federal Law

The Federal Controlled Substances Act⁵³ also classifies controlled substances into schedules based on the potential for abuse and whether there is a currently accepted medical use for the substance. The Drug Enforcement Administration (DEA) is required to consider the following when determining where to schedule a substance:⁵⁴

- The substance's actual or relative potential for abuse;
- Scientific evidence of the substance's pharmacological effect, if known;
- The state of current scientific knowledge regarding the substance;
- The substance's history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to public health;
- The substance's psychic or physiological dependence liability; and
- Whether the substance is an immediate precursor of a substance already controlled.

Telehealth Prescribing of Controlled Substances

The FDA regulations governing Extralabel Drug Use in Animals and Veterinary Feed Directives, limited in application to circumstances where a veterinarian is using a drug in a manner other than the purpose for which it was approved or in feed directives, require a valid VCPR, which "can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept."⁵⁵

"However, the corresponding regulation in the Florida Administrative Code blocks veterinarians from prescribing unless they have "recent contact" with the animal.⁵⁶ Since the Florida statute contains no

⁵³ 21 U.S.C. s. 812.

⁵⁴ 21 U.S.C. s. 811(c).

⁵⁵ 21 C.F.R. §530.1 & §530.3(i)(3).

⁵⁶ Rule 61G18-30.001 (2)(y), F.S.

“recent contact” requirement for a VCPR or for prescribing, the Board may have exceeded its statutory authority⁵⁷ to “carry out the provisions of” F.S. Ch. 474, Veterinary Medical Practice.”⁵⁸

Federal law specifically prohibits prescribing controlled substances via the Internet without an in-person evaluation, but the Ryan Haight Online Pharmacy Consumer Protection Act (Haight Act),⁵⁹ signed into law in October 2008⁶⁰ created a pathway for telehealth practitioners to dispense controlled substances via telehealth.

The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice. But, **once an in-person evaluation of the patient has occurred**, the practitioner may provide future prescriptions for **controlled substances** for that patient using telehealth services.⁶¹

Florida law currently prohibits a telehealth provider (human) from using telehealth services to prescribe a controlled substance except when treating a psychiatric disorder, an inpatient at a licensed hospital, a patient receiving hospice services, or a resident of a nursing home facility.⁶²

Prescription Drug Law for Veterinarians

In order to purchase, prescribe, administer or dispense controlled substances in Florida, veterinarians must obtain a license from the U.S. Drug Enforcement Administration (DEA). Florida does not require any additional licensure for veterinarians to purchase and prescribe controlled drugs.⁶³

The DEA is a division within the U.S. Department of Justice and reports to the U.S. Attorney General. In consultation with the U.S. Secretary of the federal Department of Health and Human Services (HHS) and others, the Attorney General oversees the listing of substances on five schedules (Classes I, II, III, IV or V) of controlled agents as described in Title 21 United States Code (USC) of the Controlled Substances Act. The central mission of the DEA is to enforce controlled substances laws and regulations.⁶⁴

With respect to veterinarians and other health professionals, the major focus of the DEA is to prevent illegal diversion of controlled prescription drugs for the purpose of illicit or non-medical uses. In order to legally purchase, dispense or prescribe controlled prescription drugs, a veterinarian must be licensed by the DEA. Prescription drugs that are regulated or controlled by the DEA include many important drugs that are used routinely by veterinarians. DEA-controlled drugs are tightly controlled at all aspects of manufacturing, distribution, ordering, storage, use and disposition.⁶⁵

While veterinarians are allowed to write prescriptions for controlled drugs, they cannot order controlled drugs from their local pharmacy for “in-house” use nor for secondary re-sale. Like any other prescription, controlled drug prescriptions must be written for a specific patient and cannot be for

⁵⁷ S. 474.204(1), F.S.

⁵⁸ Camille DeClementi, Jennifer Hobgood, and Diana Ferguson, *IN THE CARDS: BETTING ON VETERINARY TELEMEDICINE LEGAL REFORM*, Florida Bar Journal, (Dec. 2022), <https://www.floridabar.org/the-florida-bar-journal/in-the-cards-betting-on-veterinary-telemedicine-legal-reform/> (last visited Jan. 9, 2024).

⁵⁹ Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).

⁶⁰ 21 CFR s. 829, the in-person medical evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.

⁶¹ *Id.*

⁶² S. 456.47(2)(c), F.S.

⁶³ Thomas Vickory, PhD, DEA REGULATION OF CONTROLLED DRUGS, <https://www.vetfolio.com/learn/article/florida-drug-laws-update-2013> (last visited Jan. 5, 2024).

⁶⁴ Thomas, *supra* note 63.

⁶⁵ Thomas, *supra* note 63.

general use. As a licensed DEA registrant, veterinarians are expected to create and maintain a system that provides strong safeguards against theft or diversion of controlled drugs in their practice.⁶⁶

Two opioids are approved and marketed for use in animals, butorphanol and buprenorphine. Due to the limited number of approved and marketed veterinary opioids, veterinarians who need to use opioids to control pain in their patients generally use products approved for use in people.⁶⁷

Effect of the Bill

The bill creates the "Providing Equity in Telehealth Services Act," which allows licensed veterinarians to practice veterinary telehealth on a limited basis.

Specifically, the bill:

- Defines "veterinary 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.
- Allows a veterinarian who holds a current license to practice veterinary medicine in this state to practice veterinary telehealth.
- Gives the Board jurisdiction over a veterinarian practicing veterinary telehealth, regardless of where the veterinarian's physical office is located.
- Deems the practice of veterinary medicine to occur when the veterinarian, the patient, or both are located within this state at the time the veterinarian practices veterinary telehealth.
- Prohibits practicing veterinary telehealth unless it is within the context of a VCPR.
- Requires veterinarians to:
 - Practice telehealth in a manner consistent with the scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in this state; and
 - Employ sound, professional judgment to determine whether using veterinary telehealth is an appropriate method for delivering medical advice or treatment to the patient.
- Authorizes veterinarians practicing telehealth to perform an initial patient evaluation to establish the VCPR if the evaluation is conducted using synchronous, audiovisual communication.
- Prohibits such evaluation from being performed using:
 - Audio only communications;
 - Text messaging;
 - Questionnaires;
 - Chatbots; or
 - Other similar means.
- Specifies that if a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth to provide a veterinary health care service to the patient.
- Specifies that if the initial patient evaluation is performed using veterinary telehealth, the veterinarian is required to:
 - Provide the client with a statement containing:
 - The veterinarian's name, license number, and contact information.
 - Contact information for at least one physical veterinary clinic in the vicinity of the patient's location.

⁶⁶ Thomas, *supra* note 63.

⁶⁷ U.S. FDA, *The Opioid Epidemic: What Veterinarians Need to Know*, <https://www.fda.gov/animal-veterinary/resources-you/opioid-epidemic-what-veterinarians-need-know> (last visited Jan. 5, 2024).

- Instructions for how to receive patient follow-up care or assistance if the veterinarian and client are unable to communicate because of a technological or equipment failure or if there is an adverse reaction to treatment.
 - Inform the client, if medication is prescribed, that the client may obtain a prescription that may be filled at the pharmacy of his or her choice.
 - Obtain from the client a signed and dated statement indicating the client has received the required information before practicing veterinary telehealth.
- Requires veterinarians practicing telehealth to prescribe all drugs and medications in accordance with all federal and state laws, as follows:
 - Authorizes veterinarians practicing veterinary telehealth to order, prescribe, or make available medicinal drugs or drugs specifically approved for use in animals by the FDA, the use of which conforms to the approved labeling.
 - Authorizes prescriptions based solely on a telehealth evaluation to be issued for up to 1 month for products labeled solely for flea and tick control and up to 14 days of treatment for other animal drugs.
 - Prohibits prescriptions based solely on a telehealth evaluation from being renewed without an in-person examination.
 - Prohibits veterinarians practicing veterinary telehealth from ordering, prescribing, or making available medicinal drugs or drugs as defined in s. 465.003, F.S., approved by the FDA for human use or compounded antibacterial, antifungal, antiviral, or antiparasitic medications, unless the veterinarian has:
 - Conducted an in-person physical examination of the animal; or
 - Made medically appropriate and timely visits to the premises where the animal is kept.
 - Prohibits veterinarians from using veterinary telehealth to prescribe a controlled substance as defined in chapter 893, F.S., unless the veterinarian has:
 - Conducted an in-person physical examination of the animal; or
 - Made medically appropriate and timely visits within the past year to the premises where the animal is kept.
 - Prohibits veterinarians practicing veterinary telehealth from prescribing a drug or other medication for use on:
 - A horse engaged in racing or training at a facility under the jurisdiction of the Florida Gaming Control Commission; or
 - A covered horse as defined in the federal Horseracing Integrity and Safety Act, 15 U.S.C. ss. 3051 et seq.
- Requires veterinarians practicing telehealth to:
 - Be familiar with available veterinary resources, including emergency resources, near the patient's location.
 - Be able to provide the client with a list of nearby veterinarians who may be able to see the patient in person upon the request of the client.
 - Keep, maintain, and make available a summary of the patient record as provided in s. 474.2165, F.S.
- Prohibits veterinarians from using veterinary telehealth to issue an international or interstate travel certificate or a certificate of veterinary inspection.
- Authorizes veterinarians personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461, F.S., who have recently seen the animal or group of animals or made medically appropriate and timely visits to the premises where the animal or group of animals is kept to practice veterinary telehealth for animals on such operations.
- Includes technical and conforming changes.

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:

Licensed veterinarians will be permitted to practice veterinary telehealth, including limited prescription authority, thus giving them more flexibility in their practice. This will move them further toward equal footing with licensed health care providers in the state who are already allowed to practice telehealth.

Animal owners may have greater access to veterinarians and may feel more comfortable, especially during a state of emergency. Visitors and tourists with pets may be able to obtain veterinarian care while on vacation in Florida without the need for locating and transporting their animal to a veterinarian's office.

D. FISCAL COMMENTS:

None.