

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1232

INTRODUCER: Senator Brodeur

SUBJECT: Telehealth Prescribing

DATE: March 24, 2023

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Stovall | Brown          | HP        | <b>Pre-meeting</b> |
| 2. |         |                | JU        |                    |
| 3. |         |                | RC        |                    |

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**I. Summary:**

SB 1232 authorizes a controlled substance listed in Schedule II of s. 893.03, F.S., to be prescribed via telehealth by a telehealth provider for the treatment of a terminal condition or for the treatment of cancer.

The bill provides an effective date of 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.<sup>1</sup>

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.<sup>2</sup>

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

<sup>2</sup> 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.<sup>3</sup>

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,<sup>4</sup> or the Department of Health (DOH) if there is no board, and meet certain eligibility requirements.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

The website of an out-of-state telehealth provider registered under s. 456.47, F.S., must prominently display a hyperlink to the DOH website, and the DOH 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.
- Out-of-state health care licenses, including license numbers.
- Florida telehealth provider registration number.
- Specialty, if any.
- Board certification, if any.
- Five years of 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.<sup>8</sup>

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 DOH if there is no board, of any restrictions placed on his or her license

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<sup>3</sup> 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).

<sup>4</sup> 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 DOH or, in some cases, within the DOH’s Division of Medical Quality Assurance (MQA).

<sup>5</sup> See generally s. 456.47(4), F.S.

<sup>6</sup> See s. 456.47(4)(f), F.S.

<sup>7</sup> Section 456.47(3), F.S. (referencing ss. 395.3025(4) and 456.057, F.S., in connection with confidentiality).

<sup>8</sup> Section 456.47(4)(c) and (4)(h), F.S.

to practice, or any disciplinary action taken or pending against him or her, in any state or jurisdiction. This notification must be provided within five business days after the restriction is placed or the disciplinary action is initiated or taken.<sup>9</sup>

The board, or the DOH 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 DOH if there is no board, of any adverse action 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.<sup>10</sup>

Disciplinary action taken by the applicable board, or the DOH 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 DOH 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 DOH if there is no board.<sup>11</sup>

Venue for civil or administrative actions initiated by the DOH, 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.<sup>12</sup>

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 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.<sup>13</sup>

### **Controlled Substances**

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, 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:

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<sup>9</sup> Section 456.47 (4)(d), F.S.

<sup>10</sup> 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).

<sup>11</sup> *Id.*

<sup>12</sup> Section 456.47(5), F.S.

<sup>13</sup> Section 456.47(6), F.S. (referencing s. 395.002, F.S., in connection with emergency medical conditions).

- 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.

The prescribing of controlled substances in Florida is regulated under s. 456.44, F.S. and the various practice acts and board rules. Practitioners in Florida who are authorized to prescribe controlled substances within their scope of practice include allopathic physicians ch. 458, F.S., osteopathic physicians ch. 459, F.S., podiatrists ch. 461, F.S., dentists ch. 466, F.S., physician assistants licensed under ch. 458 or ch. 459, F.S., and advanced practice registered nurses licensed under part I, ch. 464, F.S.

Controlled substance prescribing is more tightly regulated under s. 456.44, F.S., for the treatment of acute pain and chronic nonmalignant pain, primarily due to the higher potential for substance abuse and addiction. Under this section:

- “Acute pain” is defined as the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The term does not include pain related to cancer, a terminal condition, palliative care to provide relief of symptoms related to an incurable, progressive illness or injury, or a traumatic injury with an Injury Severity Score of 9 or greater.
- “Chronic nonmalignant pain” is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of pain or more than 90 days after surgery.

### **Evolution of Telehealth Prescribing of Controlled Substances**

When the authorization for health care practitioners to practice through telehealth was initially enacted in 2019,<sup>14</sup> telehealth providers were prohibited from prescribing any controlled substance unless the controlled substance was prescribed for:

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<sup>14</sup> Chapter 2019-137, Laws of Fla.

- 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.

In 2022,<sup>15</sup> this prohibition against prescribing any controlled substance unless it was for one of the four exceptions was relaxed. Under current law, the restriction applies only to Schedule II<sup>16</sup> drugs, so that a telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II of the state law establishing standards and schedules for controlled substances<sup>17</sup> 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;<sup>18</sup> or
- The treatment of a resident of a nursing home facility.<sup>19, 20</sup>

### III. Effect of Proposed Changes:

SB 1232 expands the conditions under which a telehealth provider may use telehealth to prescribe a controlled substance listed in Schedule II to include the treatment of a terminal condition as defined in s. 456.44(1)(2)2, F.S., or the treatment of cancer.

A terminal condition is defined in s. 456.44(1)(2)2, F.S., as a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within one year after diagnosis if the condition runs its normal course.

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

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

<sup>15</sup> Chapter 2022-22, Laws of Fla.

<sup>16</sup> 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).

<sup>17</sup> Section 893.03, F.S.

<sup>18</sup> Section 400.601(14), F.S., defines “hospice services” as items and services furnished to a patient and family by a hospice, or by others under arrangements with such a program, in a place of temporary or permanent residence used as the patient’s home for the purpose of maintaining the patient at home; or, if the patient needs short-term institutionalization, the services must be furnished in cooperation with those contracted institutions or in the hospice inpatient facility.

<sup>19</sup> Section 400.021(12), F.S., defines a “nursing home facility” as any facility which provides nursing services defined and licensed under ch. 464 part I, F.S..

<sup>20</sup> Section 456.47(2)(c), F.S.

**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.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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