



Garfunkel Wild

Florida Telehealth – What Florida and Non-Florida Practitioners Need to Know

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Susan L. St. John is a partner at Garfunkel Wild based out of our Florida office. Having served as a health care financial consultant and Medicare Auditor prior to becoming a lawyer, Susan brings over 30 years of health care experience to clients on business planning, tax law, health care compliance, mergers and acquisitions, commercial transactions and health care regulatory matters. Susan combines sophisticated M&A negotiation skills, with a unique understanding of operations, financial and tax implications of transactional matters and structuring “the deal” to help her clients maximize value and minimize risk.

Telehealth in Florida

- Section 456.47, F.S. – Use of Telehealth to Provide Services
 - Became law July 1, 2019.
 - Uses electronic information and telehealth communication technologies to support and promote patient access and care, education, and public health and health care administration.
 - Synchronous or asynchronous telecommunications. May use video conferencing, the internet, store and forward imaging, streaming media, and terrestrial and wireless communications. Currently, may not use audio-only telephone calls, e-mail messages, or facsimile transmissions.
 - Telephone conversations, chart review, electronic mail message, or facsimile transmissions are not considered telehealth pursuant to Section 456.47, Fla. Stats., or Florida Medicaid.
 - May provide various health care services via telehealth, including assessment, diagnosis, consults, treatment, patient monitoring, etc.
 - Patient-practitioner relationship may be established via telehealth.
 - Practitioners licensed in Florida – not limited to physicians, APRNs, or PAs. Most practitioners licensed through Department of Health are able to provide telehealth services.

What If I Am Out of State?

- Out-of-State practitioners may register with the appropriate board or Department of Health to provide telehealth services in Florida.
 - See application at: Microsoft Word - Telehealth Provider Registration App- Updated 5272022 (flhealthsource.gov)
 - Hold a valid active and unencumbered license in another state, DC, or US territory or possession, that is substantially similar to a license issued in Florida.
 - No disciplinary proceedings during the 5-year period prior to registration.
 - Not undergoing current investigation or discipline.
 - Has not had license revoked in any state or jurisdiction.
 - Professional liability coverage or financial responsibility that includes telehealth services provided to patients not in licensee's state and in amounts at a minimum equal to coverage or financial responsibility or practitioners licensed in Florida.
 - Must include a hyperlink in physician/practitioner website to Department of Health's list of all registrants.
 - No physical office in Florida; no in-person services in Florida.
 - NPDB used to verify information submitted by out-of-state practitioner.
 - Must have a registered agent in Florida.
 - Out-of-State practitioners are subject to the jurisdiction of Florida courts.

Telehealth Standards

- Department of Health standards applicable to all telehealth practitioners:
 - Medical records documentation.
 - Adherence to applicable Florida practice act.
 - Out-of-state registrants must also adhere to practice act of state of license.
 - Practitioner does not need to research patient’s medical history or conduct a physical exam if patient evaluation through telehealth is sufficient, i.e., telehealth visit can establish the patient-practitioner relationship.
 - Communications and patient record confidentiality must be maintained in compliance with HIPAA.
 - Two-way audio/video such as Facetime is not HIPAA compliant.
 - Make sure the telehealth platform you choose is HIPAA compliant.

Controlled Substances

- Prescribing controlled substances via telehealth in Florida.
 - Licensed and registered practitioners registered with the DEA may prescribe controlled substances to telehealth patients
 - Prescribing controlled substances to telehealth patients excludes schedule II controlled substances as defined in Section 893.03, Florida Statutes, except in certain circumstances.
 - ▶ Psychiatric disorders.
 - ▶ Treatment of hospital inpatient.
 - ▶ Treatment of hospice patient.
 - ▶ Treatment of a nursing home resident.
 - Initial in-person visit not required under Florida law but is required under Federal law except during the public health emergency.
 - Must utilize the Prescription Drug Monitoring Program for controlled substances.

Controlled Substances (cont.)

- DEA Requirements for prescribing controlled substances via telehealth.
 - Prior to Public Health Emergency: requires an in-person encounter within 24 months of prescribing controlled substance via telehealth.
 - Public Health Emergency allowed for controlled substances to be prescribed via telehealth without an initial in-person encounter.
 - Public Health Emergency allowed prescribing of controlled substances “across state lines.”
 - Under the law (no public health emergency), in order to prescribe controlled substances to patients, the practitioner must be registered to prescribe controlled substances in the state the patient where the patient is located.
 - DEA set to publish proposed rules to allow prescribing of controlled substances without an initial in-person encounter.

Medicare Beneficiaries

- Telehealth services for Medicare beneficiaries.
 - During Public Health Emergency.
 - Post Public Health Emergency.

Telehealth in Florida

- Useful websites:
 - [Telehealth \(flhealthsource.gov\)](https://www.flhealthsource.gov)
 - [DEA Announces Proposed Rules for Permanent Telemedicine Flexibilities](#)
 - [Medicare payment policies during COVID-19 | Telehealth.HHS.gov](https://www.hhs.gov/telehealth/policies)
 - <https://www.floridahealth.gov/statistics-and-data/e-forcse/>



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Q&A

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