

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1040

INTRODUCER: Fiscal Policy Committee; Regulated Industries Committee; and Senator Bradley

SUBJECT: Veterinary Practices

DATE: February 23, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kraemer</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>
3.	<u>Kraemer</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1040 creates an act that may be cited as the Providing Equity in Telehealth Services (PETS) Act (PETS act), which establishes a framework for the practice of veterinary telehealth.

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 for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease. Veterinarians are licensed and 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 statutory standards for veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in Florida meets minimum requirements for safe practice to protect public health and safety.¹

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.

¹ Section 474.201, F.S.

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.²

The regulatory framework for the PETS act establishes a framework for the practice of veterinary telehealth, provides in part as follows:

- Defines “veterinary telehealth” to mean the use of synchronous or asynchronous telecommunications technology (occurring or not occurring simultaneously) by a telehealth provider to provide health care services. This includes, but is 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.
- Authorizes a veterinarian to use veterinary telehealth to perform an initial patient evaluation to establish the veterinarian/client/patient relationship, if the evaluation is conducted using audiovisual communication at the same time that the evaluation occurs (synchronous, audiovisual communication); the evaluation may not be performed using audio-only communications, text messaging, questionnaires, chatbots, or other similar means;
- Requires that if the initial patient evaluation is performed using veterinary telehealth, certain information must be supplied to the client, including the veterinarian’s contact information;
- Authorizes a veterinarian practicing veterinary telehealth to order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003, F.S., the Florida Pharmacy Act.
- Prohibits a veterinarian from using veterinary telehealth to prescribe a controlled substance as defined in ch. 893, F.S. (Drug Abuse Preventions and Control), 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.
- Allows veterinarians who are personally acquainted with the caring or keeping of an animal or group of animals for food-producing animal operations, who have recently seen the animals or made medically appropriate and timely visits to practice veterinary telehealth for these animals.
- Specifies that only Florida licensed veterinarians may practice veterinary telehealth, and grants the board jurisdiction over the practice of veterinary telehealth.

According to the Department of Business and Professional Regulation (DBPR), there is no impact expected on state or local government revenues and expenditures.³ See Section V, Fiscal Impact Statement.

The bill has an effective date of July 1, 2024.

² See s. 456.47, F.S., relating to the use of telehealth to provide healthcare services.

³ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for HB 849 (identical to SB 1040 at 5 (Dec. 13, 2023) (on file with the Senate Committee on Regulated Industries)*.

II. Present Situation:

Veterinary Medicine, the Practice of Veterinary Medicine, and Exempted Persons

In 1979, the Legislature determined the practice of veterinary medicine to be potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners and that minimum requirements for the safe practice of veterinary medicine are necessary.⁴ The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on Veterinary Medical Practice.⁵ A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida under ch. 474, F.S.⁶ In Fiscal Year 2022-2023, there were 13,285 actively licensed veterinarians in Florida.⁷

Veterinary medicine⁸ includes, with respect to animals:⁹

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);¹⁰ and
- Other branches or specialties of veterinary medicine.

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.¹¹ Veterinarians who are incompetent or present a danger to the public are subject to discipline and may be prohibited from practicing in the state.¹²

Eleven categories of persons are exempt from complying with ch. 474, F.S.:¹³

- Faculty veterinarians with assigned teaching duties at accredited¹⁴ institutions;

⁴ See s. 474.201, F.S.

⁵ See s. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.

⁶ See s. 474.202(11), F.S.

⁷ See Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2022-2023*, at page 18, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Feb. 1, 2024).

⁸ See s. 474.202(13), F.S.

⁹ Section 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.”

¹⁰ The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. See <https://www.therio.org/> (last visited Feb. 1, 2024).

¹¹ Section 474.201, F.S. 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, fertility, or infertility of animals.

¹² See s. 474.213, F.S., on prohibited acts, and s. 474.214, F.S., on disciplinary proceedings.

¹³ See s. 474.203, F.S.

¹⁴ Sections 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

- Intern/resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;
- Students in a school or college of veterinary medicine who perform assigned duties by an instructor (no accreditation of the institution is required), or work as preceptors¹⁵ (if the preceptorship is required for graduation from an accredited institution);
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties at the installations for which the services were engaged;
- Persons or their employees caring for the persons' own animals, as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd and flock animals, with certain limitations; however, the exemption is not available to a person licensed as a veterinarian in another state and temporarily practicing in Florida, or convicted of violating ch. 828, F.S., on animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;
- Certain entities or persons¹⁶ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods or techniques to diagnose or treat human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine;
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹⁷ of a licensed veterinarian;
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, and are assisting upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner;
- Employees, agents, or contractors of public or private animal shelters, humane organizations, or animal control agencies operated by a humane organization, county, municipality, or

Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the United States and Canada, and may also approve foreign veterinary colleges. *See* <https://www.avma.org/education/center-for-veterinary-accreditation/accreditation-policies-and-procedures-avma-council-education-coe/coe-accreditation-policies-and-procedures-accreditation> (last visited Feb. 1, 2024). The AVMA Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program. *See* <https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx> (last visited Feb. 1, 2024). In turn, the Council for Higher Education Accreditation, a national advocate for regulation of academic quality through accreditation, is an association of degree-granting colleges and universities. *See* <http://chea.org/about> (last visited Feb. 1, 2024).

¹⁵ 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* <https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary> (last visited Feb. 1, 2024).

¹⁶ *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. . . .”

¹⁷ 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.

incorporated political subdivision, whose work is confined solely to implanting radio frequency identification device microchips in dogs and cats in accordance with s. 823.15, F.S.;¹⁸

- Paramedics or emergency medical technicians providing emergency medical care to a police canine¹⁹ injured in the line of duty while at the scene of the emergency or while the police canine is being transported to a veterinary clinic or similar facility; and
- Veterinarians who hold an active license to practice veterinary medicine in another jurisdiction in the United States, are in good standing in such jurisdiction, and who perform dog or cat sterilization services or routine preventative health services at the time of sterilization as an unpaid volunteer under the responsible supervision of a veterinarian licensed in Florida. Out-of-state veterinarians practicing pursuant to this exemption are not eligible to apply for premises permits for veterinary establishments.

Persons who are eligible faculty veterinarians, intern veterinarians, resident veterinarians, or state or federal veterinarians exempt from complying with ch. 474, F.S., are deemed to be duly licensed practitioners authorized to prescribe drugs or medicinal supplies.²⁰

Veterinarian/Client/Patient Relationship

The practice act defines a “patient” as any animal for which a veterinarian practices veterinary medicine.²¹

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.²²

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 available medicinal drugs or drugs²³ or controlled substances²⁴ 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;

¹⁸ See s. 823.15(5), F.S., which authorizes such persons to perform microchipping of dogs and cats.

¹⁹ Section 401.254, F.S., defines the term “police canine” as “any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; the enforcement of laws; the investigation of fires; or the apprehension of offenders.” A paramedic or an emergency medical technician who acts in good faith to provide emergency medical care to an injured police canine is immune from criminal or civil liability.

²⁰ See s. 474.203, F.S. (flush left language).

²¹ Section 474.202(8), F.S.

²² Section 474.202(12), F.S.

²³ Section 465.003(8), F.S.

²⁴ Section 893.02(4), F.S.

- 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.²⁵

Veterinary Telemedicine

The use of electronic communications to facilitate patient health care (veterinary telemedicine) is not addressed in the practice act and is neither specifically prohibited nor is it specifically authorized for practitioners of veterinary medicine in Florida statute.²⁶

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.²⁷ The reasons for this include cost of veterinary care, logistical obstacles, and a shortage of licensed veterinarians.²⁸

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.”²⁹

“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.”³⁰

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.”³¹

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.”³² However, the same approach does not appear to exist with veterinary medicine.

²⁵ Section 474.214(1)(y), F.S.

²⁶ Fla. Admin. Code 64B8-9.0141. Currently, medical doctors may practice telemedicine in Florida when in a patient relationship with a patient evaluation, under certain circumstances.

²⁷ 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. 31, 2024).

²⁸ The Veterinary Care Accessibility Project, *Veterinary Care Accessibility Score*, <https://www.accesstovetcare.org/> (last visited Jan. 31, 2024).

²⁹ 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. 31, 2024).

³⁰ *Id.*

³¹ *Id.*

³² 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. 31, 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.”³³

Veterinary Telemedicine during the COVID-19 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 animals³⁴ and veterinary feed directive drugs.³⁵ 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.³⁶

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.”³⁷

On March 27, 2020, the DBPR issued emergency order EO 2020-04, which suspended any restrictions in the practice act or the administrative rules set forth in ch. 61G-18, of the Florida Administrative Code, that would have prohibited 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.³⁸

³³ 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. 31, 2024).

³⁴ 21 C.F.R. part 530.

³⁵ 21 C.F.R. s. 558.6.

³⁶ 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. 31, 2024).

³⁷ 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. 31, 2024).

³⁸ 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. 31, 2024).

The FDA withdrew its temporary guidance suspending the enforcement of the animal examination and premises visit VCPR requirements on February 21, 2023.³⁹

The 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, 2021.⁴⁰

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; five states allow telemedicine to create a VCPR; one state allows telemedicine to create a VCPR except for prescriptions; one state does not reference and therefore does not define or use the term VCPR; and nine states expressly prohibit using telemedicine to establish a VCPR.⁴¹

The state of 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.⁴²

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

The veterinarian must employ sound professional 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

³⁹ 87 F.R. 78111, Dec. 21, 2022.

⁴⁰ 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.

⁴¹ Veterinary Virtual Care Association, *Veterinary Telemedicine Regulatory Map*, <https://vvca.org/telemedicine-map/> (last visited Jan. 31, 2024).

⁴² 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. 31, 2024).

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.⁴³

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(s), 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 decisions⁴⁴

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.⁴⁵

The state of Michigan has also repealed the need for an in-person exam prior to practicing telemedicine. As of April 15, 2021, a veterinarian providing a “telehealth service” in Michigan must have sufficient knowledge of the animal patient by having recently examined the animal patient in person or have 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.⁴⁶

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:⁴⁷

- 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.

⁴³ 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. 31, 2024).

⁴⁴ Oklahoma State Board of Veterinary Medical Examiners, *Veterinarian-Client-Patient-Relationship-VCPR*, <https://www.okvetboard.com/client-information/62-vcpr> (last visited Jan. 31, 2024).

⁴⁵ Wash. Rev. Code s. 246-933-200(2).

⁴⁶ Mich. Gen. R. 338.4901a.

⁴⁷ Section 456.47(1)(a), F.S.

Telehealth does not include e-mail messages, or facsimile transmission under Florida law.⁴⁸ 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,⁴⁹ or a registered out-of-state health care provider.⁵⁰

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;⁵¹
- 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;
- 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;⁵² and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.⁵³

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.⁵⁴

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

⁴⁸ *Id.*

⁴⁹ Florida is a member of the Nurse Licensure Compact. Section 464.0095, F.S.

⁵⁰ S. 456.47(4), F.S.

⁵¹ *See* s. 456.47(4), F.S., which requires the DOH to consult the National Practitioner Data Bank to verify registration submitted by applicants.

⁵² 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* Fla Admin. Code R. 64B18-14.0072).

⁵³ Section 456.47(4), F.S.

⁵⁴ Section 456.47(2), F.S.

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 Health and Human Services issued a public health emergency.⁵⁵ On March 16, 2020, the federal Drug Enforcement Administration (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.⁵⁶

Controlled Substances – Florida Law

Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act. The 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:

- 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.

⁵⁵ 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=Azar%20II%2C%20Secretary%20of%20Health,January%2027%2C%202020%2C%20nationwide> (last visited Jan. 31, 2024).

⁵⁶ U.S. Drug Enforcement Administration, *DEA's response to COVID-19*, <https://www.dea.gov/press-releases/2020/03/20/deas-response-covid-19> (last visited Jan. 31, 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. 31, 2024).

- 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 Act⁵⁷ 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 DEA is required to consider the following when determining where to schedule a substance:⁵⁸

- 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 Extra-label 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.”⁵⁹

A corresponding regulation in the Florida Administrative Code blocks veterinarians from such prescribing unless they have ‘recent contact’ with the animal.⁶⁰ The practice act contains no such ‘recent contact’ requirement for a VCPR or for such prescribing.⁶¹

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

⁵⁷ 21 U.S.C. s. 812.

⁵⁸ 21 U.S.C. s. 811(c).

⁵⁹ 21 C.F.R. s. 530.1 and s. 530.3(i)(3).

⁶⁰ Fla. Admin Code R. 61G18-30.001 (2)(y).

⁶¹ 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. 31, 2024).

Act),⁶² signed into law in October 2008,⁶³ 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.⁶⁴

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.⁶⁵

Prescription Drug Law for Veterinarians

In order to purchase, prescribe, administer or dispense controlled substances in Florida, veterinarians must register and comply with DEA requirements, but there are no restrictions in the practice act for the purchasing and prescribing of controlled drugs.⁶⁶

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.⁶⁷

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.⁶⁸

III. Effect of Proposed Changes:

The bill authorizes licensed veterinarians in Florida to practice veterinary telehealth on a limited basis as described in the PETS act, and indirectly supervise rabies vaccinations of impounded animals.

⁶² Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).

⁶³ 21 C.F.R. 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.

⁶⁴ *Id.*

⁶⁵ Section 456.47(2)(c), F.S.

⁶⁶ See the information promulgated by the University of Florida, College of Veterinary Medicine on accreditation and licensure requirements for veterinarians, at <https://education.vetmed.ufl.edu/dvm-curriculum/florida-and-national-board-information/> (last visited Feb. 1, 2024).

⁶⁷ See the DEA mission statement at <https://www.dea.gov/about/mission#:~:text=The%20mission%20of%20the%20Drug,members%20of%20organizations%2C%20involved%20in> (last visited Feb. 1, 2024).

⁶⁸ 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. 31, 2024).

Regarding veterinary telemedicine, the bill:

- Provides the act may be cited as the “Providing Equity in Telehealth Services Act” (PETS act);
- Defines “veterinary telehealth” to mean the use of synchronous or asynchronous telecommunications technology (occurring or not occurring simultaneously) by a telehealth provider to provide health care services. This includes, but is 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 Florida 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 to occur at the premises where the patient is located at the time the veterinarian practices veterinary telehealth;
- Prohibits practicing veterinary telehealth unless it is within the context of a veterinarian/client/patient relationship (VCPR);
- Requires the practice of telehealth to be consistent with a veterinarian’s scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in Florida, and who must 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 to use veterinary telehealth to perform an initial patient evaluation to establish the veterinarian/client/patient relationship, if the evaluation is conducted using audiovisual communication at the same time that the evaluation occurs (synchronous, audiovisual communication); the evaluation may not be performed using audio-only communications, text messaging, questionnaires, chatbots, or other similar means;
- Requires that if the initial patient evaluation is performed using veterinary telehealth, certain information must be supplied to the client, including the veterinarian’s contact information;
- 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;
- Must provide the client the veterinarian’s name, license number, and contact information, if the initial patient evaluation is performed using veterinary telehealth;
- Must provide the client contact information for at least one physical veterinary clinic in the vicinity of the patient’s location and 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
 - There is an adverse reaction to treatment;
- Must obtain a signed and dated statement from the client indicating the client has received the required information before practicing veterinary telehealth;
- Must prescribe all drugs and medications in accordance with federal and state laws;
- May order or prescribe medicinal drugs or drugs specifically approved for use in animals by the United States Food and Drug Administration, conforming to approved labeling.

Prescriptions based solely on a telehealth evaluation may be issued for up to one month for products labeled solely for flea and tick control and up to 14 days of treatment for other animal drugs. Prescriptions based solely on a telehealth evaluation may not be renewed without an in-person examination.

- May not order or prescribe medicinal drugs or drugs as defined in s. 465.003, F.S., approved by the United States Food and Drug Administration 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 within the past year to the premises where the animal is kept.
- May not use veterinary telehealth to prescribe a controlled substance as defined in ch. 893, F.S. (Drug Abuse Preventions and Control), 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.
- May not prescribe 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 on a horse that is a covered horse, as defined in the federal Horseracing Integrity and Safety Act (15 U.S.C., ss. 3051 et seq.
- Must be familiar with available veterinary resources, including emergency resources, near the patient's location;
- Must 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;
- Must keep, maintain and make available a summary of the patient record as required by s. 474.2165, F.S., relating to ownership and control of veterinary medical patient records;
- May not use veterinary telehealth to issue an international or interstate travel certificate, or a certificate of veterinary inspection; and
- Authorizes veterinarians who are 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 has recently seen the animal or group of animals or has 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.

The bill includes technical conforming changes, including the revision of s. 474.2165, F.S., relating to ownership and control of veterinary medical patient records, to revise a reference to a veterinarian who generates a medical record after "making a physical examination." The bill revises the language to address medical records that are generated after "making an examination" to address the authority for the use of veterinary telehealth as authorized in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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:

Licensed veterinarians will be permitted to practice veterinary telehealth, including limited prescription authority, providing them more flexibility in their practice similar to the licensed health care providers in Florida authorized to provide telehealth services.

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 veterinary care without having to locate a veterinarian's office in an unfamiliar area and transport their animal.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation (DBPR), there is no impact expected on state or local government revenues and expenditures.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶⁹ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for HB 849 (identical to SB 1040 at 5 (Dec. 13, 2023) (on file with the Senate Committee on Regulated Industries).*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 474.202 and 474.2165.

This bill creates the following section of the Florida Statutes: 474.2021.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Fiscal Policy on February 22, 2024:**

The committee substitute:

- Removes limiting language in the definition of “veterinary telehealth” to authorize the use of e-mail and facsimile transmissions as part of “veterinary telehealth.
- Provides that a veterinarian practicing veterinary telehealth shall:
 - Practice in a manner consistent with the veterinarian’s scope of practice and the prevailing professional standard for providing in-state veterinary services to patients; and
 - Employ sound, professional judgment to determine whether using veterinary telehealth is an appropriate method for delivering medical advice or treatment to the patient;
- Provides that a veterinarian practicing veterinary telehealth may perform an initial patient evaluation to establish the veterinarian/client/patient relationship, if the evaluation is conducted using synchronous, audiovisual communication (that occurs simultaneously with the evaluation), however, the evaluation may not be performed using audio-only communications, text messaging, questionnaires, chatbots, or other similar means;
- Requires that if the initial patient evaluation is performed using veterinary telehealth, the veterinarian must provide the client the veterinarian’s name, license number, and contact information and contact information for at least one physical veterinary clinic in the vicinity of the patient’s location and 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;
 - There is an adverse reaction to treatment;
- Requires the veterinarian, before practicing veterinary telehealth, to obtain a signed and dated statement from the client indicating the client has received the required information;
- Provides that a veterinarian practicing veterinary telehealth may issue prescriptions based solely on a telehealth evaluation for up to one month for products labeled solely for flea and tick control, and up to 14 days of treatment for other animal drugs;
- Provides that prescriptions based solely on a telehealth evaluation may not be renewed without an in-person examination;
- Provides that a veterinarian may not use veterinary telehealth to prescribe a controlled substance as defined in ch. 893, F.S. (Drug Abuse Preventions and Control), 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;

- Removes provisions in the bill related to rabies vaccination of dogs, cats, and ferrets.

CS by Regulated Industries on February 5, 2024:

The committee substitute:

- Defines “veterinary telehealth” to mean the use of synchronous or asynchronous telecommunications technology (occurring or not occurring simultaneously) by a telehealth provider to provide health care services. This includes, but is 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 e-mail messages or facsimile transmissions.
- May use veterinary telehealth to perform a patient evaluation, if the evaluation is conducted using audiovisual communication at the same time that the evaluation occurs (synchronous, audiovisual communication);
- Must provide the client the veterinarian’s name, license number, and contact information;
- Must provide the client contact information for at least one physical veterinary clinic in the vicinity of the pet’s location and 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
 - There is an adverse reaction to treatment;
- Must obtain a signed and dated statement from the client indicating the client has received the required information;
- Must prescribe all drugs and medications in accordance with federal and state laws;
- May order or prescribe medicinal drugs or drugs specifically approved for use in animals by the United States Food and Drug Administration, conforming to approved labeling. Prescriptions based solely on a telehealth evaluation may be issued for up to one month for parasite treatment and prevention medications and up to 14 days for other animal drugs.
- May not order or prescribe medicinal drugs or drugs as defined in s. 465.003, F.S., approved by the United States Food and Drug Administration for human use, including 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.
- May not use veterinary telehealth to prescribe a controlled substance as defined in ch. 893, F.S. (Drug Abuse Preventions and Control), 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.
- May not prescribe a drug or other medication for use on a racing horse under the jurisdiction of the Florida Gaming Control Commission or on a horse covered by the federal Horseracing Integrity and Safety Act.

- Must be familiar with available veterinary and emergency resources near the patient's location;
- Must be able to provide the client with a list of nearby veterinarians who may be able to see the patient in person if requested by the client;
- Must maintain and make available a summary of the patient record as required by the Veterinary Medical Practice Act; and
- May not use veterinary telehealth to issue an international or interstate travel certificate, or a certificate of veterinary inspection.
- Removes the authorization for a veterinarian to practice veterinary telehealth for an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461, F.S.

B. Amendments:

None.