

Florida Telehealth Addendum 2CE

Course Description

This course is intended to be taken in conjunction with the course, *Introduction to Telehealth*. This Addendum is specific for health care professionals in the state of Florida and is designed to inform Florida health care professionals about Florida Statute 456.47 - Use of telehealth; and, it will also inform those professionals regulated by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, about the relevant Rules related to face-to-face psychotherapy and Telehealth.

Statute and Rule Examined

- Florida Statute 456.47 Use of telehealth to provide services
- Rule 64B4-2002

Course Learning Objectives

- You will learn the definition of Telehealth according to Florida law
- You will learn who may be considered a Telehealth provider under Florida law
- You will learn the practice standards for using Telehealth in Florida
- You will learn documentation requirements for Telehealth services under Florida law
- You will learn about the relevant rules related to face-to-face psychotherapy and Telehealth by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

Course Requirements

You will be expected to review all materials provided and pass the poset-test with a minimum of 80%, in order to receive your certificate of completion. You will also be

Online Continuing Education for Professionals

required to complete a course evaluation. Once you have satisfactorily completed the post-test and submitted your evaluation, your certificate will be emailed to you.

Florida Telehealth Addendum

This course, *Florida Telehealth Addendum*, is intended to be taken in conjunction with the course, *Introduction to Telehealth*. This Addendum, will discuss Florida laws and rules regarding the practice of telehealth as it relates to professionals licensed under Chapter 491 of the Florida Statutes. It is presumed that the reader has taken the course, *Introduction to Telehealth*, and has a basic understanding of telehealth concepts.

Florida Statute 456.47

As you learned in the course, *Introduction to Telehealth*, states have different laws defining and regulating the practice of telehealth, and in 2019 Florida became one of the many states which have enacted its own laws regarding the provision of telehealth services for health care professionals. This law can be found in Section 456.47 of the Florida Statutes (FL. Stat. 456.47, 2022).

Definitions

Pursuant to Section 456.47(1)(a), the term “telehealth” is defined 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.(FL. Stat. 456.47, 2022).

As mentioned in the course, *Introduction to Telehealth*, according to the Telehealth Definition Framework finalized by The Center for Connected Health Policy (CCHP), *synchronous* technology refers to “...[l]ive, two-way interaction between a person and a

provider using audiovisual telecommunications technology;” whereas, *asynchronous* technology, otherwise known as *store-and-forward*, refers to the “... [t]ransmission of recorded health history through an electronic communications system to a practitioner, usually a specialist, who uses the information to evaluate the case or render a service outside of a real-time or live interaction” (National Consortium of Telehealth Resource Centers [NCTRC], n.d., p. 1).

Section 456.47(1)(b) defines a “telehealth provider” as:

...any individual who provides health care and related services using telehealth and who is licensed or certified under s. 393.17; part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part III, part IV, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part I or part II of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; who is licensed under a multistate health care licensure compact of which Florida is a member state; or who is registered under and complies with subsection (4).(FL. Stat. 456.47, 2022).

For purposes of this course, the focus is on those professionals who provide counseling and psychotherapy services and are licensed pursuant to chapter 491 of the Florida Statutes.

Practice Standards

Section 456.47(2) sets forth a list of standards which health care professionals are obligated to follow with regard to the practice of telehealth services:

- (a) A telehealth provider has the duty to practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for

a health care professional who provides in-person health care services to patients in this state.

(b) A telehealth provider may use telehealth to perform a patient evaluation. If a telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient, the telehealth provider is not required to research a patient's medical history or conduct a physical examination of the patient before using telehealth to provide health care services to the patient.

(c) A telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03 unless the controlled substance is prescribed for the following:

1. The treatment of a psychiatric disorder;
2. Inpatient treatment at a hospital licensed under chapter 395;
3. The treatment of a patient receiving hospice services as defined in s. 400.601; or
4. The treatment of a resident of a nursing home facility as defined in s. 400.021.

(d) A telehealth provider and a patient may be in separate locations when telehealth is used to provide health care services to a patient.

(e) A nonphysician telehealth provider using telehealth and acting within his or her relevant scope of practice, as established by Florida law or rule, is not in violation of s. 458.327(1)(a) or s. 459.013(1)(a). (FL. Stat. 456.47, 2022).

For purposes of this course, the relevant sections of 456.47(2) are subsections (a), (b), and (d). Subsection (c) referring to prescribing medications does not apply to professionals licensed under chapter 491. Likewise, subsection (e) refers to the practice of medicine and osteopathic medicine by out-of-state providers. Therefore, professionals licensed under Chapter 491 will be subject to practicing telehealth in a manner which is consistent with the laws and rules regulating such professions.

Counselors will be guided by the ethical practices outlined in the American Counseling Association's Code of Ethics and/or the National Board for Certified Counselors Code of Ethics, marriage and family therapists will be guided by the ethical standards set forth

Online Continuing Education for Professionals

by The American Association for Marriage and Family Therapy in their Code of Ethics, and social workers will be guided by the ethical standards set forth by the National Association of Social Workers Code of Ethics.

Records

Section 456.47(3) addresses the standards for documenting the provision of telehealth care services:

(3) RECORDS.—A telehealth provider shall 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 pursuant to ss. 395.3025(4) and 456.057.

Thus, a professional licensed under Chapter 491 who practices telehealth is required to comply with laws and rules pertaining to client records found in sections 456.057, 491.0148, and Rule 64B4-9.001. Rule 64B4-9.001 provides that pursuant to 456.057, anyone licensed under under Chapter 491 must maintain responsibility for all client records. The records shall remain confidential, except as provided by law or waiver. Records must be maintained for seven years after the date of the last contact with the client.

When a person licensed under Chapter 491 terminates practice or relocates and is no longer available to clients, the licenseholder must inform their clients of such by publishing in the newspaper of greatest general circulation in the county in which the licensee practices or practiced, a notice which provides the date of termination or relocation and an address at which the the clients' records are available to the clients. The notice must appear at least once a week for 4 consecutive weeks. The records shall be maintained for 2 years after termination or relocation.

If the termination or practice was the licenseholder's death, records must be maintained for 2 years after death. At the conclusion of a 22 month period from the date of the licensee's death, the executor, administrator, personal representative, or survivor shall cause to be published once during each week for 4 consecutive weeks, in the newspaper of greatest general circulation in each county in which the licensee practiced, a notice indicating to the clients or users of the deceased licensee that the licensee's records will be disposed of or destroyed 4 weeks or later from the last day of the final week of publication of the notice.

Registration of out-of-state telehealth providers

In the state of Florida, if a practitioner who is licensed in another state wishes to provide telehealth services in the state of Florida, that practitioner may do so, as long as the practitioner registers with the applicable board or department and complies with the following provisions:

(4) REGISTRATION OF OUT-OF-STATE TELEHEALTH PROVIDERS.—

(a) A health care professional not licensed in this state may provide health care services to a patient located in this state using telehealth if the health care professional registers with the applicable board, or the department if there is no board, and provides health care services within the applicable scope of practice established by Florida law or rule.

(b) The board, or the department if there is no board, shall register a health care professional not licensed in this state as a telehealth provider if the health care professional:

1. Completes an application in the format prescribed by the department;
2. Is licensed with an active, unencumbered license that is issued by another state, the District of Columbia, or a possession or territory of the

United States and that is substantially similar to a license issued to a Florida-licensed provider specified in paragraph (1)(b);

3. Has not been the subject of disciplinary action relating to his or her license during the 5-year period immediately prior to the submission of the application;

4. Designates a duly appointed registered agent for service of process in this state on a form prescribed by the department; and

5. Demonstrates to the board, or the department if there is no board, that he or she is in compliance with paragraph (e).

The department shall use the National Practitioner Data Bank to verify the information submitted under this paragraph, as applicable.

(c) The website of a telehealth provider registered under paragraph (b) must prominently display a hyperlink to the department's website containing information required under paragraph (h).

(d) A health care professional may not register under this subsection 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 health care professional registered under this subsection must notify the appropriate board, or the department if there is no board, of restrictions placed on his or her license to practice, or any disciplinary action taken or pending against him or her, in any state or jurisdiction. The notification must be provided within 5 business days after the restriction is placed or disciplinary action is initiated or taken.

(e) A provider registered under this subsection shall maintain professional liability coverage or financial responsibility, that includes coverage or financial responsibility for telehealth services provided to patients not located in the provider's home state, in an amount equal to or greater than the requirements for a licensed practitioner under s. 456.048, s. 458.320, or s. 459.0085, as applicable.

(f) A health care professional registered under this subsection may not open an office in this state and may not provide in-person health care services to patients located in this state.

(g) A pharmacist registered under this subsection may only use a pharmacy permitted under chapter 465, a nonresident pharmacy registered under s. [465.0156](#), or a nonresident pharmacy or outsourcing facility holding an active permit pursuant to s. [465.0158](#) to dispense medicinal drugs to patients located in this state.

(h) The department shall publish on its website a list of all registrants and include, to the extent applicable, each registrant's:

1. Name.
2. Health care occupation.
3. Completed health care training and education, including completion dates and any certificates or degrees obtained.
4. Out-of-state health care license with the license number.
5. Florida telehealth provider registration number.
6. Specialty.
7. Board certification.
8. Five-year disciplinary history, including sanctions and board actions.
9. Medical malpractice insurance provider and policy limits, including whether the policy covers claims that arise in this state.
10. The name and address of the registered agent designated for service of process in this state.

(i) The board, or the department if there is no board, may take disciplinary action against an out-of-state telehealth provider registered under this subsection if the registrant:

1. Fails to notify the applicable board, or the department if there is no board, of any adverse actions taken against his or her license as required under paragraph (d).
2. Has restrictions placed on or disciplinary action taken against his or her license in any state or jurisdiction.

3. Violates any of the requirements of this section.
4. Commits any act that constitutes grounds for disciplinary action under s. 456.072(1) or the applicable practice act for Florida-licensed providers. (FL. Stat. 456.47, 2022).

The following are exemptions to the registration requirement for professionals licensed outside of Florida, but providing telehealth services to patients in Florida:

(6) EXEMPTIONS.—A health care professional who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another state or jurisdiction, and who provides health care services using telehealth to a patient located in this state, is not subject to the registration requirement under this section if the services are provided:

- (a) In response to an emergency medical condition as defined in s. 395.002; or
- (b) In consultation with a health care professional licensed in this state who has ultimate authority over the diagnosis and care of the patient. (FL. Stat. 456.47, 2022).

Venue

In the world of telehealth, the term “originating site” refers to the patient’s location at the time services are rendered (“CCHP,” n.d.). Florida seems to have followed this concept and has identified the “venue” as the location where the patient is located at the time services are received:

(5) VENUE.—For the purposes of this section, any act that constitutes the delivery of health care services is deemed to occur at the place where the patient is located at the time the act is performed or in the patient’s county of residence. Venue for a civil or administrative action initiated by the department,

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. (FL. Stat. 456.47, 2022).

Rulemaking

Section 456.47 is a fairly new law and over time, the Board may adopt specific rules to administer this section. The authority to do so is set forth below:

(7) RULEMAKING.—The applicable board, or the department if there is no board, may adopt rules to administer this section.

History.—s. 1, ch. 2019-137; s. 60, ch. 2020-156; s. 1, ch. 2022-26. (FL. Stat. 456.47, 2022).

Rule 64B4

Rule 64B4-2.002 Definition of “Supervision” for Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling

Supervision is the relationship between the qualified supervisor and intern that promotes the development of responsibility, skills, knowledge, attitudes and adherence to ethical, legal and regulatory standards in the practice of clinical social work, marriage and family therapy and mental health counseling.

Supervision is contact between an intern and a supervisor during which the intern appraises the supervisor of the diagnosis and treatment of each client, client cases are discussed, the supervisor provides the intern with oversight and guidance in diagnosing, treating and dealing with clients, and the supervisor evaluates the intern's performance.

- (1) An intern shall be credited for the time of supervision required by Section 491.005, F.S., if the intern:
 - (a) Received at least 100 hours of supervision in no less than 100 weeks; and,
 - (b) Provided at least 1500 hours of face-to-face psychotherapy with clients; and,
 - (c) Received at least 1 hour of supervision every two weeks.

(2) The supervision shall focus on the raw data from the intern's face-to-face psychotherapy with clients. The intern shall make the raw data directly available to the supervisor through such means as written clinical materials, direct observation and video and audio recordings. Supervision is a process distinguishable from personal psychotherapy or didactic instruction.

(3) The supervisor and intern may utilize face-to-face electronic methods to conduct the supervisory sessions; however, the supervisor and intern must have in-person face-to-face contact for at least 50% of all of the interactions required in subsection (1), above. Prior to utilizing any online or interactive methods for supervision, the supervisor and the intern shall have at least one in-person face-to-face meeting. The supervisor and the intern are responsible for maintaining the confidentiality of the clients during both in-person and online or interactive supervisory sessions.

(4) If an intern obtains group supervision, each hour of group supervision must alternate with an hour of individual supervision. Group supervision must be conducted with all participants present in-person. For the purpose of this section, individual supervision is defined as one qualified supervisor supervising no more than two (2) interns and group supervision is defined as one qualified supervisor supervising more than 2 but a maximum of 6 interns in the group.

(5) A qualified supervisor shall supervise no more than 25 registered interns simultaneously.

(6) "Face-to-face psychotherapy" for clinical social workers, marriage and family therapists, and mental health counselors registered pursuant to Section 491.0045, F.S., includes face-to-face by electronic methods so long as the registered intern establishes and adheres to the following:

(a) The registered intern has a written telehealth protocol and safety plan in place with their current qualified supervisor which includes the provision that the qualified supervisor must be readily available during the electronic therapy session; and

(b) The registered intern and their qualified supervisor have determined, through their professional judgements, that providing face-to-face psychotherapy by electronic methods is not detrimental to the patient is necessary to protect the health, safety, or welfare of the patient, the registered intern, or both, and does not violate any existing statutes or regulations.

(7) Notwithstanding subsections (3) and (4) above a qualified supervisor may utilize face-to-face electronic methods, including telephone only communication, to conduct

all supervisory sessions for internship hours if the qualified supervisor determines, through their professional judgment, that such methods are not detrimental to the registered intern’s patients and are necessary to protect the health, safety, or welfare of the qualified supervisor, the registered intern, or both. Any clinical hours obtained via face-to-face psychotherapy by electronic means shall be considered clinical hours for the purpose of meeting internship requirements.

(8) No later than 90 days prior to June 30, 2026, the Board shall review and amend, modify, or repeal subsections (6) and (7) above if it determines that same creates barriers to entry for private business competition, is duplicative, outdated, obsolete, overly burdensome, imposes excessive costs, or otherwise negatively impacts the quality of psychotherapy received by Florida citizens.

Rulemaking Authority 491.004(5), 491.0045, 491.005(1)(c), (3)(c), (4)(c) FS. Law Implemented 491.005(1)(c), (3)(c), (4)(c) FS. History—New 7-6- 88, Amended 3-21-90, Formerly 21CC-2.002, 61F4-2.002, Amended 1-7-96, 12-16-96, Formerly 59P-2.002, Amended 11-13-97, 10-28-98, 1-1-07, 3-14-07, 2-9-16, 1-2-20, 10-4-20, 7-15-21. (Rule 64B4-2.002, FAC).

64B4-5.0015 Out-of-State Telehealth Discipline.

(1) The following disciplinary guidelines shall be followed by the board in imposing disciplinary penalties upon out-of-state telehealth providers registered pursuant to Section 456.47(4), F.S., for violation of the below mentioned statutes and rules. For the purposes of this rule, the descriptions of the violations are abbreviated, and the full statute or rule cited should be consulted to determine the prohibited conduct.

VIOLATION	PENALTY RANGE	
	FIRST VIOLATION	SECOND AND SUBSEQUENT VIOLATIONS

1. Fails to notify the applicable board, or the department if there is no board, of any adverse actions taken against his or her license. (Section 456.47(4)(i), F.S.);	Letter of Concern to suspension and a corrective action plan	Suspension and a corrective action plan to revocation
2. Has restrictions placed on or disciplinary action taken against his or her license in any state or jurisdiction. (Section 456.47(4)(i), F.S.)	Letter of concern to revocation as closely as possible to same penalty as imposed in other jurisdiction	Letter of concern to revocation as closely as possible to same penalty as imposed in other jurisdiction to revocation
3. Violates any of the requirements of Section 456.47, F.S. (Section 456.47(4)(i), F.S.)	Letter of Concern to suspension and a corrective action plan	Suspension and a corrective action plan to revocation
4. Commits any act that constitutes grounds for disciplinary action under Section 456.072(1) or 491.009(1), F.S.	As stated in subsection 64B4-5.001(1), F.A.C.	As stated in subsection 64B4-5.001(1), F.A.C.

(2) The range of disciplinary action for registered out-of-state telehealth providers shall be, in ascending order of severity, letter of concern, reprimand, suspension, and revocation.

(3) A suspension may be for a definite term or may be accompanied by a corrective action plan, as stated in subsection 64B5-5.001(1), F.A.C.

(4) A suspension for a definite term may be terminated early only upon approval of the Board. A suspension accompanied by a corrective action plan may be lifted upon successful compliance with the corrective action or otherwise determined by the Board.

(5) A “corrective action plan” must accompany a suspension and includes rehabilitative provisions established by the Board which are narrowly tailored to address the conduct which resulted in the underlying disciplinary violations. In order to

satisfy a corrective action plan, the Registrant must provide proof of successful completion of all provisions to the Board. A corrective action plan may follow a suspension for a definite term and require continued suspension until successful compliance with the corrective action plan. Nothing in this paragraph shall be interpreted as restricting the Board's ability to impose a suspension for a definite term absent or accompanied by a corrective action plan.

Rulemaking Authority 456.47(4), 456.47(7) FS. Law Implemented 456.47(4) FS. History—New 3-11-21.

References

Florida Statutes, Chapter 456.47 (2022). http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0456/Sections/0456.47.html. (Last accessed January 16, 2023).

National Consortium of Telehealth Resource Centers. (n.d.). *A framework for defining telehealth*. Retrieved from The Center for Connected Health Policy website: https://www.cchpca.org/sites/default/files/2018-10/Telehealth%20Definintion%20Framework%20for%20TRCs_0.pdf

Rule 64B4-2.002, F.A.C. (July 15, 2021) <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64B4-2>

Florida Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling website: <https://floridasmentalhealthprofessions.gov/latest-news/telehealth/>

Contributors

Shayna Rayman, J.D., LMHC, LCPC, NCC

Shayna a member of the Florida Bar and a Florida Licensed Mental Health Counselor. She is a former Florida Dependency attorney and currently operates her own mental health counseling practice. Shayna has authored educational materials and trainings in her own practice and has served as a contributor for educational trainings and workshops for other organizations in her community.