

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of telemedicine medical services,
3 teledentistry services, and telehealth services; providing a civil
4 penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 111.001, Occupations Code, is amended by
7 amending Subdivision (1) and adding Subdivision (1-a) to read as
8 follows:

9 (1) "Controlled substance" has the meaning assigned by
10 Section 481.002, Health and Safety Code.

11 (1-a) "Dentist," "health professional," and
12 "physician" have the meanings assigned by Section 1455.001,
13 Insurance Code.

14 SECTION 2. Section 111.002(a), Occupations Code, is amended
15 to read as follows:

16 (a) A treating physician, dentist, or health professional
17 who provides or facilitates the use of telemedicine medical
18 services, teledentistry dental services, or telehealth services
19 shall:

20 (1) ensure that the informed consent of the patient,
21 or another appropriate individual authorized to make health care
22 treatment decisions for the patient, is obtained before
23 telemedicine medical services, teledentistry dental services, or
24 telehealth services are provided; and

1 (2) with respect to health care treatment for a
2 patient who is a minor, develop and implement protocols requiring
3 that an individual authorized to make health care treatment
4 decisions for the minor patient:

5 (A) is present at the initial appointment or
6 meeting with the minor patient; and

7 (B) consents to the treatment of the minor
8 patient.

9 SECTION 3. The heading to Section 111.005, Occupations
10 Code, is amended to read as follows:

11 Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR
12 TELEMEDICINE MEDICAL SERVICES, [OR] TELEDENTISTRY DENTAL SERVICES,
13 OR TELEHEALTH SERVICES.

14 SECTION 4. Sections 111.005(a) and (b), Occupations Code,
15 are amended to read as follows:

16 (a) For purposes of Section 562.056, a valid
17 practitioner-patient relationship is present between a
18 practitioner providing a telemedicine medical service, ~~[or a]~~
19 teledentistry dental service, or telehealth service and a patient
20 receiving the service as long as the practitioner complies with the
21 standard of care described in Section 111.007 and the practitioner:

22 (1) has a preexisting practitioner-patient
23 relationship with the patient established in accordance with rules
24 adopted under Section 111.006;

25 (2) communicates, regardless of the method of
26 communication, with the patient pursuant to a call coverage
27 agreement established in accordance with:

1 (A) Texas Medical Board rules with a physician
2 requesting coverage of medical care for the patient; or

3 (B) State Board of Dental Examiners rules with a
4 dentist requesting coverage of dental care for the patient; or

5 (3) provides the telemedicine medical services, ~~[or]~~
6 teledentistry dental services, or telehealth services through the
7 use of one of the following methods, as long as the practitioner
8 complies with the follow-up requirements in Subsection (b), and the
9 method allows the practitioner to have access to, and the
10 practitioner uses, the relevant clinical information that would be
11 required in accordance with the standard of care described in
12 Section 111.007:

13 (A) synchronous audiovisual interaction between
14 the practitioner and the patient in another location;

15 (B) ~~[asynchronous store and forward technology,~~
16 ~~including]~~ asynchronous store and forward technology in
17 conjunction with synchronous audio interaction between the
18 practitioner and the patient in another location, as long as the
19 practitioner uses clinical information from:

20 (i) clinically relevant photographic or
21 video images, including diagnostic images; or

22 (ii) the patient's relevant clinical
23 records, such as the relevant medical or dental history, laboratory
24 and pathology results, and prescriptive histories; or

25 (C) another ~~[form of audiovisual~~
26 ~~telecommunication]~~ technology platform that:

27 (i) allows the practitioner to comply with

1 the standard of care described in Section 111.007; and
2 (ii) complies with the privacy requirements
3 of the Health Insurance Portability and Accountability Act of 1996
4 (Pub. L. No. 104-191).

5 (b) A practitioner who provides telemedicine medical
6 services or telehealth services to a patient as described by ~~in~~
7 Subsection (a)(3) shall:

8 (1) provide the patient with guidance on appropriate
9 follow-up care; and

10 (2) at the request of the patient ~~[if the patient~~
11 ~~consents and the patient has a primary care physician]~~, provide to
12 the patient's primary care physician not later than ~~[within]~~ 72
13 hours after the patient's request ~~[practitioner provides the~~
14 ~~services to the patient]~~ a medical record or other report
15 containing an explanation of the treatment provided by the
16 practitioner to the patient and the practitioner's evaluation,
17 analysis, or diagnosis, as appropriate, of the patient's condition.

18 SECTION 5. Chapter 111, Occupations Code, is amended by
19 adding Section 111.0055 to read as follows:

20 Sec. 111.0055. EMERGENCY PROCEDURES. (a) A health
21 professional who provides telemedicine medical services or
22 telehealth services to a patient as described by Section
23 111.005(a)(3) shall develop and implement emergency protocols that
24 are appropriate to the standard of care that applies to the
25 services. The emergency protocols must be in writing and include
26 procedures for making a good faith effort to:

27 (1) determine the patient's location if the patient is

1 unable to provide the location to the health professional; and

2 (2) provide the name, location, and contact
3 information of the patient to emergency services in oral, written,
4 or digital form.

5 (b) If an emergency arises while a health professional is
6 providing telemedicine medical services or telehealth services to a
7 patient as described by Section 111.005(a)(3), the professional
8 shall make a good faith effort to:

9 (1) directly contact and coordinate with emergency
10 services located near the patient's location; and

11 (2) if the emergency arises while the health
12 professional is connected to the patient by a synchronous
13 technology, remain connected to the patient until emergency
14 services have reached the patient's location or the emergency is
15 resolved.

16 SECTION 6. Section 111.008, Occupations Code, is amended to
17 read as follows:

18 Sec. 111.008. APPLICATION OF CHAPTER TO MENTAL HEALTH
19 SERVICES [EXCLUDED]. Except as provided by Section 113.004, this
20 [This] chapter applies [does not apply] to mental health services.

21 SECTION 7. The heading to Section 111.009, Occupations
22 Code, is amended to read as follows:

23 Sec. 111.009. LIMITATION ON CERTAIN PRESCRIPTIONS AS
24 TELEDENTISTRY SERVICES.

25 SECTION 8. Section 111.009(a), Occupations Code, is amended
26 to read as follows:

27 (a) In this section:

1 (1) "National holiday" means a day described by
2 Section 662.003(a), Government Code.

3 (2) "Opiate" ["Controlled substance," "opiate,"] and
4 "prescribe" have the meanings assigned by Section 481.002, Health
5 and Safety Code.

6 ~~[(2) "National holiday" means a day described by~~
7 ~~Section 662.003(a), Government Code.]~~

8 SECTION 9. Chapter 111, Occupations Code, is amended by
9 adding Sections 111.010, 111.011, 111.012, and 111.013 to read as
10 follows:

11 Sec. 111.010. LIMITATION ON CERTAIN PRESCRIPTIONS AS
12 TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) A
13 health professional who provides telemedicine medical services or
14 telehealth services to a patient may not allow a patient to select a
15 particular controlled substance unless the patient has been
16 examined and diagnosed by the professional.

17 (b) A health professional who offers telemedicine medical
18 services or telehealth services may not enter into a contract that:

19 (1) provides a financial or other incentive to the
20 health professional based on the professional prescribing a
21 particular controlled substance to a patient as a telemedicine
22 medical service or telehealth service;

23 (2) compensates the health professional based on the
24 number of prescriptions for controlled substances prescribed to
25 patients as telemedicine medical services or telehealth services;
26 or

27 (3) requires that the health professional prescribe a

1 certain number of controlled substance prescriptions to patients as
2 telemedicine medical services or telehealth services.

3 (c) A violation of this section is grounds for disciplinary
4 action against the health professional by the agency with
5 regulatory authority over the professional.

6 Sec. 111.011. ADDITIONAL REGULATION OF CERTAIN
7 PRESCRIPTIONS AS TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH
8 SERVICES; ENFORCEMENT. (a) A person may not:

9 (1) advertise, offer, or award a financial or other
10 incentive to a health professional who offers telemedicine medical
11 services or telehealth services based on the professional
12 prescribing a particular controlled substance to a patient as a
13 telemedicine medical service or telehealth service;

14 (2) compensate a health professional who offers
15 telemedicine medical services or telehealth services based on the
16 number of prescriptions for controlled substances prescribed by the
17 professional to patients as telemedicine medical services or
18 telehealth services; or

19 (3) advertise that a health professional who offers
20 telemedicine medical services or telehealth services will:

21 (A) prescribe to a patient a particular
22 controlled substance as a telemedicine medical service or
23 telehealth service; or

24 (B) allow a patient to select a particular
25 controlled substance without the patient being examined and
26 diagnosed by the professional.

27 (b) A person who violates Subsection (a) is liable to this

1 state for a civil penalty in an amount of not less than \$100,000 for
2 each violation. The attorney general may bring an action to collect
3 a civil penalty imposed under this subsection and, in the name of
4 this state, to enjoin a violation of Subsection (a). The attorney
5 general is entitled to recover reasonable expenses incurred in
6 bringing an action under this subsection, including reasonable
7 attorney's fees and court costs.

8 (c) Any person may bring a civil action against any person
9 who violates Subsection (a). If a claimant prevails in an action
10 brought under this subsection, the court shall award:

11 (1) injunctive relief sufficient to prevent the
12 defendant from violating Subsection (a);

13 (2) statutory damages in an amount of not less than
14 \$100,000 for each violation of Subsection (a); and

15 (3) reasonable attorney's fees and court costs.

16 Sec. 111.012. PRESCRIPTION OF CONTROLLED SUBSTANCES FOR
17 CHRONIC PAIN. (a) No controlled substance may be prescribed,
18 delivered, distributed, or dispensed through telemedicine unless
19 the health professional has conducted at least one in-person visit
20 with a patient that has established chronic pain.

21 (b) A health professional may refill an established chronic
22 pain patient's controlled substance prescription through
23 telemedicine between in-person visits, but the professional must
24 evaluate the patient through telemedicine in order to refill a
25 controlled substance prescription.

26 (c) A health professional must conduct an in-person
27 evaluation of a patient not later than 90 days after every

1 telemedicine appointment where a controlled substance is
2 prescribed or refilled to address chronic pain.

3 Sec. 111.013. REGULATOR ENFORCEMENT. (a) A health
4 professional that prescribes controlled substances through
5 telemedicine, or an affiliated telehealth entity or group, shall
6 file a report annually with the agency or board with regulatory
7 authority over the professional, entity, or group for audit and
8 review to ensure, at minimum, that a proper physician-patient
9 relationship had been established for the prescribing and that the
10 standard of care has been met. Failure to submit such a report
11 shall be considered unprofessional conduct. A violation of this
12 subsection is grounds to revoke the health professional's license
13 within their scope of practice.

14 (b) The attorney general may review any report submitted
15 under Subsection (a) to ensure compliance with all applicable laws
16 and regulations, including during the course of any investigation
17 of a serious injury or death reasonably attributed to a
18 prescription drug.

19 (c) Any agency or board with regulatory authority over a
20 health professional who is authorized to prescribe a controlled
21 substance shall adopt rules concerning the contents and submission
22 of the report required under this section.

23 SECTION 10. Chapter 113, Occupations Code, is amended by
24 adding Sections 113.003 and 113.004 to read as follows:

25 Sec. 113.003. LIMITATIONS ON TELEMEDICINE OR TELEHEALTH
26 PRESCRIPTIONS BY MENTAL HEALTH PROFESSIONALS. (a) A health
27 professional that provides a mental health service through

1 telehealth services may prescribe a controlled substance through a
2 synchronous audiovisual platform if the health professional has
3 conducted at least one prior visit with the patient either
4 in-person or through a synchronous audiovisual platform.

5 (b) Before prescribing a controlled substance through a
6 synchronous audiovisual platform, the health professional must
7 make a good faith effort to ensure that the patient has not been
8 prescribed the same controlled substance from another health
9 professional within the 30-day period before the appointment with
10 the patient.

11 (c) If the health professional prescribed the first
12 controlled substance prescription for a patient through
13 telemedicine or telehealth, then the professional must evaluate the
14 patient through telehealth or telemedicine or in person in order to
15 refill a controlled substance prescription.

16 Sec. 113.004. USE OF CERTAIN ASYNCHRONOUS COMMUNICATION
17 TECHNOLOGIES. (a) Except as provided by Subsection (b) and
18 notwithstanding any other law, a health professional may provide a
19 mental health service that is within the scope of the
20 professional's license, certification, or authorization through
21 the use of a telemedicine medical service or a telehealth service to
22 a patient by using asynchronous store and forward technology,
23 regardless of whether that technology is used in conjunction with
24 synchronous audio interaction between the professional and the
25 patient.

26 (b) A health professional that provides a mental health
27 service through the use of asynchronous store and forward

1 technology that is not used in conjunction with synchronous audio
2 interaction between the professional and the patient may not write
3 a prescription for the patient as a mental health service.

4 SECTION 11. Section 562.056(c), Occupations Code, is
5 amended to read as follows:

6 (c) For purposes of this section and Section 562.112, a
7 valid practitioner-patient relationship is present between a
8 practitioner providing telemedicine medical services, ~~[or]~~
9 teledentistry dental services, or telehealth services and the
10 patient receiving the services if the practitioner has complied
11 with the requirements for establishing such a relationship in
12 accordance with Section 111.005.

13 SECTION 12. Section 111.010(b), Occupations Code, as added
14 by this Act, applies only to a contract entered into on or after the
15 effective date of this Act.

16 SECTION 13. This Act takes effect September 1, 2023.