

1-1 By: Campbell, Schwertner S.B. No. 2527
 1-2 (In the Senate - Filed March 10, 2023; March 23, 2023, read
 1-3 first time and referred to Committee on Health & Human Services;
 1-4 April 25, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0; April 25, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16			X	
1-17			X	

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 2527 By: Perry

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the regulation of telemedicine medical services,
 1-22 teledentistry services, and telehealth services; providing a civil
 1-23 penalty.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 111.001, Occupations Code, is amended by
 1-26 amending Subdivision (1) and adding Subdivision (1-a) to read as
 1-27 follows:

1-28 (1) "Controlled substance" has the meaning assigned by
 1-29 Section 481.002, Health and Safety Code.

1-30 (1-a) "Dentist," "health professional," and
 1-31 "physician" have the meanings assigned by Section 1455.001,
 1-32 Insurance Code.

1-33 SECTION 2. Section 111.002(a), Occupations Code, is amended
 1-34 to read as follows:

1-35 (a) A treating physician, dentist, or health professional
 1-36 who provides or facilitates the use of telemedicine medical
 1-37 services, teledentistry dental services, or telehealth services
 1-38 shall:

1-39 (1) ensure that the informed consent of the patient,
 1-40 or another appropriate individual authorized to make health care
 1-41 treatment decisions for the patient, is obtained before
 1-42 telemedicine medical services, teledentistry dental services, or
 1-43 telehealth services are provided; and

1-44 (2) with respect to health care treatment for a
 1-45 patient who is a minor, develop and implement protocols requiring
 1-46 that an individual authorized to make health care treatment
 1-47 decisions for the minor patient:

1-48 (A) is present at the initial appointment or
 1-49 meeting with the minor patient; and

1-50 (B) consents to the treatment of the minor
 1-51 patient.

1-52 SECTION 3. The heading to Section 111.005, Occupations
 1-53 Code, is amended to read as follows:

1-54 Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR
 1-55 TELEMEDICINE MEDICAL SERVICES, [OR] TELEDENTISTRY DENTAL SERVICES,
 1-56 OR TELEHEALTH SERVICES.

1-57 SECTION 4. Sections 111.005(a) and (b), Occupations Code,
 1-58 are amended to read as follows:

1-59 (a) For purposes of Section 562.056, a valid
 1-60 practitioner-patient relationship is present between a

2-1 practitioner providing a telemedicine medical service, ~~[or a]~~
2-2 ~~teledentistry dental service, or telehealth service~~ and a patient
2-3 receiving the service as long as the practitioner complies with the
2-4 standard of care described in Section 111.007 and the practitioner:

2-5 (1) has a preexisting practitioner-patient
2-6 relationship with the patient established in accordance with rules
2-7 adopted under Section 111.006;

2-8 (2) communicates, regardless of the method of
2-9 communication, with the patient pursuant to a call coverage
2-10 agreement established in accordance with:

2-11 (A) Texas Medical Board rules with a physician
2-12 requesting coverage of medical care for the patient; or

2-13 (B) State Board of Dental Examiners rules with a
2-14 dentist requesting coverage of dental care for the patient; or

2-15 (3) provides the telemedicine medical services, ~~[or]~~
2-16 ~~teledentistry dental services, or telehealth services~~ through the
2-17 use of one of the following methods, as long as the practitioner
2-18 complies with the follow-up requirements in Subsection (b), and the
2-19 method allows the practitioner to have access to, and the
2-20 practitioner uses, the relevant clinical information that would be
2-21 required in accordance with the standard of care described in
2-22 Section 111.007:

2-23 (A) synchronous audiovisual interaction between
2-24 the practitioner and the patient in another location;

2-25 (B) asynchronous store and forward technology,
2-26 including asynchronous store and forward technology in conjunction
2-27 with synchronous audio interaction between the practitioner and the
2-28 patient in another location, as long as the practitioner uses
2-29 clinical information from:

2-30 (i) clinically relevant photographic or
2-31 video images, including diagnostic images; or

2-32 (ii) the patient's relevant clinical
2-33 records, such as the relevant medical or dental history, laboratory
2-34 and pathology results, and prescriptive histories; or

2-35 (C) another ~~[form of audiovisual~~
2-36 ~~telecommunication]~~ technology platform that:

2-37 (i) allows the practitioner to comply with
2-38 the standard of care described in Section 111.007; and

2-39 (ii) complies with the privacy requirements
2-40 of the Health Insurance Portability and Accountability Act of 1996
2-41 (Pub. L. No. 104-191).

2-42 (b) A practitioner who provides telemedicine medical
2-43 services or telehealth services to a patient as described by ~~[in]~~
2-44 Subsection (a)(3) shall:

2-45 (1) provide the patient with guidance on appropriate
2-46 follow-up care; and

2-47 (2) at the request of the patient [if the patient
2-48 consents and the patient has a primary care physician], provide to
2-49 the patient's primary care physician not later than [within] 72
2-50 hours after the patient's request [practitioner provides the
2-51 services to the patient] a medical record or other report
2-52 containing an explanation of the treatment provided by the
2-53 practitioner to the patient and the practitioner's evaluation,
2-54 analysis, or diagnosis, as appropriate, of the patient's condition.

2-55 SECTION 5. Chapter 111, Occupations Code, is amended by
2-56 adding Section 111.0055 to read as follows:

2-57 Sec. 111.0055. EMERGENCY PROCEDURES. (a) A health
2-58 professional who provides telemedicine medical services or
2-59 telehealth services to a patient as described by Section
2-60 111.005(a)(3) shall develop and implement emergency protocols that
2-61 are appropriate to the standard of care that applies to the
2-62 services. The emergency protocols must be in writing and include
2-63 procedures for making a good faith effort to:

2-64 (1) determine the patient's location if the patient is
2-65 unable to provide the location to the health professional; and

2-66 (2) provide the name, location, and contact
2-67 information of the patient to emergency services in oral, written,
2-68 or digital form.

2-69 (b) If an emergency arises while a health professional is

3-1 providing telemedicine medical services or telehealth services to a
3-2 patient as described by Section 111.005(a)(3), the professional
3-3 shall make a good faith effort to:

3-4 (1) directly contact and coordinate with emergency
3-5 services located near the patient's location; and

3-6 (2) if the emergency arises while the health
3-7 professional is connected to the patient by a synchronous
3-8 technology, remain connected to the patient until emergency
3-9 services have reached the patient's location or the emergency is
3-10 resolved.

3-11 SECTION 6. Section 111.008, Occupations Code, is amended to
3-12 read as follows:

3-13 Sec. 111.008. APPLICATION OF CHAPTER TO MENTAL HEALTH
3-14 SERVICES [EXCLUDED]. This chapter applies [does not apply] to
3-15 mental health services.

3-16 SECTION 7. The heading to Section 111.009, Occupations
3-17 Code, is amended to read as follows:

3-18 Sec. 111.009. LIMITATION ON CERTAIN PRESCRIPTIONS AS
3-19 TELEDENTISTRY SERVICES.

3-20 SECTION 8. Section 111.009(a), Occupations Code, is amended
3-21 to read as follows:

3-22 (a) In this section:

3-23 (1) "National holiday" means a day described by
3-24 Section 662.003(a), Government Code.

3-25 (2) "Opiate" ["Controlled substance," "opiate,"] and
3-26 "prescribe" have the meanings assigned by Section 481.002, Health
3-27 and Safety Code.

3-28 [~~(2) "National holiday" means a day described by~~
3-29 ~~Section 662.003(a), Government Code.]~~

3-30 SECTION 9. Chapter 111, Occupations Code, is amended by
3-31 adding Sections 111.010, 111.011, 111.012, and 111.013 to read as
3-32 follows:

3-33 Sec. 111.010. LIMITATION ON CERTAIN PRESCRIPTIONS AS
3-34 TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) A
3-35 health professional who provides telemedicine medical services or
3-36 telehealth services to a patient may not allow a patient to select a
3-37 particular controlled substance unless the patient has been
3-38 examined and diagnosed by the professional.

3-39 (b) A health professional who offers telemedicine medical
3-40 services or telehealth services may not enter into a contract that:

3-41 (1) provides a financial or other incentive to the
3-42 health professional based on the professional prescribing a
3-43 particular controlled substance to a patient as a telemedicine
3-44 medical service or telehealth service;

3-45 (2) compensates the health professional based on the
3-46 number of prescriptions for controlled substances prescribed to
3-47 patients as telemedicine medical services or telehealth services;
3-48 or

3-49 (3) requires that the health professional prescribe a
3-50 certain number of controlled substance prescriptions to patients as
3-51 telemedicine medical services or telehealth services.

3-52 (c) A violation of this section is grounds for disciplinary
3-53 action against the health professional by the agency with
3-54 regulatory authority over the professional.

3-55 Sec. 111.011. ADDITIONAL REGULATION OF CERTAIN
3-56 PRESCRIPTIONS AS TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH
3-57 SERVICES; ENFORCEMENT. (a) A person may not:

3-58 (1) advertise, offer, or award a financial or other
3-59 incentive to a health professional who offers telemedicine medical
3-60 services or telehealth services based on the professional
3-61 prescribing a particular controlled substance to a patient as a
3-62 telemedicine medical service or telehealth service;

3-63 (2) compensate a health professional who offers
3-64 telemedicine medical services or telehealth services based on the
3-65 number of prescriptions for controlled substances prescribed by the
3-66 professional to patients as telemedicine medical services or
3-67 telehealth services; or

3-68 (3) advertise that a health professional who offers
3-69 telemedicine medical services or telehealth services will:

4-1 (A) prescribe to a patient a particular
 4-2 controlled substance as a telemedicine medical service or
 4-3 telehealth service; or

4-4 (B) allow a patient to select a particular
 4-5 controlled substance without the patient being examined and
 4-6 diagnosed by the professional.

4-7 (b) A person who violates Subsection (a) is liable to this
 4-8 state for a civil penalty in an amount of not less than \$100,000 for
 4-9 each violation. The attorney general may bring an action to collect
 4-10 a civil penalty imposed under this subsection and, in the name of
 4-11 this state, to enjoin a violation of Subsection (a). The attorney
 4-12 general is entitled to recover reasonable expenses incurred in
 4-13 bringing an action under this subsection, including reasonable
 4-14 attorney's fees and court costs.

4-15 (c) Any person may bring a civil action against any person
 4-16 who violates Subsection (a). If a claimant prevails in an action
 4-17 brought under this subsection, the court shall award:

4-18 (1) injunctive relief sufficient to prevent the
 4-19 defendant from violating Subsection (a);

4-20 (2) statutory damages in an amount of not less than
 4-21 \$100,000 for each violation of Subsection (a); and

4-22 (3) reasonable attorney's fees and court costs.

4-23 Sec. 111.012. PRESCRIPTION OF CONTROLLED SUBSTANCES. (a)
 4-24 A health professional may not prescribe or provide a refill
 4-25 prescription to a patient for a Schedule II controlled substance or
 4-26 a narcotic drug, as defined by Section 481.002, Health and Safety
 4-27 Code, listed as a Schedule III, IV, or V controlled substance as a
 4-28 telemedicine medical service or telehealth service unless the
 4-29 health professional has conducted an in-person examination of the
 4-30 patient at least once in the 12-month period preceding the
 4-31 prescription or refill prescription. This subsection does not
 4-32 apply to the prescription of or refill of a prescription for
 4-33 buprenorphine.

4-34 (b) A health professional may prescribe to a patient a
 4-35 controlled substance listed in Schedule III, IV, or V, other than a
 4-36 narcotic drug, as defined by Section 481.002, Health and Safety
 4-37 Code, as a telemedicine medical service or telehealth service
 4-38 without conducting an in-person examination of the patient. A
 4-39 prescription under this subsection must be limited to an initial
 4-40 30-day supply. It is considered unprofessional conduct by a health
 4-41 professional who prescribes a controlled substance under this
 4-42 subsection to enter into a business arrangement with an entity that
 4-43 facilitates the prescribing of controlled substances to patients on
 4-44 a month-by-month basis by using a different health professional
 4-45 each month.

4-46 (c) Before a health professional prescribes a controlled
 4-47 substance as described by Subsection (a) or (b), the health
 4-48 professional must consult the appropriate prescription drug
 4-49 monitoring program to ensure that:

4-50 (1) the patient has not been prescribed the controlled
 4-51 substance within the 30-day period preceding the date the health
 4-52 professional consults the monitoring program; and

4-53 (2) the prescription is appropriate for the patient.

4-54 Sec. 111.013. REPORT OF CONTROLLED SUBSTANCE PRESCRIBING
 4-55 ACTIVITY. (a) On request of an agency with regulatory authority
 4-56 over a health professional who prescribes a controlled substance as
 4-57 a telemedicine medical service or telehealth service, or an entity
 4-58 or group affiliated with the health professional, the health
 4-59 professional or the entity or group shall submit to the agency a
 4-60 report of the health professional's prescribing activity for review
 4-61 by the agency to ensure that a proper practitioner-patient
 4-62 relationship was established for each prescription and that the
 4-63 health professional has complied with the standard of care. It is
 4-64 considered unprofessional conduct for a health professional to fail
 4-65 to timely submit a report requested by an agency under this
 4-66 subsection. A health professional's violation of this subsection
 4-67 is grounds for disciplinary action by an agency with regulatory
 4-68 authority over the health professional.

4-69 (b) The attorney general may at any time, including during

5-1 the course of any investigation of a serious injury or death
5-2 reasonably attributed to a prescription drug, review a report
5-3 submitted to an agency in response to a request under Subsection (a)
5-4 to ensure compliance with all applicable laws and regulations.

5-5 (c) Each agency with regulatory authority over a health
5-6 professional authorized to prescribe a controlled substance shall
5-7 adopt rules to prescribe the contents of and establish procedures
5-8 for the submission of a report described by Subsection (a).

5-9 SECTION 10. Section 562.056(c), Occupations Code, is
5-10 amended to read as follows:

5-11 (c) For purposes of this section and Section 562.112, a
5-12 valid practitioner-patient relationship is present between a
5-13 practitioner providing telemedicine medical services, [~~or~~]
5-14 teledentistry dental services, or telehealth services and the
5-15 patient receiving the services if the practitioner has complied
5-16 with the requirements for establishing such a relationship in
5-17 accordance with Section 111.005.

5-18 SECTION 11. Section 111.010(b), Occupations Code, as added
5-19 by this Act, applies only to a contract entered into on or after the
5-20 effective date of this Act.

5-21 SECTION 12. This Act takes effect September 1, 2023.

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