BILL ANALYSIS

C.S.H.B. 1806
By: Smithee
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Legislation enacted within the last decade prohibited a health benefit plan from excluding a telemedicine medical service or a telehealth service from coverage under the plan solely because the service is not provided through a face-to-face consultation. Interested parties observe that significant changes regarding the use of telemedicine and telehealth services have occurred since that legislation was enacted, with increased Internet availability making it easier for two people to communicate via video connection using a simple computer or even a cell phone. In an effort to keep up with changing technology, C.S.H.B. 1806 addresses coverage of telephone consultations and telehealth services or telemedicine medical services under health benefit plans.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1806 amends the Insurance Code to prohibit a health benefit plan from covering a telemedicine medical service or telehealth service unless the telemedicine or telehealth provider is licensed or certified in Texas; has established a physician-patient or provider-patient relationship with the recipient of the service; is able to verify the identity of the patient; has discussed the risks and benefits of the service with the patient; advises the patient to see a physician or other health care professional in person within a reasonable time if the patient's symptoms do not improve; provides only services that are medically indicated; adopts protocols to prevent fraud and abuse; does not violate state or federal laws relating to patient privacy; maintains medical or health care records for all telemedicine medical services or telehealth services; does not treat chronic pain with a controlled substance listed on Schedule II, III, IV, or V under the Texas Controlled Substances Act at a site other than a site normally used for the provision of medical care; and practices according to the appropriate standard of care for the patient's condition.

C.S.H.B. 1806 authorizes a telemedicine or telehealth provider, for the purposes of such coverage restrictions, to establish a physician-patient or provider-patient relationship in an initial encounter using telemedicine medical services or telehealth services. The bill requires a telemedicine or telehealth provider, for purposes of such coverage restrictions, to ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services or telehealth services are provided and to ensure that the confidentiality of the patient's medical information is maintained as required by applicable law. The bill's provisions relating to telemedicine and telehealth apply only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2014.

C.S.H.B. 1806 prohibits specified employee benefit plans or health benefit plans from prohibiting a physician from charging for a telephone consultation with a covered patient if that

plan allows another person to charge for a telephone consultation with a covered patient; denying payment to a physician for a medically necessary telephone consultation with a covered patient if that plan pays another person for a telephone consultation with a covered patient; or discriminating against a physician in determining a payment amount for a medically necessary telephone consultation provided to a covered patient if that plan pays another person for a telephone consultation with a covered patient. The bill prohibits that prohibition from being construed as prohibiting an employee benefit plan or a health benefit plan from paying a physician for medically necessary telephone consultations. The bill defines "physician" for such purposes to mean an individual licensed to practice medicine in Texas, a professional association composed solely of individuals licensed to practice medicine in Texas, a single legal entity authorized to practice medicine in Texas that is owned by a group of individuals licensed to practice medicine in Texas, a nonprofit health corporation certified by the Texas Medical Board, or a partnership composed solely of individuals licensed to practice medicine in Texas.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1806 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. The heading to Chapter 1455, Insurance Code, is amended to read as follows: CHAPTER 1455. TELEMEDICINE [~~AND TELEHEALTH~~]	No equivalent provision.
SECTION 2. Section 1455.001, Insurance Code, is amended by amending Subdivision (3) and adding Subdivision (4) to read as follows:	SECTION 1. Section 1455.001, Insurance Code, is amended by amending Subdivision (3) and adding Subdivisions (4), (5), and (6) to read as follows: (3) "Telehealth provider" means a licensed or certified health professional who provides telehealth services. (4) "Telehealth service" has the meaning assigned by Section 531.001, Government Code.
(3) "Telemedicine [~~"Telehealth service" and "telemedicine~~] medical service" means a health care service that is provided through the use of advanced telecommunications technology for the purpose of:	(5) "Telemedicine [~~and "telemedicine~~] medical service" means a medical service that is provided through the use of advanced telecommunications technology for the purpose of:
(A) patient assessment, diagnosis, consultation, or treatment; or	(A) patient assessment, diagnosis, consultation, or treatment; or
(B) the transfer of medical data [~~have the meanings assigned by Section 57.042, Utilities Code~~].	(B) the transfer of medical data [~~have the meanings assigned by Section 57.042, Utilities Code~~]. (6) "Telemedicine provider" means:

(4) "Telemedicine provider" means: (A) a physician who provides telemedicine medical services; or (B) a physician assistant or advanced practice nurse who: (i) provides telemedicine medical services; and (ii) is supervised by and has delegated authority from a physician licensed in this state.	(A) a physician who provides telemedicine medical services; or (B) a physician assistant or advanced practice nurse who: (i) provides telemedicine medical services; and (ii) is supervised by and has delegated authority from a physician licensed in this state.
SECTION 3. Section 1455.004, Insurance Code, is amended to read as follows: Sec. 1455.004. COVERAGE FOR TELEMEDICINE MEDICAL SERVICES [~~AND TELEHEALTH SERVICES~~]. (a) A health benefit plan may not exclude a telemedicine medical service [~~or a telehealth service~~] from coverage under the plan solely because the service is not provided through a face-to-face consultation. (b) A health benefit plan may require a deductible, a copayment, or coinsurance for a telemedicine medical service [~~or a telehealth service~~]. The amount of the deductible, copayment, or coinsurance may not exceed the amount of the deductible, copayment, or coinsurance required for a comparable medical service provided through a face-to-face consultation.	SECTION 2. Section 1455.004, Insurance Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:
(c) A health benefit plan may not cover a telemedicine medical service unless the telemedicine provider:	(c) A health benefit plan may not cover a telemedicine medical service or telehealth service unless the telemedicine or telehealth provider:
(1) is licensed and resides in this state;	(1) is licensed or certified, as applicable, in this state;
(2) has established a physician-patient relationship with the recipient of the service;	(2) has established a physician-patient or provider-patient relationship with the recipient of the service;
(3) is able to verify the identity of the patient;	(3) is able to verify the identity of the patient;
(4) has discussed the risks and benefits of telemedicine medical services with the patient;	(4) has discussed the risks and benefits of the service with the patient;
(5) advises the patient to see a physician or other health care professional in person within a reasonable time if the patient's symptoms do not improve;	(5) advises the patient to see a physician or other health care professional in person within a reasonable time if the patient's symptoms do not improve;
(6) provides only services that are medically indicated;	(6) provides only services that are medically indicated;
(7) adopts protocols to prevent fraud and abuse;	(7) adopts protocols to prevent fraud and abuse;
(8) does not violate state or federal laws	(8) does not violate state or federal laws

relating to patient privacy;	relating to patient privacy;
(9) maintains medical records for all telemedicine medical services;	(9) maintains medical or health care records, as applicable, for all telemedicine medical services or telehealth services;
(10) does not treat chronic pain with a controlled substance listed on Schedule II, III, IV, or V under Chapter 481, Health and Safety Code, at a site other than a site normally used for the provision of medical care; and	(10) does not treat chronic pain with a controlled substance listed on Schedule II, III, IV, or V under Chapter 481, Health and Safety Code, at a site other than a site normally used for the provision of medical care; and
(11) practices according to the appropriate standard of care for the patient's condition.	(11) practices according to the appropriate standard of care for the patient's condition.
(d) For the purposes of Subsection (c), a telemedicine provider may establish a physician-patient relationship in an initial encounter using telemedicine medical services.	(d) For the purposes of Subsection (c), a telemedicine or telehealth provider may establish a physician-patient or provider-patient relationship, as applicable, in an initial encounter using telemedicine medical services or telehealth services.
(e) For the purposes of Subsection (c), a telemedicine provider must ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services are provided.	(e) For the purposes of Subsection (c), a telemedicine or telehealth provider must ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services or telehealth services are provided.
(f) For the purposes of Subsection (c), a telemedicine provider shall ensure that the confidentiality of the patient's medical information is maintained as required by Chapter 159, Occupations Code, or other applicable law.	(f) For the purposes of Subsection (c), a telemedicine or telehealth provider shall ensure that the confidentiality of the patient's medical information is maintained as required by Chapter 159, Occupations Code, or other applicable law.
No equivalent provision.	SECTION 3. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1459 to read as follows: CHAPTER 1459. FAIR ACCESS TO TELEPHONE CONSULTATIONS Sec. 1459.001. DEFINITION. In this chapter, "physician" means: (1) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code; (2) a professional association composed solely of individuals licensed to practice medicine in this state; (3) a single legal entity authorized to practice medicine in this state that is owned by a group of individuals licensed to practice medicine in this state; (4) a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code; or (5) a partnership composed solely of

individuals licensed to practice medicine in this state.

No equivalent provision.

Sec. 1459.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to an employee benefit plan or a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:
(1) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document that is offered by:
(A) an insurance company;
(B) a group hospital service corporation operating under Chapter 842;
(C) a fraternal benefit society operating under Chapter 885;
(D) a stipulated premium company operating under Chapter 884;
(E) a reciprocal exchange operating under Chapter 942;
(F) a health maintenance organization operating under Chapter 843; or
(G) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or
(2) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846, or any other employee benefit plan.
(b) This chapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.
(c) Notwithstanding Section 172.014, Local Government Code, or any other law, this chapter applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.
(d) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:
(1) a basic coverage plan under Chapter 1551;
(2) a basic plan under Chapter 1575;
(3) a primary care coverage plan under Chapter 1579; and
(4) basic coverage under Chapter 1601.
(e) Notwithstanding Section 1501.251 or any other law, this chapter applies to a small

employer health benefit plan subject to Chapter 1501.

(f) Notwithstanding Sections 1507.004 and 1507.053, or any other law, this chapter applies to a consumer choice of benefits plan issued under Chapter 1507.

No equivalent provision.

Sec. 1459.003. NONDISCRIMINATION IN TELEPHONE CONSULTATION SERVICES. (a) An employee benefit plan or a health benefit plan may not:

(1) prohibit a physician from charging for a telephone consultation with a covered patient if that plan allows another person to charge for a telephone consultation with a covered patient;

(2) deny payment to a physician for a medically necessary telephone consultation with a covered patient if that plan pays another person for a telephone consultation with a covered patient; or

(3) discriminate against a physician in determining a payment amount for a medically necessary telephone consultation provided to a covered patient if that plan pays another person for a telephone consultation with a covered patient.

(b) Nothing in this section shall be construed as prohibiting an employee benefit plan or a health benefit plan from paying a physician for medically necessary telephone consultations.

SECTION 4.
The change in law made by this Act applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2014. A health benefit plan delivered, issued for delivery, or renewed before January 1, 2014, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. (a) Sections 1455.001 and 1455.004, Insurance Code, as amended by this Act, apply only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2014. A health benefit plan delivered, issued for delivery, or renewed before January 1, 2014, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Chapter 1459, Insurance Code, as added by this Act, applies only to an employee benefit plan or a health benefit plan that is delivered, issued for delivery, or renewed on or after September 1, 2013. An employee benefit plan or a health benefit plan delivered, issued for delivery, or renewed before September 1, 2013, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2013.	SECTION 5. Same as introduced version.