

By: Schwertner, Perry

S.B. No. 1107

A BILL TO BE ENTITLED

AN ACT

relating to telemedicine and telehealth services.

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

SECTION 1. Section 111.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivisions (3) and (4) to read as follows:

(2) "Store and forward technology" means technology that stores and transmits or grants access to a person's clinical information for review by a health professional at a different physical location than the person.

(3) "Telehealth service" means a health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology.

(4) "Telemedicine [~~and~~ "telemedicine] medical service" means a health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using

1 telecommunications or information technology [~~have the meanings~~  
2 ~~assigned by Section 57.042, Utilities Code~~].

3 SECTION 2. Section 111.004, Occupations Code, is amended to  
4 read as follows:

5 Sec. 111.004. RULES. The Texas [~~State Board of~~] Medical  
6 Board [~~Examiners~~], in consultation with the commissioner of  
7 insurance, as appropriate, may adopt rules necessary to:

8 (1) ensure that patients using telemedicine medical  
9 services receive appropriate, quality care;

10 (2) prevent abuse and fraud in the use of telemedicine  
11 medical services, including rules relating to the filing of claims  
12 and records required to be maintained in connection with  
13 telemedicine medical services;

14 (3) ensure adequate supervision of health  
15 professionals who are not physicians and who provide telemedicine  
16 medical services; and

17 (4) establish the maximum number of health  
18 professionals who are not physicians that a physician may supervise  
19 through a telemedicine medical service[~~, and~~

20 [~~(5) require a face-to-face consultation between a~~  
21 ~~patient and a physician providing a telemedicine medical service~~  
22 ~~within a certain number of days following an initial telemedicine~~  
23 ~~medical service only if the physician has never seen the patient~~].

24 SECTION 3. Chapter 111, Occupations Code, is amended by  
25 adding Sections 111.005 through 111.008 to read as follows:

26 Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR  
27 TELEMEDICINE MEDICAL SERVICES. (a) For purposes of Section

1 562.056, a valid practitioner-patient relationship is present  
2 between a practitioner providing a telemedicine medical service and  
3 a patient receiving the telemedicine medical service as long as the  
4 practitioner complies with the standard of care described in  
5 Section 111.007 and the practitioner:

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

9 (2) communicates, regardless of the method of  
10 communication, with the patient pursuant to a call coverage  
11 agreement established in accordance with Texas Medical Board rules  
12 with a physician requesting coverage of medical care for the  
13 patient; or

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

21 (A) synchronous audiovisual interaction between  
22 the practitioner and the patient in another location;

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

1                   (i) clinically relevant photographic or  
2 video images, including diagnostic images; or

3                   (ii) the patient's relevant medical  
4 records, such as the relevant medical history, laboratory and  
5 pathology results, and prescriptive histories; or

6                   (C) another form of audiovisual  
7 telecommunication technology that allows the practitioner to  
8 comply with the standard of care described in Section 111.007.

9           (b) A practitioner who provides telemedicine medical  
10 services to a patient as described in Subsection (a)(3) shall:

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

13                   (2) if the patient consents and the patient has a  
14 primary care physician, provide to the patient's primary care  
15 physician within 72 hours after the practitioner provides the  
16 services to the patient a medical record or other report containing  
17 an explanation of the treatment provided by the practitioner to the  
18 patient and the practitioner's evaluation, analysis, or diagnosis,  
19 as appropriate, of the patient's condition.

20           (c) Notwithstanding any other provision of this section, a  
21 practitioner-patient relationship is not present if a practitioner  
22 prescribes an abortifacient or any other drug or device that  
23 terminates a pregnancy.

24           Sec. 111.006. COORDINATION TO ADOPT RULES THAT DETERMINE  
25 VALID PRESCRIPTION. (a) The Texas Medical Board, the Texas Board  
26 of Nursing, the Texas Physician Assistant Board, and the Texas  
27 State Board of Pharmacy shall jointly adopt rules that establish

1 the determination of a valid prescription in accordance with  
2 Section 111.005. Rules adopted under this section must allow for  
3 the establishment of a practitioner-patient relationship by a  
4 telemedicine medical service provided by a practitioner to a  
5 patient in a manner that complies with Section 111.005(a)(3).

6 (b) The Texas Medical Board, the Texas Board of Nursing, the  
7 Texas Physician Assistant Board, and the Texas State Board of  
8 Pharmacy shall jointly develop and publish on each respective  
9 board's Internet website responses to frequently asked questions  
10 relating to the determination of a valid prescription issued in the  
11 course of the provision of telemedicine medical services.

12 Sec. 111.007. STANDARD OF CARE FOR TELEMEDICINE MEDICAL  
13 SERVICES AND TELEHEALTH SERVICES. (a) A health professional  
14 providing a health care service or procedure as a telemedicine  
15 medical service or a telehealth service is subject to the standard  
16 of care that would apply to the provision of the same health care  
17 service or procedure in an in-person setting.

18 (b) An agency with regulatory authority over a health  
19 professional may not adopt rules pertaining to telemedicine medical  
20 services or telehealth services that would impose a higher standard  
21 of care than the standard described in Subsection (a).

22 Sec. 111.008. MENTAL HEALTH SERVICES EXCLUDED. This  
23 chapter does not apply to mental health services.

24 SECTION 4. Section 562.056, Occupations Code, is amended by  
25 adding Subsection (c) to read as follows:

26 (c) For purposes of this section, a valid  
27 practitioner-patient relationship is present between a

1 practitioner providing telemedicine medical services and the  
2 patient receiving the telemedicine medical services if the  
3 practitioner has complied with the requirements for establishing  
4 such a relationship in accordance with Section 111.005.

5 SECTION 5. Section 1455.001(3), Insurance Code, is amended  
6 to read as follows:

7 (3) "Telehealth service" and "telemedicine medical  
8 service" have the meanings assigned by Section 111.001 [~~57.042~~],  
9 Occupations [~~Utilities~~] Code.

10 SECTION 6. Section 1455.004, Insurance Code, is amended by  
11 adding Subsection (c) to read as follows:

12 (c) Notwithstanding Subsection (a), a health benefit plan  
13 is not required to provide coverage for a telemedicine medical  
14 service or a telehealth service provided by only synchronous or  
15 asynchronous audio interaction or a facsimile.

16 SECTION 7. Chapter 1455, Insurance Code, is amended by  
17 adding Section 1455.006 to read as follows:

18 Sec. 1455.006. TELEMEDICINE MEDICAL SERVICES AND  
19 TELEHEALTH SERVICES STATEMENT. Each issuer of a health benefit  
20 plan shall adopt and display in a conspicuous manner on the health  
21 benefit plan issuer's Internet website the issuer's policies and  
22 payment practices for telemedicine medical services and telehealth  
23 services.

24 SECTION 8. Sections 531.001(7) and (8), Government Code,  
25 are amended to read as follows:

26 (7) "Telehealth service" has the meaning assigned by  
27 Section 111.001, Occupations Code [~~means a health service, other~~

1 ~~than a telemedicine medical service, that is delivered by a~~  
2 ~~licensed or certified health professional acting within the scope~~  
3 ~~of the health professional's license or certification who does not~~  
4 ~~perform a telemedicine medical service and that requires the use of~~  
5 ~~advanced telecommunications technology, other than telephone or~~  
6 ~~facsimile technology, including:~~

7 ~~[(A) compressed digital interactive video,~~  
8 ~~audio, or data transmission;~~

9 ~~[(B) clinical data transmission using computer~~  
10 ~~imaging by way of still-image capture and store and forward; and~~

11 ~~[(C) other technology that facilitates access to~~  
12 ~~health care services or medical specialty expertise].~~

13 (8) "Telemedicine medical service" has the meaning  
14 assigned by Section 111.001, Occupations Code ~~[means a health care~~  
15 ~~service that is initiated by a physician or provided by a health~~  
16 ~~professional acting under physician delegation and supervision,~~  
17 ~~that is provided for purposes of patient assessment by a health~~  
18 ~~professional, diagnosis or consultation by a physician, or~~  
19 ~~treatment, or for the transfer of medical data, and that requires~~  
20 ~~the use of advanced telecommunications technology, other than~~  
21 ~~telephone or facsimile technology, including:~~

22 ~~[(A) compressed digital interactive video,~~  
23 ~~audio, or data transmission;~~

24 ~~[(B) clinical data transmission using computer~~  
25 ~~imaging by way of still-image capture and store and forward; and~~

26 ~~[(C) other technology that facilitates access to~~  
27 ~~health care services or medical specialty expertise].~~

1 SECTION 9. Section 771.151(7), Health and Safety Code, is  
2 amended to read as follows:

3 (7) "Telemedicine medical service" has the meaning  
4 assigned by Section 111.001, Occupations Code [~~means a health care~~  
5 ~~service that is initiated by a physician or provided by a health~~  
6 ~~professional acting under physician delegation and supervision,~~  
7 ~~that is provided for purposes of patient assessment by a health~~  
8 ~~professional, diagnosis or consultation by a physician, or~~  
9 ~~treatment, or for the transfer of medical data, and that requires~~  
10 ~~the use of advanced telecommunications technology, other than~~  
11 ~~telephone or facsimile technology, including:~~

12 [~~(A) compressed digital interactive video,~~  
13 ~~audio, or data transmission;~~

14 [~~(B) clinical data transmission using computer~~  
15 ~~imaging by way of still-image capture and store and forward; and~~

16 [~~(C) other technology that facilitates access to~~  
17 ~~health care services or medical specialty expertise].~~

18 SECTION 10. (a) Except as provided by Subsection (b) of  
19 this section, this Act takes effect immediately if it receives a  
20 vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2017.

24 (b) Section 1455.006, Insurance Code, as added by this Act,  
25 takes effect September 1, 2017.