

## **BILL ANALYSIS**

C.S.H.B. 2056  
By: Klick  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

During the COVID-19 pandemic, many dental offices temporarily closed in large part because there is no reimbursement mechanism for providing access to patients by a dental health professional through telehealth services. These closures prompted layoffs of many dental health professionals, causing many of them to seek unemployment. While the legislature in recent years has addressed telemedicine and telehealth services, dentistry was not included in the scope of the legislation.

Those involved in the ongoing policy discussions regarding the need to bring teledentistry under the statutes governing telemedicine and telehealth services have pointed to a U.S. Army teledentistry project from the 1990s that has subsequently been determined to have improved patient care and increased access to care, provided more dental education, and fostered better communication between dentists and dental laboratories.

C.S.H.B. 2056 seeks to establish a teledentistry dental service as a telehealth service that is subject to specified Occupations Code provisions regarding telemedicine and telehealth.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTIONS 5, 8, 11, 13, 21, and 29 of this bill; the Texas State Board of Pharmacy in SECTION 8 of this bill; and the executive commissioner of the Health and Human Services Commission in SECTIONS 18, 20, and 21 of this bill.

### **ANALYSIS**

#### **Occupations Code Provisions**

##### Teledentistry Dental Services

C.S.H.B. 2056 amends the Occupations Code provisions applicable to telemedicine and telehealth to make them also applicable to teledentistry dental services and to revise them to reflect that applicability. The bill defines a "teledentistry dental service" as a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

Accordingly, C.S.H.B. 2056 provides the following:

- a dentist who delegates a teledentistry dental service must ensure that the informed consent of the patient includes disclosure to the patient that the dentist has delegated the service;
- a dentist who provides or facilitates the use of teledentistry dental services must ensure that the confidentiality of the patient's clinical information is maintained as required by law;
- the State Board of Dental Examiners (SBDE), in consultation with the commissioner of insurance, as appropriate, may adopt rules necessary to:
  - ensure that patients using teledentistry dental services receive appropriate, quality care;
  - prevent abuse and fraud in the use of such services, including rules relating to the filing of claims and records required to be maintained in connection with those services;
  - ensure adequate supervision of health professionals who are not dentists and who provide the services under the delegation and supervision of a dentist; and
  - authorize a dentist to simultaneously delegate to and supervise through the service not more than five health professionals who are not dentists;
- a health professional providing a teledentistry dental service is subject to the standard of care that would apply to the provision of the same health care service or procedure in an in-person setting and an agency with regulatory authority over such a professional may not adopt rules that would impose a higher standard of care;
- a health professional providing a health care service or procedure as a teledentistry dental service is subject to the licensing requirements that would apply to the provision of the same health care service or procedure in an in-person setting;
- a valid practitioner-patient relationship is present between a practitioner providing a teledentistry dental service and a patient receiving the service under the same conditions under which such a relationship is present with respect to telemedicine medical services, except that the condition based on a call coverage agreement is established in accordance with the SBDE rules; and
- the SBDE and the Texas State Board of Pharmacy (TSBP) must jointly adopt rules not later than March 1, 2022, that:
  - establish the determination of a valid prescription;
  - allow for the establishment of a practitioner-patient relationship by a teledentistry dental service provided by a dentist to a patient using certain forms of audiovisual telecommunication technology that allows the practitioner to comply with the applicable standard of care; and
  - are substantially similar to the rules adopted by the Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the TSBP that establish the determination of a valid prescription in regards to telemedicine medical services.

C.S.H.B. 2056 requires the SBDE and the TSBP to jointly develop and publish on each respective board's website responses to frequently asked questions relating to the determination of a valid prescription issued in the course of the provision of teledentistry dental services.

C.S.H.B. 2056 requires the SBDE by rule to establish limits on the quantity of a controlled substance, including an opiate, that a dentist may prescribe to a patient as a teledentistry dental service and provides the following:

- the rules may not authorize a dentist to prescribe more than is necessary to supply a patient for the following:
  - if the prescription is for an opiate, a two-day period; or
  - if the prescription is for a controlled substance other than an opiate, a five-day period;

- for each day in those periods that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday, as defined by reference; and
- the rules must comply with applicable federal laws and rules.

C.S.H.B. 2056 requires the SBDE to adopt, not later than March 1, 2022, the rules necessary to implement the bill's amendments to provisions regarding telemedicine and telehealth as applicable to teledentistry dental services.

#### Dental Practice Act

C.S.H.B. 2056 provides the following with respect to the Dental Practice Act:

- a person located in another state practices dentistry in Texas and is required to hold a license to practice dentistry in Texas if the person through the use of any medium, including an electronic medium, performs an act that constitutes the practice of dentistry on a patient in Texas;
- a dental hygienist who practices dental hygiene as a teledentistry dental service is practicing in an alternate setting in compliance with applicable law regarding performance of delegated duties;
- the prohibition against the delegation of the authority to an individual who is not applicably licensed to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent is applicable to a teledentistry dental service; and
- the SBDE, not later than March 1, 2022, must adopt rules governing a call coverage agreement between dentists.

#### Texas Pharmacy Act

C.S.H.B. 2056 makes applicable to teledentistry dental services the Texas Pharmacy Act requirement that a pharmacist and a pharmacy, respectively, determine that a valid practitioner-patient relationship is present between the practitioner and the patient.

#### **Government Code Provisions**

C.S.H.B. 2056 amends the Government Code to require the executive commissioner of the Health and Human Services Commission (HHSC) by rule to develop and implement a system for, and establish policies that permit, reimbursement under Medicaid and CHIP for services provided through teledentistry dental services to children with special health care needs.

C.S.H.B. 2056 requires HHSC by rule, adopted not later than March 1, 2022, to require each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for teledentistry dental services provided by a dentist licensed to practice dentistry in Texas at the same rate as the Medicaid program reimburses for the same in-person dental service. The bill, with respect to the reimbursement, does the following:

- prohibits a request for reimbursement from being denied solely because an in-person dental service between a dentist and a patient did not occur;
- prohibits HHSC from limiting a dentist's choice of platform for providing a teledentistry dental service by requiring that the dentist use a particular platform to receive reimbursement for the service; and
- authorizes the SBDE, in consultation with HHSC and the office of inspector general of HHSC, as appropriate, to adopt rules as necessary to do the following:
  - ensure that appropriate care is provided to patients who receive teledentistry dental services; and
  - prevent abuse and fraud through the use of those services, including rules relating to filing claims and the records required to be maintained in connection with the services.

## **Health and Safety Code Provisions**

C.S.H.B. 2056 amends the Health and Safety Code to require a health plan provider to permit benefits through teledentistry dental services in providing covered benefits to a child under CHIP, including a child with special health care needs.

## **Insurance Code Provisions**

C.S.H.B. 2056 amends the Insurance Code provisions applicable to telemedicine and telehealth to make them also applicable to teledentistry dental services as follows:

- the definition of "health professional" for purposes of those provisions is expanded to include an individual who is licensed or certified in Texas to perform health care services and is authorized to assist a dentist in providing teledentistry dental services that are delegated and supervised by the dentist;
- effective January 1, 2022, an applicable health benefit plan:
  - must provide coverage for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a teledentistry dental service on the same basis and to the same extent that the plan provides coverage for the service or procedure in an in-person setting;
  - may not exclude from coverage a covered health care service or procedure delivered as a teledentistry dental service solely because the covered health care service or procedure is not provided through an in-person consultation;
  - may not limit, deny, or reduce coverage for a covered health care service or procedure delivered as a teledentistry dental service based on the health professional's choice of platform for delivering the service or procedure; and
  - may require a deductible, a copayment, or coinsurance for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a teledentistry dental service.

Effective January 1, 2022, an issuer of an applicable health benefit plan must adopt and display in a conspicuous manner on the issuer's website the issuer's policies and payment practices for teledentistry dental services, but this provision expressly does not require an issuer of a health benefit plan to display negotiated contract payment rates for health professionals who contract with the issuer to provide teledentistry dental services.

## **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2021.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2056 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the original's authorization for the SBDE to establish, by rule, the maximum number of non-dentist health professionals a dentist may supervise through a teledentistry dental service. The substitute does not require the maximum to be established by SBDE rule but instead explicitly sets the maximum in statute by providing that the rules may authorize a dentist to simultaneously delegate to and supervise through a service not more than five health professionals who are not dentists.

The substitute does not include the original's provisions that did the following:

- made telemedicine medical services follow-up care requirements applicable to teledentistry dental services, including the requirement for certain records or reports to be provided within 72 hours, on the patient's consent, to an applicable practitioner; and

- exempted a practitioner who provides, at a location other than the dentist's location, a treatment based on a teledentistry dental service consisting of a certain type of digital three-dimensional scan from the 72-hour deadline for providing the applicable record or report to an applicable practitioner but required, on the patient's request, the practitioner to provide to the patient the record or report after the patient has completed treatment.

The substitute and the original both require the adoption of SBDE rules to establish limits on the quantity of any controlled substance that a dentist may prescribe to a patient as a teledentistry dental service. However, rather than prohibiting the prescription of more than a five-day supply of the controlled substance as the original did, the substitute instead explicitly prohibits the prescription of more than is necessary to supply a patient for the following periods:

- a two-day period for an opiate; or
- a five-day period for a controlled substance other than an opiate.

Furthermore, with respect to the prescribed limited periods and the SBDE rules establishing the limits, the substitute provides the following, which are absent from the original:

- for each day in either of the prescribed limited periods that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday; and
- the rules must comply with applicable federal laws and rules.