

BILL ANALYSIS

Senate Research Center

S.B. 2527
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2017, the Senate passed S.B. 1107, relating to telemedicine and telehealth services. That bill laid out the groundwork for conducting telemedicine visits, including establishing a framework for maintaining the same standard of care that would be expected during an in-person visit. During the COVID-19 pandemic, there was a sharp increase in telemedicine use, most specifically in rural communities without consistent, proper access to in-person healthcare. The pandemic contributed to the rapid expansion of telemedicine by allowing health professionals to continue seeing their patients virtually during times of isolation. Many laws, ordinances, rules, etc. were relaxed to ensure that patients still had access to care throughout this unprecedented period. At the time, telemedicine was still a relatively new phenomenon and the consequences of its unpredicted growth were unknown. For example, the relaxation of previously existing rules created a market demand for online platforms that health professionals could use to schedule appointments or prescribe medication. Additionally, both state and federal laws lagged behind the constant evolution of the pandemic, thus unintentionally allowing some telemedicine companies to take advantage of the medical system for financial gain.

For instance, recent news reports have shed light on the dubious practices of some companies that claim to offer quality virtual health care services but have ultimately left patients stranded and injured due to their substandard care. Some bad actors have used instant messaging to inappropriately prescribe Schedule II Controlled Substances—like Adderall—to unassuming patients, contributing to nationwide medication shortages, higher addiction rates, and even suicide.

Several Schedule II Controlled Substances have a high potential for abuse, which can lead to severe psychological or physical dependence. Examples of Schedule II substances include:

- Fentanyl
- Adderall
- Oxycodone
- Codeine
- Hydrocodone
- Methamphetamine
- Morphine
- Several other opiates

It is essential that Texas act now and lead the nation in ensuring patients have quality access to care via telehealth. Texas must adopt commonsense patient protection laws that bar bad actors from operating in the state while still maintaining an environment that allows responsible virtual care companies to treat patients.

S.B. 2527 seeks to strengthen current telemedicine laws by the following:

- Requiring practitioners receive the consent of a minor's guardian, who must be present at the first appointment, prior to the treatment of the minor via telemedicine.
- Requiring practitioners to have emergency protocols in place to provide the name, location, and contact information of the patient to emergency services in case of a medical emergency during a synchronous telemedicine visit.

- Prohibiting the use of telemedicine for quota-based or incentive driven prescription filing.
- Prohibiting companies from advertising that a provider will prescribe a specific controlled substance or allowing patients to select a controlled substance without being previously examined.
- Creating a private cause of action allowing families and good industry actors to shine a light on fly-by-night companies and stop them from causing harm to patients.
- Prohibiting the prescription of controlled substances via telemedicine unless the patient is a chronic pain patient with whom the health professional has conducted at least one in-person visit.
- Allowing health professionals to refill controlled substance prescriptions via telemedicine platforms as long as an evaluation is completed and an in-person reassessment is done at least every 90 days.
- Ensuring that any health professional who prescribes controlled substances through telemedicine files a report with the appropriate regulatory board, which will determine the contents of the report.
- Allowing mental health professionals to use audiovisual telehealth services to prescribe controlled substances as long an evaluation has been done prior and the patient has not been prescribed the same substance within 30 days.
- Clarifying that telehealth and mental health providers are subject to the same patient protection laws so that all providers are treated equally under the law.
- Allowing mental health professionals using telemedicine to continue meeting with patients over instant messaging, but prohibiting prescription of medication without at least an audio interaction.

As proposed, S.B. 2527 amends current law relating to the regulation of telemedicine medical services, teledentistry services, and telehealth services, and provides a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to any agency or board with regulatory authority over a health professional who is authorized to prescribe a controlled substance in SECTION 9 (Section 111.013, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 111.001, Occupations Code, by amending Subdivision (1) and adding Subdivision (1-a) to define "controlled substance" and to make a nonsubstantive change.

SECTION 2. Amends Section 111.002(a), Occupations Code, as follows:

(a) Requires a treating physician, dentist, or health professional who provides or facilitates the use of telemedicine medical services, teledentistry dental services, or telehealth services to:

(1) creates this subdivision from existing text; and

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

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

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

SECTION 3. Amends the heading to Section 111.005, Occupations Code, to read as follows:

Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, OR TELEHEALTH SERVICES.

SECTION 4. Amends Sections 111.005(a) and (b), Occupations Code, as follows:

(a) Provides that a valid practitioner-patient relationship, for purposes of Section 562.056 (Practitioner-Patient Relationship Required), is present between a practitioner providing a telemedicine medical service, teledentistry dental service, or telehealth service and a patient receiving the service as long as the practitioner complies with the standard of care described in Section 111.007 (Standard of Care for Telemedicine Medical Services, Teledentistry Dental Services, and Telehealth Services) and the practitioner:

(1)-(2) makes no changes to these subdivisions; or

(3) provides certain services, including telehealth services, through the use of one of the following methods, as long as the practitioner complies with the follow-up requirements in Subsection (b), and the method allows the practitioner to have access to, and the practitioner uses, the relevant clinical information that would be required in accordance with the standard of care described in Section 111.007:

(A) makes no changes to this paragraph;

(B) makes a nonsubstantive change to this paragraph; or

(C) another technology platform, rather than another form of audiovisual telecommunication technology, that:

(i) creates this subparagraph from existing text; and

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

(b) Requires a practitioner who provides telemedicine medical services or telehealth services to a patient as described by Subsection (a)(3) to:

(1) makes no changes to this subdivision; and

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

SECTION 5. Amends Chapter 111, Occupations Code, by adding Section 111.0055, as follows:

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

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

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

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

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

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

SECTION 6. Amends Section 111.008, Occupations Code, as follows:

Sec. 111.008. New heading: APPLICATION OF CHAPTER TO MENTAL HEALTH SERVICES. Provides that Chapter 111 (Telemedicine, Teledentistry, and Telehealth) applies to mental health services, except as provided by Section 113.004. Deletes existing text providing that this chapter does not apply to mental health services.

SECTION 7. Amends the heading to Section 111.009, Occupations Code, to read as follows:

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

SECTION 8. Amends Section 111.009(a), Occupations Code, to delete existing text defining "controlled substance" and to make nonsubstantive changes.

SECTION 9. Amends Chapter 111, Occupations Code, by adding Sections 111.010, 111.011, 111.012, and 111.013, as follows:

Sec. 111.010. LIMITATION ON CERTAIN PRESCRIPTIONS AS TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) Prohibits a health professional who provides telemedicine medical services or telehealth services to a patient from allowing a patient to select a particular controlled substance unless the patient has been examined and diagnosed by the professional.

(b) Prohibits a health professional who offers telemedicine medical services or telehealth services from entering into a contract that:

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

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

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

(c) Provides that a violation of this section is grounds for disciplinary action against the health professional by the agency with regulatory authority over the professional.

Sec. 111.011. ADDITIONAL REGULATION OF CERTAIN PRESCRIPTIONS AS TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES; ENFORCEMENT. (a) Prohibits a person from:

(1) advertising, offering, or awarding a financial or other incentive to a health professional who offers telemedicine medical services or telehealth services based on the professional prescribing a particular controlled substance to a patient as a telemedicine medical service or telehealth service;

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

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

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

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

(b) Provides that a person who violates Subsection (a) is liable to this state for a civil penalty in an amount of not less than \$100,000 for each violation. Authorizes the attorney general to bring an action to collect a civil penalty imposed under this subsection and, in the name of this state, to enjoin a violation of Subsection (a). Provides that the attorney general is entitled to recover reasonable expenses incurred in bringing an action under this subsection, including reasonable attorney's fees and court costs.

(c) Authorizes any person to bring a civil action against any person who violates Subsection (a). Requires the court, if a claimant prevails in an action brought under this subsection, to award:

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

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

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

Sec. 111.012. PRESCRIPTION OF CONTROLLED SUBSTANCES FOR CHRONIC PAIN. (a) Prohibits any controlled substance from being prescribed, delivered, distributed, or dispensed through telemedicine unless the health professional has conducted at least one in-person visit with a patient that has established chronic pain.

(b) Authorizes a health professional to refill an established chronic pain patient's controlled substance prescription through telemedicine between in-person visits,

but requires the professional to evaluate the patient through telemedicine in order to refill a controlled substance prescription.

(c) Requires a health professional to conduct an in-person evaluation of a patient not later than 90 days after every telemedicine appointment where a controlled substance is prescribed or refilled to address chronic pain.

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

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

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

SECTION 10. Amends Chapter 113, Occupations Code, by adding Sections 113.003 and 113.004, as follows:

Sec. 113.003. **LIMITATIONS ON TELEMEDICINE OR TELEHEALTH PRESCRIPTIONS BY MENTAL HEALTH PROFESSIONALS.** (a) Authorizes a health professional that provides a mental health service through telehealth services to prescribe a controlled substance through a synchronous audiovisual platform if the health professional has conducted at least one prior visit with the patient either in-person or through a synchronous audiovisual platform.

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

(c) Provides that if the health professional prescribed the first controlled substance prescription for a patient through telemedicine or telehealth, then the professional is required to evaluate the patient through telehealth or telemedicine or in person in order to refill a controlled substance prescription.

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

(b) Prohibits a health professional that provides a mental health service through the use of asynchronous store and forward technology that is not used in conjunction with synchronous audio interaction between the professional and the patient from writing a prescription for the patient as a mental health service.

SECTION 11. Amends Section 562.056(c), Occupations Code, to make a conforming change.

SECTION 12. Makes application of Section 111.010(b), Occupations Code, as added by this Act, prospective.

SECTION 13. Effective date: September 1, 2023.