By:  Campbell, Schwertner S.B. No. 2527

(In the Senate - Filed March 10, 2023; March 23, 2023, read first time and referred to Committee on Health & Human Services; April 25, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; April 25, 2023, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Hall              X

Hancock           X

Hughes            X

LaMantia                    X

Miles                       X

Sparks                      X

COMMITTEE SUBSTITUTE FOR S.B. No. 2527 By:  Perry

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of telemedicine medical services, teledentistry services, and telehealth services; providing a civil penalty.

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

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

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

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

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

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

(1)  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, teledentistry dental services, or telehealth services are provided; 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.  The heading to Section 111.005, Occupations Code, is amended to read as follows:

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

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

(a)  For purposes of Section 562.056, a valid practitioner-patient relationship is present between a practitioner providing a telemedicine medical service, [~~or a~~] 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 and the practitioner:

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

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

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

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

(3)  provides the telemedicine medical services, [~~or~~] teledentistry dental services, or 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)  synchronous audiovisual interaction between the practitioner and the patient in another location;

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

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

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

(C)  another [~~form of audiovisual telecommunication~~] technology platform that:

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

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

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

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

(2)  at the request of the patient [~~if the patient consents and the patient has a primary care physician~~], provide to the patient's primary care physician not later than [~~within~~] 72 hours after the patient's request [~~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.  Chapter 111, Occupations Code, is amended by adding Section 111.0055 to read as follows:

Sec. 111.0055.  EMERGENCY PROCEDURES. (a) A health professional who provides telemedicine medical services or telehealth services to a patient as described by Section 111.005(a)(3) shall develop and implement emergency protocols that are appropriate to the standard of care that applies to the services. The emergency protocols must 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)  If an emergency arises while a health professional is providing telemedicine medical services or telehealth services to a patient as described by Section 111.005(a)(3), the professional shall 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.  Section 111.008, Occupations Code, is amended to read as follows:

Sec. 111.008.  APPLICATION OF CHAPTER TO MENTAL HEALTH SERVICES [~~EXCLUDED~~]. This chapter applies [~~does not apply~~] to mental health services.

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

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

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

(a)  In this section:

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

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

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

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

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

(b)  A health professional who offers telemedicine medical services or telehealth services may not enter 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)  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) A person may not:

(1)  advertise, offer, or award 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)  compensate 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)  advertise 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)  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. The attorney general may 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). 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)  Any person may bring a civil action against any person who violates Subsection (a). If a claimant prevails in an action brought under this subsection, the court shall 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. (a) A health professional may not prescribe or provide a refill prescription to a patient for a Schedule II controlled substance or a narcotic drug, as defined by Section 481.002, Health and Safety Code, listed as a Schedule III, IV, or V controlled substance as a telemedicine medical service or telehealth service unless the health professional has conducted an in-person examination of the patient at least once in the 12-month period preceding the prescription or refill prescription. This subsection does not apply to the prescription of or refill of a prescription for buprenorphine.

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

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

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

(2)  the prescription is appropriate for the patient.

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

(b)  The attorney general may at any time, including during the course of any investigation of a serious injury or death reasonably attributed to a prescription drug, review a report submitted to an agency in response to a request under Subsection (a) to ensure compliance with all applicable laws and regulations.

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

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

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

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

SECTION 12.  This Act takes effect September 1, 2023.

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