

By: Campbell, Schwertner

S.B. No. 2527

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of telemedicine medical services,
3 teledentistry services, and telehealth services; providing a civil
4 penalty.

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

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

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

11 (1-a) "Dentist," "health professional," and
12 "physician" have the meanings assigned by Section 1455.001,
13 Insurance Code.

14 SECTION 2. Section 111.002, Occupations Code, is amended by
15 amending Subsection (a) and adding Subsection (a-1) to read as
16 follows:

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

21 (1) ensure that the informed consent of the patient,
22 or another appropriate individual authorized to make health care
23 treatment decisions for the patient, is obtained before
24 telemedicine medical services, teledentistry dental services, or

1 telehealth services are provided; and

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

6 (A) subject to Paragraph (B), is given notice of
7 and the opportunity to attend the initial appointment or meeting
8 with the minor patient;

9 (B) if the treatment includes the prescription of
10 a controlled substance, is present at the initial appointment or
11 meeting with the minor patient; and

12 (C) consents to the treatment of the minor
13 patient.

14 (a-1) Subsection (a)(2) does not apply with respect to the
15 provision of treatment or counseling to a patient who is a child in
16 accordance with Section 32.003 or 32.004, Family Code, as
17 applicable.

18 SECTION 3. Chapter 111, Occupations Code, is amended by
19 adding Section 111.0025 to read as follows:

20 Sec. 111.0025. SCOPE OF PRACTICE NOT EXPANDED. (a) A
21 health professional who provides telemedicine medical services or
22 telehealth services to a patient as described by Section
23 111.005(a)(3) may provide only services within the health
24 professional's scope of practice.

25 (b) This chapter does not change the scope of practice of
26 any profession.

27 SECTION 4. The heading to Section 111.005, Occupations

1 Code, is amended to read as follows:

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

5 SECTION 5. Sections 111.005(a) and (b), Occupations Code,
6 are amended to read as follows:

7 (a) For purposes of Section 562.056, a valid
8 practitioner-patient relationship is present between a
9 practitioner providing a telemedicine medical service, ~~[or a]~~
10 teledentistry dental service, or telehealth service and a patient
11 receiving the service as long as the practitioner complies with the
12 standard of care described in Section 111.007 and the practitioner:

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

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

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

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

23 (3) provides the telemedicine medical services, ~~[or]~~
24 teledentistry dental services, or telehealth services through the
25 use of one of the following methods, as long as the practitioner
26 complies with the follow-up requirements in Subsection (b), and the
27 method allows the practitioner to have access to, and the

1 practitioner uses, the relevant clinical information that would be
2 required in accordance with the standard of care described in
3 Section 111.007:

4 (A) synchronous audiovisual interaction between
5 the practitioner and the patient in another location;

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

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

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

16 (C) another form of audiovisual
17 telecommunication technology that allows the practitioner to
18 comply with the standard of care described in Section 111.007.

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

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

24 (2) at the request of the patient [~~if the patient~~
25 ~~consents and the patient has a primary care physician~~], provide to
26 the patient's primary care physician not later than [~~within~~] 72
27 hours after the patient's request [~~practitioner provides the~~

1 ~~services to the patient]~~ a medical record or other report
2 containing an explanation of the treatment provided by the
3 practitioner to the patient and the practitioner's evaluation,
4 analysis, or diagnosis, as appropriate, of the patient's condition.

5 SECTION 6. Chapter [111](#), Occupations Code, is amended by
6 adding Sections 111.0052 and 111.0055 to read as follows:

7 Sec. 111.0052. RECORDS OF CERTAIN TELEMEDICINE MEDICAL
8 SERVICES AND TELEHEALTH SERVICES. (a) A health professional who
9 provides telemedicine medical services or telehealth services to a
10 patient as described by Section [111.005](#)(a)(3) shall:

11 (1) maintain a record of each telemedicine medical
12 service or telehealth service provided to a patient by the health
13 professional until the seventh anniversary of the date the service
14 is provided; and

15 (2) produce a record described by Subdivision (1) on
16 request of the state licensing agency with regulatory authority
17 over the health professional that is conducting a regulatory
18 investigation or disciplinary action.

19 (b) A health professional may designate as custodian of
20 records described by Subsection (a)(1) a designated agent in this
21 state for any business entity through which the professional
22 provided telemedicine medical services or telehealth services to
23 the patient. A health professional who designates a custodian
24 under this subsection may maintain a complete copy of the records of
25 each of the patients to whom the professional provides telemedicine
26 medical services or telehealth services as described by Section
27 [111.005](#)(a)(3).

1 Sec. 111.0055. EMERGENCY PROCEDURES. (a) A health
2 professional who provides telemedicine medical services or
3 telehealth services to a patient as described by Section
4 111.005(a)(3) shall develop and implement emergency protocols that
5 are appropriate to the standard of care that applies to the
6 services. The emergency protocols must be in writing and include
7 procedures for making a good faith effort to:

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

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

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

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

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

24 SECTION 7. Section 111.008, Occupations Code, is amended to
25 read as follows:

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

1 mental health services.

2 SECTION 8. The heading to Section 111.009, Occupations
3 Code, is amended to read as follows:

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

6 SECTION 9. Section 111.009(a), Occupations Code, is amended
7 to read as follows:

8 (a) In this section:

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

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

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

16 SECTION 10. Chapter 111, Occupations Code, is amended by
17 adding Sections 111.010, 111.011, 111.012, and 111.013 to read as
18 follows:

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

25 (b) A health professional who offers telemedicine medical
26 services or telehealth services may not enter into a contract that:

27 (1) provides a financial or other incentive to the

1 health professional based on the professional prescribing a
2 particular controlled substance to a patient as a telemedicine
3 medical service or telehealth service;

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

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

11 (c) A violation of this section is grounds for disciplinary
12 action against the health professional by the agency with
13 regulatory authority over the professional.

14 Sec. 111.011. ADDITIONAL REGULATION OF CERTAIN
15 PRESCRIPTIONS AS TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH
16 SERVICES; ENFORCEMENT. (a) A person may not:

17 (1) advertise, offer, or award a financial or other
18 incentive to a health professional who offers telemedicine medical
19 services or telehealth services based on the professional
20 prescribing a particular controlled substance to a patient as a
21 telemedicine medical service or telehealth service;

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

27 (3) advertise that a health professional who offers

1 telemedicine medical services or telehealth services will:

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

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

8 (b) A person who violates Subsection (a) is liable to this
9 state for a civil penalty in an amount of not less than \$100,000 for
10 each violation. The attorney general may bring an action to collect
11 a civil penalty imposed under this subsection and, in the name of
12 this state, to enjoin a violation of Subsection (a). The attorney
13 general is entitled to recover reasonable expenses incurred in
14 bringing an action under this subsection, including reasonable
15 attorney's fees and court costs.

16 (c) Any person may bring a civil action against a person who
17 violates Subsection (a). If a claimant prevails in an action under
18 this subsection, the court shall award injunctive relief sufficient
19 to prevent the defendant from violating Subsection (a).

20 Sec. 111.012. PRESCRIPTION OF CONTROLLED SUBSTANCES. (a)
21 A health professional may not prescribe or provide a refill
22 prescription to a patient for a Schedule II controlled substance or
23 a narcotic drug, as defined by Section 481.002, Health and Safety
24 Code, listed as a Schedule III, IV, or V controlled substance as a
25 telemedicine medical service or telehealth service unless the
26 health professional has conducted an in-person examination of the
27 patient at least once in the 12-month period preceding the

1 prescription or refill prescription. This subsection does not
2 apply to the prescription of or refill of a prescription for
3 buprenorphine.

4 (b) A health professional may prescribe to a patient a
5 controlled substance listed in Schedule III, IV, or V, other than a
6 narcotic drug, as defined by Section 481.002, Health and Safety
7 Code, as a telemedicine medical service or telehealth service
8 without conducting an in-person examination of the patient. A
9 prescription under this subsection must be limited to an initial
10 30-day supply. It is considered unprofessional conduct by a health
11 professional who prescribes a controlled substance under this
12 subsection to enter into a business arrangement with an entity that
13 facilitates the prescribing of controlled substances to patients on
14 a month-by-month basis by using a different health professional
15 each month.

16 (c) A health professional may provide to a patient as a
17 telemedicine medical service or telehealth service a refill
18 prescription for a prescription that was initially prescribed under
19 Subsection (b) only if the health professional has conducted an
20 in-person examination of the patient at least once in the 12-month
21 period preceding the date of the refill prescription.

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

26 (1) the patient has not been prescribed the controlled
27 substance within the 30-day period preceding the date the health

1 professional consults the monitoring program; and

2 (2) the prescription is appropriate for the patient.

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

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

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

27 SECTION 11. Section [562.056\(c\)](#), Occupations Code, is

1 amended to read as follows:

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

9 SECTION 12. Section 111.010(b), Occupations Code, as added
10 by this Act, applies only to a contract entered into on or after the
11 effective date of this Act.

12 SECTION 13. This Act takes effect September 1, 2023.