

## **BILL ANALYSIS**

Senate Research Center

S.B. 1107  
By: Schwertner; Perry  
Health & Human Services  
6/6/2017  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1107 seeks to create a clear and accountable regulatory structure regarding the establishment of a valid practitioner-patient relationship via telemedicine. Specifically, S.B. 1107 removes the existing provision that allows the Texas Medical Board (TMB) to establish rules requiring a face-to-face consultation between a patient and a physician providing a telemedicine medical service if the physician has never seen the patient, and creates a new framework for establishing a valid practitioner-patient relationship in a telemedicine encounter. Under S.B. 1107, a valid practitioner-patient relationship would be established in a telemedicine encounter if:

- there is a pre-existing relationship between the provider and the patient;
- the services are provided through a call coverage relationship established under TMB rules; or
- the practitioner uses audio-visual interaction or store and forward technology, which may be used in conjunction with audio communications. These provisions require follow-up and that the practitioner use clinical information relevant to the encounter.

Additionally, S.B. 1107 creates new definitions for telemedicine and telehealth and conforms those definitions in other areas of code, defines "store and forward technology," establishes that the standard of care for a telemedicine service is the same as that for an in-person service, prohibits any agency with regulatory authority over a health professional from establishing rules that impose a higher standard of care than what is required under the bill, continues the mental health service exemptions that currently exist in TMB rules, clarifies that health plans do not have to include services provided by only synchronous or asynchronous audio interaction or a facsimile in the current telemedicine coverage mandate for fully insured plans, requires fully insured health plans to publish their policies and payment practices for telemedicine and telehealth on their websites, and requires certain agencies to both adopt rules that establish the determination of a valid prescription in accordance with Section 111.005 of S.B. 1107 and to develop and publish a frequently asked questions document related to prescriptions that result from a telemedicine encounter. (Original Author's / Sponsor's Statement of Intent)

S.B. 1107 amends current law relating to telemedicine and telehealth services.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas State Board of Medical Examiners is transferred to the Texas Medical Board (TMB) and modified in SECTION 2 (Section 111.004, Occupations Code) of this bill.

Rulemaking authority is jointly granted to TMB, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy in SECTION 3 (Section 111.006, Occupations Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) is modified in SECTION 9 (Section 531.0216, Government Code) of this bill.

Rulemaking authority previously granted to TMB is modified in SECTION 10 (Section 531.0217, Government Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is rescinded in SECTION 12 (Section 531.02163, Government Code) of this bill.

Rulemaking authority previously granted to TMB is rescinded in SECTION 12 (Section 531.0217, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 111.001, Occupations Code, by amending Subdivision (2) and adding Subdivisions (3) and (4), to define "store and forward technology" and redefine "telehealth service" and "telemedicine medical service."

SECTION 2. Amends Section 111.004, Occupations Code, as follows:

Sec. 111.004. RULES. Authorizes the Texas Medical Board (TMB), rather than the Texas State Board of Medical Examiners, in consultation with the commissioner of insurance, as appropriate, to adopt rules necessary to:

(1) and (2) makes no changes to these subdivisions;

(3) and (4) makes nonsubstantive changes. Deletes existing text of Subdivision (5) relating to a face-to-face consultation between a patient and a physician providing a telemedicine medical service.

SECTION 3. Amends Chapter 111, Occupations Code, by adding Sections 111.005 through 111.008, as follows:

Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR TELEMEDICINE MEDICAL SERVICES. (a) Provides that for purposes of Section 562.056 (Practitioner-Patient Relationship Required), a valid practitioner-patient relationship is present between a practitioner providing a telemedicine medical service and a patient receiving the telemedicine medical service as long as the practitioner complies with the standard of care described in Section 111.007 and the practitioner meets certain criteria.

(b) Requires a practitioner who provides telemedicine medical services to a patient to provide the patient with guidance on appropriate follow-up care and, 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.

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

Sec. 111.006. COORDINATION TO ADOPT RULES THAT DETERMINE VALID PRESCRIPTION. (a) Requires TMB, the Texas Board of Nursing (BON), the Texas Physician Assistant Board (PAB), and the Texas State Board of Pharmacy (TSBP) to jointly adopt rules that establish the determination of a valid prescription in accordance with Section 111.005. Requires that rules adopted under this section allow for the establishment of a practitioner-patient relationship by a telemedicine medical service provided by a practitioner to a patient in a manner that complies with Section 111.005(a)(3).

(b) Requires TMB, BON, PAB, and TSBP to jointly develop and publish on each respective board's Internet website responses to frequently asked questions relating to the determination of a valid prescription issued in the course of the provision of telemedicine medical services.

Sec. 111.007. STANDARD OF CARE FOR TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) Provides that a health professional providing a health care service or procedure as a telemedicine medical service or a telehealth 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.

(b) Prohibits an agency with regulatory authority over a health professional from adopting rules pertaining to telemedicine medical services or telehealth services that would impose a higher standard of care than the standard described in Subsection (a).

Sec. 111.008. MENTAL HEALTH SERVICES EXCLUDED. Provides that this chapter does not apply to mental health services.

SECTION 4. Amends Section 562.056, Occupations Code, by adding Subsection (c), as follows:

(c) Provides that, for purposes of this section, a valid practitioner-patient relationship is present between a practitioner providing telemedicine medical services and the patient receiving the telemedicine medical services if the practitioner has complied with the requirements for establishing such a relationship in accordance with Section 111.005.

SECTION 5. Amends Section 1455.001(3), Insurance Code, to redefine "telehealth service" and "telemedicine medical service."

SECTION 6. Amends Section 1455.004, Insurance Code, as follows:

Sec. 1455.004. COVERAGE FOR TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) Prohibits a health benefit plan from excluding from coverage a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service or a telehealth service solely because the covered health care service or procedure is not provided through an in-person consultation, rather than from excluding a telemedicine medical service or a telehealth service from coverage under the plan solely because the service is not provided through a face-to-face consultation.

(b) Authorizes a health benefit plan to 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 telemedicine medical service or a telehealth service, rather than to require a deductible, a copayment, or coinsurance for a telemedicine medical service or a telehealth service. Prohibits the amount of the deductible, copayment, or coinsurance from exceeding the amount of the deductible, copayment, or coinsurance required for the covered health care service or procedure provided through an in-person consultation, rather than required for a comparable medical service provided through a face-to-face consultation.

(c) Provides that, notwithstanding Subsection (a), a health benefit plan is not required to provide coverage for a telemedicine medical service or a telehealth service provided by only synchronous or asynchronous audio interaction, including an audio-only telephone consultation, a text-only e-mail message, or a facsimile transmission.

SECTION 7. Amends Chapter 1455, Insurance Code, by adding Section 1455.006, as follows:

Sec. 1455.006. TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES STATEMENT. (a) Requires each issuer of a health benefit plan to adopt and display in a conspicuous manner on the health benefit plan issuer's Internet website the issuer's policies and payment practices for telemedicine medical services and telehealth services.

(b) Provides that this section 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 telemedicine medical services or telehealth services.

SECTION 8. Amends Sections 531.001(7) and (8), Government Code, to redefine "telehealth service" and "telemedicine medical service."

SECTION 9. Amends Section 531.0216(b), Government Code, as follows:

(b) Deletes existing text requiring the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) by rule, in developing the system to reimburse medicaid service providers for certain telemedicine medical or telehealth services, to provide for an approval process before a provider can receive reimbursement for services. Redesignates existing Subdivisions (4) through (6) as Subdivisions (3) through (5), respectively.

SECTION 10. Amends Sections 531.0217(c-1) and (i), Government Code, as follows:

(c-1) Deletes existing text requiring HHSC, notwithstanding Subsection (b) (relating to the executive commissioner requiring certain health and human service agencies to provide Medicaid reimbursement for certain telemedicine medical services) or (c) (relating to HHSC ensuring that reimbursement is provided only for certain telemedicine medical services), to provide for reimbursement under Medicaid for an office visit provided through telemedicine by a physician who is assessing and evaluating the patient from a distant site if a health professional acting under the delegation and supervision of that physician is present with the patient at the time of the visit. Makes nonsubstantive changes.

(i) Deletes existing text authorizing TMB, in consultation with HHSC, as appropriate, to adopt rules as necessary to define those situations when a face-to-face consultation with a physician is required after a telemedicine medical service. Makes nonsubstantive changes.

SECTION 11. Amends Section 771.151(7), Health and Safety Code, to redefine "telemedicine medical service."

SECTION 12. Repealers: Sections 531.02163 (Telepresenters) and 531.0217(i-1) (relating to TMB adopting rules to establish supervisory requirements for a physician delegating a service to be performed by a certain individual), Government Code.

SECTION 13. (a) Effective date, except as provided by Subsection (b): upon passage or September 1, 2017.

(b) Effective date, Sections 1455.001(3) and 1455.004, Insurance Code, as amended by this Act, and Section 1455.006, Insurance Code, as added by this Act: January 1, 2018.