

## **BILL ANALYSIS**

Senate Research Center

S.B. 40  
By: Zaffirini  
Business & Commerce  
5/24/2021  
Enrolled

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

In 2020, the Texas Department of Licensing and Regulation (TDLR) conducted a strategic planning process to identify agency licensing programs and activities that could improve the protection of public health, safety, and welfare in response to the COVID-19 pandemic. TDLR also requested and received waivers from Governor Abbott to suspend statutes and rules to allow TDLR-regulated health professionals to practice telehealth during stay-at-home/work safe orders and to address the need for expanded telehealth services. Such services are critical during emergencies, as they allow clients to maintain proficiency and avoid regression.

A TDLR recommendation, S.B. 40 would clarify the authority of TDLR-regulated health professionals to provide telehealth services in accordance with Chapter 111, Occupations Code; require a reference to a health professional performing "direct" observation of a patient to include provision of telehealth services; and allow TDLR to adopt rules governing telehealth services offered by its regulated professionals.

(Original Author's/Sponsor's Statement of Intent)

S.B. 40 amends current law relating to the provision of telehealth services by certain health professionals licensed by the Texas Department of Licensing and Regulation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 (Section 51.501, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is rescinded in SECTION 4 (Sections 401.2022 and 402.1023, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 51, Occupations Code, by adding Subchapter J, as follows:

#### **SUBCHAPTER J. PRACTICE BY CERTAIN LICENSE HOLDERS**

Sec. 51.501. TELEHEALTH. (a) Defines "health professional," "patient," and "telehealth service."

(b) Authorizes a health professional to provide telehealth services in accordance with Chapter 111 (Telemedicine and Telehealth) and any requirements imposed by the law and rules governing practice by the health professional.

(c) Provides that, unless the context indicates otherwise, a reference in Title 3 (Health Professions) or a rule adopted under Title 3 to direct observation of a patient by a health professional or direct care or services provided to a patient by a health professional includes the provision of that observation, care, or service using telehealth services.

(d) Authorizes the Texas Commission of Licensing and Regulation to adopt rules as necessary to:

- (1) ensure that patients receiving telehealth services receive appropriate, quality care;
- (2) prevent abuse and fraud in the use of telehealth services, including rules relating to the filing of claims and records required to be maintained in connection with telehealth services;
- (3) implement the requirements of Chapter 111 or other laws of this state regarding the provision of telehealth services or the protection of patients receiving telehealth services;
- (4) provide for the remote supervision of assistants and other authorized persons performing duties within their existing scope of practice using telecommunications or information technology; and
- (5) provide for the remote supervision of experience for apprentices, interns, or other similar trainees using telecommunications or information technology.

(e) Authorizes rules under this section to allow for the provision of:

- (1) remote education or distance learning for public or private schools; and
- (2) continuing education using telecommunications or information technology.

(f) Provides that the adoption of rules under this section is subject to Sections 51.2031 (Rules Regarding Health-Related Programs; Provision of Information) and 51.2032 (Rules Regarding Podiatry; Provision of Information).

(g) Prohibits this section from being interpreted to expand the scope of practice of a health professional, or to authorize a practice or procedure otherwise prohibited by the law or rules governing a health professional.

SECTION 2. Amends Section 402.255(a), Occupations Code, to require a supervisor of a temporary training permit holder to currently practice in this state under a certain license, rather than currently practice in an established place of business.

SECTION 3. Amends Section 403.151, Occupations Code, as follows:

Sec. 403.151. PRACTICE SETTING. (a) Authorizes a licensed dyslexia practitioner to practice only in, or provide telehealth services from a remote location only to, an educational setting, including a school, learning center, or clinic.

(b) Authorizes a licensed dyslexia therapist to practice in, or provide telehealth services from a remote location to, a school, learning center, clinic, or private practice setting.

(c) Authorizes a license holder to provide telehealth services only in a practice setting described by Section 403.151, regardless of the physical location of the license holder or the recipient of the telehealth services.

SECTION 4. Repealer: Section 401.2022 (Rules for Fitting and Dispensing of Hearing Instruments by Telepractice), Occupations Code.

Repealer: Section 402.1023 (Rules for Fitting and Dispensing of Hearing Instruments by Telepractice), Occupations Code.

SECTION 5. Effective date: upon passage or September 1, 2021.