

## **BILL ANALYSIS**

C.S.S.B. 1107  
By: Schwertner  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note the benefits of utilizing telemedicine services. C.S.S.B. 1107 seeks to provide for a clear and accountable regulatory structure regarding the establishment of a valid practitioner-patient relationship via telemedicine.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy in SECTION 3 of this bill.

### **ANALYSIS**

C.S.S.B. 1107 amends the Occupations Code to remove the authorization for the Texas Medical Board to adopt rules necessary to require a face-to-face consultation between a patient and a physician providing a telemedicine medical service within a certain number of days following an initial telemedicine medical service if the physician has never seen the patient. The bill subjects a health professional providing a health care service or procedure as a telemedicine medical service or a telehealth service to the standard of care that would apply to the provision of the same health care service or procedure in an in-person setting. The bill 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 by the bill. The bill expressly excludes mental health services from statutory provisions governing telemedicine and telehealth.

C.S.S.B. 1107 establishes that for purposes of the requirement that a pharmacist determine the existence of a valid practitioner-patient relationship before dispensing a prescription, such a 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 requisite standard of care and the practitioner has a preexisting practitioner-patient relationship with the patient established in accordance with rules adopted under the bill's provisions; communicates, regardless of the method of communication, with the patient pursuant to a call coverage agreement established in accordance with Texas Medical Board rules with a physician requesting coverage of medical care for the patient; or provides the telemedicine medical services through the use of one of the alternate methods specified in the bill, as long as the practitioner complies with the applicable follow-up requirements 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 such standard of care. The bill requires a practitioner who

provides telemedicine medical services through one of those alternate methods 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. The bill establishes that a practitioner-patient relationship is not present if a practitioner prescribes an abortifacient or any other drug or device that terminates a pregnancy.

C.S.S.B. 1107 requires the Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy to jointly adopt rules that establish the determination of a valid prescription issued in the course of the provision of telemedicine medical services. The bill requires the rules to 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 one of the specified alternate methods. The bill requires those boards to jointly develop and publish on each respective board's 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.

C.S.S.B. 1107 amends the Insurance Code to specify that a health benefit plan may not exclude 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 telehealth service solely on the basis of the service or procedure not being provided in person. The bill establishes that 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. The bill requires each issuer of a health benefit plan to adopt and display in a conspicuous manner on the health benefit plan issuer's website the issuer's policies and payment practices for telemedicine medical services and telehealth services other than negotiated contract payment rates for health professionals who contract with the issuer to provide telemedicine medical services or telehealth services. The bill's Insurance Code provisions take effect January 1, 2018.

C.S.S.B. 1107 amends the Government Code to remove the requirement that the executive commissioner of the Health and Human Services Commission (HHSC), in developing the system to reimburse providers of services under Medicaid for services performed using telemedicine medical services or telehealth services, by rule provide for an approval process before a provider can receive reimbursement for services. The bill removes the condition that a health professional acting under the delegation and supervision of a physician assessing and evaluating a patient in an office visit provided through telemedicine be present with the patient at the time of the visit for HHSC to be required to provide reimbursement under Medicaid for the visit. The bill removes the authorization for the Texas Medical Board to adopt rules as necessary to define those situations when a face-to-face consultation with a physician is required after a telemedicine service.

C.S.S.B. 1107 amends the Health and Safety Code to make a conforming change.

C.S.S.B. 1107 repeals Sections 531.02163 and 531.0217(i-1), Government Code, relating to the authorization for certain health professionals to act as telepresenters and present patients who are Medicaid recipients for telemedicine medical services consultations to be conducted by physicians at distant sites.

#### **EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2017.

## COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1107 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 111.001, Occupations Code, is amended.	SECTION 1. Same as engrossed version.
SECTION 2. Section 111.004, Occupations Code, is amended.	SECTION 2. Same as engrossed version.
SECTION 3. Chapter 111, Occupations Code, is amended.	SECTION 3. Same as engrossed version.
SECTION 4. Section 562.056, Occupations Code, is amended.	SECTION 4. Same as engrossed version.
SECTION 5. Section 1455.001(3), Insurance Code, is amended.	SECTION 5. Same as engrossed version.
SECTION 6. Section 1455.004, Insurance Code, is amended by adding Subsection (c) to read as follows:  No equivalent provision.	SECTION 6. Section 1455.004, Insurance Code, is amended to read as follows:  Sec. 1455.004. <b>COVERAGE FOR TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES.</b> (a) A health benefit plan may not exclude <u>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</u> [ <del>from coverage under the plan</del> ] solely because the <u>covered health care service or procedure</u> is not provided through <u>an in-person</u> [ <del>a face-to-face</del> ] consultation.
No equivalent provision.	(b) A health benefit plan may require a deductible, a copayment, or coinsurance for <u>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.</u> The amount of the deductible, copayment, or coinsurance may not exceed the amount of the deductible, copayment, or coinsurance required for <u>the covered health care</u> [ <del>a comparable medical</del> ] <u>service or procedure provided through an in-person</u> [ <del>a face-to-face</del> ] consultation.
(c) <u>Notwithstanding Subsection (a), a health</u>	(c) <u>Notwithstanding Subsection (a), a health</u>

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 or a facsimile.

SECTION 7. Chapter 1455, Insurance Code, is amended.

SECTION 8. Sections 531.001(7) and (8), Government Code, are amended.

No equivalent provision.

No equivalent provision.

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:

- (1) an audio-only telephone consultation;
- (2) a text-only e-mail message; or
- (3) a facsimile transmission.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Section 531.0216(b), Government Code, is amended to read as follows:

(b) In developing the system, the executive commissioner by rule shall:

- (1) review programs and pilot projects in other states to determine the most effective method for reimbursement;
- (2) establish billing codes and a fee schedule for services;
- (3) ~~provide for an approval process before a provider can receive reimbursement for services;~~

~~(4)~~ consult with the Department of State Health Services to establish procedures to:

- (A) identify clinical evidence supporting delivery of health care services using a telecommunications system; and
- (B) annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

~~(4)~~ ~~(5)~~ establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

~~(5)~~ ~~(6)~~ establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

SECTION 10. Sections 531.0217(c-1) and (i), Government Code, are amended to read as follows:

(c-1) Notwithstanding Subsection (b) or (c), the commission shall 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 [~~1~~ a health professional acting under the delegation and supervision of that physician is present with the patient at the time of the visit; and  
[~~2~~] the medical condition, illness, or injury for which the patient is receiving the service is not likely, within a reasonable degree of medical certainty, to undergo material deterioration within the 30-day period following the date of the visit.  
(i) The Texas Medical Board, in consultation with the commission, as appropriate, may adopt rules as necessary to:  
(1) ensure that appropriate care, including quality of care, is provided to patients who receive telemedicine medical services; and  
(2) prevent abuse and fraud through the use of telemedicine medical services, including rules relating to filing of claims and records required to be maintained in connection with telemedicine[; and  
[~~3~~ define those situations when a face-to-face consultation with a physician is required after a telemedicine medical service].

SECTION 9. Section 771.151(7), Health and Safety Code, is amended.

No equivalent provision.

SECTION 10. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

(b) Section 1455.006, Insurance Code, as added by this Act, takes effect September 1, 2017.

SECTION 11. Same as engrossed version.

SECTION 12. Sections 531.02163 and 531.0217(i-1), Government Code, are repealed.

SECTION 13. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

(b) 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, take effect January 1, 2018.