

## **BILL ANALYSIS**

Senate Research Center

S.B. 670  
By: Buckingham  
Health & Human Services  
6/20/2019  
Enrolled

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

In 2017, the Texas Legislature passed S.B. 1107, which created a streamlined regulatory system for the provision of telemedicine and telehealth services at the Texas Medical Board. Since the passage of that bill, stakeholders have become aware that additional concurring changes need to be made at the Health and Human Services Commission (HHSC) in order to remove unnecessary and burdensome regulatory provisions from the program. As such, S.B. 670 seeks to make necessary changes to the regulation and payment of telemedicine and telehealth services provided through the Texas Medicaid program. These changes will ensure that patients and providers have access to a full array of choices when participating in virtual health care.

Under S.B. 670, the following regulatory requirements will be repealed:

- requirements for patient site presenters for school-based clinics;
- consulting with the Department of State Health Services on telemedicine services;
- annual reviews of what services are and are not appropriate for telemedicine/telehealth reimbursement at Medicaid;
- HHSC setting and enforcing minimum technology standards for telemedicine and telehealth;
- mandatory requirements for facility fees/fee splitting and consulting with CMS about those fees; and
- aligning Texas Medicaid telemedicine policy with Medicare.

S.B. 670 also directs Medicaid health plans to not deny payment of services solely because the service was provided via telemedicine/telehealth rather than in person. The goal of this language is to avoid having to go service by service through all the Medicaid services that are possible and add them to telemedicine/telehealth reimbursement one at a time. (Original Author's/Sponsor's Statement of Intent)

S.B. 670 amends current law relating to telemedicine and telehealth services.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) in SECTION 2 (Section 531.0216, Government Code) and SECTION 6 (Section 531.0217, Government Code) of this bill.

Rulemaking authority previously granted to the Texas State Board of Pharmacy is modified in SECTION 5 (Section 562.110, Occupations Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 6 (Sections 531.0216, 531.02161, and 531.02173, Government Code) of this bill.

Rulemaking authority previously granted to HHSC is modified in SECTION 6 (Section 531.0217, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Section 531.001, Government Code, by adding Subdivisions (4-c) and (4-d), as follows:

(4-c) Defines "Medicaid managed care organization."

(4-d) Defines "platform."

SECTION 2. Amends Section 531.0216, Government Code, by amending Subsections (c) and (c-1) and adding Subsections (g), (h), (i), and (j), as follows:

(c) Requires the Health and Human Services Commission (HHSC) to encourage health care providers and health care facilities to provide telemedicine medical services and telehealth services in the health care delivery system, rather than requiring HHSC to encourage health care providers and health care facilities to participate as telemedicine medical service providers or telehealth service providers in the health care delivery system. Prohibits HHSC from requiring that a service be provided to a patient through telemedicine medical services or telehealth services, rather than prohibiting HHSC from requiring that a service be provided to a patient through telemedicine medical services or telehealth services when the service can reasonably be provided by a physician through a face-to-face consultation with the patient in the community in which the patient resides or works. Deletes existing text providing that this subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services or telehealth services at the patient's request.

(c-1) Makes nonsubstantive changes. Requires HHSC to explore opportunities to increase STAR Health program providers' use of telemedicine medical services in medically underserved areas of this state, rather than requiring HHSC to explore opportunities to increase STAR Health program providers' use of telemedicine medical services in medically underserved areas of this state and encourage STAR Health program providers to use telemedicine medical services as appropriate.

(g) Requires HHSC to ensure that a Medicaid managed care organization:

(1) does not deny reimbursement for a covered health care service or procedure delivered by a health care provider with whom the managed care organization contracts to a Medicaid recipient as a telemedicine medical service or a telehealth service solely because the covered service or procedure is not provided through an in-person consultation;

(2) does not limit, deny, or reduce reimbursement for a covered health care service or procedure delivered by a health care provider with whom the managed care organization contracts to a Medicaid recipient as a telemedicine medical service or a telehealth service based on the health care provider's choice of platform for providing the health care service or procedure; and

(3) ensures that the use of telemedicine medical services or telehealth services promotes and supports patient-centered medical homes by allowing a Medicaid recipient to receive a telemedicine medical service or telehealth service from a provider other than the recipient's primary care physician or provider, except as provided by Section 531.0217(c-4), only if:

(A) the telemedicine medical service or telehealth service is provided in accordance with the law and contract requirements applicable to the provision of the same health care service in an in-person setting, including requirements regarding care coordination; and

(B) the provider of the telemedicine medical service or telehealth service gives notice to the Medicaid recipient's primary care physician or provider regarding the telemedicine medical service or telehealth service, including a summary of the service, exam findings, a list of prescribed or administered medications, and patient instructions, for the purpose of sharing medical information, provided that the recipient has a primary care physician or provider and the recipient or, if appropriate, the recipient's parent or legal guardian, consents to the notice.

(h) Requires HHSC to develop, document, and implement a monitoring process to ensure that a Medicaid managed care organization ensures that the use of telemedicine medical services or telehealth services promotes and supports patient-centered medical homes and care coordination in accordance with Subsection (g)(3). Requires the process to include monitoring of the rate at which a telemedicine medical service or telehealth service provider gives notice in accordance with Subsection (g)(3)(B).

(i) Requires the executive commissioner of HHSC (executive commissioner) by rule to ensure that a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B) may be reimbursed for the originating site facility fee or the distant site practitioner fee or both, as appropriate, for a covered telemedicine medical service or telehealth service delivered by a health care provider to a Medicaid recipient. Provides that HHSC is required to implement this subsection only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, HHSC, if the legislature does not appropriate money specifically for that purpose, to implement this subsection using other money available to HHSC for that purpose.

(j) Provides that, in complying with state and federal requirements to provide access to medically necessary services under the Medicaid managed care program, a Medicaid managed care organization determining whether reimbursement for a telemedicine medical service or telehealth service is appropriate is required to continue to consider other factors, including whether reimbursement is cost-effective and whether the provision of the service is clinically effective.

SECTION 3. Amends Sections 531.0217(c-4), (d), and (k), Government Code, as follows:

(c-4) Deletes existing text requiring HHSC to ensure that Medicaid reimbursement is provided to a physician for a telemedicine medical service provided by the physician, even if the physician is not the patient's primary care physician or provider, if a health professional is present with the patient during the treatment. Makes nonsubstantive changes.

(d) Requires HHSC to require reimbursement for a telemedicine medical service at the same rate as Medicaid reimburses for the same in-person medical service, rather than requiring HHSC to require reimbursement for a telemedicine medical service at the same rate as Medicaid reimburses for a comparable in-person medical service. Prohibits HHSC from limiting a physician's choice of platform for providing a telemedicine medical service or telehealth service by requiring that the physician use a particular platform to receive reimbursement for the service.

(k) Provides that this section does not affect any requirement relating to:

(1) deletes existing text referring to a federally qualified health center; or

(2)–(3) redesignates these subdivisions as Subdivisions (1)–(2).

SECTION 4. Amends Section 162.251(2), Occupations Code, as follows:

(2) Provides that the term includes telemedicine medical services and telehealth services, as those terms are defined by Section 111.001 (Definitions), provided using a technology platform.

SECTION 5. Amends Section 562.110, Occupations Code, by amending Subsections (e) and (f) and adding Subsection (f-1), as follows:

(e) Requires the Texas State Board of Pharmacy (TSBP) to adopt rules regarding the use of a telepharmacy system under this section (Telepharmacy Systems), including:

(1) the types of health care facilities at which a telepharmacy system may be located under Subsection (d)(1) (relating to authorizing a telepharmacy system to be located at certain regulated facilities), which must include the following facilities:

(A)-(B) makes nonsubstantive changes to these paragraphs; and

(C) a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B); and

(2)-(6) makes no changes to these subdivisions.

(f) Makes a nonsubstantive change. Prohibits a telepharmacy system located at a health care facility under Subsection (d)(1), except as provided by Subsection (f-1), from being located in a community in which a Class A or Class C pharmacy is located as determined by TSBP rule.

(f-1) Authorizes a telepharmacy system located at a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B) to be located in a community in which a Class A or Class C pharmacy is located as determined by TSBP rule.

SECTION 6. Repealer: Section 531.0216(b) (relating to requiring the executive commissioner by rule to establish certain administrative procedures for reimbursing telemedicine and telehealth service providers), Government Code.

Repealer: Section 531.0216(e) (relating to prohibiting HHSC from reimbursing a health care facility for telemedicine medical services or telehealth services provided to a Medicaid recipient unless certain conditions are met), Government Code.

Repealer: Section 531.02161 (Telemedicine, Telehealth, and Home Telemonitoring Technology Standards), Government Code.

Repealer: Sections 531.0217(c-1) (relating to requiring HHSC 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 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), Government Code.

Repealer: Sections 531.0217(c-2) (relating to the requirement that HHSC develop rules to allocate certain reimbursements or facility fees between a physician consulting from a distant site and a health professional present with the patient), Government Code.

Repealer: Sections 531.0217(c-3) (relating to requiring the executive commissioner to confer with the Centers for Medicare and Medicaid Services on the legality of allocating reimbursement or establishing a facility fee), Government Code.

Repealer: Sections 531.0217(f) (relating to prohibiting HHSC from requiring a telemedicine medical service if an in-person consultation with a physician is reasonably available where the patient resides or works), Government Code.

Repealer: Section 531.02173 (Alignment of Medicaid Telemedicine Reimbursement Policies With Medicare Reimbursement Policies), Government Code.

Repealer: Section 531.02176 (Expiration of Medicaid Reimbursement For Provision of Home Telemonitoring Services), Government Code.

SECTION 7. Requires a state agency affected by a provision of this Act to request a waiver or authorization from a federal agency if the state agency determines that such a waiver or authorization is necessary for implementation of a provision of this Act, and authorizes the agency to delay implementation until such a waiver or authorization is granted.

SECTION 8. Effective date: September 1, 2019.