

2017 Texas Senate Bill No. 1107, Texas Eighty-Fifth Legislature


TEXAS BILL TEXT

TITLE: Relating to telemedicine and telehealth services.

VERSION: Adopted

May 27, 2017

Schwertner, Perry, Hinojosa, Huffines, Lucio, Nelson, Taylor, Van, Uresti, Watson, West, Zaffirini, Price, Coleman, Springer, Fallon, Guerra, Israel, Krause, Zerwas

 [Image 1 within document in PDF format.](#)

SUMMARY: Relating to telemedicine and telehealth services.

TEXT:

S.B. No. 1107

AN ACT relating to telemedicine and telehealth services.

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

SECTION 1. [Section 111.001, Occupations Code](#), is amended by amending Subdivision (2) and adding Subdivisions (3) and (4) to read as follows:

(2) **"Store and forward technology" means technology that stores and transmits or grants access to a person's clinical information for review by a health professional at a different physical location than the person.**

(3) **"Telehealth service" means a health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology.**

(4) **"Telemedicine [and "telemedicine] medical service" means a health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology** [have the meanings assigned by Section 57.042, Utilities Code].

SECTION 2. [Section 111.004, Occupations Code](#), is amended to read as follows:

Sec. 111.004. RULES. The Texas [~~State Board of] Medical **Board** [Examiners], in consultation with the commissioner of insurance, as appropriate, may adopt rules necessary to:~~

(1) ensure that patients using telemedicine medical services receive appropriate, quality care;

(2) prevent abuse and fraud in the use of telemedicine medical services, including rules relating to the filing of claims and records required to be maintained in connection with telemedicine medical services;

(3) ensure adequate supervision of health professionals who are not physicians and who provide telemedicine medical services; **and**

(4) establish the maximum number of health professionals who are not physicians that a physician may supervise through a telemedicine medical service~~]; and~~

~~[(5) 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 only if the physician has never seen the patient].~~

SECTION 3. Chapter 111, Occupations Code, is amended by adding Sections 111.005 through 111.008 to read as follows:

Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR TELEMEDICINE MEDICAL SERVICES. (a) For purposes of Section 562.056, 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:

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

(2) 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

(3) provides the telemedicine medical services through the use of one of the following methods, as long as the practitioner complies with the follow-up requirements in Subsection (b), 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 the standard of care described in Section 111.007:

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

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

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

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

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

(b) A practitioner who provides telemedicine medical services to a patient as described in Subsection (a)(3) shall:

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

(2) 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) 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) The Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy shall jointly adopt rules that establish the determination of a valid prescription in accordance with Section 111.005. Rules adopted under this section must 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) The Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy shall 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) 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) An agency with regulatory authority over a health professional may not adopt 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. This chapter does not apply to mental health services.

SECTION 4. [Section 562.056, Occupations Code](#), is amended by adding Subsection (c) to read as follows:

(c) 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. [Section 1455.001\(3\), Insurance Code](#), is amended to read as follows:

(3) "Telehealth service" and "telemedicine medical service" have the meanings assigned by Section **111.001** [57.042], **Occupations** [Utilities] Code.

SECTION 6. [Section 1455.004, Insurance Code](#), is amended to read as follows:

Sec. 1455.004. COVERAGE FOR TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) 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 a telehealth service [from coverage under the plan] solely because the covered health care service or procedure is not provided through an in-person [a face-to-face] consultation.

(b) A health benefit plan may 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. The amount of the deductible, copayment, or coinsurance may not exceed the amount of the deductible, copayment, or coinsurance required for **the covered health care** [a-comparable-medical] service **or procedure** provided through **an in-person** [a-face-to-face] consultation.

(c) 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:

(1) an audio-only telephone consultation;

(2) a text-only e-mail message; or

(3) a facsimile transmission.

SECTION 7. Chapter 1455, Insurance Code, is amended by adding Section 1455.006 to read as follows:

Sec. 1455.006. TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES STATEMENT. (a) Each issuer of a health benefit plan shall 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) 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. Sections 531.001(7) and (8), Government Code, are amended to read as follows:

(7) "Telehealth service" **has the meaning assigned by Section 111.001, Occupations Code** [means a health service, other than a telemedicine medical service, that is delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

[A] compressed digital interactive video, audio, or data transmission;

[B] clinical data transmission using computer imaging by way of still-image capture and store and forward; and

[C] other technology that facilitates access to health care services or medical specialty expertise].

(8) "Telemedicine medical service" **has the meaning assigned by Section 111.001, Occupations Code** [means a health care service that is initiated by a physician or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

[A] compressed digital interactive video, audio, or data transmission;

[B] clinical data transmission using computer imaging by way of still-image capture and store and forward; and

~~[(C) other technology that facilitates access to health care services or medical specialty expertise].~~

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 11. [Section 771.151\(7\), Health and Safety Code](#), is amended to read as follows:

(7) "Telemedicine medical service" **has the meaning assigned by Section 111.001, Occupations Code** [means a health care service that is initiated by a physician or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

[(A) compressed digital interactive video, audio, or data transmission;

[(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

[(C) other technology that facilitates access to health care services or medical specialty expertise].

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. _____

President of the Senate
Speaker of the House

I hereby certify that S.B. No. 1107 passed the Senate on March 29, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 18, 2017, by the following vote: Yeas 30, Nays 0.
_____ Secretary of the Senate

I hereby certify that S.B. No. 1107 passed the House, with amendment, on May 11, 2017, by the following vote: Yeas 135, Nays 0, one present not voting. _____ Chief Clerk of the House Approved:

Date _____

Governor