

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 792
By: Perry
Health & Human Services
4/24/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many Texans in rural settings continue to have inadequate access to general and specialty oral healthcare. They must travel long distances to see a dentist, and even longer distances for specialists. This travel often requires residents to take a day off work or from school to make the round trip to meet with their dentist in-person for a routine dental cleaning, examination, or consultation with a specialist.

In the 2017 legislative session, the house of representatives and the senate unanimously passed S.B. 1107, addressing telemedicine and telehealth services; however, dentistry was not included in the legislation.

S.B. 792 allows for dentists and dental professionals to communicate, collaborate, and share patient information, allowing rural residents additional access to healthcare professionals. It would also help reduce the number of visits and travel time to see a dental specialist in a more urban area. This is a proven practical effective solution to increasing access and removing barriers to critical services. S.B. 792 will bring care to those who are currently underserved.

S.B. 792 amends the current telehealth statute to include teledentistry, dentists and dental hygienists and gives authority to the Texas State Board of Dental Examiners to promulgate rules. The bill would allow for a dentist to supervise a dental hygienist in an alternate site other than the dental office, bringing care directly to patients in alternate settings. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 792 amends current law relating to the practice of dentistry and the provision of teledentistry dental services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTION 5 (Section 111.004, Occupations Code), SECTION 8 (Section 111.006, Occupations Code), SECTION 13 (Section 254.0035, Occupations Code), and SECTION 23 (Section 531.02172, Government Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTION 8 (Section 111.006, Occupations Code).

Rulemaking authority is expressly granted to the Health and Human Services Commission (HHSC) in SECTION 23 (Section 531.02172, Government Code)] of this bill.

Rulemaking authority previously granted to the executive commissioner of HHSC is modified in SECTION 18 (Section 531.0216, Government Code), SECTION 20 (Section 531.02161, Government Code), and SECTION 22 (Section 531.02162, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 111, Occupations Code, to read as follows:

CHAPTER 111. TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH

SECTION 2. Amends Section 111.001, Occupations Code, by amending Subdivisions (1) and (3) and adding Subdivision (2-a), as follows:

- (1) Defines "dentist," "health professional," and "physician."
- (2-a) Defines "teledentistry dental service."
- (3) Redefines "telehealth service" to include a teledentistry dental service.

SECTION 3. Amends Section 111.002, Occupations Code, as follows:

Sec. 111.002. INFORMED CONSENT. (a) Creates this subsection from existing text. Requires a treating physician, dentist, or health professional who provides or facilitates the use of telemedicine medical services, teledentistry dental services, or telehealth services to ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services, teledentistry dental services, or telehealth services are provided.

- (b) Requires a dentist who delegates a teledentistry dental services to ensure that the informed consent of the patient includes disclosure to the patient that the dentist has delegated the service.

SECTION 4. Amends Section 111.003, Occupations Code, as follows:

Sec. 111.003. CONFIDENTIALITY. Requires a treating physician, dentist, or health professional who provides or facilitates the use of telemedicine medical services, teledentistry dental services, or telehealth services to ensure that the confidentiality of the patient's clinical, rather than medical, information is maintained as required by Chapter 159 (Physician-Patient Communication), by Subchapter C (Dental Privilege), Chapter 258, or by other applicable law, rather than by Chapter 159 or other applicable law.

SECTION 5. Amends Section 111.004, Occupations Code, as follows:

Sec. 111.004. RULES. (a) Creates this subsection from existing text and makes no further changes.

- (b) Authorizes the Texas State Board of Dental Examiners (TSBDE), in consultation with the commissioner of insurance, as appropriate, to adopt rules necessary to:

- (1) ensure that patients using teledentistry dental services receive appropriate, quality care;
- (2) prevent abuse and fraud in the use of teledentistry dental services, including rules relating to the filing of claims and records required to be maintained in connection with teledentistry dental services;
- (3) ensure adequate supervision of health professionals who are not dentists and who provide teledentistry dental services under the delegation and supervision of a dentists; and
- (4) establish that a dentist is authorized to delegate to and supervise through a teledentistry dental service not more than two health professionals who are not dentists.

SECTION 6. Amends the heading to Section 111.005, Occupations Code, to read as follows:

Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR TELEMEDICINE MEDICAL SERVICES OR TELEDENTISTRY DENTAL SERVICES.

SECTION 7. Amends Section 111.005, Occupations Code by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(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 or a teledentistry dental service and a patient receiving the service, rather than receiving the telemedicine medical service, as long as the practitioner complies with the standard of care described in Section 111.007 (Standard of Care for Telemedicine Medical Services and Telehealth Services) and the practitioner:

(1) makes no changes to this subdivision;

(2) communicates, regardless of the method of communication, with the patient pursuant to a call coverage agreement established in accordance with:

(A) creates this paragraph from existing text and makes no further changes; or

(B) TSBDE rules with a dentist requesting coverage of dental care for the patient; or

(3) provides the telemedicine medical services or teledentistry dental 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) makes no changes to this paragraph;

(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) makes no changes to this subparagraph; or

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

(C) makes no changes to this paragraph.

(b) Requires a practitioner who provides telemedicine medical services or teledentistry dental services to a patient as described in Subsection (a) (3) to:

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

(2) subject to Subsection (d), if the patient consents and the patient has a primary care physician or a regular dentist, provide to the patient's a primary care physician or regular dentist, as appropriate, within 72 hours after the practitioner provides the services to the patient, a clinical, rather than medical record or other report containing an explanation of:

(A) creates this paragraph and Paragraph (B) from existing text and makes a nonsubstantive change; and

(B) as authorized by the law under which the practitioner is licensed, certified, or otherwise permitted to provide the service, the practitioner's evaluation, analysis, or diagnosis, rather than the practitioner's evaluation, analysis, or diagnosis, as appropriate, of the patient's condition.

(d) Provides that a practitioner who provides teledentistry dental services to a patient as described in Subsection (a)(3):

(1) on the date the practitioner first provides the teledentistry dental services, is required to inform the patient of the limitation provided by Subdivision (2); and

(2) is authorized to only provide teledentistry dental services with respect to the patient for 12 months unless:

(A) a dentist performs an in-person tactile and visual examination of the hard and soft tissues of the patient's oral cavity; and

(B) the practitioner receives notice of the examination described by Paragraph (A).

SECTION 8. Amends Section 111.006, Occupations Code, by adding Subsection (c), as follows:

(c) Requires TSBDE 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 rules adopted under this subsection to allow for the establishment of a practitioner-patient relationship by a teledentistry dental service provided by a dentist to a patient in a manner that complies with Section 111.005(a)(3). Requires TSBDE 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 teledentistry dental services.

SECTION 9. Amends Section 111.007, Occupations Code, as follows:

Sec. 111.007. New heading: STANDARD OF CARE FOR TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) Provides that a health professional providing a health care service or procedure as a telemedicine medical service, a teledentistry dental 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, teledentistry dental services, or telehealth services that would impose a higher standard of care than the standard described in Subsection (a).

SECTION 10. Amends Chapter 111, Occupation Code, by adding Section 111.0075, as follows:

Sec. 111.0075. LICENSING FOR TELEDENTISTRY DENTAL SERVICES. Provides that a health professional providing a health care service or procedure as a teledentistry dental service is subject to the licensing requirements that would apply to the provision of the same health care service or procedure in an in-person setting.

SECTION 11. Amends Chapter 111, Occupations Code, by adding Section 111.009, as follows:

Sec. 111.009. CERTAIN PRESCRIPTIONS PROHIBITED. (a) Defines "controlled substance" and "prescribe."

(b) Prohibits a dentist from prescribing a controlled substance to a patient as a teledentistry dental service.

SECTION 12. Amends Section 251.003, Occupations Code, by adding Subsection (d) to provide that for purposes of this subtitle (Dentistry), a person located in another state practices dentistry in this state if the person through the use of any medium, including an electronic medium, performs an act that constitutes the practice of dentistry on a patient in this state.

SECTION 13. Amends Chapter 254, Occupations Code, by adding Section 254.0035, as follows:

Sec. 254.0035. RULES REGARDING CALL COVERAGE AGREEMENTS. Requires TSBDE to adopt rules governing a call coverage agreement between dentists.

SECTION 14. Amends Section 258.001, Occupations Code, as follows:

Sec. 258.001. IMPERMISSIBLE DELEGATIONS. Prohibits a dentist from delegating to an individual the authority to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent, including as a teledentistry dental service as that term is defined by Section 111.001 (Definitions), if the individual is not licensed as one of certain health professionals. Makes no other changes to this section.

SECTION 15. Amends Section 262.152, Occupations Code as follows:

Sec. 262.152. PERFORMANCE OF DELEGATED DUTIES. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that for purposes of this section, a dental hygienist who practices dental hygiene as a teledentistry dental service, as defined by Section 111.001, is practicing in an alternate setting in compliance with Subsection (a)(2).

SECTION 16. Amends Section 562.056(c), Occupations Code, as follows:

(c) Provides that, for purposes of this section and Section 562.112 (Practitioner-Patient Relationship Required), a valid practitioner-patient relationship is present between a practitioner providing telemedicine medical services or teledentistry dental services and the patient receiving the services, rather than the telemedicine medical services, if the practitioner has complied with requirements for establishing such a relationship in accordance with Section 111.005.

SECTION 17. Amends Section 531.001, Government Code, by adding Subdivision (6-a), to define "teledentistry dental service."

SECTION 18. Amends Section 531.0216, Government Code, as follows:

Sec. 531.0216. New heading: PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS, TELEDENTISTRY DENTAL SERVICE PROVIDERS, AND TELEHEALTH SERVICE PROVIDERS UNDER MEDICAID. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) by rule to develop and implement a system to reimburse providers of services under Medicaid for services performed using telemedicine medical services, teledentistry dental services, or telehealth services.

(b) Requires the executive commissioner by rule, in developing the system, to:

(1)–(3) makes no changes to these subdivisions;

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

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

(c) Requires HHSC to encourage health care providers and health care facilities to participate as telemedicine medical service providers, teledentistry dental 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, teledentistry dental services, or telehealth services when the service can reasonably be provided by a physician or a dentist if through a face-to face consultation with the patient in the community in which the patient resides or works. Provides that this subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services, teledentistry dental services, or telehealth services at the patient's request.

(c-1) Provides that Subsection (c) does not prohibit the authorization of the provision of any service to a patient through teledentistry dental services if:

(1) the patient requests the service; and

(2) the provision of the service through teledentistry does not violate the standard of care applicable to the service.

(c-2) Creates this subsection from existing text and makes no further changes.

(d) Authorizes the executive commissioner, subject to Sections 111.004 and 153.004, Occupations Code, rather than Section 153.004, Occupations Code, to adopt rules as necessary to implement this section. Requires the executive commissioner, in the rules adopted under this section, to:

(1) makes no changes to this subdivision; and

(2) refer to the site where the physician, dentist, or health professional providing the telemedicine medical service, teledentistry dental service, or telehealth service is physically located as the distant site.

(e) Prohibits HHSC from reimbursing a health care facility for telemedicine medical services, teledentistry dental services, or telehealth services provided to a Medicaid recipient unless the facility complies with the minimum standards adopted under Section 531.02161.

(f) Requires HHSC, not later than December 1 of each even-numbered year, to report to the speaker of the house of representatives and the lieutenant governor on the effects of certain services, including teledentistry dental services, on Medicaid in the state. Makes conforming changes.

SECTION 19. Amends the heading to Section 531.02161, Government Code, to read as follows:

Sec. 531.02161. **TELEMEDICINE, TELEDENTISTRY, TELEHEALTH, AND HOME TELEMONITORING TECHNOLOGY STANDARDS.**

SECTION 20. Amends Sections 531.02161(b), Government Code, as follows:

(b) Requires the executive commissioner by rule to establish and adopt minimum standards for an operating system used in the provision of telemedicine medical services, teledentistry dental services, telehealth services, or home telemonitoring services by a health care facility participating in Medicaid, including standards for electronic transmission, software, and hardware.

SECTION 21. Amends the heading to Section 531.02162, Government Code, to read as follows:

Sec. 531.02162. MEDICAID SERVICES PROVIDED THROUGH TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES TO CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

SECTION 22. Amends Section 531.02162, Government Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires the executive commissioner by rule to establish policies that permit reimbursement under Medicaid and the child health plan program for services provided through telemedicine medical services, teledentistry dental services, and telehealth services to children with special health care needs.

(c) Requires the policies under this section to:

(1) makes conforming changes; and

(2) provide for reimbursement of multiple providers of different services who participate in a single session of telemedicine medical services, teledentistry dental services, telehealth services, or any combination of those services, rather than who participate in a single telemedicine medical services and telehealth services session, for a child with special health care needs, if HHSC determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry services, and telehealth services including the costs of transportation and lodging and other direct costs.

(d) Authorizes the policies established under Subsection (c)(1) to authorize the provision of a service as a teledentistry dental service only if the service through teledentistry does not violate the standard of care applicable to the service.

SECTION 23. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.02172, as follows:

Sec. 531.02172. REIMBURSEMENT FOR TELEDENTISTRY DENTAL SERVICES.

(a) Requires HHSC by rule to require each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for teledentistry dental services provided by a dentist licensed to practice dentistry in this state.

(b) Requires HHSC to require reimbursement for a teledentistry dental service at the same rate as the Medicaid program reimburses for a comparable in-person dental service. Prohibits a request for reimbursement from being denied solely because an in-person dental service between a dentist and a patient did not occur. Authorizes a service provided as a teledentistry dental service to only be reimbursed if the provision of the service through teledentistry does not violate the standard of care applicable to the service.

(c) Authorizes TSBDE, in consultation with HHSC and HHSC's office of inspector general, as appropriate, to adopt rules as necessary to:

(1) ensure that appropriate care, including quality of care, is provided to patients who receive teledentistry dental services; and

(2) prevent abuse and fraud through the use of teledentistry dental services, including rules relating to filing claims and the records required to be maintained in connection with teledentistry dental services.

SECTION 24. Amends the heading to Section 62.157, Health and Safety Code, to read as follows:

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

SECTION 25. Amends Sections 62.157(a) and (b), Health and Safety Code, as follows:

(a) Requires a health care provider, in providing covered benefits to a child with special health care needs, to permit benefits to be provided through telemedicine medical services, teledentistry dental services, and telehealth services in accordance with policies developed by HHSC.

(b) Requires the policies to provide for:

(1) makes conforming changes; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, teledentistry dental services, telehealth services, or any combination of those services, rather than a single telemedicine medical services and telehealth services session, if the executive commissioner determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry dental services, and telehealth services, including the costs of transportation and lodging and other direct costs.

SECTION 26. Amends Section 62.1571, Health and Safety Code, as follows:

Sec. 62.1571. New heading: TELEMEDICINE MEDICAL SERVICES AND TELEDENTISTRY DENTAL SERVICES. (a) Requires a health plan provider, in providing covered benefits to a child, to permit benefits to be provided through telemedicine medical services and teledentistry dental services in accordance with policies developed by HHSC.

(b) Makes conforming changes.

(c) Redesignates existing Subsection (d) as Subsection (c). Defines "teledentistry dental service" and "telemedicine medical service."

SECTION 27. Amends the heading to Chapter 1455, Insurance Code, to read as follows:

CHAPTER 1455. TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH

SECTION 28. Amends Section 1455.001, Insurance Code, by amending Subdivisions (1) and (3) and adding Subdivision (1-a), as follows:

(1) Defines "dentist."

(1-a) Creates this subdivision from existing text and redefines "health professional" to include an individual who is authorized to assist a dentist in providing teledentistry dental services that are delegated and supervised by the dentist, a licensed or certified health professional acting within the scope of the license of certification who does not perform a telemedicine medical service or teledentistry service, or a dentist.

(3) Defines "teledentistry dental service," "telehealth service," and "telemedicine medical service."

SECTION 29. Amends Section 1455.004, Insurance Code, as follows:

Sec. 1455.004. New heading: COVERAGE FOR TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY 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, teledentistry dental service, or a telehealth service solely because the covered health care service or procedure is not provided through an in-person consultation.

(b) and (c) Makes conforming changes.

SECTION 30. Amends Section 1455.006, Insurance Code, as follows:

Sec. 1455.006. New heading: TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL 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, teledentistry dental services, or telehealth services.

(b) Makes a conforming change.

SECTION 31. Provides that not later than March 1, 2020:

(1) TSBDE and TSBP are required to jointly adopt rules as required by Section 111.006(c), Occupations Code, as added by this Act.

(2) TSBDE is required to adopt:

(A) rules necessary to implement Chapter 111, Occupations Code, as amended by this Act;

(B) rules as required by Section 254.0035, Occupations Code, as added by this Act; and

(3) HHSC is required to adopt rules as required by Section 531.02172, Government Code, as added by this Act.

SECTION 32. Requires an agency affected by the provision, if before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and authorizes the agency to delay implementing that provision until the waiver or authorization is granted.

SECTION 33. (a) Effective date, except as provided by Subsection (b): September 1, 2019.

(b) Effective date, Sections 1455.004 and 1455.006, Insurance Code, as amended by this Act: January 1, 2020.