BILL ANALYSIS

Senate Research Center
87R14291 KKR-F

H.B. 4
By: Price et al. (Buckingham)
Health & Human Services
5/7/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2019, the Texas Legislature passed S.B. 670, which made several needed changes to the regulation and payment of telemedicine and telehealth services provided through the Texas Medicaid program. As a result, the opportunity to use telemedicine and telehealth in the Medicaid program was expanded significantly prior to the onset of COVID-19.

Since March of 2020, the Health and Human Services Commission has allowed additional flexibilities in the use of telemedicine and telehealth to provide services to Medicaid and CHIP recipients. These flexibilities, in addition to the framework put in place by S.B. 670, have been remarkably successful in supporting social distancing and allowing patients to continue to receive services via telemedicine and telehealth during the pandemic.

H.B. 4 proposes to make permanent most of the Medicaid/CHIP waivers that were put in place as part of the state's COVID-19 response while still upholding the standard of care. It also addresses gaps related to the use of technology in delivering services and information to clients that were identified by stakeholders during the COVID-19 pandemic.

H.B. 4 amends current law relating to the provision and delivery of health care services under Medicaid and other public benefits programs using telecommunications or information technology and to reimbursement for some of those services.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 1 (Section 531.0216, Government Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 531.02161, Government Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 2 (Section 531.02161, Government Code) and SECTION 6 (Section 533.039, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 531.0216(i), Government Code, to require the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to ensure that certain health centers, including a rural health clinic as defined by 42 U.S.C. Section 1396d(l)(1), 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.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.02161, as follows:

Sec. 531.02161. PROVISION OF SERVICES THROUGH TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY UNDER MEDICAID AND OTHER PUBLIC BENEFITS PROGRAMS. (a) Provides that in this section, "case management services" includes service coordination, service management, and care coordination.

(b) Requires the Health and Human Services Commission (HHSC), to the extent permitted by federal law and to the extent it is cost-effective and clinically effective, as determined by HHSC, to ensure that Medicaid recipients, child health plan program enrollees, and other individuals receiving benefits under a public benefits program administered by HHSC or a health and human services agency, regardless of whether receiving benefits through a managed care delivery model or another delivery model, have the option to receive services as telemedicine medical services, telehealth services, or otherwise using telecommunications or information technology, including the following services:

(1) preventative health and wellness services;

(2) case management services, including targeted case management services;

(3) subject to Subsection (c), behavioral health services;

(4) occupational, physical, and speech therapy services;

(5) nutritional counseling services; and

(6) assessment services, including nursing assessments under the following Section 1915(c) waiver programs:

(A) the community living assistance and support services (CLASS) waiver program;

(B) the deaf-blind with multiple disabilities (DBMD) waiver program;

(C) the home and community-based services (HCS) waiver program; and

(D) the Texas home living (TxHmL) waiver program.

(c) Requires HHSC by rule to develop and implement a system to ensure behavioral health services may be provided using audio-only technology to a Medicaid recipient, a child health plan program enrollee, or another individual receiving those services under another public benefits program administered by HHSC or a health and human services agency.

(d) Authorizes the executive commissioner by rule, if the executive commissioner determines that providing services other than behavioral health services is appropriate using audio-only technology under a public benefits program administered by HHSC or a health and human services agency, in accordance with applicable federal and state law, to authorize the provision of those services under the applicable program using that technology. Requires the executive commissioner, in determining whether the use of audio-only technology in a program is appropriate under this subsection, to consider whether using the technology would be cost-effective and clinically effective.

SECTION 3. Amends Section 531.02164, Government Code, by adding Subsection (f), as follows:

(f) Authorizes a Medicaid managed care organization, to comply with state and federal requirements to provide access to medically necessary services under the Medicaid managed care program, to reimburse providers for home telemonitoring services provided to persons and in circumstances other than those expressly authorized by Section 531.02164 (Medicaid Services Provided Through Home Telemonitoring Services). Requires the organization, in determining whether the managed care organization should provide reimbursement for services under this subsection, to consider whether reimbursement for the service is cost-effective and providing the service is clinically effective.

SECTION 4. Amends Section 533.0061(b), Government Code, to require that the provider access standards established under Section 533.0061 (Provider Access Standards; Report), to the extent it is feasible, meet certain criteria, including considering and including the availability of telehealth services and telemedicine medical services within the provider network of a managed care organization. Makes nonsubstantive changes.

SECTION 5. Amends Section 533.008, Government Code, by adding Subsection (c), as follows:

(c) Requires the executive commissioner to adopt and publish guidelines for Medicaid managed care organizations regarding how organizations may communicate by text message with recipients enrolled in the organization's managed care plan. Requires that the guidelines include standardized consent language to be used by organizations in obtaining a recipient's consent to receive communications by text message.

SECTION 6. Amends Subchapter A, Chapter 533, Government Code, by adding Section 533.039, as follows:

Sec. 533.039. DELIVERY OF BENEFITS USING TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY. (a) Requires HHSC to establish policies and procedures to improve access to care under the Medicaid managed care program by encouraging the use of telehealth services, telemedicine medical services, home telemonitoring services, and other telecommunications or information technology under the program.

(b) Requires HHSC by rule, to the extent permitted by federal law, to establish policies and procedures that allow a Medicaid managed care organization to conduct assessments of and provide care coordination services to recipients receiving home and community-based services using another telecommunications or information technology if:

(1) the managed care organization determines using the telecommunications or information technology is appropriate;

(2) the recipient requests that the assessment or activity is provided using telecommunications or information technology;

(3) an in-person assessment or activity is not feasible because of the existence of an emergency or state of disaster, including a public health emergency or natural disaster; or

(4) HHSC determines using the telecommunications or information technology is appropriate under the circumstances.

(c) Requires a managed care organization, if the managed care organization conducts an assessment of or provides care coordination services to a recipient using telecommunications or information technology, to monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse, and determine whether additional social services or supports are needed.

(d) Requires HHSC, to the extent permitted by federal law, to allow a recipient who is assessed or provided with care coordination services by a Medicaid managed care organization using telecommunications or information technology

to provide consent or other authorizations to receive services verbally instead of in writing.

(e) Requires HHSC to determine categories of recipients of home and community-based services who are required to receive in-person visits. Requires a Medicaid managed care organization, except during circumstances described by Subsection (b)(3), for a recipient of home and community-based services for which HHSC requires in-person visits, to conduct at least one in-person visit with the recipient and additional in-person visits with the recipient if necessary, as determined by the managed care organization.

SECTION 7. Amends Section 62.1571, Health and Safety Code, as follows:

Sec. 62.1571. New heading: TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES. (a) - (d) Makes conforming and nonsubstantive changes to these subsections.

SECTION 8. Requires HHSC, not later than January 1, 2022, to:

(1) implement Section 531.02161, Government Code, as added by this Act; and

(2) publish the guidelines required by Section 533.008(c), Government Code, as added by this Act.

SECTION 9. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 10. Effective date: upon passage or September 1, 2021.