

## RULE ANALYSIS

**Introduction:** THE AMENDMENTS ARE SUBMITTED TO THE BOARD FOR CONSIDERATION AS AN ADOPTED RULE

**Short Title:** Professional Responsibility of Pharmacists.

**Rule Number:** §291.29

**Statutory Authority:** Texas Pharmacy Act, Chapter 551-569, Occupations Code:

- (1) Section 551.002 specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; and
- (2) Section 554.051 gives the Board the authority to adopt rules for the proper administration and enforcement of the Act.

**Purpose:** The amendments, if adopted, establish the determination of a valid prescription issued as a result of teledentistry dental services, in accordance with House Bill 2056, or telemedicine medical services.

**The Board reviewed and voted to propose the amendments during the November 2, 2021 meeting. The proposed amendments were published in the December 24, 2021, issue of the *Texas Register* at 46 TexReg 8883.**

1 **TITLE 22. EXAMINING BOARDS**  
2 **PART 15. TEXAS STATE BOARD OF PHARMACY**  
3 **CHAPTER 291. PHARMACIES**  
4 **SUBCHAPTER A. ALL CLASSES OF PHARMACIES**

5 **§291.29. PROFESSIONAL RESPONSIBILITY OF PHARMACISTS.**

6 The Texas State Board of Pharmacy proposes amendments to §291.29, concerning  
7 Professional Responsibility of Pharmacists. The amendments, if adopted, establish the  
8 determination of a valid prescription issued as a result of teledentistry dental services, in  
9 accordance with House Bill 2056, or telemedicine medical services.

10 Timothy L. Tucker, Pharm.D., Executive Director/Secretary, has determined that, for the first  
11 five-year period the rules are in effect, there will be no fiscal implications for state or local  
12 government as a result of enforcing or administering the rule. Dr. Tucker has determined that,  
13 for each year of the first five-year period the rule will be in effect, the public benefit anticipated  
14 as a result of enforcing the amendments will be to provide consistency with state law and to  
15 ensure that pharmacists are dispensing controlled substances and dangerous drugs pursuant  
16 only to valid prescriptions. There is no anticipated adverse economic impact on large, small or  
17 micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an  
18 economic impact statement and regulatory flexibility analysis are not required.

19 For each year of the first five years the proposed amendments will be in effect, Dr. Tucker has  
20 determined the following:

- 21 (1) The proposed amendments do not create or eliminate a government program;
- 22 (2) Implementation of the proposed amendments does not require the creation of new employee  
23 positions or the elimination of existing employee positions;
- 24 (3) Implementation of the proposed amendments does not require an increase or decrease in  
25 the future legislative appropriations to the agency;
- 26 (4) The proposed amendments do not require an increase or decrease in fees paid to the  
27 agency;
- 28 (5) The proposed amendments do not create a new regulation;
- 29 (6) The proposed amendments do expand an existing regulation in order to be consistent with  
30 state law;
- 31 (7) The proposed amendments do not increase or decrease the number of individuals subject to  
32 the rule's applicability; and
- 33 (8) The proposed amendments do not positively or adversely affect this state's economy.

34 Written comments on the amendments may be submitted to Eamon D. Briggs, Assistant  
35 General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin,

36 Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 24,  
37 2022.

38 The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act  
39 (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing  
40 the agency to protect the public through the effective control and regulation of the practice of  
41 pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the  
42 proper administration and enforcement of the Act.

43 The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas  
44 Occupations Code.

45 *§291.29. Professional Responsibility of Pharmacists.*

46 (a) A pharmacist shall exercise sound professional judgment with respect to the accuracy and  
47 authenticity of any prescription drug order dispensed. If the pharmacist questions the accuracy  
48 or authenticity of a prescription drug order, the pharmacist shall verify the order with the  
49 practitioner prior to dispensing.

50 (b) A pharmacist shall make every reasonable effort to ensure that any prescription drug order,  
51 regardless of the means of transmission, has been issued for a legitimate medical purpose by a  
52 practitioner in the course of medical practice. A pharmacist shall not dispense a prescription  
53 drug if the pharmacist knows or should have known that the order for such drug was issued  
54 without a valid pre-existing patient-practitioner relationship as defined by the Texas Medical  
55 Board in 22 Texas Administrative Code (TAC) §190.8 (relating to Violation Guidelines) or  
56 without a valid prescription drug order.

57 (1) A prescription drug order may not be dispensed or delivered by means of the Internet unless  
58 pursuant to a valid prescription that was issued for a legitimate medical purpose in the course of  
59 medical practice by a practitioner, or practitioner covering for another practitioner.

60 (2) A prescription drug order may not be dispensed or delivered if the pharmacist has reason to  
61 suspect that the prescription drug order may have been authorized in the absence of a valid  
62 patient-practitioner relationship, or otherwise in violation of the practitioner's standard of practice  
63 to include that the practitioner:

64 (A) did not establish a diagnosis through the use of acceptable medical practices for the  
65 treatment of patient's condition;

66 (B) prescribed prescription drugs that were not necessary for the patient due to a lack of a valid  
67 medical need or the lack of a therapeutic purpose for the prescription drugs; or

68 (C) issued the prescriptions outside the usual course of medical practice.

69 (3) Notwithstanding the provisions of this subsection and as authorized by the Texas Medical  
70 Board in 22 TAC §190.8, a pharmacist may dispense a prescription when a physician has not  
71 established a professional relationship with a patient if the prescription is for medications for:

72 (A) sexually transmitted diseases for partners of the physician's established patient; or

73 (B) a patient's family members if the patient has an illness determined by the Centers for  
74 Disease Control and Prevention, the World Health Organization, or the Governor's office to be  
75 pandemic.

76 (c) If a pharmacist has reasons to suspect that a prescription was authorized solely based on  
77 the results of a questionnaire and/or in the absence of a documented patient evaluation  
78 including a physical examination, the pharmacist shall ascertain if that practitioner's standard of  
79 practice allows that practitioner to authorize a prescription under such circumstances. Reasons  
80 to suspect that a prescription may have been authorized in the absence of a valid patient-  
81 practitioner relationship or in violation of the practitioner's standard of practice include:

82 (1) the number of prescriptions authorized on a daily basis by the practitioner;

83 (2) a disproportionate number of patients of the practitioner receive controlled substances;

84 (3) the manner in which the prescriptions are authorized by the practitioner or received by the  
85 pharmacy;

86 (4) the geographical distance between the practitioner and the patient or between the pharmacy  
87 and the patient;

88 (5) knowledge by the pharmacist that the prescription was issued solely based on answers to a  
89 questionnaire;

90 (6) knowledge by the pharmacist that the pharmacy he/she works for directly or indirectly  
91 participates in or is otherwise associated with an Internet site that markets prescription drugs to  
92 the public without requiring the patient to provide a valid prescription order from the patients  
93 practitioner; or

94 (7) knowledge by the pharmacist that the patient has exhibited doctor-shopping or pharmacy-  
95 shopping tendencies.

96 (d) A pharmacist shall ensure that prescription drug orders for the treatment of chronic pain  
97 have been issued in accordance with the guidelines set forth by the Texas Medical Board in 22  
98 TAC §170.3 (relating to Guidelines), prior to dispensing or delivering such prescriptions.

99 (e) A prescription drug order may not be dispensed or delivered if issued by a practitioner  
100 practicing at a pain management clinic that is not in compliance with the rules of the Texas  
101 Medical Board in 22 TAC §§195.1 - 195.4 (relating to Pain Management Clinics). A prescription  
102 drug order from a practitioner practicing at a certified pain management clinic is not  
103 automatically valid and does not negate a pharmacist's responsibility to determine that the  
104 prescription is valid and has been issued for a legitimate or appropriate medical purpose.

105 (f) A pharmacist shall not dispense a prescription drug if the pharmacist knows or should know  
106 the prescription drug order is fraudulent or forged. A pharmacist shall make every reasonable  
107 effort to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically  
108 inappropriate prescriptions in violation of a pharmacist's corresponding responsibility. The  
109 following patterns (i.e., red flag factors) are relevant to preventing the non-therapeutic  
110 dispensing of controlled substances and shall be considered by evaluating the totality of the  
111 circumstances rather than any single factor:

- 112 (1) the pharmacy dispenses a reasonably discernible pattern of substantially identical  
113 prescriptions for the same controlled substances, potentially paired with other drugs, for  
114 numerous persons, indicating a lack of individual drug therapy in prescriptions issued by the  
115 practitioner;
- 116 (2) the pharmacy operates with a reasonably discernible pattern of overall low prescription  
117 dispensing volume, maintaining relatively consistent 1:1 ratio of controlled substances to  
118 dangerous drugs and/or over-the-counter products dispensed as prescriptions;
- 119 (3) prescriptions by a prescriber presented to the pharmacy are routinely for controlled  
120 substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle  
121 relaxants, psychostimulants, and/or cough syrups containing codeine, or any combination of  
122 these drugs;
- 123 (4) prescriptions for controlled substances by a prescriber presented to the pharmacy contain  
124 nonspecific or no diagnoses, or lack the intended use of the drug;
- 125 (5) prescriptions for controlled substances are commonly for the highest strength of the drug  
126 and/or for large quantities (e.g., monthly supply), indicating a lack of individual drug therapy in  
127 prescriptions issued by the practitioner;
- 128 (6) dangerous drugs or over-the-counter products (e.g., multi-vitamins or laxatives) are  
129 consistently added by the prescriber to prescriptions for controlled substances presented to the  
130 pharmacy, indicating a lack of individual drug therapy in prescriptions issued by the practitioner;
- 131 (7) upon contacting the practitioner's office regarding a controlled substance prescription, the  
132 pharmacist is unable to engage in a discussion with the actual prescribing practitioner; the  
133 practitioner fails to appropriately address based on a reasonable pharmacist standard the  
134 pharmacist's concerns regarding the practitioner's prescribing practices with regard to the  
135 prescription; and/or the practitioner is unwilling to provide additional information, such as  
136 treatment goals and/or prognosis with prescribed drug therapy;
- 137 (8) the practitioner's clinic is not registered as, and not exempted from registration as, a pain  
138 management clinic by the Texas Medical Board, despite prescriptions by the practitioner  
139 presented to the pharmacy indicating that the practitioner is mostly prescribing opioids,  
140 benzodiazepines, barbiturates, or carisoprodol, but not including suboxone, or any combination  
141 of these drugs;
- 142 (9) the controlled substance(s) or the quantity of the controlled substance(s) prescribed are  
143 inconsistent with the practitioner's area of medical practice;
- 144 (10) the Texas Prescription Monitoring Program indicates the person presenting the  
145 prescriptions is obtaining similar drugs from multiple practitioners, and/or that the persons is  
146 being dispensed similar drugs at multiple pharmacies;
- 147 (11) multiple persons with the same address present substantially similar controlled substance  
148 prescriptions from the same practitioner;
- 149 (12) persons consistently pay for controlled substance prescriptions with cash or cash  
150 equivalents more often than through insurance;

151 (13) persons presenting controlled substance prescriptions are doing so in such a manner that  
152 varies from the manner in which persons routinely seek pharmacy services (e.g., persons  
153 arriving in the same vehicle with prescriptions from same practitioner; one person seeking to  
154 pick up prescriptions for multiple others; drugs referenced by street names;

155 (14) the pharmacy charges and persons are willing to pay significantly more for controlled  
156 substances relative to nearby pharmacies;

157 (15) the pharmacy routinely orders controlled substances from more than one drug supplier;

158 (16) the pharmacy has been discontinued by a drug supplier related to controlled substance  
159 orders;

160 (17) the pharmacy has a sporadic and inconsistent dispensing volume (including zero  
161 dispensing);

162 (18) the pharmacy does not maintain normal operational hours each week from Monday through  
163 Friday; and

164 (19) the pharmacy has been previously warned or disciplined by the Texas State Board of  
165 Pharmacy for inappropriate dispensing of controlled substances.

166 **(g) Prescriptions issued as a result of telemedicine medical services or teledentistry**  
167 **dental services.**

168 **(1) The validity of a prescription issued as a result of telemedicine medical services or**  
169 **teledentistry dental services is determined by the same standards that would apply to the**  
170 **issuance of the prescription in an in-person setting.**

171 **(2) A valid prescription issued as a result of telemedicine medical services or**  
172 **teledentistry dental services must:**

173 **(A) be issued for a legitimate medical purpose by a practitioner as part of a practitioner-**  
174 **patient relationship as set out in Texas Occupations Code §111.005; and**

175 **(B) meet all other applicable laws before prescribing, dispensing, delivering, or**  
176 **administering a dangerous drug or controlled substance.**

AN ACT

relating to the practice of dentistry and the provision of teledentistry dental services.

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

SECTION 1. The heading to Chapter 111, Occupations Code, is amended to read as follows:

CHAPTER 111. TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH

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

(1) "Dentist," "health [Health] professional," and "physician" have the meanings assigned by Section 1455.001, Insurance Code.

(2-a) "Teledentistry dental service" means a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

(3) "Telehealth service" means a health service, other than a telemedicine medical service or a teledentistry dental service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the

1 scope of the health professional's license, certification, or  
2 entitlement to a patient at a different physical location than the  
3 health professional using telecommunications or information  
4 technology.

5 SECTION 3. Section 111.002, Occupations Code, is amended to  
6 read as follows:

7 Sec. 111.002. INFORMED CONSENT. (a) A treating physician,  
8 dentist, or health professional who provides or facilitates the use  
9 of telemedicine medical services, teledentistry dental services,  
10 or telehealth services shall ensure that the informed consent of  
11 the patient, or another appropriate individual authorized to make  
12 health care treatment decisions for the patient, is obtained before  
13 telemedicine medical services, teledentistry dental services, or  
14 telehealth services are provided.

15 (b) A dentist who delegates a teledentistry dental service  
16 shall ensure that the informed consent of the patient includes  
17 disclosure to the patient that the dentist has delegated the  
18 service.

19 SECTION 4. Section 111.003, Occupations Code, is amended to  
20 read as follows:

21 Sec. 111.003. CONFIDENTIALITY. A treating physician,  
22 dentist, or health professional who provides or facilitates the use  
23 of telemedicine medical services, teledentistry dental services,  
24 or telehealth services shall ensure that the confidentiality of the  
25 patient's clinical [~~medical~~] information is maintained as required  
26 by Chapter 159, by Subchapter C, Chapter 258, or by other applicable  
27 law.



1 SECTION 5. Section 111.004, Occupations Code, is amended  
2 to read as follows:

3 Sec. 111.004. RULES. (a) The Texas Medical Board, in  
4 consultation with the commissioner of insurance, as appropriate,  
5 may adopt rules necessary to:

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

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

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

15 (4) establish the maximum number of health  
16 professionals who are not physicians that a physician may supervise  
17 through a telemedicine medical service.

18 (b) The State Board of Dental Examiners, in consultation  
19 with the commissioner of insurance, as appropriate, may adopt rules  
20 necessary to:

21 (1) ensure that patients using teledentistry dental  
22 services receive appropriate, quality care;

23 (2) prevent abuse and fraud in the use of  
24 teledentistry dental services, including rules relating to the  
25 filing of claims and records required to be maintained in  
26 connection with teledentistry dental services;

27 (3) ensure adequate supervision of health

1 professionals who are not dentists and who provide teledentistry  
2 dental services under the delegation and supervision of a dentist;  
3 and

4 (4) authorize a dentist to simultaneously delegate to  
5 and supervise through a teledentistry dental service not more than  
6 five health professionals who are not dentists.

7 SECTION 6. The heading to Section 111.005, Occupations  
8 Code, is amended to read as follows:

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

11 SECTION 7. Section 111.005(a), Occupations Code, is amended  
12 to read as follows:

13 (a) For purposes of Section 562.056, a valid  
14 practitioner-patient relationship is present between a  
15 practitioner providing a telemedicine medical service or a  
16 teledentistry dental service and a patient receiving the  
17 [~~telemedicine medical~~] service as long as the practitioner complies  
18 with the standard of care described in Section 111.007 and the  
19 practitioner:

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

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

26 (A) Texas Medical Board rules with a physician  
27 requesting coverage of medical care for the patient; or

1                   (B) State Board of Dental Examiners rules with a  
2 dentist requesting coverage of dental care for the patient; or

3                   (3) provides the telemedicine medical services or  
4 teledentistry dental services through the use of one of the  
5 following methods, as long as the practitioner complies with the  
6 follow-up requirements in Subsection (b), and the method allows the  
7 practitioner to have access to, and the practitioner uses, the  
8 relevant clinical information that would be required in accordance  
9 with the standard of care described in Section 111.007:

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

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

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

19                   (ii) the patient's relevant clinical  
20 ~~[medical]~~ records, such as the relevant medical or dental history,  
21 laboratory and pathology results, and prescriptive histories; or

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

25                   SECTION 8. Section 111.006, Occupations Code, is amended by  
26 adding Subsection (c) to read as follows:

27                   (c) The State Board of Dental Examiners and the Texas State

1 Board of Pharmacy shall jointly adopt rules that establish the  
2 determination of a valid prescription in accordance with Section  
3 111.005. Rules adopted under this subsection must allow for the  
4 establishment of a practitioner-patient relationship by a  
5 teledentistry dental service provided by a dentist to a patient in a  
6 manner that complies with Section 111.005(a)(3) and must be  
7 substantially similar to the rules adopted under Subsection (a) of  
8 this section. The State Board of Dental Examiners and the Texas  
9 State Board of Pharmacy shall jointly develop and publish on each  
10 respective board's Internet website responses to frequently asked  
11 questions relating to the determination of a valid prescription  
12 issued in the course of the provision of teledentistry dental  
13 services.

14 SECTION 9. Section 111.007, Occupations Code, is amended to  
15 read as follows:

16 Sec. 111.007. STANDARD OF CARE FOR TELEMEDICINE MEDICAL  
17 SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES.

18 (a) A health professional providing a health care service or  
19 procedure as a telemedicine medical service, a teledentistry dental  
20 service, or a telehealth service is subject to the standard of care  
21 that would apply to the provision of the same health care service or  
22 procedure in an in-person setting.

23 (b) An agency with regulatory authority over a health  
24 professional may not adopt rules pertaining to telemedicine medical  
25 services, teledentistry dental services, or telehealth services  
26 that would impose a higher standard of care than the standard  
27 described in Subsection (a).

1 SECTION 10. Chapter 111, Occupations Code, is amended by  
2 adding Section 111.0075 to read as follows:

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

8 SECTION 11. Chapter 111, Occupations Code, is amended by  
9 adding Section 111.009 to read as follows:

10 Sec. 111.009. LIMITATION ON CERTAIN PRESCRIPTIONS. (a) In  
11 this section:

12 (1) "Controlled substance," "opiate," and "prescribe"  
13 have the meanings assigned by Section 481.002, Health and Safety  
14 Code.

15 (2) "National holiday" means a day described by  
16 Section 662.003(a), Government Code.

17 (b) The State Board of Dental Examiners by rule shall  
18 establish limits on the quantity of a controlled substance,  
19 including an opiate, that a dentist may prescribe to a patient as a  
20 teledentistry dental service. Except as provided by Subsection  
21 (c), the rules may not authorize a dentist to prescribe more than is  
22 necessary to supply a patient for:

23 (1) if the prescription is for an opiate, a two-day  
24 period; or

25 (2) if the prescription is for a controlled substance  
26 other than an opiate, a five-day period.

27 (c) For each day in a period described by Subsection (b)(1)

1 or (2) that is a Saturday, Sunday, or national holiday, the period  
2 is extended to include the next day that is not a Saturday, Sunday,  
3 or national holiday.

4 (d) Rules adopted under this section must comply with  
5 applicable federal laws and rules.

6 SECTION 12. Section 251.003, Occupations Code, is amended  
7 by adding Subsection (d) to read as follows:

8 (d) For purposes of this subtitle, a person located in  
9 another state practices dentistry in this state and is required to  
10 hold a license to practice dentistry in this state if the person  
11 through the use of any medium, including an electronic medium,  
12 performs an act that constitutes the practice of dentistry on a  
13 patient in this state.

14 SECTION 13. Chapter 254, Occupations Code, is amended by  
15 adding Section 254.0035 to read as follows:

16 Sec. 254.0035. RULES REGARDING CALL COVERAGE AGREEMENTS.  
17 The board shall adopt rules governing a call coverage agreement  
18 between dentists.

19 SECTION 14. Section 258.001, Occupations Code, is amended  
20 to read as follows:

21 Sec. 258.001. IMPERMISSIBLE DELEGATIONS. A dentist may not  
22 delegate:

23 (1) an act to an individual who, by board order, is  
24 prohibited from performing the act;

25 (2) any of the following acts to a person not licensed  
26 as a dentist or dental hygienist:

27 (A) the removal of calculus, deposits, or

1 accretions from the natural and restored surfaces of exposed human  
2 teeth and restorations in the human mouth;

3 (B) root planing or the smoothing and polishing  
4 of roughened root surfaces or exposed human teeth; or

5 (C) any other act the delegation of which is  
6 prohibited by board rule;

7 (3) any of the following acts to a person not licensed  
8 as a dentist:

9 (A) comprehensive examination or diagnosis and  
10 treatment planning;

11 (B) a surgical or cutting procedure on hard or  
12 soft tissue;

13 (C) the prescription of a drug, medication, or  
14 work authorization;

15 (D) the taking of an impression for a final  
16 restoration, appliance, or prosthesis;

17 (E) the making of an intraoral occlusal  
18 adjustment;

19 (F) direct pulp capping, pulpotomy, or any other  
20 endodontic procedure;

21 (G) the final placement and intraoral adjustment  
22 of a fixed or removable appliance; or

23 (H) the placement of any final restoration; or

24 (4) the authority to an individual to administer a  
25 local anesthetic agent, inhalation sedative agent, parenteral  
26 sedative agent, or general anesthetic agent, including as a  
27 teledentistry dental service as that term is defined by Section

1 111.001, if the individual is not licensed as:

2 (A) a dentist with a permit issued by the board  
3 for the procedure being performed, if a permit is required;

4 (B) a certified registered nurse anesthetist  
5 licensed by the Texas Board of Nursing, only if the delegating  
6 dentist holds a permit issued by the board for the procedure being  
7 performed, if a permit is required; or

8 (C) a physician anesthesiologist licensed by the  
9 Texas Medical Board.

10 SECTION 15. Section 262.152, Occupations Code, is amended  
11 to read as follows:

12 Sec. 262.152. PERFORMANCE OF DELEGATED DUTIES. (a) Except  
13 as provided by Section 262.1515, a dental hygienist shall practice  
14 dental hygiene:

15 (1) in the dental office of a supervising dentist  
16 licensed by the board; or

17 (2) in an alternate setting, including a nursing home,  
18 the patient's home, a school, a hospital, a state institution, a  
19 public health clinic, or another institution, under the supervision  
20 of a supervising dentist.

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

25 SECTION 16. Section 562.056(c), Occupations Code, is  
26 amended to read as follows:

27 (c) For purposes of this section and Section 562.112, a



1 valid practitioner-patient relationship is present between a  
2 practitioner providing telemedicine medical services or  
3 teledentistry dental services and the patient receiving the  
4 [~~telemedicine medical~~] services if the practitioner has complied  
5 with the requirements for establishing such a relationship in  
6 accordance with Section 111.005.

7 SECTION 17. Section 531.001, Government Code, is amended by  
8 amending Subdivision (4-d) and adding Subdivision (6-a) to read as  
9 follows:

10 (4-d) "Platform" means the technology, system,  
11 software, application, modality, or other method through which a  
12 health professional remotely interfaces with a patient when  
13 providing a health care service or procedure as a telemedicine  
14 medical service, teledentistry dental service, or telehealth  
15 service.

16 (6-a) "Teledentistry dental service" has the meaning  
17 assigned by Section 111.001, Occupations Code.

18 SECTION 18. Section 531.0216, Government Code, is amended  
19 to read as follows:

20 Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF  
21 TELEMEDICINE MEDICAL SERVICE PROVIDERS, TELEDENTISTRY DENTAL  
22 SERVICE PROVIDERS, AND TELEHEALTH SERVICE PROVIDERS UNDER  
23 MEDICAID. (a) The executive commissioner by rule shall develop and  
24 implement a system to reimburse providers of services under  
25 Medicaid for services performed using telemedicine medical  
26 services, teledentistry dental services, or telehealth services.

27 (c) The commission shall encourage health care providers

1 and health care facilities to provide telemedicine medical  
2 services, teledentistry dental services, and telehealth services  
3 in the health care delivery system. The commission may not require  
4 that a service be provided to a patient through telemedicine  
5 medical services, teledentistry dental services, or telehealth  
6 services.

7 (c-1) The commission shall explore opportunities to  
8 increase STAR Health program providers' use of telemedicine medical  
9 services in medically underserved areas of this state.

10 (d) Subject to Sections 111.004 and [Section] 153.004,  
11 Occupations Code, the executive commissioner may adopt rules as  
12 necessary to implement this section. In the rules adopted under  
13 this section, the executive commissioner shall:

14 (1) refer to the site where the patient is physically  
15 located as the patient site; and

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

20 (f) Not later than December 1 of each even-numbered year,  
21 the commission shall report to the speaker of the house of  
22 representatives and the lieutenant governor on the effects of  
23 telemedicine medical services, teledentistry dental services,  
24 telehealth services, and home telemonitoring services on Medicaid  
25 in the state, including the number of physicians, dentists, health  
26 professionals, and licensed health care facilities using  
27 telemedicine medical services, teledentistry dental services,

1 telehealth services, or home telemonitoring services, the  
2 geographic and demographic disposition of the physicians,  
3 dentists, and health professionals, the number of patients  
4 receiving telemedicine medical services, teledentistry dental  
5 services, telehealth services, and home telemonitoring services,  
6 the types of services being provided, the cost of utilization, and  
7 the cost savings of telemedicine medical services, teledentistry  
8 dental services, telehealth services, and home telemonitoring  
9 services to Medicaid.

10 (g) The commission shall ensure that a Medicaid managed care  
11 organization:

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

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

25 (3) ensures that the use of telemedicine medical  
26 services, teledentistry dental services, or telehealth services  
27 promotes and supports patient-centered medical homes by allowing a

1 Medicaid recipient to receive a telemedicine medical service,  
2 teledentistry dental service, or telehealth service from a provider  
3 other than the recipient's primary care physician or provider,  
4 except as provided by Section 531.0217(c-4), only if:

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

10 (B) the provider of the telemedicine medical  
11 service, teledentistry dental service, or telehealth service gives  
12 notice to the Medicaid recipient's primary care physician or  
13 provider regarding the [~~telemedicine medical service or~~  
14 ~~telehealth~~] service, including a summary of the service, exam  
15 findings, a list of prescribed or administered medications, and  
16 patient instructions, for the purpose of sharing medical  
17 information, provided that the recipient has a primary care  
18 physician or provider and the recipient or, if appropriate, the  
19 recipient's parent or legal guardian, consents to the notice.

20 (h) The commission shall develop, document, and implement a  
21 monitoring process to ensure that a Medicaid managed care  
22 organization ensures that the use of telemedicine medical services,  
23 teledentistry dental services, or telehealth services promotes and  
24 supports patient-centered medical homes and care coordination in  
25 accordance with Subsection (g)(3). The process must include  
26 monitoring of the rate at which a telemedicine medical service,  
27 teledentistry dental service, or telehealth service provider gives

1 notice in accordance with Subsection (g)(3)(B).

2 (i) The executive commissioner by rule shall ensure that a  
3 federally-qualified [~~federally qualified~~] health center as defined  
4 by 42 U.S.C. Section 1396d(1)(2)(B) may be reimbursed for the  
5 originating site facility fee or the distant site practitioner fee  
6 or both, as appropriate, for a covered telemedicine medical  
7 service, teledentistry dental service, or telehealth service  
8 delivered by a health care provider to a Medicaid recipient. The  
9 commission is required to implement this subsection only if the  
10 legislature appropriates money specifically for that purpose. If  
11 the legislature does not appropriate money specifically for that  
12 purpose, the commission may, but is not required to, implement this  
13 subsection using other money available to the commission for that  
14 purpose.

15 (j) In complying with state and federal requirements to  
16 provide access to medically necessary services under the Medicaid  
17 managed care program, a Medicaid managed care organization  
18 determining whether reimbursement for a telemedicine medical  
19 service, teledentistry dental service, or telehealth service is  
20 appropriate shall continue to consider other factors, including  
21 whether reimbursement is cost-effective and whether the provision  
22 of the service is clinically effective.

23 SECTION 19. The heading to Section [531.02162](#), Government  
24 Code, is amended to read as follows:

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

1 SECTION 20. Sections 531.02162(b) and (c), Government Code,  
2 are amended to read as follows:

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

8 (c) The policies required under this section must:

9 (1) be designed to:

10 (A) prevent unnecessary travel and encourage  
11 efficient use of telemedicine medical services, teledentistry  
12 dental services, and telehealth services for children with special  
13 health care needs in all suitable circumstances; and

14 (B) ensure in a cost-effective manner the  
15 availability to a child with special health care needs of services  
16 appropriately performed using telemedicine medical services,  
17 teledentistry dental services, and telehealth services that are  
18 comparable to the same types of services available to that child  
19 without the use of telemedicine medical services, teledentistry  
20 dental services, and telehealth services; and

21 (2) provide for reimbursement of multiple providers of  
22 different services who participate in a single session of  
23 telemedicine medical services, teledentistry dental services,  
24 ~~and~~ telehealth services, or any combination of those services,  
25 ~~session~~ for a child with special health care needs, if the  
26 commission determines that reimbursing each provider for the  
27 session is cost-effective in comparison to the costs that would be

1 involved in obtaining the services from providers without the use  
2 of telemedicine medical services, teledentistry dental services,  
3 and telehealth services, including the costs of transportation and  
4 lodging and other direct costs.

5 SECTION 21. Subchapter B, Chapter 531, Government Code, is  
6 amended by adding Section 531.02172 to read as follows:

7 Sec. 531.02172. REIMBURSEMENT FOR TELEDENTISTRY DENTAL  
8 SERVICES. (a) The commission by rule shall require each health and  
9 human services agency that administers a part of the Medicaid  
10 program to provide Medicaid reimbursement for teledentistry dental  
11 services provided by a dentist licensed to practice dentistry in  
12 this state.

13 (b) The commission shall require reimbursement for a  
14 teledentistry dental service at the same rate as the Medicaid  
15 program reimburses for the same in-person dental service. A  
16 request for reimbursement may not be denied solely because an  
17 in-person dental service between a dentist and a patient did not  
18 occur. The commission may not limit a dentist's choice of platform  
19 for providing a teledentistry dental service by requiring that the  
20 dentist use a particular platform to receive reimbursement for the  
21 service.

22 (c) The State Board of Dental Examiners, in consultation  
23 with the commission and the commission's office of inspector  
24 general, as appropriate, may adopt rules as necessary to:

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

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

5           SECTION 22. The heading to Section 62.157, Health and  
6 Safety Code, is amended to read as follows:

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

10          SECTION 23. Sections 62.157(a) and (b), Health and Safety  
11 Code, are amended to read as follows:

12           (a) In providing covered benefits to a child with special  
13 health care needs, a health plan provider must permit benefits to be  
14 provided through telemedicine medical services, teledentistry  
15 dental services, and telehealth services in accordance with  
16 policies developed by the commission.

17           (b) The policies must provide for:

18                   (1) the availability of covered benefits  
19 appropriately provided through telemedicine medical services,  
20 teledentistry dental services, and telehealth services that are  
21 comparable to the same types of covered benefits provided without  
22 the use of telemedicine medical services, teledentistry dental  
23 services, and telehealth services; and

24                   (2) the availability of covered benefits for different  
25 services performed by multiple health care providers during a  
26 single [~~telemedicine medical services and telehealth services~~]  
27 session of telemedicine medical services, teledentistry dental



1 services, telehealth services, or any combination of those  
2 services, if the executive commissioner determines that delivery of  
3 the covered benefits in that manner is cost-effective in comparison  
4 to the costs that would be involved in obtaining the services from  
5 providers without the use of telemedicine medical services,  
6 teledentistry dental services, and telehealth services, including  
7 the costs of transportation and lodging and other direct costs.

8 SECTION 24. Section 62.1571, Health and Safety Code, is  
9 amended to read as follows:

10 Sec. 62.1571. TELEMEDICINE MEDICAL SERVICES AND  
11 TELEDENTISTRY DENTAL SERVICES. (a) In providing covered benefits  
12 to a child, a health plan provider must permit benefits to be  
13 provided through telemedicine medical services and teledentistry  
14 dental services in accordance with policies developed by the  
15 commission.

16 (b) The policies must provide for:

17 (1) the availability of covered benefits  
18 appropriately provided through telemedicine medical services and  
19 teledentistry dental services that are comparable to the same types  
20 of covered benefits provided without the use of telemedicine  
21 medical services and teledentistry dental services; and

22 (2) the availability of covered benefits for different  
23 services performed by multiple health care providers during a  
24 single session of telemedicine medical services, teledentistry  
25 dental services, or both services, if the executive commissioner  
26 determines that delivery of the covered benefits in that manner is  
27 cost-effective in comparison to the costs that would be involved in

1 obtaining the services from providers without the use of  
2 telemedicine medical services or teledentistry dental services,  
3 including the costs of transportation and lodging and other direct  
4 costs.

5 (c) [~~(d)~~] In this section, "teledentistry dental service"  
6 and "telemedicine medical service" have [~~has~~] the meanings  
7 [~~meaning~~] assigned by Section 531.001, Government Code.

8 SECTION 25. The heading to Chapter 1455, Insurance Code, is  
9 amended to read as follows:

10 CHAPTER 1455. TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH

11 SECTION 26. Section 1455.001, Insurance Code, is amended by  
12 amending Subdivisions (1) and (3) and adding Subdivision (1-a) to  
13 read as follows:

14 (1) "Dentist" means a person licensed to practice  
15 dentistry in this state under Subtitle D, Title 3, Occupations  
16 Code.

17 (1-a) "Health professional" means:

18 (A) a physician;

19 (B) an individual who is:

20 (i) licensed or certified in this state to  
21 perform health care services; and

22 (ii) authorized to assist:

23 (a) a physician in providing  
24 telemedicine medical services that are delegated and supervised by  
25 the physician; or

26 (b) a dentist in providing  
27 teledentistry dental services that are delegated and supervised by

1 the dentist;

2 (C) a licensed or certified health professional  
3 acting within the scope of the license or certification who does not  
4 perform a telemedicine medical service or a teledentistry dental  
5 service; or

6 (D) a dentist.

7 (3) "Teledentistry dental service," "telehealth  
8 ["Telehealth] service," and "telemedicine medical service" have  
9 the meanings assigned by Section 111.001, Occupations Code.

10 SECTION 27. Section 1455.004, Insurance Code, is amended to  
11 read as follows:

12 Sec. 1455.004. COVERAGE FOR TELEMEDICINE MEDICAL SERVICES,  
13 TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) A  
14 health benefit plan:

15 (1) must provide coverage for a covered health care  
16 service or procedure delivered by a preferred or contracted health  
17 professional to a covered patient as a telemedicine medical  
18 service, teledentistry dental service, or telehealth service on the  
19 same basis and to the same extent that the plan provides coverage  
20 for the service or procedure in an in-person setting; and

21 (2) may not:

22 (A) exclude from coverage a covered health care  
23 service or procedure delivered by a preferred or contracted health  
24 professional to a covered patient as a telemedicine medical  
25 service, a teledentistry dental service, or a telehealth service  
26 solely because the covered health care service or procedure is not  
27 provided through an in-person consultation; and

1 (B) subject to Subsection (c), limit, deny, or  
2 reduce coverage for a covered health care service or procedure  
3 delivered as a telemedicine medical service, teledentistry dental  
4 service, or telehealth service based on the health professional's  
5 choice of platform for delivering the service or procedure.

6 (b) A health benefit plan may require a deductible, a  
7 copayment, or coinsurance for a covered health care service or  
8 procedure delivered by a preferred or contracted health  
9 professional to a covered patient as a telemedicine medical  
10 service, a teledentistry dental service, or a telehealth service.  
11 The amount of the deductible, copayment, or coinsurance may not  
12 exceed the amount of the deductible, copayment, or coinsurance  
13 required for the covered health care service or procedure provided  
14 through an in-person consultation.

15 (b-1) Subsection (b) does not authorize a health benefit  
16 plan to charge a separate deductible that applies only to a covered  
17 health care service or procedure delivered as a telemedicine  
18 medical service, teledentistry dental service, or telehealth  
19 service.

20 (c) Notwithstanding Subsection (a), a health benefit plan  
21 is not required to provide coverage for a telemedicine medical  
22 service, a teledentistry dental service, or a telehealth service  
23 provided by only synchronous or asynchronous audio interaction,  
24 including:

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

1 (d) A health benefit plan may not impose an annual or  
2 lifetime maximum on coverage for covered health care services or  
3 procedures delivered as telemedicine medical services,  
4 teledentistry dental services, or telehealth services other than  
5 the annual or lifetime maximum, if any, that applies in the  
6 aggregate to all items and services and procedures covered under  
7 the plan.

8 SECTION 28. Section 1455.006, Insurance Code, is amended to  
9 read as follows:

10 Sec. 1455.006. TELEMEDICINE MEDICAL SERVICES,  
11 TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES STATEMENT.

12 (a) Each issuer of a health benefit plan shall adopt and display in  
13 a conspicuous manner on the health benefit plan issuer's Internet  
14 website the issuer's policies and payment practices for  
15 telemedicine medical services, teledentistry dental services, and  
16 telehealth services.

17 (b) This section does not require an issuer of a health  
18 benefit plan to display negotiated contract payment rates for  
19 health professionals who contract with the issuer to provide  
20 telemedicine medical services, teledentistry dental services, or  
21 telehealth services.

22 SECTION 29. Not later than March 1, 2022:

23 (1) the State Board of Dental Examiners and the Texas  
24 State Board of Pharmacy shall jointly adopt rules as required by  
25 Section 111.006(c), Occupations Code, as added by this Act;

26 (2) the State Board of Dental Examiners shall adopt:

27 (A) rules necessary to implement Chapter 111,

1 Occupations Code, as amended by this Act; and

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

4 (3) the Health and Human Services Commission shall  
5 adopt rules as required by Section 531.02172, Government Code, as  
6 added by this Act.

7 SECTION 30. If before implementing any provision of this  
8 Act a state agency determines that a waiver or authorization from a  
9 federal agency is necessary for implementation of that provision,  
10 the agency affected by the provision shall request the waiver or  
11 authorization and may delay implementing that provision until the  
12 waiver or authorization is granted.

13 SECTION 31. (a) Except as provided by Subsection (b) of  
14 this section, this Act takes effect September 1, 2021.

15 (b) Sections 1455.004 and 1455.006, Insurance Code, as  
16 amended by this Act, take effect January 1, 2022.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2056 was passed by the House on May 8, 2021, by the following vote: Yeas 130, Nays 9, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2056 was passed by the Senate on May 24, 2021, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor