

By: McClendon

H.B. No. 2700

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of an electronic system for monitoring controlled substances and for submitting prescription drug orders; providing criminal penalties.

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

SECTION 1. Subtitle J, Title 3, Occupations Code, is amended by adding Chapter 570 to read as follows:

CHAPTER 570. ELECTRONIC SYSTEM FOR MONITORING

CONTROLLED SUBSTANCES AND FOR SUBMITTING

PRESCRIPTION DRUG ORDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 570.001. DEFINITIONS. In this chapter:

(1) "Controlled substance" means a controlled substance listed in Schedule II, III, IV, or V as established under Subchapter B, Chapter 481, Health and Safety Code.

(2) "Electronic system" means the electronic system for monitoring controlled substances and for submitting prescription drug orders established under this chapter.

(3) "Practitioner" means a person authorized under the laws of this state to prescribe or dispense a prescription drug or device.

Sec. 570.002. RULES. The board may adopt the rules necessary to implement this chapter.

Sec. 570.003. PROHIBITED FEES AND TAXES. The board may not

1 require a practitioner or a pharmacist to pay a fee or tax
2 specifically dedicated to the operation of the system.

3 Sec. 570.004. GIFTS AND GRANTS. The board may accept gifts
4 or grants from private individuals, foundations, or the federal
5 government for the purposes of this chapter.

6 [Sections 570.005-570.050 reserved for expansion]

7 SUBCHAPTER B. ELECTRONIC SYSTEM

8 Sec. 570.051. ESTABLISHMENT OF SYSTEM. The board shall
9 establish an electronic system for:

10 (1) tracking prescriptions for controlled substances;

11 (2) monitoring controlled substances that are
12 dispensed in this state by a practitioner or pharmacist or
13 dispensed to an address in this state by a pharmacy licensed in this
14 state;

15 (3) allowing a practitioner to generate and transmit a
16 prescription drug order for a prescription drug or device to a
17 pharmacy or pharmacist for dispensing;

18 (4) allowing a practitioner to have real-time Internet
19 access to data in the system for prescribing purposes and for
20 patient safety; and

21 (5) alerting the board or law enforcement agencies
22 when episodes of inappropriate activity are identified by the
23 system.

24 Sec. 570.052. DATA SUBMITTED TO BOARD. (a) Each pharmacy
25 and pharmacist licensed in this state that is authorized to
26 dispense a controlled substance in this state shall report to the
27 board the data required by this section in a timely manner as

1 prescribed by board rule, except that reporting may not be required
2 for:

- 3 (1) a drug administered directly to a patient; or
4 (2) a drug dispensed by a practitioner at a health care
5 facility licensed in this state, provided that the quantity
6 dispensed is limited to an amount adequate to treat the patient for
7 a maximum of 48 hours.

8 (b) Data for each controlled substance that is dispensed
9 must include the following:

- 10 (1) a patient identifier;
11 (2) the name of the drug dispensed;
12 (3) the date of dispensing;
13 (4) the quantity dispensed;
14 (5) the name of the practitioner who prescribed the
15 controlled substance;
16 (6) the name and address of the pharmacy or pharmacist
17 who dispensed the controlled substance; and
18 (7) any other information required by board rule.

19 (c) A pharmacy or pharmacist shall provide the data required
20 under Subsection (b) to the board in the electronic format
21 specified by board rule unless a waiver has been granted by the
22 board to an individual pharmacy or pharmacist.

23 (d) The board shall establish acceptable error tolerance
24 rates for data submitted under this section. A pharmacy or
25 pharmacist who submits the data shall ensure that reports fall
26 within the acceptable tolerances.

27 (e) A pharmacy or pharmacist who submits incomplete or

1 inaccurate data shall correct the data on notification by the board
2 if the pharmacy or pharmacist exceeds the acceptable error
3 tolerance rates established by the board.

4 Sec. 570.053. DISCLOSURE OF DATA. (a) The board may
5 disclose data obtained under this chapter only to persons and
6 entities authorized to receive that data under this chapter.
7 Disclosure to any other person or entity, including disclosure in
8 the context of a civil action in which the disclosure is sought
9 either for the purpose of discovery or for evidence, is prohibited
10 unless specifically authorized by this chapter.

11 (b) The board may provide data obtained under this chapter,
12 or a report containing or summarizing that data, to:

13 (1) a designated representative of a board that is
14 responsible for the licensure, regulation, or discipline of
15 practitioners, pharmacists, or other persons who are authorized to
16 prescribe, administer, or dispense controlled substances and that
17 is involved in a bona fide specific investigation involving a
18 designated person;

19 (2) a peace officer licensed in this state, a
20 certified or full-time peace officer of another state, or a federal
21 peace officer whose duty is to enforce the laws of this state, of
22 another state, or of the United States relating to drugs and who is
23 engaged in a bona fide specific investigation involving a
24 designated person;

25 (3) a state-operated Medicaid program;

26 (4) a properly convened grand jury pursuant to a
27 subpoena properly issued for the data;

1 (5) a practitioner or pharmacist who requests
2 information and certifies that the requested information is for the
3 purpose of providing medical or pharmaceutical treatment to a bona
4 fide current patient;

5 (6) the Texas Medical Board for any physician who is:

6 (A) associated in a partnership or other business
7 entity with a physician who is already under investigation by the
8 Texas Medical Board for improper prescribing practices;

9 (B) located in a designated geographic area for
10 which a trend report indicates a substantial likelihood that
11 inappropriate prescribing may be occurring in that area; or

12 (C) located in a designated geographic area for
13 which a report on another physician in that area indicates a
14 substantial likelihood that inappropriate prescribing may be
15 occurring in that area;

16 (7) the Texas Board of Nursing, for any advanced
17 registered nurse practitioner who is:

18 (A) associated in a partnership or other business
19 entity with a physician who is already under investigation by the
20 Texas Medical Board for improper prescribing practices;

21 (B) associated in a partnership or other business
22 entity with an advanced registered nurse practitioner who is
23 already under investigation by the Texas Board of Nursing for
24 improper prescribing practices;

25 (C) located in a designated geographic area for
26 which a trend report indicates a substantial likelihood that
27 inappropriate prescribing may be occurring in that area; or

1 (D) located in a designated geographic area for
2 which a report on a physician or another advanced registered nurse
3 practitioner in that area indicates a substantial likelihood that
4 inappropriate prescribing may be occurring in that area; or

5 (8) a judge or a probation or parole officer
6 administering a diversion or probation program of a criminal
7 defendant arising out of a violation of this chapter or of a
8 criminal defendant who is documented by the court as a substance
9 abuser who is eligible to participate in a court-ordered drug
10 diversion or probation program.

11 (c) The Health and Human Services Commission may use any
12 data or reports from the system to identify Medicaid recipients
13 whose use of controlled substances may be appropriately managed by
14 a single outpatient pharmacy or primary care physician.

15 (d) A person who receives data or any report of the system
16 from the board may not provide it to any other person or entity
17 except by order of a court and only to a person or entity authorized
18 to receive the data or the report under this section, except as
19 provided by Subsections (e) and (f).

20 (e) A peace officer specified in Subsection (b)(2) who is
21 authorized to receive data or a report may share that information
22 with other peace officers specified in that subsection who are
23 authorized to receive data or a report if the peace officers are
24 working on a bona fide specific investigation involving a
25 designated person. The person providing and the person receiving
26 the data or report under this subsection must document in writing
27 each person to whom or by whom the data or report has been given or

1 received and the day, month, and year that the data or report has
2 been given or received. This document must be maintained in a file
3 by each law enforcement agency engaged in the investigation.

4 (f) A representative of the Health and Human Services
5 Commission may:

6 (1) share data or reports regarding overutilization by
7 Medicaid recipients with a board described by Subsection (b)(1) or
8 with a peace officer specified in Subsection (b)(2); and

9 (2) submit the data as evidence in an administrative
10 hearing held in accordance with Chapter 2001, Government Code.

11 (g) The board, all peace officers specified in Subsection
12 (b)(2), all officers of the court, and all regulatory agencies and
13 officers, in using the data for investigative or prosecution
14 purposes, shall consider the nature of the practitioner's and
15 pharmacist's practice and the condition for which the patient is
16 being treated.

17 (h) The data and any report obtained from the data may not be
18 a public record, except that the Health and Human Services
19 Commission may submit the data as evidence in an administrative
20 hearing held in accordance with Chapter 2001, Government Code.

21 Sec. 570.054. LIMITATIONS ON DATA IN SYSTEM; ARCHIVE. (a)
22 The board may limit the length of time that data remains in the
23 electronic system.

24 (b) Any data removed from the electronic system must be
25 archived and subject to retrieval within a reasonable time after a
26 request from a person authorized to review data under this section.

27 Sec. 570.055. COOPERATION OF STATE AGENCIES ON CONTINUING

1 EDUCATION. (a) The board shall work with each board responsible
2 for the licensure, regulation, or discipline of practitioners or
3 other persons who are authorized to prescribe, administer, or
4 dispense controlled substances for the development of a continuing
5 education program about the purposes and uses of the electronic
6 system for monitoring established under this chapter.

7 (b) The board shall work with the State Bar of Texas for the
8 development of a continuing education program for attorneys about
9 the purposes and uses of the electronic system established under
10 this chapter.

11 (c) The board shall work with the Commission on Law
12 Enforcement Officer Standards and Education for the development of
13 a continuing education program for peace officers about the
14 purposes and uses of the electronic system established under this
15 chapter.

16 [Sections 570.056-570.100 reserved for expansion]

17 SUBCHAPTER C. CRIMINAL PENALTIES

18 Sec. 570.101. CRIMINAL PENALTIES. (a) A pharmacist or
19 owner of a pharmacy that intentionally fails to transmit to the
20 board the data required by Section 570.052 commits an offense. An
21 offense under this subsection is a Class A misdemeanor for the first
22 offense and a state jail felony for each subsequent offense.

23 (b) A person who violates Section 570.053 commits an
24 offense. An offense under this subsection is a state jail felony
25 for the first offense and a third degree felony for each subsequent
26 offense.

27 SECTION 2. (a) An advisory committee is created to advise

1 the Texas State Board of Pharmacy on the implementation of Chapter
2 570, Occupations Code, as added by this Act.

3 (b) The advisory committee is composed of:

4 (1) the executive director of the Texas State Board of
5 Pharmacy or the executive director's designee;

6 (2) a physician appointed by the governor;

7 (3) a pharmacist appointed by the governor;

8 (4) a physician appointed by the lieutenant governor;

9 (5) a pharmacist appointed by the lieutenant governor;

10 (6) a physician appointed by the governor from a list
11 of names submitted by the speaker of the house of representatives;

12 (7) a pharmacist appointed by the governor from a list
13 of names submitted by the speaker of the house of representatives;

14 and

15 (8) one member from each of the following boards:

16 (A) Texas Medical Board;

17 (B) Texas State Board of Pharmacy;

18 (C) State Board of Dental Examiners; and

19 (D) Texas Board of Nursing.

20 (c) The executive director of the Texas State Board of
21 Pharmacy or the executive director's designee is the presiding
22 officer of the advisory committee. The committee shall meet at the
23 call of the presiding officer or at the request of any three members
24 other than the presiding officer.

25 (d) The advisory committee shall:

26 (1) develop recommendations regarding the improvement
27 of the official prescription program established by Section

1 481.075, Health and Safety Code;

2 (2) develop recommendations regarding the
3 implementation of the electronic system for monitoring controlled
4 substances established under Chapter 570, Occupations Code;

5 (3) develop recommendations on the data that should be
6 provided to the Texas State Board of Pharmacy to support the
7 electronic system for monitoring controlled substances, including
8 provider identification information;

9 (4) monitor and develop recommendations regarding the
10 implementation and enforcement of the electronic system for
11 monitoring controlled substances;

12 (5) develop recommended procedures necessary for
13 real-time point-of-service access for a practitioner authorized to
14 prescribe or dispense controlled substances listed in Schedules II
15 through V so that the practitioner may obtain:

16 (A) the prescription history for a particular
17 patient; or

18 (B) the practitioner's own dispensing or
19 prescribing activity; and

20 (6) develop recommended procedures that should be
21 followed by the Texas State Board of Pharmacy and the applicable
22 licensing authority of this state, another state, or the United
23 States when:

24 (A) the board shares information related to
25 diversion of controlled substances with a licensing authority for
26 the purpose of licensing enforcement; or

27 (B) a licensing authority shares information

1 related to diversion of controlled substances with the board for
2 the purpose of criminal enforcement.

3 (e) The executive director of the Texas State Board of
4 Pharmacy shall report the recommendations developed under
5 Subsection (d) of this section to the governor, lieutenant
6 governor, speaker of the house of representatives, and appropriate
7 committees of the senate and the house of representatives not later
8 than July 1, 2010.

9 (f) This section expires and the advisory committee is
10 abolished September 1, 2011.

11 SECTION 3. The executive director of the Texas State Board
12 of Pharmacy or the executive director's designee shall adopt any
13 rules necessary to administer and enforce Chapter 570, Occupations
14 Code, as added by this Act, not later than January 1, 2010.

15 SECTION 4. (a) Except as provided by Subsection (b) of
16 this section, this Act takes effect September 1, 2009.

17 (b) Subchapter C, Chapter 570, Occupations Code, as added by
18 this Act, takes effect September 1, 2010.