

By: Van de Putte, West
(Zerwas)

S.B. No. 594

A BILL TO BE ENTITLED

AN ACT

relating to certain procedures applicable to electronic prescriptions for Schedule II controlled substances.

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

SECTION 1. Subsections (b), (c), (d-1), (e) through (h), and (k), Section 481.074, Health and Safety Code, are amended to read as follows:

(b) Except in an emergency as defined by rule of the director or as provided by Subsection (o) or Section 481.075(j) or (m), a person may not dispense or administer a controlled substance listed in Schedule II without a [the] written prescription of a practitioner on an official prescription form or without an electronic prescription that meets the requirements of and is completed by the practitioner in accordance with Section 481.075. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:

(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, department registration number,

1 and Federal Drug Enforcement Administration number of the
2 prescribing practitioner, all information required to be provided
3 by a practitioner under Section 481.075(e)(1), and all information
4 required to be provided by a dispensing pharmacist under Section
5 481.075(e)(2).

6 (c) Not later than the seventh day after the date a
7 prescribing practitioner authorizes an emergency oral or
8 telephonically communicated prescription, the prescribing
9 practitioner shall cause a written or electronic prescription,
10 completed in the manner required by Section 481.075, to be
11 delivered [~~in person or mailed~~] to the dispensing pharmacist at the
12 pharmacy where the prescription was dispensed. A written
13 prescription may be delivered in person or by mail. The envelope of
14 a prescription delivered by mail must be postmarked not later than
15 the seventh day after the date the prescription was authorized. On
16 receipt of a written [~~the~~] prescription, the dispensing pharmacy
17 shall file the transcription of the telephonically communicated
18 prescription and the pharmacy copy and shall send information to
19 the director as required by Section 481.075. On receipt of an
20 electronic prescription, the pharmacist shall annotate the
21 electronic prescription record with the original authorization and
22 date of the emergency oral or telephonically communicated
23 prescription.

24 (d-1) Notwithstanding Subsection (d), a prescribing
25 practitioner may issue multiple prescriptions authorizing the
26 patient to receive a total of up to a 90-day supply of a Schedule II
27 controlled substance if:

1 (1) each separate prescription is issued for a
2 legitimate medical purpose by a prescribing practitioner acting in
3 the usual course of professional practice;

4 (2) the prescribing practitioner provides [~~written~~]
5 instructions on each prescription to be filled at a later date
6 indicating the earliest date on which a pharmacy may fill each
7 prescription;

8 (3) the prescribing practitioner concludes that
9 providing the patient with multiple prescriptions in this manner
10 does not create an undue risk of diversion or abuse; and

11 (4) the issuance of multiple prescriptions complies
12 with other applicable state and federal laws.

13 (e) The partial filling of a prescription for a controlled
14 substance listed in Schedule II is permissible, if the pharmacist
15 is unable to supply the full quantity called for in a written or
16 electronic prescription or emergency oral prescription and the
17 pharmacist makes a notation of the quantity supplied on the face of
18 the written prescription, on the [~~or~~] written record of the
19 emergency oral prescription, or in the electronic prescription
20 record. The remaining portion of the prescription may be filled
21 within 72 hours of the first partial filling; however, if the
22 remaining portion is not or cannot be filled within the 72-hour
23 period, the pharmacist shall so notify the prescribing individual
24 practitioner. No further quantity may be supplied beyond 72 hours
25 without a new prescription.

26 (f) A prescription for a Schedule II controlled substance
27 [~~written~~] for a patient in a long-term care facility (LTCF) or for a

1 patient with a medical diagnosis documenting a terminal illness may
2 be filled in partial quantities to include individual dosage units.
3 If there is any question about whether a patient may be classified
4 as having a terminal illness, the pharmacist must contact the
5 practitioner before partially filling the prescription. Both the
6 pharmacist and the practitioner have a corresponding
7 responsibility to assure that the controlled substance is for a
8 terminally ill patient. The pharmacist must record the
9 prescription on an official prescription form or in the electronic
10 prescription record and must indicate on the official prescription
11 form or in the electronic prescription record whether the patient
12 is "terminally ill" or an "LTCF patient." A prescription that is
13 partially filled and does not contain the notation "terminally ill"
14 or "LTCF patient" is considered to have been filled in violation of
15 this chapter. For each partial filling, the dispensing pharmacist
16 shall record on the back of the official prescription form or in the
17 electronic prescription record the date of the partial filling, the
18 quantity dispensed, the remaining quantity authorized to be
19 dispensed, and the identification of the dispensing pharmacist.
20 Before any subsequent partial filling, the pharmacist must
21 determine that the additional partial filling is necessary. The
22 total quantity of Schedule II controlled substances dispensed in
23 all partial fillings may not exceed the total quantity prescribed.
24 Schedule II prescriptions for patients in a long-term care facility
25 or patients with a medical diagnosis documenting a terminal illness
26 are valid for a period not to exceed 60 days following the issue
27 date unless sooner terminated by discontinuance of the medication.

1 (g) A person may not dispense a controlled substance in
2 Schedule III or IV that is a prescription drug under the Federal
3 Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without
4 a written, electronic, oral, or telephonically [~~or electronically~~]
5 communicated prescription of a practitioner defined by Section
6 481.002(39)(A) or (D), except that the practitioner may dispense
7 the substance directly to an ultimate user. A prescription for a
8 controlled substance listed in Schedule III or IV may not be filled
9 or refilled later than six months after the date on which the
10 prescription is issued and may not be refilled more than five times,
11 unless the prescription is renewed by the practitioner. A
12 prescription under this subsection must comply with other
13 applicable state and federal laws.

14 (h) A pharmacist may dispense a controlled substance listed
15 in Schedule III, IV, or V under a written, electronic, oral, or
16 telephonically [~~or electronically~~] communicated prescription
17 issued by a practitioner defined by Section 481.002(39)(C) and only
18 if the pharmacist determines that the prescription was issued for a
19 valid medical purpose and in the course of professional practice. A
20 prescription issued under this subsection may not be filled or
21 refilled later than six months after the date the prescription is
22 issued and may not be refilled more than five times, unless the
23 prescription is renewed by the practitioner.

24 (k) A prescription for a controlled substance must show:

25 (1) the quantity of the substance prescribed:

26 (A) numerically, followed by the number written
27 as a word, if the prescription is written; [~~or~~]

1 (B) numerically, if the prescription is
2 electronic; or

3 (C) if the prescription is communicated orally or
4 telephonically, as transcribed by the receiving pharmacist;

5 (2) the date of issue;

6 (2-a) if the prescription is issued for a Schedule II
7 controlled substance to be filled at a later date under Subsection
8 (d-1), the earliest date on which a pharmacy may fill the
9 prescription;

10 (3) the name, address, and date of birth or age of the
11 patient or, if the controlled substance is prescribed for an
12 animal, the species of the animal and the name and address of its
13 owner;

14 (4) the name and strength of the controlled substance
15 prescribed;

16 (5) the directions for use of the controlled
17 substance;

18 (6) the intended use of the substance prescribed
19 unless the practitioner determines the furnishing of this
20 information is not in the best interest of the patient;

21 (7) the [~~legibly printed or stamped~~] name, address,
22 Federal Drug Enforcement Administration registration number, and
23 telephone number of the practitioner at the practitioner's usual
24 place of business, which must be legibly printed or stamped on a
25 written prescription;

26 (8) if the prescription is handwritten, the signature
27 of the prescribing practitioner; and

1 (9) if the prescribing practitioner is licensed in
2 this state, the practitioner's department registration number.

3 SECTION 2. Subsections (a), (e), and (g) through (j),
4 Section 481.075, Health and Safety Code, are amended to read as
5 follows:

6 (a) A practitioner who prescribes a controlled substance
7 listed in Schedule II shall, except as provided by rule adopted
8 under Section 481.0761, record the prescription on an official
9 prescription form or in an electronic prescription that includes
10 the information required by this section.

11 (e) Each official prescription form or electronic
12 prescription used to prescribe a Schedule II controlled substance
13 must contain:

14 (1) information provided by the prescribing
15 practitioner, including:

16 (A) the date the prescription is issued
17 ~~[written]~~;

18 (B) the controlled substance prescribed;

19 (C) the quantity of controlled substance
20 prescribed, shown:

21 (i) numerically, followed by the number
22 written as a word, if the prescription is written; or

23 (ii) numerically, if the prescription is
24 electronic;

25 (D) the intended use of the controlled substance
26 or the diagnosis for which it is prescribed and the instructions for
27 use of the substance;

1 (E) the practitioner's name, address, department
2 registration number, and Federal Drug Enforcement Administration
3 number;

4 (F) the name, address, and date of birth or age of
5 the person for whom the controlled substance is prescribed; and

6 (G) if the prescription is issued to be filled at
7 a later date under Section 481.074(d-1), the earliest date on which
8 a pharmacy may fill the prescription;

9 (2) information provided by the dispensing
10 pharmacist, including the date the prescription is filled; and

11 (3) for a written prescription, the signatures of the
12 prescribing practitioner and the dispensing pharmacist or for an
13 electronic prescription, the prescribing practitioner's electronic
14 signature or other secure method of validation authorized by
15 federal law.

16 (g) Except for an oral prescription prescribed under
17 Section 481.074(b), the prescribing practitioner shall:

18 (1) legibly fill in, or direct a designated agent to
19 legibly fill in, on the official prescription form or in the
20 electronic prescription, each item of information required to be
21 provided by the prescribing practitioner under Subsection (e)(1),
22 unless the practitioner determines that:

23 (A) under rule adopted by the director for this
24 purpose, it is unnecessary for the practitioner or the
25 practitioner's agent to provide the patient identification number;
26 or

27 (B) it is not in the best interest of the patient

1 for the practitioner or practitioner's agent to provide information
2 regarding the intended use of the controlled substance or the
3 diagnosis for which it is prescribed; and

4 (2) sign the official prescription form and give the
5 form to the person authorized to receive the prescription or, in the
6 case of an electronic prescription, electronically sign or validate
7 the electronic prescription as authorized by federal law and
8 transmit the prescription to the dispensing pharmacy.

9 (h) In the case of an oral prescription prescribed under
10 Section 481.074(b), the prescribing practitioner shall give the
11 dispensing pharmacy the information needed to complete the official
12 prescription form or electronic prescription record.

13 (i) Each dispensing pharmacist shall:

14 (1) fill in on the official prescription form or note
15 in the electronic prescription record each item of information
16 given orally to the dispensing pharmacy under Subsection (h) and~~[7]~~
17 the date the prescription is filled, and:

18 (A) for a written prescription, fill in the
19 dispensing pharmacist's signature; or

20 (B) for an electronic prescription,
21 appropriately record the identity of the dispensing pharmacist in
22 the electronic prescription record;

23 (2) retain with the records of the pharmacy for at
24 least two years:

25 (A) the official prescription form or the
26 electronic prescription record, as applicable; and

27 (B) the name or other patient identification

1 required by Section 481.074(m) or (n); and

2 (3) send all information required by the director,
3 including any information required to complete an official
4 prescription form or electronic prescription record, to the
5 director by electronic transfer or another form approved by the
6 director not later than the 15th day after the last day of the month
7 in which the prescription is completely filled.

8 (j) A medication order written for a patient who is admitted
9 to a hospital at the time the medication order is written and filled
10 is not required to be on an official prescription [a] form or in an
11 electronic prescription record that meets the requirements of this
12 section.

13 SECTION 3. Subsection (d), Section 481.0761, Health and
14 Safety Code, is amended to read as follows:

15 (d) The director by rule shall authorize a practitioner to
16 determine whether it is necessary to obtain a particular patient
17 identification number and to provide that number on the official
18 prescription form or in the electronic prescription record.

19 SECTION 4. Section 552.118, Government Code, is amended to
20 read as follows:

21 Sec. 552.118. EXCEPTION: OFFICIAL PRESCRIPTION PROGRAM
22 INFORMATION [~~FORM~~]. Information is excepted from the requirements
23 of Section 552.021 if it is:

24 (1) information on or derived from an official
25 prescription form or electronic prescription record filed with the
26 director of the Department of Public Safety under Section 481.075,
27 Health and Safety Code; or

1 (2) other information collected under Section 481.075
2 of that code.

3 SECTION 5. Subsection (c), Section 157.059, Occupations
4 Code, is amended to read as follows:

5 (c) The physician may not delegate:

6 (1) the use of a prescription sticker or the use or
7 issuance of an official prescription form; or

8 (2) the authority to issue an electronic prescription
9 under Section 481.075, Health and Safety Code.

10 SECTION 6. The change in law made by this Act applies only
11 to the issuance of a prescription on or after the effective date of
12 this Act. The issuance of a prescription before the effective date
13 of this Act is covered by the law in effect when the prescription
14 was issued, and the former law is continued in effect for that
15 purpose.

16 SECTION 7. This Act takes effect September 1, 2011.