

BILL ANALYSIS

Senate Research Center

S.B. 1643
By: Williams; Nelson
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas prescription program (program) was created by the Texas Legislature in 1982 to monitor Schedule II controlled substance prescriptions. The 80th Legislature expanded the program to include the monitoring of Schedule III through Schedule V controlled substance prescriptions.

Diversion of prescription drugs is a significant abuse problem, and this program was created to be an efficient, cost-effective tool for investigating and preventing drug diversion. Although controlled substances have valid medical uses, they also have potential for abuse and addiction. The program seeks to control misuse by following controlled substances to the point of ultimate use.

S.B. 1643 amends current law relating to the monitoring of prescriptions for certain controlled substances, and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 481.002, Health and Safety Code, by amending Subdivisions (20) and (32) to redefine "hospital" and "patient" and adding Subdivision (54) to define "health information exchange."

SECTION 2. Amends Section 481.076, Health and Safety Code, by amending Subsections (a) and (e) and adding Subsections (a-1) and (a-2), as follows:

(a) Prohibits the director of the Department of Public Safety of the State of Texas (DPS) or an employee of DPS designated by the director of DPS (director) from permitting any person to have access to information submitted to the director under Section 481.074(q) (relating to requiring each dispensing pharmacist to send certain information required by the director to the director by electronic transfer or another form approved by the director not later than the seventh day after the date the prescription is completely filled) or 481.075 (Official Prescription Program) except:

(1)-(2) Makes no change to these subdivisions; or

(3) if the director finds that proper need has been shown to the director:

(A) Makes no change to this subdivision;

(B) a pharmacist or a pharmacy technician, as defined by Section 551.003 (Definitions), Occupations Code, acting at the direction of a pharmacist or a practitioner who is a physician, dentist, veterinarian, podiatrist, or advanced practice nurse or is a physician assistant described by Section 481.002(39)(D) (defining "practitioner" as an advanced practice nurse or

physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under certain sections) or a nurse licensed under Chapter 301 (Nurses), Occupations Code, acting at the direction of a practitioner and is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner; or

(C) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity.

(a-1) Authorizes a person authorized to receive information under Subsection (a)(3)(B) or (C) to access that information through a health insurance exchange, subject to proper security measures to ensure against disclosure to unauthorized persons.

(a-2) Authorizes a person authorized to receive information under Subsection (a)(3)(B) to include that information in any form in the medical or pharmacy record of the patient who is the subject of the information. Provides that any information included in a patient's medical or pharmacy record under this subsection is subject to any applicable state or federal confidentiality or privacy laws.

(e) Requires the director to remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the director not later than the end of the 36th calendar month, rather than the 12th calendar month, after the month in which the identity is entered into the system.

SECTION 3. Amends Section 481.127(a), Health and Safety Code, to provide that a person commits an offense if the person knowingly gives, permits, or obtains unauthorized access to information submitted to the director under Section 481.074 (g) (relating to prohibiting the disposal of or the refilling of a prescription for a Schedule III or IV substance under certain circumstances) or 481.075 (Official Prescription Program).

SECTION 4. Amends Chapter 481, Health and Safety Code, by adding Subchapter I, as follows:

SUBCHAPTER I. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP

Sec. 481.351. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP. Provides that the interagency prescription monitoring work group is created to evaluate the effectiveness of prescription monitoring under this chapter (Texas Controlled Substances Act) and offer recommendations to improve the effectiveness and efficiency of recordkeeping and other functions related to the regulation of dispensing controlled substances by prescription.

Sec. 481.352. MEMBERS. Provides that the work group is composed of:

- (1) the director or the director's designee;
- (2) the commissioner of state health services or the commissioner's designee;
- (3) the executive director of the Texas State Board of Pharmacy or the executive director's designee;
- (4) the executive director of the Texas Medical Board or the executive director's designee;
- (5) the executive director of the Texas Board of Nursing or the executive director's designee; and
- (6) the executive director of the Texas Physician Assistant Board or the executive director's designee.

Sec. 481.353. MEETINGS. (a) Requires the work group to meet at least quarterly.

(b) Provides that the work group is subject to Chapter 551 (Open Meetings), Government Code.

(c) Requires the work group to proactively engage stakeholders and solicit and take into account input from the public.

Sec. 481.354. REPORT. Requires the work group, not later than December 1 of each even-numbered year, to submit to the legislature its recommendations relating to prescription monitoring.

SECTION 5. Amends Section 168.102, Occupations Code, by adding Subsection (d), to prohibit TMB, if an applicant for a certificate under this chapter is under investigation by TMB for a violation of this subtitle, TMB rules, or other law relating to the prescription, dispensation, administration, supply, or sale of a controlled substance, from making a decision on the application until TMB has reached a final decision on the matter under investigation.

SECTION 6. Amends Section 168.202(a), Occupations Code, to provide that a violation of this chapter or a rule adopted under this chapter is grounds for disciplinary action, including a temporary suspension or restriction under Section 164.059 (Temporary Suspension or Restriction of License), against a pain management clinic certified under this chapter or an owner or operator of a clinic certified under this chapter.

SECTION 7. Effective date: September 1, 2013.