

BILL ANALYSIS

C.S.S.B. 1643
By: Williams
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Although controlled substances have valid medical uses, they also have the potential for abuse and addiction. For a number of decades, Texas law has provided efficient, cost-effective mechanisms for monitoring prescriptions for Schedule II controlled substances for purposes of investigating and preventing drug diversion. Recent legislation expanded those provisions of law to include the monitoring of Schedule III through Schedule V controlled substance prescriptions. C.S.S.B. 1643 seeks to further amend current law relating to the monitoring of prescriptions for certain controlled substances and provide related penalties.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1643 amends the Health and Safety Code to redefine "hospital" to include a licensed freestanding emergency medical care facility and "patient" to include a human for whom or an animal for which a drug is intended to be administered, dispensed, delivered, or prescribed by a practitioner for purposes of the Texas Controlled Substances Act. The bill defines "health information exchange," for purposes of that act, as an organization that assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement; that, as a primary business function, compiles or organizes health-related information that is designed to be securely transmitted by the organization among physicians, health care providers, or entities within a region, state, community, or hospital system; or that assists in the transmission or receipt of electronic health-related information among physicians, health care providers, or entities within a hospital system, a physician organization, a health care collaborative, an accountable care organization participating in the Pioneer Model under the initiative by the Innovation Center of the Centers for Medicare and Medicaid Services, or an accountable care organization participating in the federal Medicare shared savings program.

C.S.S.B. 1643 requires each prescription form or electronic prescription used to prescribe a Schedule II controlled substance to contain, in addition to other specified information, the method of payment used to pay for the prescription and requires each dispensing pharmacist to fill in on the official prescription form or note in the electronic prescription record such information.

C.S.S.B. 1643 includes a pharmacy technician acting at the direction of a pharmacist and a licensed nurse acting at the direction of a practitioner who is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner among the persons authorized to access certain information submitted to the director of the Department of Public Safety under the official prescription program or by a dispensing pharmacist if the director finds that proper need has been shown. The bill authorizes certain pharmacists and health care

professionals authorized to receive such information to access that information through a health information exchange, subject to proper security measures to ensure against disclosure to unauthorized persons. The bill authorizes the same persons, other than a pharmacist or practitioner inquiring about the person's own dispensing or prescribing activity, to include the information accessed in any form in the medical or pharmacy record of the patient who is the subject of the information and makes any information included in a patient's medical or pharmacy record subject to any applicable state or federal confidentiality or privacy laws. The bill extends the deadline by which the director is required to remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted to the director from the end of the 12th calendar month after the month in which the identity is entered into the system to the end of the 36th calendar month after such time.

C.S.S.B. 1643 expands the conduct that constitutes the state jail felony offense involving knowingly giving, permitting, or obtaining unauthorized access to information submitted to the director under the official prescription program to include knowingly giving, permitting, or obtaining unauthorized access to certain information provided to the director by a dispensing pharmacist including information relating to Schedule III through V prescription forms.

C.S.S.B. 1643 creates the interagency prescription monitoring work group to evaluate the effectiveness of prescription monitoring under the Texas Controlled Substances Act and to offer recommendations to improve the effectiveness and efficiency of recordkeeping and other functions related to the regulation of dispensing controlled substances by prescription. The bill establishes that the work group is composed of the director or the director's designee, the commissioner of state health services or the commissioner's designee, the executive director of the Texas State Board of Pharmacy or the executive director's designee, the executive director of the Texas Medical Board or the executive director's designee, and the executive director of the Texas Board of Nursing or the executive director's designee. The bill requires the work group to meet at least quarterly and specifies that the work group is subject to state open meeting laws. The bill requires the work group to proactively engage stakeholders and to solicit and take into account input from the public and, not later than December 1 of each even-numbered year, to submit to the legislature its recommendations relating to prescription monitoring.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1643 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 481.002, Health and Safety Code, is amended.

SECTION 1. Same as engrossed version.

SECTION 2. Subsections (e) and (i), Section 491.075, Health and Safety Code, are amended.

SECTION 2. Same as engrossed version except for recitation.

SECTION 3. Section 481.076, Health and Safety Code, is amended by amending Subsections (a) and (e) and adding Subsection (a-1) to read as follows:

(a) The director may not permit any person to have access to information submitted to the director under Section 481.074(q) or 481.075 except:

(1) an investigator for the Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas State Board of Pharmacy;

(2) an authorized officer or member of the department engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state; or

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

(A) a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(B) a pharmacist or a pharmacy technician, as defined by Section 551.003, 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) or a nurse licensed under Chapter 301, 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) A person authorized to receive information under Subsection (a)(3)(B) or (C) may access that information through a health information exchange, subject to proper security measures to ensure against disclosure to unauthorized persons.

SECTION 3. Section 481.076, Health and Safety Code, is amended by amending Subsections (a) and (e) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The director may not permit any person to have access to information submitted to the director under Section 481.074(q) or 481.075 except:

(1) an investigator for the Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas State Board of Pharmacy;

(2) an authorized officer or member of the department engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state; or

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

(A) a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(B) a pharmacist or a pharmacy technician, as defined by Section 551.003, 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) or a nurse licensed under Chapter 301, 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) A person authorized to receive information under Subsection (a)(3)(B) or (C) may access that information through a health information exchange, subject to proper security measures to ensure against disclosure to unauthorized persons.

(a-2) A person authorized to receive information under Subsection (a)(3)(B) may include that information in any form in the medical or pharmacy record of the patient

who is the subject of the information. 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) The director shall 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 [~~42th~~] calendar month after the month in which the identity is entered into the system. However, the director may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

SECTION 4. Subsection (a), Section 481.127, Health and Safety Code, is amended.

SECTION 5. Chapter 481, Health and Safety Code, is amended.

SECTION 6. This Act takes effect September 1, 2013.

(e) The director shall 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 [~~42th~~] calendar month after the month in which the identity is entered into the system. However, the director may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

SECTION 4. Same as engrossed version except for recitation.

SECTION 5. Same as engrossed version.

SECTION 6. Same as engrossed version.