

By: Williams, et al.
(Alvarado)

S.B. No. 1643

Substitute the following for S.B. No. 1643:

By: Kolkhorst

C.S.S.B. No. 1643

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the monitoring of prescriptions for certain controlled
3 substances; providing penalties.

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

5 SECTION 1. Section 481.002, Health and Safety Code, is
6 amended by amending Subdivisions (20) and (32) and adding
7 Subdivision (54) to read as follows:

8 (20) "Hospital" means:

9 (A) a general or special hospital as defined by
10 Section 241.003 [~~(Texas Hospital Licensing Law)~~]; [~~or~~]

11 (B) an ambulatory surgical center licensed under
12 Chapter 243 [~~by the Texas Department of Health~~] and approved by the
13 federal government to perform surgery paid by Medicaid on patients
14 admitted for a period of not more than 24 hours; or

15 (C) a freestanding emergency medical care
16 facility licensed under Chapter 254.

17 (32) "Patient" means a human for whom or an animal for
18 which a drug:

19 (A) is administered, dispensed, delivered, or
20 prescribed by a practitioner; or

21 (B) is intended to be administered, dispensed,
22 delivered, or prescribed by a practitioner.

23 (54) "Health information exchange" means an
24 organization that:

1 (A) assists in the transmission or receipt of
2 health-related information among organizations transmitting or
3 receiving the information according to nationally recognized
4 standards and under an express written agreement;

5 (B) as a primary business function, compiles or
6 organizes health-related information that is designed to be
7 securely transmitted by the organization among physicians, health
8 care providers, or entities within a region, state, community, or
9 hospital system; or

10 (C) assists in the transmission or receipt of
11 electronic health-related information among physicians, health
12 care providers, or entities within:

13 (i) a hospital system;

14 (ii) a physician organization;

15 (iii) a health care collaborative, as
16 defined by Section 848.001, Insurance Code;

17 (iv) an accountable care organization
18 participating in the Pioneer Model under the initiative by the
19 Innovation Center of the Centers for Medicare and Medicaid
20 Services; or

21 (v) an accountable care organization
22 participating in the Medicare shared savings program under 42
23 U.S.C. Section 1395jjj.

24 SECTION 2. Sections 481.075(e) and (i), Health and Safety
25 Code, are amended to read as follows:

26 (e) Each official prescription form or electronic
27 prescription used to prescribe a Schedule II controlled substance

1 must contain:

2 (1) information provided by the prescribing
3 practitioner, including:

4 (A) the date the prescription is issued;

5 (B) the controlled substance prescribed;

6 (C) the quantity of controlled substance
7 prescribed, shown:

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

10 (ii) numerically, if the prescription is
11 electronic;

12 (D) the intended use of the controlled substance
13 or the diagnosis for which it is prescribed and the instructions for
14 use of the substance;

15 (E) the practitioner's name, address, and
16 Federal Drug Enforcement Administration number issued for
17 prescribing a controlled substance in this state;

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

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

23 (2) information provided by the dispensing
24 pharmacist, including the date the prescription is filled and the
25 method of payment used to pay for the prescription; and

26 (3) for a written prescription, the signatures of the
27 prescribing practitioner and the dispensing pharmacist or for an

1 electronic prescription, the prescribing practitioner's electronic
2 signature or other secure method of validation authorized by
3 federal law.

4 (i) Each dispensing pharmacist shall:

5 (1) fill in on the official prescription form or note
6 in the electronic prescription record each item of information
7 given orally to the dispensing pharmacy under Subsection (h), ~~and~~
8 the date the prescription is filled, and the method of payment used
9 to pay for the prescription, and:

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

12 (B) for an electronic prescription,
13 appropriately record the identity of the dispensing pharmacist in
14 the electronic prescription record;

15 (2) retain with the records of the pharmacy for at
16 least two years:

17 (A) the official prescription form or the
18 electronic prescription record, as applicable; and

19 (B) the name or other patient identification
20 required by Section 481.074(m) or (n); and

21 (3) send all information required by the director,
22 including any information required to complete an official
23 prescription form or electronic prescription record, to the
24 director by electronic transfer or another form approved by the
25 director not later than the seventh day after the date the
26 prescription is completely filled.

27 SECTION 3. Section 481.076, Health and Safety Code, is

1 amended by amending Subsections (a) and (e) and adding Subsections
2 (a-1) and (a-2) to read as follows:

3 (a) The director may not permit any person to have access to
4 information submitted to the director under Section 481.074(q) or
5 481.075 except:

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

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

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

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

21 (B) a pharmacist or a pharmacy technician, as
22 defined by Section 551.003, Occupations Code, acting at the
23 direction of a pharmacist or a practitioner who is a physician,
24 dentist, veterinarian, podiatrist, or advanced practice nurse or is
25 a physician assistant described by Section 481.002(39)(D) or a
26 nurse licensed under Chapter 301, Occupations Code, acting at the
27 direction of a practitioner and is inquiring about a recent

1 Schedule II, III, IV, or V prescription history of a particular
2 patient of the practitioner; or

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

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

9 (a-2) A person authorized to receive information under
10 Subsection (a)(3)(B) may include that information in any form in
11 the medical or pharmacy record of the patient who is the subject of
12 the information. Any information included in a patient's medical
13 or pharmacy record under this subsection is subject to any
14 applicable state or federal confidentiality or privacy laws.

15 (e) The director shall remove from the information
16 retrieval system, destroy, and make irretrievable the record of the
17 identity of a patient submitted under this section to the director
18 not later than the end of the 36th [~~12th~~] calendar month after the
19 month in which the identity is entered into the system. However,
20 the director may retain a patient identity that is necessary for use
21 in a specific ongoing investigation conducted in accordance with
22 this section until the 30th day after the end of the month in which
23 the necessity for retention of the identity ends.

24 SECTION 4. Section 481.127(a), Health and Safety Code, is
25 amended to read as follows:

26 (a) A person commits an offense if the person knowingly
27 gives, permits, or obtains unauthorized access to information

1 submitted to the director under Section 481.074(g) or 481.075.

2 SECTION 5. Chapter 481, Health and Safety Code, is amended
3 by adding Subchapter I to read as follows:

4 SUBCHAPTER I. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP

5 Sec. 481.351. INTERAGENCY PRESCRIPTION MONITORING WORK
6 GROUP. The interagency prescription monitoring work group is
7 created to evaluate the effectiveness of prescription monitoring
8 under this chapter and offer recommendations to improve the
9 effectiveness and efficiency of recordkeeping and other functions
10 related to the regulation of dispensing controlled substances by
11 prescription.

12 Sec. 481.352. MEMBERS. The work group is composed of:

- 13 (1) the director or the director's designee;
14 (2) the commissioner of state health services or the
15 commissioner's designee;
16 (3) the executive director of the Texas State Board of
17 Pharmacy or the executive director's designee;
18 (4) the executive director of the Texas Medical Board
19 or the executive director's designee; and
20 (5) the executive director of the Texas Board of
21 Nursing or the executive director's designee.

22 Sec. 481.353. MEETINGS. (a) The work group shall meet at
23 least quarterly.

24 (b) The work group is subject to Chapter 551, Government
25 Code.

26 (c) The work group shall proactively engage stakeholders
27 and solicit and take into account input from the public.

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

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