

By: Schwertner

S.B. No. 195

A BILL TO BE ENTITLED

AN ACT

1
2 relating to information relating to prescriptions for certain
3 controlled substances.

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

5 SECTION 1. Sections 481.074(c), (p), and (q), Health and
6 Safety Code, are amended to read as follows:

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

1 (p) On receipt of the prescription, the dispensing pharmacy
2 shall file the facsimile copy of the prescription and shall send
3 information to the Texas State Board of Pharmacy [~~director~~] as
4 required by Section 481.075.

5 (q) Each dispensing pharmacist shall send all required
6 information [~~required by the director~~], including any information
7 required to complete the Schedule III through V prescription forms,
8 to the Texas State Board of Pharmacy [~~director~~] by electronic
9 transfer or another form approved by the board [~~director~~] not later
10 than the seventh day after the date the prescription is completely
11 filled.

12 SECTION 2. Section 481.075(i), Health and Safety Code, is
13 amended to read as follows:

14 (i) Each dispensing pharmacist shall:

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

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

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

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

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

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

3 (3) send all required information [~~required by the~~
4 ~~director~~], including any information required to complete an
5 official prescription form or electronic prescription record, to
6 the Texas State Board of Pharmacy [~~director~~] by electronic transfer
7 or another form approved by the board [~~director~~] not later than the
8 seventh day after the date the prescription is completely filled.

9 SECTION 3. Section 481.076, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 481.076. OFFICIAL PRESCRIPTION INFORMATION; DUTIES OF
12 TEXAS STATE BOARD OF PHARMACY. (a) The board [~~director~~] may not
13 permit any person to have access to information submitted to the
14 board [~~director~~] under Section 481.074(q) or 481.075 except:

15 (1) an investigator for the board, the Texas Medical
16 Board, the Texas State Board of Podiatric Medical Examiners, the
17 State Board of Dental Examiners, the State Board of Veterinary
18 Medical Examiners, or the Texas Board of Nursing[, ~~or the Texas~~
19 ~~State Board of Pharmacy~~];

20 (2) an authorized officer or member of the department
21 or authorized employee or member of the board engaged in the
22 administration, investigation, or enforcement of this chapter or
23 another law governing illicit drugs in this state or another state;
24 [~~or~~]

25 (3) if the board [~~director~~] finds that proper need has
26 been shown to the board, [~~director~~];

27 [~~(A)~~] a law enforcement or prosecutorial

1 official engaged in the administration, investigation, or
2 enforcement of this chapter or another law governing illicit drugs
3 in this state or another state;

4 (4) [~~(B)~~] a pharmacist or a pharmacy technician, as
5 defined by Section 551.003, Occupations Code, acting at the
6 direction of a pharmacist or a practitioner who is a physician,
7 dentist, veterinarian, podiatrist, or advanced practice nurse or is
8 a physician assistant described by Section 481.002(39)(D) or a
9 nurse licensed under Chapter 301, Occupations Code, acting at the
10 direction of a practitioner and is inquiring about a recent
11 Schedule II, III, IV, or V prescription history of a particular
12 patient of the practitioner; [~~or~~]

13 (5) [~~(C)~~] a pharmacist or practitioner who is
14 inquiring about the person's own dispensing or prescribing
15 activity; or

16 (6) one or more states or an association of states with
17 which the board has an interoperability agreement, as provided by
18 Subsection (j).

19 (a-1) A person authorized to receive information under
20 Subsection (a)(4) [~~(a)(3)(B)~~] or (5) [~~(C)~~] may access that
21 information through a health information exchange, subject to
22 proper security measures to ensure against disclosure to
23 unauthorized persons.

24 (a-2) A person authorized to receive information under
25 Subsection (a)(4) [~~(a)(3)(B)~~] may include that information in any
26 form in the medical or pharmacy record of the patient who is the
27 subject of the information. Any information included in a

1 patient's medical or pharmacy record under this subsection is
2 subject to any applicable state or federal confidentiality or
3 privacy laws.

4 (b) This section does not prohibit the board [~~director~~] from
5 creating, using, or disclosing statistical data about information
6 received by the board [~~director~~] under this section if the board
7 [~~director~~] removes any information reasonably likely to reveal the
8 identity of each patient, practitioner, or other person who is a
9 subject of the information.

10 (c) The board [~~director~~] by rule shall design and implement
11 a system for submission of information to the board [~~director~~] by
12 electronic or other means and for retrieval of information
13 submitted to the board [~~director~~] under this section and Sections
14 [481.074](#) and [481.075](#). The board [~~director~~] shall use automated
15 information security techniques and devices to preclude improper
16 access to the information. The board [~~director~~] shall submit the
17 system design to the director [~~Texas State Board of Pharmacy~~] and
18 the Texas Medical Board for review and approval or comment a
19 reasonable time before implementation of the system and shall
20 comply with the comments of those agencies unless it is
21 unreasonable to do so.

22 (d) Information submitted to the board [~~director~~] under
23 this section may be used only for:

24 (1) the administration, investigation, or enforcement
25 of this chapter or another law governing illicit drugs in this state
26 or another state;

27 (2) investigatory or evidentiary purposes in

1 connection with the functions of an agency listed in Subsection
2 (a)(1); or

3 (3) dissemination by the board [~~director~~] to the
4 public in the form of a statistical tabulation or report if all
5 information reasonably likely to reveal the identity of each
6 patient, practitioner, or other person who is a subject of the
7 information has been removed.

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

17 (f) If the board [~~director~~] permits access to information
18 under Subsection (a)(2) relating to a person licensed or regulated
19 by an agency listed in Subsection (a)(1), the board [~~director~~]
20 shall notify and cooperate with that agency regarding the
21 disposition of the matter before taking action against the person,
22 unless the board [~~director~~] determines that notification is
23 reasonably likely to interfere with an administrative or criminal
24 investigation or prosecution.

25 (g) If the board [~~director~~] permits access to information
26 under Subsection (a)(3) [~~(a)(3)(A)~~] relating to a person licensed
27 or regulated by an agency listed in Subsection (a)(1), the board

1 ~~[director]~~ shall notify that agency of the disclosure of the
2 information not later than the 10th working day after the date the
3 information is disclosed.

4 (h) If the board ~~[director]~~ withholds notification to an
5 agency under Subsection (f), the board ~~[director]~~ shall notify the
6 agency of the disclosure of the information and the reason for
7 withholding notification when the board ~~[director]~~ determines that
8 notification is no longer likely to interfere with an
9 administrative or criminal investigation or prosecution.

10 (i) Information submitted to the board ~~[director]~~ under
11 Section 481.074(q) or 481.075 is confidential and remains
12 confidential regardless of whether the board ~~[director]~~ permits
13 access to the information under this section.

14 (j) The board may enter into an interoperability agreement
15 with one or more states or an association of states authorizing the
16 board to access prescription monitoring information maintained or
17 collected by the other state or states or the association,
18 including information maintained on a central database such as the
19 National Association of Boards of Pharmacy Prescription Monitoring
20 Program InterConnect. Pursuant to an interoperability agreement,
21 the board may authorize the prescription monitoring program of one
22 or more states or an association of states to access information
23 submitted to the board under Sections 481.074(q) and 481.075,
24 including by submitting or sharing information through a central
25 database such as the National Association of Boards of Pharmacy
26 Prescription Monitoring Program InterConnect.

27 (k) A person authorized to access information under

1 Subsection (a)(4) who is registered with the board for electronic
2 access to the information is entitled to directly access the
3 information available from other states pursuant to an
4 interoperability agreement described by Subsection (j).

5 (1) In this section, "board" means the Texas State Board of
6 Pharmacy.

7 SECTION 4. Section 481.0761, Health and Safety Code, is
8 amended by amending Subsections (a), (c), (d), (e), and (f) and
9 adding Subsections (c-1) and (g) to read as follows:

10 (a) The Texas State Board of Pharmacy [~~director~~] shall
11 consult with the director [~~Texas State Board of Pharmacy~~] and by
12 rule establish and revise as necessary a standardized database
13 format that may be used by a pharmacy to transmit the information
14 required by Sections 481.074(q) and 481.075(i) to the board
15 [~~director~~] electronically or to deliver the information on storage
16 media, including disks, tapes, and cassettes.

17 (c) The director by rule may:

18 (1) permit more than one prescription to be
19 administered or dispensed and recorded on one prescription form for
20 a Schedule III through V controlled substance;

21 (2) [(1-a)] establish a procedure for the issuance of
22 multiple prescriptions of a Schedule II controlled substance under
23 Section 481.074(d-1); and

24 (3) [(2)] remove from or return to the official
25 prescription program any aspect of a practitioner's or pharmacist's
26 hospital practice, including administering or dispensing.

27 (c-1) The Texas State Board of Pharmacy by rule may:

1 (1) [~~+~~
2 ~~[(3)]~~ waive or delay any requirement relating to the
3 time or manner of reporting;

4 (2) [~~(4)]~~ establish compatibility protocols for
5 electronic data transfer hardware, software, or format, including
6 any necessary modifications for participation in a database
7 described by Section 481.076(j);

8 (3) [~~(5)]~~ establish a procedure to control the release
9 of information under Sections 481.074, 481.075, and 481.076; and

10 (4) [~~(6)]~~ establish a minimum level of prescription
11 activity below which a reporting activity may be modified or
12 deleted.

13 (d) The Texas State Board of Pharmacy [~~director~~] by rule
14 shall authorize a practitioner to determine whether it is necessary
15 to obtain a particular patient identification number and to provide
16 that number on the official prescription form or in the electronic
17 prescription record.

18 (e) In adopting a rule relating to the electronic transfer
19 of information under this subchapter, the Texas State Board of
20 Pharmacy [~~director~~] shall consider the economic impact of the rule
21 on practitioners and pharmacists and, to the extent permitted by
22 law, act to minimize any negative economic impact, including the
23 imposition of costs related to computer hardware or software or to
24 the transfer of information. The board [~~director~~] may not adopt a
25 rule relating to the electronic transfer of information under this
26 subchapter that imposes a fee in addition to the fees authorized by
27 Section 481.064.

1 (f) The Texas State Board of Pharmacy [~~director~~] may
2 authorize a contract between the board [~~department~~] and another
3 agency of this state or a private vendor as necessary to ensure the
4 effective operation of the official prescription program.

5 (g) The Texas State Board of Pharmacy may adopt rules
6 providing for a person authorized to access information under
7 Section 481.076(a)(4) to be enrolled in electronic access to the
8 information described by Section 481.076(a) at the time the person
9 obtains or renews the person's applicable professional or
10 occupational license or registration.

11 SECTION 5. (a) The changes in law made by this Act apply
12 only to information submitted or accessed on or after January 1,
13 2016.

14 (b) The Texas State Board of Pharmacy may enter into an
15 interoperability agreement described by Section 481.076(j), as
16 added by this Act, before January 1, 2016, but the agreement may not
17 go into effect until on or after January 1, 2016.

18 SECTION 6. (a) Not later than January 1, 2016, the
19 Department of Public Safety shall transfer the appropriate records
20 received by the department under Sections 481.074, 481.076, and
21 481.0761, Health and Safety Code, to the Texas State Board of
22 Pharmacy.

23 (b) The Texas State Board of Pharmacy shall adopt any rules
24 required by Chapter 481, Health and Safety Code, as amended by this
25 Act, not later than December 1, 2016.

26 (c) A rule, form, policy, procedure, or decision adopted
27 under Chapter 481, Health and Safety Code, as it existed before

1 amendment by this Act, continues in effect as a rule, form, policy,
2 procedure, or decision and remains in effect until amended or
3 replaced.

4 (d) A reference in law or an administrative rule to the
5 public safety director of the Department of Public Safety relating
6 to rulemaking authority given and duties transferred to the Texas
7 State Board of Pharmacy by this Act is a reference to the Texas
8 State Board of Pharmacy.

9 SECTION 7. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2015.