BILL ANALYSIS

Senate Research Center

H.B. 2811
By: Price et al. (Hughes)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been observed that the rates of abuse of, and accidental poisoning deaths resulting from, controlled substances and other dangerous drugs are increasing as Texas and the nation as a whole suffer from an opioid epidemic. It has been suggested that instituting various reforms regarding the prescription of these drugs for acute pain and providing for the safe storage and disposal of leftover drugs would help to decrease those rates and save countless lives.

H.B. 2811 endeavors to address the devastation wrought by the opioid crisis by setting out provisions intended to improve the process by which drugs are prescribed to treat acute pain and to make patients and their caregivers more aware of the dangers of opioids and other related drugs.

H.B. 2811 amends the Occupations Code to set out provisions relating to the prescribing of controlled substances and dangerous drugs for acute pain by a practitioner, defined as a person, other than a veterinarian, who is authorized to prescribe a controlled substance. The bill assigns "dangerous drug" the meaning provided under the Texas Dangerous Drug Act and provides that acute pain does not include chronic pain or pain being treated as part of cancer care, end-of-life care, or palliative care.

H.B. 2811 amends current law relating to the prescribing of controlled substances and dangerous drugs for acute pain.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 1 (Section 107A.002, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 3, Occupations Code, by adding Chapter 107A, as follows:

CHAPTER 107A. TREATMENT FOR ACUTE PAIN

Sec. 107A.001. DEFINITIONS. Defines "abuse," "substance abuse," "acute pain," "addiction," "chronic pain," "controlled substance," "dangerous drug," "diversion," "pain," "physical dependence," "practitioner," "tolerance," and "withdrawal."

Sec. 107A.002. EVALUATION OF PATIENT WITH ACUTE PAIN. (a) Provides that a practitioner's treatment of a patient's acute pain is evaluated by considering whether the treatment meets the generally accepted standard of care.

(b) Requires a practitioner to obtain a medical history and a physical examination that includes a problem-focused examination specific to the chief presenting complaint of the patient. Requires the patient's medical record to document the medical history and physical examination.

(c) Requires the Texas Medical Board (TMB) to adopt rules governing what information a practitioner who is prescribing a controlled substance or dangerous drug for acute pain or creating a treatment plan for the treatment of acute pain is required to be placed in the patient's medical record regarding the medical history and physical examination of the patient. Authorizes the rules adopted under this subsection to create different standards for practitioners treating patients with acute pain in an emergency department.

(d) Requires a practitioner, before prescribing a controlled substance or dangerous drug for the treatment of acute pain, to review prescription data and history related to the patient under Section 481.076 (Official Prescription Information; Duties of Texas State Board of Pharmacy), Health and Safety Code.

(e) Requires a practitioner, if a practitioner determines that reviewing the patient's prescription data and history under Subsection (d) is not necessary before prescribing a controlled substance or dangerous drug to the patient, to document in the patient's medical record the practitioner's rationale for not reviewing the data and history.

Sec. 107A.003. INFORMED CONSENT. (a) Requires each regulatory agency that issues a license, certification, or registration to a practitioner to create specific written guidelines for a discussion between the practitioner and a patient with acute pain, or the patient's surrogate or guardian if the patient is unable to give consent for the patient's medical treatment, about the risks and benefits of the use of a controlled substance or dangerous drug to treat the patient's acute pain.

(b) Requires the written guidelines to require that the discussion:

(1) be verbal;

(2) be documented by a signed document maintained in the patient's medical record or a contemporaneous notation included in the patient's medical record; and

(3) include an explanation of:

(A) the risk of addiction associated with the drug prescribed, including any risk of developing an addiction or a physical or psychological dependence on the drug;

(B) the risk of taking the drug in a dosage greater than the dosage prescribed;

(C) the danger of taking the drug with benzodiazepines, alcohol, or other central nervous system depressants;

(D) the reasons why the prescription is necessary;

(E) the responsibility of the patient to safeguard all drugs in a secure location;

(F) methods for safely disposing of an unused portion of a controlled substance or dangerous drug prescription;

(G) the patient's diagnosis;

(H) the proposed treatment plan;

(I) any anticipated therapeutic results, including realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief;

(J) therapies available in addition to or instead of drug therapy, including non-pharmacological therapeutic modalities or psychological techniques;

(K) potential side effects and techniques for managing the side effects;

(L) possible adverse effects, including the potential for tolerance and withdrawal; and

(M) the potential for impairment of judgment and motor skills.

(c) Authorizes a regulatory agency described by Subsection (a) to develop written guidelines for written information to be provided to the patient about the risks and benefits of a controlled substance or dangerous drug used to treat the patient's acute pain. Prohibits the guidelines from authorizing the practitioner to provide the written information under this subsection in lieu of discussing the information verbally with the patient as described by Subsection (b).

Sec. 107A.004. PERIODIC REVIEW OF TREATMENT OF ACUTE PAIN; CONSULTATION AND REFERRAL. (a) Requires the practitioner, if necessary, to:

(1) see the patient being treated for acute pain for periodic review at reasonable intervals; or

(2) subject to Subsection (c), refer the patient to another practitioner for further evaluation and treatment.

(b) Requires the practitioner to review the patient's compliance with the prescribed treatment plan and reevaluate the potential for substance abuse or diversion.

(c) Provides that patients who are at risk for substance abuse or addiction and patients with acute pain and histories of substance abuse or addiction or with comorbid psychiatric disorders require the consideration of a consultation with or referral to an expert in the management of those patients.

SECTION 2. Requires TMB to adopt and implement the rules described by Section 107A.002(c), Occupations Code, as added by this Act, not later than March 1, 2020.

SECTION 3. Requires each regulatory agency that issues a license, certification, or registration to a practitioner as defined by Section 107A.001, Occupations Code, as added by this Act, to create and make available to the practitioner the specific written discussion guidelines required by Section 107A.003, Occupations Code, as added by this Act, not later than March 1, 2020.

SECTION 4. Makes application of this Act prospective to March 1, 2020.

SECTION 5. Effective date: September 1, 2019.