By:  Hinojosa S.B. No. 2316

A BILL TO BE ENTITLED

AN ACT

relating to controlled substance prescriptions under the Texas Controlled Substances Act; creating a criminal offense.

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

SECTION 1.  Section 481.003(a), Health and Safety Code, is amended to read as follows:

(a)  The director may adopt rules to administer and enforce this chapter, other than Sections 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, 481.0767, 481.0768, and 481.0769. The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, 481.0767, 481.0768, and 481.0769.

SECTION 2.  Section 481.076, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (a-6) to read as follows:

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

(1)  the board, the Texas Medical Board, the Texas Department of Licensing and Regulation, with respect to the regulation of podiatrists [~~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 Optometry Board for the purpose of:

(A)  investigating a specific license holder; or

(B)  monitoring for potentially harmful prescribing or dispensing patterns or practices under Section 481.0762;

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

(3)  the department on behalf of 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;

(4)  a medical examiner conducting an investigation;

(5)  provided that accessing the information is authorized under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and regulations adopted under that Act:

(A)  a pharmacist or a pharmacy technician, as defined by Section 551.003, Occupations Code, acting at the direction of a pharmacist; or

(B)  a practitioner who:

(i)  is a physician, dentist, veterinarian, podiatrist, optometrist, or advanced practice nurse or is a physician assistant described by Section 481.002(39)(D) or an employee or other agent of a practitioner acting at the direction of a practitioner; and

(ii)  is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner;

(6)  a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity; [~~or~~]

(7)  one or more states or an association of states with which the board has an interoperability agreement, as provided by Subsection (j); or

(8)  the patient or patient's authorized representative inquiring about the patient's prescription record, including persons who have accessed that record.

(a-6)  A patient or the patient's authorized representative is entitled to a copy of the patient's prescription record as provided by Subsection (a)(8), including a list of persons who have accessed that record, if the patient or representative submits to the board a completed patient data request form and any supporting documentation required by the board. The board may charge a reasonable fee for providing the copy. The board shall adopt rules to implement this subsection, including rules prescribing the patient data request form, listing the documentation required for receiving a copy of the prescription record, and setting the fee.

SECTION 3.  Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.07655, 481.0767, 481.0768, and 481.0769 to read as follows:

Sec. 481.07655.  LIMITATION OF LIABILITY. (a)  A prescriber or dispenser is not liable in a civil action for damages arising from the failure to access prescription drug information as required or authorized by Section 481.0764 or failure to submit the information to the board as required under Section 481.074(q) or 481.075, unless the failure constitutes gross negligence or wilful misconduct and the prescriber or dispenser would be liable to the claimant under other law.

(b)  This section does not establish a standard of care.

Sec. 481.0767.  ADVISORY COMMITTEE. (a)  The board shall establish an advisory committee to make recommendations regarding information submitted to the board and access to that information under Sections 481.074, 481.075, 481.076, and 481.0761.

(b)  The board shall appoint the following members to the advisory committee:

(1)  a physician licensed in this state who practices in pain management;

(2)  a physician licensed in this state who practices in family medicine;

(3)  a physician licensed in this state who performs surgery;

(4)  a physician licensed in this state who practices in emergency medicine;

(5)  a dentist licensed in this state who performs oral surgery;

(6)  a podiatrist licensed in this state;

(7)  a physician assistant to whom a physician has delegated the authority to prescribe or order a drug;

(8)  an advanced practice registered nurse to whom a physician has delegated the authority to prescribe or order a drug;

(9)  a pharmacist working at a chain pharmacy;

(10)  a pharmacist working at an independent pharmacy;

(11)  a veterinarian; and

(12)  an electronic records consultant.

(c)  Members of the advisory committee serve three-year terms. Each member shall serve until the member's replacement has been appointed.

(d)  The advisory committee shall annually elect a presiding officer from its members.

(e)  The advisory committee shall meet at least two times a year and at the call of the presiding officer or the board.

(f)  A member of the advisory committee serves without compensation but may be reimbursed by the board for actual expenses incurred in performing the duties of the advisory committee.

(g)  The advisory committee is abolished and this section expires on September 1, 2023.

Sec. 481.0768.  CRIMINAL OFFENSES RELATED TO PRESCRIPTION INFORMATION. (a)  A person authorized to receive information under Section 481.076(a) commits an offense if the person discloses or uses the information in a manner not authorized by this subchapter or other law.

(b)  A person requesting information under Section 481.076(a-6) commits an offense if the person makes a material misrepresentation or fails to disclose a material fact in the request for information under that subsection.

(c)  An offense under Subsection (a) is a Class A misdemeanor.

(d)  An offense under Subsection (b) is a Class C misdemeanor.

Sec. 481.0769.  ADMINISTRATIVE PENALTY: DISCLOSURE OR USE OF INFORMATION. (a)  A regulatory agency that issues a license, certification, or registration to a prescriber or dispenser shall periodically update the administrative penalties, or any applicable disciplinary guidelines concerning the penalties, assessed by that agency for conduct constituting an offense under Section 481.0768(a).

(b)  The agency shall set the penalties in an amount sufficient to deter the conduct.

SECTION 4.  Section 554.051, Occupations Code, is amended by amending Subsection (a-1) and adding Subsection (a-2) to read as follows:

(a-1)  The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655, [~~and~~] 481.0766, 481.0768, and 481.0769, Health and Safety Code.

(a-2)  The board may adopt rules to administer Section 481.0767, Health and Safety Code. This subsection expires September 1, 2023.

SECTION 5.  Section 565.003, Occupations Code, is amended to read as follows:

Sec. 565.003.  ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless compliance would violate the pharmacy or drug statutes or rules in the state in which the pharmacy is located, the board may discipline an applicant for or the holder of a nonresident pharmacy license if the board finds that the applicant or license holder has failed to comply with:

(1)  Section 481.073, 481.074, [~~or~~] 481.075, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, 481.07655, 481.0766, 481.0768, or 481.0769, Health and Safety Code;

(2)  Texas substitution requirements regarding:

(A)  the practitioner's directions concerning generic substitution;

(B)  the patient's right to refuse generic substitution; or

(C)  notification to the patient of the patient's right to refuse substitution;

(3)  any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or

(4)  any board rule adopted under Section 554.051(a) and determined by the board to be applicable under Section 554.051(b).

SECTION 6.  The State Auditor's Office, in accordance with Chapter 321, Government Code, shall audit the Texas State Board of Pharmacy with respect to the information submitted to the board and access to that information under Sections 481.074, 481.075, 481.076, and 481.0761, Health and Safety Code. The audit must consider the economy and efficiency and the effectiveness of the systems for submission of and access to the information, including vendor performance and contract management. The audit must be completed not later than December 1, 2024.

SECTION 7.  Not later than September 1, 2020, each regulatory agency that issues a license, certification, or registration to a prescriber or dispenser shall evaluate and update any administrative penalties and guidelines as provided by Section 481.0769, Health and Safety Code, as added by this Act.

SECTION 8.  Notwithstanding Section 24, Chapter 485 (H.B. 2561), Acts of the 85th Legislature, Regular Session, 2017, Section 481.0764(a), Health and Safety Code, as added by that Act, applies only to:

(1)  a prescriber, other than a veterinarian, who issues a prescription for a controlled substance on or after March 1, 2020; or

(2)  a person authorized by law to dispense a controlled substance, other than a veterinarian, who dispenses a controlled substance on or after March 1, 2020.

SECTION 9.  This Act takes effect September 1, 2019.