

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 20, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: HB3284 by Sheffield (Relating to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; authorizing a fee; providing for administrative penalties; creating criminal offenses.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3284, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2019
2020	(\$484,716)	\$484,716	6.0
2021	(\$456,056)	\$456,056	6.0
2022	(\$456,056)	\$456,056	6.0
2023	(\$456,056)	\$456,056	6.0
2024	(\$456,056)	\$456,056	6.0

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to prescribing and dispensing controlled substances and monitoring the prescribing and dispensing of controlled substances under the Texas Controlled Substances Act; providing for administrative penalties.

The bill would require prescribers to issue electronic prescriptions for controlled substances except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP).

The bill would authorize a patient or patient's legal guardian to request and receive a copy of the patient's prescription record and list of persons who have accessed the patient's prescription record. Under the provisions of the bill, the Board of Pharmacy would be authorized to charge a fee for providing a copy of a patient's prescription record.

The bill would create a criminal offense for a person authorized to access patient prescription information if the person discloses or uses the information in an unauthorized way or if in the request for information, the person misrepresents or fails to disclose a material fact.

The provisions of the bill would add reporting requirements for veterinarians who dispense controlled substances. The bill would require electronic prescriptions for controlled substances except in certain circumstances.

Under the provisions of the bill, TSBP may not permit the Department of Public Safety (DPS) and other law enforcement or prosecutorial staff access to information in the Prescription Monitoring Program (PMP) database unless TSBP is provided a warrant, subpoena, or other court order, at which point DPS, other law enforcement, or prosecutorial staff may submit a request for information to TSBP. The bill requires that TSBP notify relevant regulatory agencies of the disclosure of information in certain circumstances.

The bill would authorize access to information in the PMP for health care facilities certified by the federal Centers for Medicare and Medicaid Services.

The bill would add restrictions to a prescriber's authority to prescribe controlled substances for acute pain.

The bill would take effect September 1, 2019.

Methodology

The bill would authorize patients and a patient's legal guardian to request and receive a copy of the patient's prescription record and list of persons who have accessed the patient's prescription record. TSBP estimates it would require \$150,048 in General Revenue in fiscal year 2020 and each fiscal year thereafter and two additional full-time-equivalent (FTE) positions to process these requests and provide copies of patient records.

Under the provisions of the bill, DPS, other law enforcement, or prosecutorial staff that obtain a warrant, subpoena, or other court order may submit a request for information in the PMP to TSBP. TSBP indicates that it would require two additional FTEs and \$178,051 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process information requests for the PMP.

The bill would require prescribers to issue electronic prescriptions for controlled substances

except in certain circumstances or in the event the prescriber has obtained a waiver from the Texas State Board of Pharmacy (TSBP). The agency indicates it would require two additional FTEs and \$114,701 in General Revenue in fiscal year 2020 and each fiscal year thereafter to process waiver requests from prescribers.

According to the Board of Pharmacy's analysis, the agency would require an additional \$41,916 in other operating and equipment costs in fiscal year 2020 and \$13,256 in each subsequent fiscal year.

The estimated total to comply with the provisions of the bill would be \$484,716 in fiscal year 2020 and \$456,056 in each subsequent fiscal year.

Each agency that participates in the Prescription Monitoring Program (the Texas Medical Board, Optometry Board, Board of Dental Examiners, Board of Nursing, Board of Veterinary Medical Examiners, and Department of Licensing and Regulation) will increase fees or use available revenue to fund the cost of implementing the provisions of the bill.

DPS, the Department of Licensing and Regulation, the Texas Medical Board, the Board of Dental Examiners, and the Board of Veterinary Medical Examiners indicate the provisions of the bill could be implemented using existing resources.

Local Government Impact

A Class C misdemeanor is punishable by a fine of not more than \$500. In addition to the fine, punishment can include up to 180 days of deferred disposition. A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Source Agencies: 515 Board of Pharmacy, 578 Board of Veterinary Medical Examiners, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners

LBB Staff: WP, ESt, AKi, SGr, DFR