88R7685 JSC-F

By:  Klick H.B. No. 2767

A BILL TO BE ENTITLED

AN ACT

relating to the sharing of controlled substance prescription monitoring information between the Texas State Board of Pharmacy and the Health and Human Services Commission for the state Medicaid program.

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

SECTION 1.  Section 481.076, Health and Safety Code, is amended by amending Subsections (a), (d), and (k) and adding Subsections (a-3) and (l) 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, 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 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 or other 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, if the board is provided a warrant, subpoena, or other court order compelling the disclosure;

(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 pharmacist-intern, pharmacy technician, or pharmacy technician trainee, as defined by Section 551.003, Occupations Code, acting at the direction of a pharmacist, who is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the 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 a practitioner who is inquiring about the prescribing activity of an individual to whom the practitioner has delegated prescribing authority;

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

(8)  a health care facility certified by the federal Centers for Medicare and Medicaid Services; [~~or~~]

(9)  the patient, the patient's parent or legal guardian, if the patient is a minor, or the patient's legal guardian, if the patient is an incapacitated person, as defined by Section 1002.017(2), Estates Code, inquiring about the patient's prescription record, including persons who have accessed that record; or

(10)  the Health and Human Services Commission or the commission's designee for the purpose of meeting the standards required by 42 U.S.C. Section 1396w-3a for a qualified prescription drug monitoring program.

(a-3)  A person authorized to receive information under Subsection (a)(10) may only access information necessary to comply with 42 U.S.C. Section 1396w-3a for the purpose of administering the medical assistance program under Chapter 32, Human Resources Code.

(d)  Information submitted to the board under this section may be used only for:

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

(2)  investigatory, evidentiary, or monitoring purposes in connection with the functions of an agency listed in Subsection (a)(1);

(3)  the prescribing and dispensing of controlled substances by a person listed in Subsection (a)(5); [~~or~~]

(4)  dissemination by the board to the public in the form of a statistical tabulation or report if all information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information has been removed; or

(5)  the administration of the medical assistance program under Chapter 32, Human Resources Code.

(k)  A person authorized to access information under Subsection (a)(4), [~~or~~] (5), or (10) who is registered with the board for electronic access to the information is entitled to directly access the information available from other states pursuant to an interoperability agreement described by Subsection (j).

(l)  The board shall enter into and maintain a data-sharing agreement with the Health and Human Services Commission for the purpose of complying with 42 U.S.C. Section 1396w-3a(b). The agreement must include a provision requiring the board and the commission to timely share information to allow the commission sufficient time to prepare and submit the annual report to the United States Secretary of Health and Human Services described by 42 U.S.C. Section 1396w-3a(e).

SECTION 2.  The Texas State Board of Pharmacy and the Health and Human Services Commission shall enter into the data-sharing agreement described by Section 481.076(l), Health and Safety Code, as added by this Act, not later than January 1, 2024.

SECTION 3.  If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.