

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;

1 (3) the department or other law enforcement or
2 prosecutorial official engaged in the administration,
3 investigation, or enforcement of this chapter or another law
4 governing illicit drugs in this state or another state, if the board
5 is provided a warrant, subpoena, or other court order compelling
6 the disclosure;

7 (4) a medical examiner conducting an investigation;

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

12 (A) a pharmacist or a pharmacist-intern,
13 pharmacy technician, or pharmacy technician trainee, as defined by
14 Section 551.003, Occupations Code, acting at the direction of a
15 pharmacist, who is inquiring about a recent Schedule II, III, IV, or
16 V prescription history of a particular patient of the pharmacist;
17 or

18 (B) a practitioner who:

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

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

27 (6) a pharmacist or practitioner who is inquiring

1 about the person's own dispensing or prescribing activity or a
2 practitioner who is inquiring about the prescribing activity of an
3 individual to whom the practitioner has delegated prescribing
4 authority;

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

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

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

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

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

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

27 (1) the administration, investigation, or enforcement

1 of this chapter or another law governing illicit drugs in this state
2 or another state;

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

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

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

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

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

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

1 42 U.S.C. Section 1396w-3a(e).

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

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

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