

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 25 2019

Date

Honorable Dan Patrick  
President of the Senate

Honorable Dennis Bonnen  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3284 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

One Nelson  
Nelson

Campbell  
Campbell

Schwertner  
Schwertner

Kel Seliger  
Seliger

Thyr Watson  
On the part of the Senate Watson

D.D. Sheffield  
D.D. Sheffield

Donna Howard  
Howard

Moody  
Moody

Stucky  
Stucky

On the part of the House Zepvas

### Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.



# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 3284

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prescribing and dispensing of controlled substances  
3 under the Texas Controlled Substances Act; authorizing a fee;  
4 providing for administrative penalties; creating criminal  
5 offenses.

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

7 SECTION 1. Section 481.076, Health and Safety Code, is  
8 amended by amending Subsections (a), (f), (g), and (h) and adding  
9 Subsection (a-6) to read as follows:

10 (a) The board may not permit any person to have access to  
11 information submitted to the board under Section 481.074(q) or  
12 481.075 except:

13 (1) the board, the Texas Medical Board, the Texas  
14 Department of Licensing and Regulation, with respect to the  
15 regulation of podiatrists [~~State Board of Podiatric Medical~~  
16 ~~Examiners~~], the State Board of Dental Examiners, the State Board of  
17 Veterinary Medical Examiners, the Texas Board of Nursing, or the  
18 Texas Optometry Board for the purpose of:

19 (A) investigating a specific license holder; or  
20 (B) monitoring for potentially harmful  
21 prescribing or dispensing patterns or practices under Section  
22 481.0762;

23 (2) an [~~authorized officer or member of the department~~  
24 ~~or~~] authorized employee of the board engaged in the administration,

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

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

9 (4) a medical examiner conducting an investigation;

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

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

17 (B) a practitioner who:

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

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

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

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

4           (8) a health care facility certified by the federal  
5 Centers for Medicare and Medicaid Services; or

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

12           (a-6) A patient, the patient's parent or legal guardian, if  
13 the patient is a minor, or the patient's legal guardian, if the  
14 patient is an incapacitated person, as defined by Section  
15 1002.017(2), Estates Code, is entitled to a copy of the patient's  
16 prescription record as provided by Subsection (a)(9), including a  
17 list of persons who have accessed that record, if a completed  
18 patient data request form and any supporting documentation required  
19 by the board is submitted to the board. The board may charge a  
20 reasonable fee for providing the copy. The board shall adopt rules  
21 to implement this subsection, including rules prescribing the  
22 patient data request form, listing the documentation required for  
23 receiving a copy of the prescription record, and setting the fee.

24           (f) If the board accesses [~~director permits access to~~]  
25 information under Subsection (a)(2) relating to a person licensed  
26 or regulated by an agency listed in Subsection (a)(1), the board  
27 [~~director~~] shall notify and cooperate with that agency regarding

1 the disposition of the matter before taking action against the  
2 person, unless the board [~~director~~] determines that notification is  
3 reasonably likely to interfere with an administrative or criminal  
4 investigation or prosecution.

5 (g) If the board provides [~~director permits~~] access to  
6 information under Subsection (a)(3) relating to a person licensed  
7 or regulated by an agency listed in Subsection (a)(1), the board  
8 [~~director~~] shall notify that agency of the disclosure of the  
9 information not later than the 10th working day after the date the  
10 information is disclosed.

11 (h) If the board [~~director~~] withholds notification to an  
12 agency under Subsection (f), the board [~~director~~] shall notify the  
13 agency of the disclosure of the information and the reason for  
14 withholding notification when the board [~~director~~] determines that  
15 notification is no longer likely to interfere with an  
16 administrative or criminal investigation or prosecution.

17 SECTION 2. Section 481.0766, Health and Safety Code, is  
18 amended by adding Subsection (c) to read as follows:

19 (c) The board shall make the information reported under  
20 Subsection (a) available to the State Board of Veterinary Medical  
21 Examiners for the purpose of routine inspections and  
22 investigations.

23 SECTION 3. Subchapter C, Chapter 481, Health and Safety  
24 Code, is amended by adding Sections 481.0767, 481.0768, and  
25 481.0769 to read as follows:

26 Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall  
27 establish an advisory committee to make recommendations regarding

1 information submitted to the board and access to that information  
2 under Sections 481.074, 481.075, 481.076, and 481.0761, including  
3 recommendations for:

4 (1) operational improvements to the electronic system  
5 that stores the information, including implementing best practices  
6 and improvements that address system weaknesses and workflow  
7 challenges;

8 (2) resolutions to identified data concerns;

9 (3) methods to improve data accuracy, integrity, and  
10 security and to reduce technical difficulties; and

11 (4) the addition of any new data set or service to the  
12 information submitted to the board or the access to that  
13 information.

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

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

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

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

22 (4) a physician licensed in this state who practices  
23 in emergency medicine at a hospital;

24 (5) a physician licensed in this state who practices  
25 in psychiatry;

26 (6) an oral and maxillofacial surgeon;

27 (7) a physician assistant or advanced practice

1 registered nurse to whom a physician has delegated the authority to  
2 prescribe or order a drug;

3 (8) a pharmacist working at a chain pharmacy;

4 (9) a pharmacist working at an independent pharmacy;

5 (10) an academic pharmacist; and

6 (11) two representatives of the health information  
7 technology industry, at least one of whom is a representative of a  
8 company whose primary line of business is electronic medical  
9 records.

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

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

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

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

20 Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE  
21 OF INFORMATION. (a) A person authorized to receive information  
22 under Section 481.076(a) may not disclose or use the information in  
23 a manner not authorized by this subchapter or other law.

24 (b) A regulatory agency that issues a license,  
25 certification, or registration to a prescriber or dispenser shall  
26 periodically update the administrative penalties, or any  
27 applicable disciplinary guidelines concerning the penalties,



1 assessed by that agency for conduct that violates Subsection (a).

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

4 Sec. 481.0769. CRIMINAL OFFENSES RELATED TO PRESCRIPTION  
5 INFORMATION. (a) A person authorized to receive information under  
6 Section 481.076(a) commits an offense if the person discloses or  
7 uses the information in a manner not authorized by this subchapter  
8 or other law.

9 (b) A person requesting information under Section  
10 481.076(a-6) commits an offense if the person makes a material  
11 misrepresentation or fails to disclose a material fact in the  
12 request for information under that subsection.

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

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

17 SECTION 4. Section 801.307, Occupations Code, is amended by  
18 adding Subsection (a-1) to read as follows:

19 (a-1) The board by rule shall require a veterinarian to  
20 complete two hours of continuing education related to opioid abuse  
21 and controlled substance diversion, inventory, and security every  
22 two years to renew a license to practice veterinary medicine.

23 SECTION 5. Section 481.003(a), Health and Safety Code, is  
24 amended to read as follows:

25 (a) The director may adopt rules to administer and enforce  
26 this chapter, other than Sections 481.073, 481.074, 481.075,  
27 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [~~and~~]

1 481.0766, 481.0767, 481.0768, and 481.0769. The board may adopt  
2 rules to administer Sections 481.073, 481.074, 481.075, 481.076,  
3 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [~~and~~] 481.0766,  
4 481.0767, 481.0768, and 481.0769.

5 SECTION 6. Section 481.128(a), Health and Safety Code, is  
6 amended to read as follows:

7 (a) A registrant or dispenser commits an offense if the  
8 registrant or dispenser knowingly:

9 (1) distributes, delivers, administers, or dispenses  
10 a controlled substance in violation of Subchapter C [~~Sections~~  
11 ~~481.070-481.075~~];

12 (2) manufactures a controlled substance not  
13 authorized by the person's Federal Drug Enforcement Administration  
14 registration or distributes or dispenses a controlled substance not  
15 authorized by the person's registration to another registrant or  
16 other person;

17 (3) refuses or fails to make, keep, or furnish a  
18 record, report, notification, order form, statement, invoice, or  
19 information required by this chapter;

20 (4) prints, manufactures, possesses, or produces an  
21 official prescription form without the approval of the board;

22 (5) delivers or possesses a counterfeit official  
23 prescription form;

24 (6) refuses an entry into a premise for an inspection  
25 authorized by this chapter;

26 (7) refuses or fails to return an official  
27 prescription form as required by Section 481.075(k);

1           (8) refuses or fails to make, keep, or furnish a  
2 record, report, notification, order form, statement, invoice, or  
3 information required by a rule adopted by the director or the board;  
4 or

5           (9) refuses or fails to maintain security required by  
6 this chapter or a rule adopted under this chapter.

7           SECTION 7. Section 481.129(a), Health and Safety Code, is  
8 amended to read as follows:

9           (a) A person commits an offense if the person knowingly:

10           (1) distributes as a registrant or dispenser a  
11 controlled substance listed in Schedule I or II, unless the person  
12 distributes the controlled substance as authorized under the  
13 federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

14           (2) uses in the course of manufacturing, prescribing,  
15 or distributing a controlled substance a Federal Drug Enforcement  
16 Administration registration number that is fictitious, revoked,  
17 suspended, or issued to another person;

18           (3) issues a prescription bearing a forged or  
19 fictitious signature;

20           (4) uses a prescription issued to another person to  
21 prescribe a Schedule II controlled substance;

22           (5) possesses, obtains, or attempts to possess or  
23 obtain a controlled substance or an increased quantity of a  
24 controlled substance:

25           (A) by misrepresentation, fraud, forgery,  
26 deception, or subterfuge;

27           (B) through use of a fraudulent prescription

1 form; ~~or~~

2 (C) through use of a fraudulent oral or  
3 telephonically communicated prescription; or

4 (D) through the use of a fraudulent electronic  
5 prescription; or

6 (6) furnishes false or fraudulent material  
7 information in or omits material information from an application,  
8 report, record, or other document required to be kept or filed under  
9 this chapter.

10 SECTION 8. Section 554.051(a-1), Occupations Code, is  
11 amended to read as follows:

12 (a-1) The board may adopt rules to administer Sections  
13 481.073, 481.074, 481.075, 481.076, 481.0761, 481.0762, 481.0763,  
14 481.0764, 481.0765, ~~and~~ 481.0766, 481.0767, 481.0768, and  
15 481.0769, Health and Safety Code.

16 SECTION 9. Section 565.003, Occupations Code, is amended to  
17 read as follows:

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

25 (1) Subchapter C, Chapter 481 [~~Section 481.074 or~~  
26 ~~481.075~~], Health and Safety Code;

27 (2) Texas substitution requirements regarding:

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

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

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

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

10 (4) any board rule adopted under Section 554.051(a)  
11 and determined by the board to be applicable under Section  
12 554.051(b).

13 SECTION 10. Sections 481.076(a-3), (a-4), and (a-5), Health  
14 and Safety Code, are repealed.

15 SECTION 11. To the extent of any conflict, this Act prevails  
16 over another Act of the 86th Legislature, Regular Session, 2019,  
17 relating to nonsubstantive additions to and corrections in enacted  
18 codes.

19 SECTION 12. Notwithstanding Section 24, Chapter 485 (H.B.  
20 2561), Acts of the 85th Legislature, Regular Session, 2017, Section  
21 481.0764(a), Health and Safety Code, as added by that Act, applies  
22 only to:

23 (1) a prescriber, other than a veterinarian, who  
24 issues a prescription for a controlled substance on or after March  
25 1, 2020; or

26 (2) a person authorized by law to dispense a  
27 controlled substance, other than a veterinarian, who dispenses a

1 controlled substance on or after March 1, 2020.

2 SECTION 13. Section 481.0768(a), Health and Safety Code, as  
3 added by this Act, applies only to conduct that occurs on or after  
4 the effective date of this Act.

5 SECTION 14. Section 801.307(a-1), Occupations Code, as  
6 added by this Act, applies only to the renewal of a license to  
7 practice veterinary medicine on or after September 1, 2020. The  
8 renewal of a license before that date is governed by the law in  
9 effect immediately before the effective date of this Act, and the  
10 former law is continued in effect for that purpose.

11 SECTION 15. This Act takes effect September 1, 2019.

**House Bill 3284**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Section 481.0755 to read as follows:

Sec. 481.0755. WRITTEN, ORAL, AND TELEPHONICALLY COMMUNICATED

PRESCRIPTIONS. (a) Notwithstanding Sections 481.073, 481.074, and 481.075, a person prescribing or dispensing a controlled substance must use the electronic prescription record and may not use a written, oral, or telephonically communicated prescription.

(b) A prescriber may issue a written, oral, or telephonically communicated prescription for a controlled substance as authorized under this subchapter only if the prescription is issued:

(1) by a veterinarian;

(2) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule;

(3) by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule;

(4) when the prescriber and dispenser are the same entity;

(5) in circumstances in which necessary elements are not supported by the most recent electronic prescription drug software;

(6) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;

(7) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health

SENATE VERSION (CS)

SECTION 1. Same as House version.

CONFERENCE

*No equivalent provision.*

*[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]*

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HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;

(8) for a drug under a research protocol;

(9) by a prescriber who is employed by or is practicing a health care profession at a health-related institution, as defined by Section 62.161, Education Code, as added by Chapter 448 (H.B. 7), Acts of the 84th Legislature, 2015;

(10) by a practitioner who has received a waiver under Subsection (c) from the requirement to use electronic prescribing; or

(11) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition.

(c) The board shall adopt rules establishing a process by which a practitioner may request and receive a waiver under Subsection (b)(10), not to exceed one year, from the requirement to use electronic prescribing. The board shall adopt rules establishing the eligibility for a waiver, including:

(1) economic hardship;

(2) technological limitations not reasonably within the control of the practitioner; or

(3) other exceptional circumstances demonstrated by the practitioner.

(d) A written, oral, or telephonically communicated prescription must comply with the applicable requirements prescribed by Sections 481.074 and 481.075.

(e) A dispensing pharmacist who receives a controlled substance prescription in a manner other than electronically



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is not required to verify that the prescription is exempt from the requirement that it be submitted electronically.

(f) The board shall enforce this section.

SECTION 2. Sections 481.076(a), (f), (g), and (h), Health and Safety Code, are amended 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 or other [~~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, if the board is provided a warrant, subpoena, or other court order compelling the disclosure;

(4) a medical examiner conducting an investigation;

SECTION 2. Section 481.076, Health and Safety Code, is amended by amending Subsections (a), (f), (g), and (h) 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 or other [~~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, if the board is provided a warrant, subpoena, or other court order compelling the disclosure;

(4) a medical examiner conducting an investigation;

SECTION 1. Same as Senate version.

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(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) a health care facility certified by the federal Centers for Medicare and Medicaid Services.

SENATE VERSION (CS)

(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);

(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.**

**(a-6) A 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, is entitled to a copy of the**

CONFERENCE

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SENATE VERSION (CS)

CONFERENCE

**patient's prescription record as provided by Subsection (a)(9), including a list of persons who have accessed that record, if a completed patient data request form and any supporting documentation required by the board is submitted to 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.**

(f) If the board accesses [~~director permits access to~~] information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board [~~director~~] shall notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless the board [~~director~~] determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(g) If the board provides [~~director permits~~] access to information under Subsection (a)(3) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board [~~director~~] shall notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h) If the board [~~director~~] withholds notification to an agency under Subsection (f), the board [~~director~~] shall notify the agency of the disclosure of the information and the reason for withholding notification when the board [~~director~~] determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

(f) If the board accesses [~~director permits access to~~] information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board [~~director~~] shall notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless the board [~~director~~] determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(g) If the board provides [~~director permits~~] access to information under Subsection (a)(3) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board [~~director~~] shall notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h) If the board [~~director~~] withholds notification to an agency under Subsection (f), the board [~~director~~] shall notify the agency of the disclosure of the information and the reason for withholding notification when the board [~~director~~] determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

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HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

SECTION 3. Section 481.0766, Health and Safety Code, is amended.

SECTION 3. Same as House version.

SECTION 2. Same as House version.

SECTION 4. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.0767 and 481.0768 to read as follows:

SECTION 4. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.0767, 481.0768, and 481.0769 to read as follows:

SECTION 3. Same as Senate version.

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, including recommendations for:

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, including recommendations for:

(1) operational improvements to the electronic system that stores the information, including implementing best practices and improvements that address system weaknesses and workflow challenges;

(1) operational improvements to the electronic system that stores the information, including implementing best practices and improvements that address system weaknesses and workflow challenges;

(2) resolutions to identified data concerns;

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(3) methods to improve data accuracy, integrity, and security and to reduce technical difficulties; and

(3) methods to improve data accuracy, integrity, and security and to reduce technical difficulties; and

(4) the addition of any new data set or service to the information submitted to the board or the access to that information.

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

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

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

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

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

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

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

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- (4) a physician licensed in this state who practices in emergency medicine at a hospital;
  - (5) a physician licensed in this state who practices in psychiatry;
  - (6) an oral and maxillofacial surgeon;
  - (7) a physician assistant or advanced practice registered nurse to whom a physician has delegated the authority to prescribe or order a drug;
  - (8) a pharmacist working at a chain pharmacy;
  - (9) a pharmacist working at an independent pharmacy;
  - (10) an academic pharmacist; and
  - (11) two representatives of the health information technology industry, at least one of whom is a representative of a company whose primary line of business is electronic medical records.
- (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.
- Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE OF INFORMATION. (a) A person authorized to receive information under Section 481.076(a) may not disclose or use the information in a manner not authorized by this subchapter or other law.

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- (4) a physician licensed in this state who practices in emergency medicine at a hospital;
  - (5) a physician licensed in this state who practices in psychiatry;
  - (6) an oral and maxillofacial surgeon;
  - (7) a physician assistant or advanced practice registered nurse to whom a physician has delegated the authority to prescribe or order a drug;
  - (8) a pharmacist working at a chain pharmacy;
  - (9) a pharmacist working at an independent pharmacy;
  - (10) an academic pharmacist; and
  - (11) two representatives of the health information technology industry, at least one of whom is a representative of a company whose primary line of business is electronic medical records.
- (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.
- Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE OF INFORMATION. (a) A person authorized to receive information under Section 481.076(a) may not disclose or use the information in a manner not authorized by this subchapter or other law.

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(b) 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 that violates Subsection (a).  
(c) The agency shall set the penalties in an amount sufficient to deter the conduct.

SECTION 5. Section 801.307, Occupations Code, is amended.

SECTION 6. 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, **481.0755**, 481.076, 481.0761, 481.0762, 481.0763,

SENATE VERSION (CS)

(b) 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 that violates Subsection (a).  
(c) The agency shall set the penalties in an amount sufficient to deter the conduct.

**Sec. 481.0769. 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.**

SECTION 5. Same as House version.

SECTION 6. 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, **481.0755**, 481.076, 481.0761, 481.0762, 481.0763,

CONFERENCE

SECTION 4. Same as House version.

SECTION 5. 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,

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481.0764, 481.0765, [and] 481.0766, 481.0767, and 481.0768. The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [and] 481.0766, 481.0767, and 481.0768.

SECTION 7. Section 481.128(a), Health and Safety Code, is amended.

SECTION 8. Section 481.129(a), Health and Safety Code, is amended.

SECTION 9. Section 554.051(a-1), Occupations Code, is amended to read as follows:

(a-1) The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [and] 481.0766, 481.0767, and 481.0768, Health and Safety Code.

SECTION 10. Section 565.003, Occupations Code, is amended.

SENATE VERSION (CS)

481.0764, 481.0765, [and] 481.0766, 481.0767, 481.0768, and 481.0769. The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [and] 481.0766, 481.0767, 481.0768, and 481.0769.

SECTION 7. Same as House version.

SECTION 8. Same as House version.

SECTION 9. Section 554.051(a-1), Occupations Code, is amended to read as follows:

(a-1) The board may adopt rules to administer Sections 481.073, 481.074, 481.075, 481.0755, 481.076, 481.0761, 481.0762, 481.0763, 481.0764, 481.0765, [and] 481.0766, 481.0767, 481.0768, and 481.0769, Health and Safety Code.

SECTION 10. Same as House version.

CONFERENCE

481.0765, [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, [and] 481.0766, 481.0767, 481.0768, and 481.0769.

*[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]*

SECTION 6. Same as House version.

SECTION 7. Same as House version.

SECTION 8. Section 554.051(a-1), Occupations Code, is amended 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, [and] 481.0766, 481.0767, 481.0768, and 481.0769, Health and Safety Code.

*[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]*

SECTION 9. Same as House version.

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SECTION 11. Sections 481.076(a-3), (a-4), and (a-5), Health and Safety Code, are repealed.

SECTION 12. To the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

*No equivalent provision.*

SECTION 13. Section 481.0755, Health and Safety Code, as added by this Act, applies only to a prescription issued on or after the effective date of this Act.

SECTION 14. Section 481.0768(a), Health and Safety Code, as added by this Act, applies only to conduct that occurs on or after the effective date of this Act.

SENATE VERSION (CS)

SECTION 11. Same as House version.

SECTION 12. Same as House version.

SECTION 13. 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 14. Same as House version.

SECTION 15. Same as House version.

CONFERENCE

SECTION 10. Same as House version.

SECTION 11. Same as House version.

SECTION 12. Same as Senate version.

*No equivalent provision.*

*[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]*

SECTION 13. Same as House version.



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HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
SECTION 15. Saving provision.	SECTION 16. Same as House version.	SECTION 14. Same as House version.
SECTION 16. Effective date.	SECTION 17. Same as House version.	SECTION 15. Same as House version.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 25, 2019**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate  
 Honorable Dennis Bonnen, Speaker of the House, House of Representatives

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

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

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3284, Conference Committee Report: 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	(\$370,015)	\$370,015	4.0
2021	(\$341,355)	\$341,355	4.0
2022	(\$341,355)	\$341,355	4.0
2023	(\$341,355)	\$341,355	4.0
2024	(\$341,355)	\$341,355	4.0

## **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 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 Texas State Board of Pharmacy (TSBP) 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.

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 \$370,015 in fiscal year

2020 and \$341,355 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, SD, ESt, AKi, SGr, DFR

**Certification of Compliance with  
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under House Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not subject to a point of order under Rule 13.

I certify that a copy of the conference committee report on HB 3284 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

J. D. Sheffield  
(name) J. D. Sheffield

May 25, 2019  
(date)