

SUBJECT: Patient-podiatrist confidentiality protection

COMMITTEE: Public Health — favorable, with amendment

VOTE: 5 ayes — Berlanga, Hirschi, Coleman, Glaze, McDonald
0 nays
4 absent — Delisi, Janek, Maxey, Rodriguez

WITNESSES: For — Mark Hanna, Podiatric Medical Association; Allen Horne, Texas Hospital Association
Against — None

DIGEST: HB 897, as amended, would add confidentiality provisions to patient records and communications between podiatrists and patients. The bill also would allow podiatrists to contract with a health organization approved by the Texas Board of Medical Examiners under VACS art. 4495b, the Medical Practice Act. The confidentiality protection would apply to podiatric information disclosed on or after September 1, 1995, the bill's effective date.

Communications between a podiatrist and a patient relating to professional services and patient records maintained by the podiatrist would be confidential and privileged and could only be disclosed under certain circumstances. The privilege of confidentiality could be claimed by the patient or by the podiatrist on the patient's behalf.

Exceptions to confidentiality protection would apply in a court or administrative proceeding when a proceeding was brought by a patient against the podiatrist, when written consent for the release of information was granted by the patient, when the purpose of the proceeding was to collect for rendered podiatric services or when a patient was attempting to recover monetary damages for any physical or mental condition.

An exception to confidentiality protection also would apply in a disciplinary proceeding, and the Texas Board of Podiatry Examiners would protect the

identity of the patient unless written consent for releasing the information had been obtained or the patient had brought charges against the podiatrist.

Exceptions also would apply in criminal investigations or proceedings against a podiatrist in which the board was participating and a criminal prosecution in which the patient was a victim, witness or defendant. Records or communications would not be discoverable until the court made an *in camera* determination as to their relevancy.

A podiatrist would be authorized to disclose confidential information to a governmental agency if the disclosure was legally required and the patient's identity was protected, to medical or law enforcement personnel under certain circumstances, to qualified financial auditing, management or research personnel, to a person with written consent from the patient for access to the information, to an individual, corporation, governmental entity involved in fee payment or collection for podiatry services, or another podiatrist or assisting personnel participating in the diagnosis, evaluation or treatment of the patient. Information could also be disclosed in a legislative inquiry regarding a state hospital or state school without identifying a patient unless proper consent to the release of information was granted.

Consent for the release of information would have to be in writing and signed by the patient, the parent or legal guardian, an attorney ad litem or a personal representative if the patient was deceased. Written consent would have to specify the information and records to be released, the reasons for the release and the person to whom the information is to be released. Consent could be withdrawn.

A podiatrist would be required to furnish copies of the records requested in a reasonable time period and could charge reasonable fees for furnishing the information. A podiatrist would not have to release the information if the podiatrist determined that access to the information would harm the patient. The podiatrist could delete confidential information about another person who has not consented to the release.

**SUPPORTERS
SAY:**

HB 897 would fill a gap in current law by giving podiatrists and their patients confidentiality protection similar to those that exist for medical doctors and chiropractors and their patients. Confidentiality is important because a patient may reveal sensitive information during the course of diagnosis and treatment, such as HIV infection or family problems that might have led to an accidental injury. Most patients assume that when they are talking to their doctors, including podiatrists, that their conversations are confidential.

The bill also would protect podiatrists. Lack of confidentiality protection and disclosure authorization could cause podiatrists to be challenged legally for information they either disclosed or refused to reveal. HB 897's effective date would protect podiatrists from liability for disclosing information that prior to September 1, 1995, was not considered confidential.

The authority to refuse to release information because it could be harmful to the patient would probably only be exercised in a few rare cases; however, podiatrists should have this authority to appropriately and compassionately respond to unusual circumstances, just as medical doctors do. Podiatrists may have longstanding relationships with a patient or a family and may be told sensitive, confidential information, for example, in the course of treating a child or family member. Patients would still have the right to legally challenge a physician's refusal to furnish requested information.

HB 897 would also allow podiatrists to provide care on behalf of certain nonprofit health organizations formed solely by physicians that are approved by the Texas Board of Medical Examiners and the secretary of state. These nonprofit organizations include physician-hospital organizations (PHOs) and other physician organizations formed to provide health care that may be part of a managed care network. These organizations would not have to contract with podiatrists, but the bill would make clear that they could.

**OPPONENTS
SAY:**

HB 897 would allow podiatrists too much flexibility in determining whether they should release information to a patient. A podiatrist would most likely not know the patient well enough to accurately determine

whether or not a patient's emotional, physical or mental health would be harmed from the disclosure of certain information. The authority to refuse to furnish requested information may be abused, and patients may not know that they have rights to legally challenge a podiatrist's decision.

NOTES:

The committee amendment would change the phrase "a licensed podiatrist may participate in and provide podiatry services on behalf of" to "a licensed provider may contract with" a health organization approved by the board of medical examiners.

The companion bill, SB 548 by Madla, passed the Senate on April 12 and was reported favorably, without amendment, by the House Public Health Committee on April 25. SB 548 is eligible to be considered in lieu of HB 897.