

**SUBJECT:** Establishing opioid prescription limits, requiring e-prescribing

**COMMITTEE:** Public Health — committee substitute recommended

**VOTE:** 9 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Ortega, Price, Sheffield, Zedler

0 nays

2 absent — Coleman, Lucio

**WITNESSES:** For — Cynthia Humphrey, Association of Substance Abuse Programs; TJ Mayes, Bexar County Opioid Task Force; Doug Read, HEB and National Association of Chain Drug Stores; (*Registered, but did not testify*: Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Janis Carter, National Association of Chain Drug Stores; Jamie Dudensing, Texas Association of Health Plans; Jess Calvert, Texas Dental Association; Nora Belcher, Texas E-Health Alliance; Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists; Dan Finch, Texas Medical Association; Stephanie Chiarello, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; Holly Deshields, Walgreens)

Against — Kristin McGarity

On — Kris Kennedy, Office of the Attorney General; Carl Nunziato, Texas Orthopaedic Association; (*Registered, but did not testify*: W. Boyd Bush, Texas State Board of Dental Examiners)

**BACKGROUND:** Health and Safety Code ch. 481 establishes the Texas Controlled Substances Act. This act regulates the prescription and dispensing of certain controlled substances.

**DIGEST:** CSHB 2174 would establish limits on prescribing opioids for acute pain. The bill also would require prescriptions for controlled substances to be submitted electronically rather than in writing, with certain exceptions,

and would establish continuing education requirements for practitioners and pharmacists.

**Opioid prescription limits.** CSHB 2174 would prohibit a practitioner from prescribing more than a 10-day supply of an opioid prescription or issue an opioid refill if they were treating a patient with acute pain. This prescription limit would exempt opioids used to treat substance addiction. "Acute pain" would mean the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. The term would exempt chronic pain or pain being treated as part of cancer care, hospice, other end-of-life care, palliative care.

The limits on prescription drugs under the state Medicaid program would not apply to an opioid prescription used to treat acute pain.

Under the bill, a dispenser would not be subject to criminal, civil, or administrative penalties for dispensing or refusing to dispense a controlled substance under a prescription that exceeded the 10-day limit.

**Electronic prescribing requirements.** CSHB 2174 would require, except in an emergency as defined by the Texas State Board of Pharmacy's rules, a person to dispense or administer a controlled substance using an electronic prescription that met certain requirements as specified in the bill. In an emergency, a person could dispense or administer a controlled substance on the oral or telephonically communicated prescription of a practitioner.

The bill would make other conforming changes regarding electronic prescription requirements for practitioners and pharmacists.

*Exemptions.* Under the bill, a prescription would not be required to be issued electronically and could be issued in writing if it was issued:

- before January 1, 2021;
- by a veterinarian;
- in circumstances in which electronic prescribing was not available

- due to temporary technological or electronic failure;
- by a practitioner to be dispensed by an out-of-state pharmacy;
  - when the prescriber and dispenser were in the same location or under the same license;
  - in circumstances in which necessary elements were not supported by the most recently implemented national data standard that facilitated electronic prescribing;
  - for a drug for which the U.S. Food and Drug Administration required additional information in the prescription that was not possible with electronic prescribing;
  - for a non-patient-specific prescription pursuant to a standing order or other circumstances;
  - for a drug under a research protocol;
  - by a practitioner who had received a waiver from the requirement to use electronic prescribing; or
  - when a practitioner reasonably determined that it would be impractical for the patient to obtain electronically prescribed drugs and that a delay would adversely impact the patient's medical condition.

In an emergency, a practitioner would be permitted to submit a prescription covered by the above list orally or telephonically. Otherwise, the practitioner would have to submit the prescription in writing.

A pharmacist who received a non-electronic prescription would not be required to verify the prescription's status as exempt from being submitted electronically.

The bill would require a written prescription for a Schedule II controlled substance to be on an official prescription form and include certain information required for an electronic prescription as well as the practitioner and dispensing pharmacist's signatures. No more than one Schedule II prescription could be recorded on an official prescription form.

*Waivers.* The bill would require the pharmacy board to convene an

interagency workgroup that included representatives of each regulatory agency that issued a license, certification, or registration to a prescriber. The workgroup would establish recommendations and standards for circumstances in which a waiver from the electronic prescribing requirement was appropriate and a process under which a prescriber could request and receive a waiver. The board would have to adopt rules to establish eligibility for a waiver, including:

- economic hardship;
- technological limitations not reasonably within the prescriber's control; or
- other exceptional circumstances the prescriber demonstrated.

The waiver could be issued to prescribers for one year, and prescribers would be permitted to reapply for a subsequent waiver by 30 days before the date the waiver expired.

**Continuing education.** The bill would require certain practitioners and pharmacists, within a year of their license issuance, to complete two hours of professional education regarding approved procedures of prescribing and monitoring controlled substances. Practitioners and pharmacists who were authorized to dispense a controlled substance before September 1, 2020, would have to complete the course by September 1, 2021.

**Penalties.** The bill would allow the pharmacy board to discipline an applicant for or holder of a nonresident pharmacy license if the board found that the applicant or license holder did not comply with the bill's provisions.

Under the bill, a person would commit an offense if the person knowingly possessed a controlled substance by using a fraudulent electronic prescription.

**Other provisions.** The bill would allow the partial filling of a Schedule II controlled substance prescription in accordance with applicable federal law and allow these prescription fillings for terminally ill hospice patients.

The bill would take effect September 1, 2019.

**SUPPORTERS  
SAY:**

CSHB 2174 would help address the growing rate of prescription drug abuse and the leading cause of maternal death in Texas. Substance abuse and addiction have increased dramatically in the United States, with far-reaching consequences for communities, governmental agencies, and health care providers. It is necessary for the state to establish the 10-day opioid prescription limit because these drugs substantially increase a person's risk of becoming addicted.

By requiring the use of electronic prescription forms, the bill also would reduce pharmacy errors and improve security and data collection.

**OPPONENTS  
SAY:**

CSHB 2174 would interfere unnecessarily in the doctor-patient relationship by establishing opioid prescription limits for patients who need more than a 10-day supply to treat acute pain. The bill should allow practitioners to gradually taper a patient's opioid prescription instead of immediately restricting their access.