

SUBJECT: Requiring e-prescribing of controlled substances under certain scenarios

COMMITTEE: Public Health — committee substitute recommended

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

0 nays

2 absent — Coleman, Ortega

WITNESSES: For — AJ Patel, Walgreens; (*Registered, but did not testify*: Audra Conwell, Alliance of Independent Pharmacists; Janis Carter, National Association of Chain Drug Stores; Nora Belcher, Texas e-Health Alliance; Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists; Duane Galligher, Texas Independent Pharmacies Association; Dan Finch, Texas Medical Association; Bobby Hillert, Texas Orthopaedic Association; Stephanie Chiarello and Debbie Garza, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; John Heal, Texas TrueCare Pharmacies; Daniel Morales, Walmart Stores; and six individuals)

Against — (*Registered, but did not testify*: Bill Kelberlau; Gregory Young)

DIGEST: CSHB 2766 would require prescriptions for controlled substances to be submitted electronically rather than in writing, with certain exceptions.

**Electronic prescribing requirements.** CSHB 2766 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:

- 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 that the prescription was exempt from being submitted electronically.

A written prescription for a Schedule II controlled substance would have to be on an official prescription form and include certain information required for an electronic prescription, the signature of the practitioner, and the signature of the dispensing pharmacist after the prescription was filled. 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. On the waiver's expiration, prescribers would be permitted to reapply for a waiver, if the circumstances that necessitated the waiver continued.

**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. A prescription for a Schedule II controlled substance for a terminally ill patient could be partially filled.

The bill would take effect January 1, 2021.

**SUPPORTERS  
SAY:**

CSHB 2766 would help address the growing rate of prescription drug abuse in the state. Rates of substance abuse and addiction have increased dramatically in the United States, with far-reaching consequences for communities, governmental agencies, and health care providers. By requiring the use of electronic prescription forms, the bill would reduce pharmacy errors and improve security and data collection. The bill would provide several exceptions for electronic prescription requirements, including technological failure.

**OPPONENTS  
SAY:**

CSHB 2766 would interfere unnecessarily in the doctor-patient relationship by requiring electronic prescriptions for controlled substances. The electronic prescription system occasionally malfunctions, resulting in delayed or missed medications for patients who experience ongoing medical conditions.