

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

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Guerra, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Lucio

WITNESSES: For — (*Registered, but did not testify:* Ashley Bishop, AIP Texas; Duane Galligher and Cynthia Humphrey, Association of Substance Abuse Programs; Will Francis, National Association of Social Workers-Texas Chapter; Marshall Kenderdine, Texas Academy of Family Physicians; Price Ashley, Texas College of Emergency Physicians; Nora Belcher, Texas e-Health Alliance; Cameron Duncan, Texas Hospital Association; Dan Finch, Texas Medical Association; Bobby Hillert, Texas Orthopaedic Association; Jim Keffer, Texas Association of Physical Therapists; Bruce McAnally)

Against — Kristin McGarity

On — Rick Wall, Texas Veterinary Medical Association; (*Registered, but did not testify:* Allison Benz, Texas State Board of Pharmacy)

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

Observers have noted the increase in prescription drug abuse, including opioids, in recent years and suggest better prescription monitoring through electronic means is necessary to curb substance abuse and addiction.

DIGEST: CSHB 3284 would require prescriptions for controlled substances to be submitted electronically rather than in writing, with certain exceptions.

The bill also would create an advisory committee to make recommendations on information submitted to the Texas State Board of Pharmacy (TSBP) and establish continuing education requirements for veterinarians.

Electronic prescribing requirements. CSHB 3284 would require a person to prescribe or dispense a controlled substance using an electronic prescription unless it met certain criteria.

Exemptions. Under the bill, a prescription would not be required to be issued electronically and could be issued in writing, orally, or telephonically 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 the same entity;
- in circumstances in which necessary elements were not supported by the most recent electronic prescription drug software;
- 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 prescriber who was employed by or was practicing a health care profession at a health-related institution of higher education;
- 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.

A pharmacist who received a non-electronic prescription would not be required to verify that the prescription was exempt from being submitted electronically.

Waiver. The board would have to adopt rules to establish eligibility for a waiver in which a practitioner could be exempt from the electronic prescribing requirements, including:

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

The waiver could be issued to practitioners for one year.

Advisory committee. The pharmacy board would have to establish an advisory committee to make recommendations on information submitted to the board and access to that information under the Prescription Monitoring Program (PMP), including recommendations for:

- operational improvements to the electronic system that stored information;
- resolutions to identified data concerns;
- methods to improve data accuracy, integrity, and security and to reduce technical difficulties; and
- the addition of any new data set or service.

The advisory committee would include five licensed physicians specializing in certain areas, an oral and maxillofacial surgeon, a physician assistant or advanced practice registered nurse to whom a physician had delegated prescriptive authority, three pharmacists, and two representatives of the health information technology industry.

The committee would meet at least twice a year and could be reimbursed by the board for actual expenses incurred in performing committee duties.

Prescription Monitoring Program. Under the bill, TSBP could not authorize access to information under the PMP by the Department of Public Safety or other law enforcement or prosecutorial official that was investigating or enforcing laws governing illicit drugs unless the board was provided a warrant, subpoena, or other court order compelling the disclosure.

The bill would require the pharmacy board to make PMP information available to the State Board of Veterinary Medical Examiners for routine inspections and investigations.

Continuing education. The pharmacy board by rule would require a veterinarian every two years to complete two hours of continuing education on opioid abuse and controlled substance diversion, inventory, and security to renew a license to practice veterinary medicine. Continuing education requirements would apply only to the renewal of a veterinary license on or after September 1, 2020.

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 pharmacy board could adopt rules to administer the bill's provisions.

Effective date. The bill would take effect September 1, 2019, and would apply to a prescription issued on or after that date.