

BILL ANALYSIS

Senate Research Center
76R4031 PB-D

S.B. 782
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Health Services
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As Filed

DIGEST

Currently, Texas law does not prevent certain persons or entities from selling, sharing, or using specific patient information for marketing, and solicitation based on their particular medical diagnosis or prescription drug use. Entities that manage a company's pharmacy share this data with their employers, due to regulatory voids. This occurs, in part, because the Texas Department of Insurance and the Texas Board of Pharmacy do not have the necessary authority to regulate the activities of pharmacy benefit managers. Further, the state does not have the ability to monitor the financial arrangements between pharmacies, pharmaceutical companies, and pharmacy benefit managers to ensure that these relationships do not influence medical decisions that interfere with the provider-patient relationship. S.B. 782 would require each pharmacist, pharmacy, and pharmacy benefit manager to disclose to the Texas State Board of Pharmacy(board), any financial incentive or other compensation paid or offered to each of them by a pharmaceutical company; requires each pharmacy and pharmacist to ensure that patient health information is maintained in a secure environment and that access to that information is restricted to persons with legitimate reasons for that access; and prohibit a person subject to regulation under this Act from selling, sharing, or using for marketing purposes, a list of patients containing information through which the identity of individual patients is disclosed.

PURPOSE

As proposed, S.B. 782 regulates disclosure requirements for certain information held by pharmacists, pharmacies, and pharmacy benefit managers.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas State Board of Pharmacy in SECTIONS 42 and 43 (Article 4542a-1, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5, Article 4542a-1, V.T.C.S.(Texas Pharmacy Act), by adding the definition "pharmacy technician." Defines "pharmacy benefit manager." Makes conforming changes.

SECTION 2. Amends Article 4542a-1, V.T.C.S., by adding Sections 42-44 as follows:

Sec. 42. DISCLOSURE OF FINANCIAL INCENTIVES REQUIRED. Requires each pharmacist, pharmacy, and pharmacy benefit manager to disclose to the Texas State Board of Pharmacy(board) in a manner provided by rule by the board, any financial incentive or other compensation paid or offered to each of them by a pharmaceutical company.

Sec. 43. LIMITATIONS ON ACCESS TO CERTAIN PATIENT HEALTH INFORMATION. Defines "patient health information." Requires each pharmacy and pharmacist to ensure that patient health information is maintained in a secure environment and that access to that information is restricted to persons with legitimate reasons for that access. Requires the board, by rule, to adopt guidelines regarding access to patient health information regarding pharmaceutical records by persons regulated under this Act and by pharmacy benefit managers. Provides that this section does not supersede or otherwise affect Section 40C of this Act or any requirement regarding confidentiality of personal information regarding a patient that is established under another law of this state or federal law.

Sec. 44. PROHIBITED ACTS; EXCEPTIONS. Prohibits a person subject to regulation under

this Act from selling, sharing, or using for marketing purposes, a list of patients containing information through which the identity of individual patients is disclosed. Prohibits a person, subject to regulation under this Act in Subsection (a) of this section, from selling, sharing, or using a list of persons who have certain diagnoses or use certain types of drugs, in order to solicit an individual patient to use another type or brand of drugs. Prohibits a person subject to regulation under this Act from waiving a prohibition created under this section by requesting or requiring a patient to sign a consent form authorizing a disclosure. Provides that this section does not prohibit a release of information authorized under Section 40C of this Act. Sets forth actions which are not prohibited under this Act.

SECTION 3. Amends Section 1, Article 21.07-6, Insurance Code, by amending Subdivision (1) and by adding Subdivision (9), to redefine “administrator,” and define “pharmacy benefit manager.”

SECTION 4. Amends Article 21.07-6, Insurance Code, by adding Section 25, as follows:

Sec. 25. APPLICATION TO PHARMACY BENEFIT MANAGERS; DISCLOSURE OF CERTAIN PATIENT INFORMATION PROHIBITED. Prohibits a person from operating as a pharmacy benefit manager in this state unless the person holds a certificate or authority issued under this article to act as an administrator. Prohibits an administrator who operates as a pharmacy benefit manager from disclosing to an employer contracting with the administrator under an employer plan, information in the administrator’s possession or to which the administrator has access that was compiled during the course of a patient’s treatment who is an employee or dependant of an employee and that could reasonably be used to determine the identity of the patient. Sets forth the information in an administrator’s possession.

SECTION 5. Effective date: September 1, 1999.

SECTION 6. Emergency clause.