

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 782
By: Nelson
Health Services
4/7/1999
Committee Report (Substituted)

DIGEST

Currently, Texas law does not prevent certain persons or entities from selling, sharing, or using specific patient information for marketing, or solicitations 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 could interfere with the provider-patient relationship. C.S.S.B. 782 would prohibit a person from transferring patient-identifying prescription information to another person, without the written consent of that patient.

PURPOSE

As proposed, C.S.S.B. 782 regulates disclosure requirements for certain patient health information and provides a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Commissioner of Insurance in SECTION 1 (Section 4(c), Article 4590k, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 71, V.T.C.S., by adding Article 4590k, as follows:

Art. 4590k. DISCLOSURE REQUIREMENTS FOR CERTAIN PATIENT HEALTH INFORMATION

Sec. 1. DEFINITIONS. Defines "device," "insurer," "patient prescription information," "person," "practitioner," and "prescription drug."

Sec. 2. TRANSFER WITHOUT CONSENT PROHIBITED. Prohibits a person from transferring patient-identifying prescription information to another person without the written consent of that patient. Requires the consent required under this section to be made on a separate consent form designed solely for the purpose of obtaining consent under this section and may not be included in any other form that the patient may be required to sign to obtain the prescription. Prohibits a person subject to this article from waiving a prohibition created under this section by requesting or requiring a patient to sign a consent form authorizing the disclosure. Defines "consent form."

Sec. 3. EXCEPTIONS. Sets forth exclusions from this article. Sets forth activities allowed by this article.

Sec. 4. INFORMATION PROVIDED BY INSURERS; REGULATION BY DEPARTMENT OF INSURANCE. Authorizes an insurer or other person regulated by the Texas Department of Insurance, notwithstanding any other provision of this article, who provides a health benefit plan to policyholders or enrollees, to provide information to its policyholders or enrollees regarding health care programs relating to specific diseases or conditions that the insurer offers through the health benefit plan if the information is provided to all of its policyholders or enrollees. Provides

that this article does not affect the authority of an insurer to notify a policyholder or enrollee about a change in the health benefit plan, including a change in benefits or the adoption of or a change in a formulary used by the insurer. Authorizes the commissioner of insurance to adopt rules as necessary to regulate the activities of insurers under this section.

Sec. 5. **GROUND FOR DISCIPLINARY ACTION.** Provides that, in addition to any other penalty provided by law, a violation of this article by a practitioner, insurer, or other person subject to this article who holds a professional license or other authority to engage in an activity affected by this article that is issued by an agency of this state, constitutes a ground for appropriate disciplinary action by that state agency.

Sec. 6. **PENALTY.** Provides that a person who knowingly violates Section 2 of this article commits an offense. Provides that an offense under this section is a misdemeanor punishable by a fine not to exceed \$10,000.

SECTION 2. Effective date: September 1, 1999.

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Deletes proposed SECTIONS 1 - 4. Amends Title 71, V.T.C.S., by adding Article 4590k, regarding disclosure requirements for certain patient health information.

SECTION 2.

Redesignated from existing SECTION 5.

SECTION 3.

Redesignated from existing SECTION 6.