

SUBJECT: Controlled substance prescriptions and monitoring

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Gray, Coleman, Delisi, Glaze, Hilderbran, Maxey, Uresti
0 nays
2 absent — Capelo, McClendon

SENATE VOTE: On final passage, Local and Uncontested Calendar, March 11 — 31-0

WITNESSES: None

BACKGROUND: In 1995, the 75th Legislature required practitioners prescribing Schedule II controlled substances to use a prescribed form and to affix to the form a sequentially numbered, non-removable sticker issued by the Department of Public Safety (DPS). DPS was given authority to make some exceptions to this requirement and was authorized to permit the use of triplicate or single prescription forms until March 1, 1999.

Schedule II controlled substances are drugs classified by the commissioner of health or the federal government as having legitimate medical purposes but also a high potential for abuse. Schedule II controlled substances generally refer to strong analgesics and pain killers such as cocaine, Darvon, and Tylenol III with codeine.

The 75th Legislature also required pharmacists to send prescription information required by DPS by electronic transfer, a universal claim form, or other form approved by DPS.

DPS cannot give access to this prescription information except under the circumstances outlined in Health and Safety Code, sec. 481.076. These circumstances include allowing access to law enforcement officers or prosecutors who are administering, investigating, or enforcing the Texas Controlled Substances Act or another illicit-drug law. If DPS releases information to a prosecutor or law enforcement officer about someone licensed by certain medical licensing agencies, it must notify the licensing

agency of the disclosure within 10 days unless the officer or prosecutor asks DPS to withhold notification and DPS determines that notifying the agency would interfere with investigation or prosecution.

DIGEST:

SB 254 would require that prescriptions for Schedule II controlled substances be recorded on an official, sequentially numbered prescription form that DPS would issue to practitioners. It would eliminate the requirement that practitioners affix a sticker to each prescription form. Official prescription forms would have to include all of the information now required to be on prescription forms except that patient identification numbers no longer would be required.

SB 254 would require a dispensing pharmacist to send all required information to DPS electronically or on another form approved by DPS. Pharmacists no longer would be able to send information on a universal claim form, unless it was one of the alternate forms approved by DPS.

SB 254 would remove a requirement that pharmacists retain in their records for at least two years the patient identification number of a person to whom a controlled substance is delivered, if the person has a number and it is required by the prescribing practitioner.

The bill would remove a requirement that allows Texas pharmacies to fill prescriptions for Schedule II controlled substances issued by practitioners in other states only if a *substantial* share of the Texas pharmacy's business involves dispensing and mailing controlled substances. Texas pharmacies could fill the prescriptions if any share of their business involved dispensing, mailing, and delivering a controlled substance.

SB 254 would eliminate the authority of law enforcement officers or prosecutors to ask DPS to withhold notification to certain medical licensing agencies that the officers or prosecutors have been given access to prescription information relating to a person licensed or regulated by the agencies.

If DPS allowed a DPS drug enforcement officer access to prescription information about persons licensed by certain boards but then exercised its current option to withhold notification to the licensing board, DPS later would have to notify the board of why it waived the notification. This would

apply to persons licensed by the medical examiners, podiatric, dental examiners, veterinary examiners, or pharmacy boards.

SB 254 would repeal the September 1, 2003, expiration dates of provisions outlining the regulations for prescription forms, access to information on the forms, and authority for DPS to establish rules about the prescription program and to contract for program operations. It also would eliminate a requirement that DPS allow the use of triplicate and single prescription forms only until March 1, 1999.

SB 254 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

The 1997 requirement that practitioners begin to use prescription stickers has turned out to be undesirable and unworkable. It could be cumbersome and difficult for doctors to keep up with both a pad to write prescriptions and stickers to affix to them. In addition, vendors reported they could not supply the stickers at an affordable cost. It also proved difficult to find a vendor that could meet the requirements of the stickers.

SB 254 would allow DPS to establish an “official prescription form.” DPS could establish a triplicate system like the one in use today or a duplicate or single form if electronic prescriptions become commonplace. There is no reason to implement stickers or any other drastic change because the current system is familiar to doctors, pharmacists, and patients and has been successful in deterring and detecting fraud in prescriptions. Allowing DPS to establish a system would ensure that everyone uses the same forms and that proper security measures are taken.

By eliminating the ability for information to be sent to DPS on a universal claim form, SB 254 would ensure that most prescription information is submitted electronically. This is the most efficient and cost-effective way for both pharmacists and DPS to handle the information. If the information is submitted on paper, DPS must input it into its computer database. SB 254 would give DPS authority to allow information to be submitted on another form, such as the universal claim form, under circumstances established by the department. DPS could use this authority to allow smaller, low-volume pharmacies to use an alternative form so they would not have to meet the electronic requirements if they did not have the technology.

Pharmacists no longer should have to retain patient identification numbers under certain circumstances for two years, because some have interpreted this to mean that social security or driver's license numbers be submitted by the patient. This is an unwarranted invasion of patients' privacy.

SB 254 would allow all pharmacies to fill prescriptions issued out of state for Schedule II drugs if the pharmacies did this in their usual scope of business. Current law unnecessarily restricts this activity to pharmacies with "substantial" mail businesses.

SB 254 would ensure that licensing agencies are involved if law enforcement officers or prosecutors are investigating a licensee. This would ensure that public health and safety are taken into consideration during an investigation. In addition, SB 254 would ensure that licensing agencies are informed as soon as possible if they are not notified about a DPS investigation.

OPPONENTS
SAY:

At a minimum, the state should retain the option of using prescription stickers. Some doctors and pharmacists might prefer this system to keeping up with the triplicate forms.

Requiring all information to be sent to DPS electronically could be a burden on pharmacies that are not wired electronically. Any DPS rule allowing some smaller pharmacies to submit information on an alternative form would be sure to exclude some pharmacies that would find it difficult to submit electronic information.

SB 254 would go too far in eliminating the ability of law enforcement officers and prosecutors to ask DPS to bypass notifying certain licensing agencies during an investigation. It would be better to leave in the statute some exceptions to the notification requirements for investigations that require confidentiality.

NOTES:

The original bill only would have eliminated the requirement that DPS allow the use of triplicate and single prescription forms until March 1, 1999.