

BILL ANALYSIS

Senate Research Center

S.B. 780
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Health Services
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As Filed

DIGEST

Currently, Texas law does not provide for a pharmacy review committee. S.B. 780 establishes pharmacy peer review committees.

PURPOSE

As proposed, S.B. 780 establishes pharmacy peer review committees.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 17(g), Article 4542-1a, V.T.C.S. (Texas Pharmacy Act). to provide that the Texas State Board of Pharmacy (board) investigative files and all information and materials compiled by the board in connection with an investigation are confidential and are not subject to disclosure under Chapter 552, Government Code, and are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline except that this information may be disclosed to a pharmaceutical or pharmacy peer review committee as outlined in Section 27A or 42 of this Act.

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

Sec. 42. PEER REVIEW. Defines “pharmacy peer review committee,” and “pharmacy society or association.” Authorizes a pharmacy peer review committee (committee) to be established to evaluate the quality of pharmacy services or the competence of pharmacists. Authorizes the committee to investigate disagreements or complaints, determine facts, and make recommendations or issue decisions in a written report. Provides that a committee includes the members, employees, and agents of the committee, including assistants, investigators, attorneys, and any other agents that serve the committee in any capacity. Provides that except as otherwise provided by this section, all proceedings and records of a committee are confidential, and all communications made to a committee are privileged. Provides that if a judge makes a preliminary finding that such proceedings, records, or communications are relevant to an anticompetitive action or an action brought under federal civil rights provisions under 42 U.S.C. Section 1983, then such proceedings, records, or communications are not confidential to the extent they are deemed relevant. Authorizes the final report of and any written or oral communications made to a committee and the records and proceedings of the committee to be disclosed to another committee, appropriate state or federal agencies, national accreditation bodies, or the state board of registration or licensure of this or any other state. Prohibits disclosure of the affected pharmacist of confidential committee information pertinent to the matter under review from constituting waiver of the confidentiality provisions provided by this section. Requires the affected pharmacist to be provided a written copy of the recommendation of the committee and a copy of the committee’s final decision, including a statement of the basis for the decision, if a committee takes action that could result in censure, license suspension, restriction, limitation or revocation by the board or denial of membership or privileges in a health care entity. Provides that unless disclosure is required or authorized by law, records or determinations of or communications to a committee are not subject to subpoena or discovery and are not admissible as evidence in any civil judicial or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee. Authorizes the evidentiary privilege created by this section to be invoked by any

person or organization in any civil judicial or administrative proceeding unless the person or organization has secured a waiver of the privilege executed in writing by the chairman, vice chairman, or secretary of the affected committee. Provides that if any committee, person, or organization named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information in the committee's, person's, or organization's own defense or in a claim or suit under Subsection (i), a plaintiff in such proceedings to disclose records or determinations of or communications to a committee in rebuttal to information supplied by the defendant. Requires any person seeking access to privileged information to plead and prove waiver of the privilege. Provides that a member, employee, or agent of a pharmacy committee who provides access to otherwise privileged communications or records in cooperation with law enforcement authorities in criminal investigations is not considered to have waived any privilege established under this section. Requires all persons, including governing bodies and medical staffs of health care entities to comply fully with a subpoena for documents or information issued by the board as otherwise authorized by law. Prohibits the disclosure of documents or information under such subpoena from constituting a waiver of the privilege associated with committee proceedings. Provides that failure to comply with such subpoena constitutes grounds for disciplinary action against the facility or individual by the appropriate licensing board. Provides that a cause of action does not accrue against the members, agents, or employees of a committee from any act, statement, determination, or recommendation made or act reported, without malice, in the course of peer review according to this section. Authorizes a committee, person participating in peer review, or a health care entity named as a defendant in any civil action filed as a result of participation in a peer review to use otherwise confidential information obtained for legitimate internal business and professional purpose, including use in the committee's, person's, or entity's own defense. Provides that such does not constitute a waiver of the confidential and privileged nature of the pharmacy committee proceedings. Provides that reports, information, or records received and maintained by the board pursuant to this section are considered investigative files and are confidential only be released as specified in Section 17(g) of this Act.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.