

BILL ANALYSIS

Senate Research Center

S.B. 315
By: Hinojosa et al.
Health & Human Services
7/14/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 315 contains recommendations adopted by the Sunset Advisory Commission (Sunset) in its review of the Texas Medical Board (TMB) to clarify the agency's authority to regulate pain management clinics.

Major Provisions in S.B. 315:

- Authorizes TMB to seek court enforcement of its administrative subpoenas for pain management clinic records when a clinic refuses to comply—authority the Dental Board and the Texas Department of Licensing and Regulation already have.
- Clarifies TMB's existing authority to inspect unregistered pain management clinics.
- Clarifies the definition of "inappropriate prescribing" to include nontherapeutic prescribing or other conduct as specified by TMB rule.

S.B. 315 only contains provisions relating to TMB's subpoena authority and enforcement of pain management clinic regulations, removing all other recommendations adopted by Sunset. (Original Author's / Sponsor's Statement of Intent)

S.B. 315 amends current law relating to the enforcement of subpoenas, the regulation of pain management clinics, and the adoption of guidelines for prescribing certain opioids by the Texas Medical Board.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 4 (Section 168.052, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading of Section 153.007, Occupations Code, to read as follows:

Sec. 153.007. AUTHORITY TO ISSUE SUBPOENA OR ADMINISTER OATH;
SUBPOENA ENFORCEMENT.

SECTION 2. Amends Section 153.007, Occupations Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes the Texas Medical Board (TMB), if a person fails to comply with a subpoena issued under this section, acting through the Texas attorney general (attorney general), to file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by TMB is authorized to be held.

(f) Requires the court, on finding that good cause exists for issuing the subpoena, to order the person to comply with the subpoena.

SECTION 3. Amends Subchapter A, Chapter 168, Occupations Code, by adding Section 168.003, as follows:

Sec. 168.003. LEGISLATIVE FINDING. Provides that the legislature finds that deaths resulting from the use of opioids and other controlled substances constitute a public health crisis and that there is a compelling state interest in TMB closely regulating the prescribing of opioids and other controlled substances by physicians and their delegates. Provides that, accordingly, the legislature finds that inspections and investigations conducted by TMB, including TMB's use of subpoenas for immediate production, inspection, and copying of medical and billing records, are necessary to adequately regulate the prescribing of opioids and other controlled substances in order to protect the public health and welfare.

SECTION 4. Amends Section 168.052, Occupations Code, as follows:

Sec. 168.052. INSPECTIONS. (a) Creates this subsection from existing text. Authorizes TMB to inspect a pain management clinic certified under this chapter (Regulation of Pain Management Clinics), including the documents of a physician practicing at the clinic, as necessary to ensure compliance with this chapter.

(b) Authorizes TMB to inspect a clinic or facility that is not certified under this chapter to determine whether the clinic or facility is required to be certified under Section 168.101 (Certificate Required). Requires TMB by rule to establish the grounds for conducting an inspection under this subsection, including grounds based on the population of patients served by the clinic or facility, the volume or combination of drugs prescribed to patients served by the clinic or facility, and any other criteria TMB considers sufficient to require an inspection of the clinic or facility.

SECTION 5. Amends Section 168.201, Occupations Code, by adding Subsection (a-1), to provide that for purposes of this section, inappropriate prescribing includes nontherapeutic prescribing or other conduct as specified by TMB rule.

SECTION 6. Amends Subtitle B, Title 3, Occupations Code, by adding Chapter 170, as follows:

CHAPTER 170. PRESCRIPTION OF OPIOID ANTAGONISTS

Sec. 170.001. DEFINITIONS. Defines "opioid antagonist" and "opioid-related drug overdose."

Sec. 170.002. GUIDELINES. (a) Requires TMB to adopt guidelines for the prescription of opioid antagonists.

(b) Requires that the guidelines address prescribing an opioid antagonist to a patient to whom an opioid medication is also prescribed and identifying patients at risk of an opioid-related drug overdose and prescribing an opioid antagonist to that patient or to a person in a position to administer the opioid antagonist to that patient.

(c) Provides that in adopting guidelines under this section, TMB:

(1) is required to consult materials published by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services; and

(2) is authorized to consult other appropriate materials, including medical journals subject to peer review and publications by medical professional associations.

Sec. 170.003. LIABILITY FOR ACT OR OMISSION WITH RESPECT TO PRESCRIBING AN OPIOID ANTAGONIST. Provides that a physician who acts in good faith and with reasonable care, regardless of whether the physician follows the guidelines adopted under this chapter, is not subject to criminal or civil liability or any professional disciplinary action for prescribing or failing to prescribe an opioid antagonist or any outcome resulting from the eventual administration of an opioid antagonist prescribed by the physician.

SECTION 7. Provides that the change in law made by this Act relating to Chapter 170, Occupations Code, as added by this Act, and to conduct that is grounds for imposition of a disciplinary sanction applies only to conduct that occurs on or after September 1, 2017. Provides that conduct that occurs before September 1, 2017, is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 8. Provides that the change in law made by this Act relating to Chapter 170, Occupations Code, as added by this Act, and to conduct that is the basis for civil liability applies only to conduct that occurs on or after September 1, 2017. Provides that conduct that occurs before September 1, 2017, is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 9. Provides that the change in law made by this Act relating to Chapter 170, Occupations Code, as added by this Act, and to conduct that constitutes a criminal offense applies only to an offense committed on or after September 1, 2017. Provides that for purposes of this section, an offense is committed before September 1, 2017, if any element of the offense occurs before that date. Provides that an offense committed before September 1, 2017, is governed by law in effect on the date that offense was committed, and the former law is continued in effect for that purpose.

SECTION 10. Effective date: September 1, 2017.