

SUBJECT: Administration of the state's prescription drug monitoring program

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Crownover, Naishtat, Blanco, R. Miller, Sheffield, Zedler,
Zerwas

0 nays

4 absent — Coleman, Collier, S. Davis, Guerra

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: For — Cathy Dewitt, Texas Association of Business; Graves Owen MD, Texas Medical Association; Cheryl White, Texas Pain Society; (*Registered, but did not testify*: Audra Conwell, Alliance of Independent Pharmacists of Texas; Adam Burklund, American Insurance Association; Kathy Hutto, Coalition for Nurses in Advanced Practice; Fred Shannon, National Safety Council; Dan Hinkle, Texas Academy of Family Physicians; Lisa Jackson, Texas Academy of Physician Assistants; Juliana Kerker, Texas College of Emergency Physicians; Bradford Shields, Texas Federation of Drug Stores; Dan Finch, Texas Medical Association; Kevin Cooper, Texas Nurse Practitioners; Rachael Reed, Texas Ophthalmological Association; Bobby Hillert, Texas Orthopaedic Association; David Reynolds, Texas Osteopathic Medical Association; Clayton Travis, Texas Pediatric Society; Justin Hudman, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; Karen Reagan, Walgreens)

Against — None

On — (*Registered, but did not testify*: Sherry Wright and Jay Alexander, Texas Department of Public Safety; Gay Dodson, Texas State Board of Pharmacy)

BACKGROUND: Health and Safety Code, ch. 481 contains the Texas Controlled Substances

Act and provisions for the state's prescription drug monitoring program. The Texas Department of Public Safety monitors Schedule II through Schedule V controlled substance prescriptions through this program.

According to the Department of Public Safety, the Texas Prescription Program can be used by practitioners and pharmacists to verify their own records and inquire about patients. Practitioners and pharmacists have statutorily restricted access to search their own prescribing and dispensing history and the prescription history of one of their patients through this program.

DIGEST:

CSSB 195 would transfer rulemaking authority over the state's prescription drug monitoring program and related duties from the Department of Public Safety (DPS) to the Texas State Board of Pharmacy. The bill also would require a person to register or be exempt from registration with the U.S. Drug Enforcement Administration under the federal Controlled Substances Act to manufacture, distribute, analyze, or dispense a controlled substance or conduct research with a controlled substance under the Texas Controlled Substances Act.

Prescription information system. The Texas State Board of Pharmacy, rather than the director of DPS, would design and implement a system for submission of information to the board by electronic or other means and for retrieval of that information. The bill would specify that the Texas State Board of Pharmacy would submit to DPS the system's design and that the design would be sent to the Texas Medical Board for review and comment within a reasonable time before the system would be implemented. The board would have to comply with the comments of those agencies unless it were unreasonable to do so.

The bill would specify the entities that would have access to information regarding prescriptions of certain controlled substances. The board would be required to ensure that DPS had unrestricted access at all times to information submitted to the board regarding prescriptions for certain controlled substances. DPS would have access to this information through a secure electronic portal under its exclusive control. DPS would be

required to pay all expenses associated with the electronic portal, including its initial implementation and ongoing operation.

The bill would authorize the board to adopt rules allowing certain pharmacists, health care providers, and employees or agents of an eligible practitioner to be enrolled in electronic access to information relating to prescriptions of certain controlled substances at the time the person obtained or renewed their professional or occupational license or registration.

A law enforcement or prosecutorial official engaged in specified activities regarding illicit drugs could obtain information submitted to the board only if the official submitted a request to DPS and showed proper need for the information. Records relating to the access of information by DPS or on behalf of a law enforcement agency would be confidential, including any information concerning the identities of investigating agents or agencies. The board would be prohibited from tracking or monitoring DPS' access to information.

The bill would require DPS to transfer to the board all appropriate records received by DPS under certain provisions of the Texas Controlled Substances Act regulating prescriptions for controlled substances and the official prescription program by September 1, 2016. A reference in law or an administrative rule to the public safety director of DPS relating to rulemaking authority given and duties transferred to the board by the bill would be considered a reference to the board.

Interoperability agreement. The bill would allow the Texas Board of Pharmacy to enter into an interoperability agreement with one or more states or an association of states that would authorize the board to access prescription monitoring information maintained or collected by the other state or states or the association, including information maintained on a central database such as the National Association of Boards of Pharmacy Prescription Monitoring Program InterConnect.

If the board entered into an interoperability agreement, the board also

could authorize the prescription monitoring program of one or more states or an association of states to access prescription information submitted to the board. A person who was authorized to electronically access information submitted to the board would be entitled to directly access information available from other states pursuant to an interoperability agreement.

The Texas State Board of Pharmacy could enter into an interoperability agreement before September 1, 2016, but the agreement could not go into effect until that date.

Fees. The board by rule would establish reasonable and necessary fees to produce sufficient revenue to cover the cost of establishing and maintaining the state's prescription drug monitoring program. The board could assess the fee on individuals or entities authorized to prescribe or dispense controlled substances under the Texas Controlled Substances Act and to access the state's prescription drug monitoring program.

Each agency that licensed individuals or entities authorized to access the state's prescription drug monitoring program and to prescribe or dispense controlled substances under the Texas Controlled Substances Act would increase its occupational license, permit, or registration fee for license holders or would use available excess revenue in an amount sufficient to operate that program as specified by the board. These fees would be transferred to the board to establish and maintain the state's prescription drug monitoring program. The board could use grants to offset or reduce the amount of fees paid by each agency.

Administrative penalties. The bill would remove the ability for DPS to impose an administrative penalty for certain actions under the Texas Controlled Substances Act.

Interagency Prescription Monitoring Work Group. The bill would specify that the executive director of the board or the executive director's designee would serve as the chair of the Interagency Prescription Monitoring Work Group and would specify the composition of the work

group.

The Texas State Board of Pharmacy would adopt required rules by March 1, 2016. Certain provisions related to rulemaking would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, the bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSSB 195 would improve the state's prescription drug monitoring program by transferring it from the Department of Public Safety (DPS) to the Texas State Board of Pharmacy. This transfer would allow DPS to focus on its core law enforcement mission rather than the burden of administering a registration program.

By authorizing the board to enter into an interoperability agreement with other states to share information through a central database, the bill would allow pharmacists, pharmacies, and health practitioners to share information across state lines to prevent interstate doctor shopping for controlled substances.

The bill also would dramatically improve the prescription drug monitoring program by enhancing its functionality and making it easier to use for all who had access to it. This change would help improve enforcement of the Texas Controlled Substances Act and federal law and would further prevent the diversion of prescription drugs. The bill also would eliminate a substantial paperwork burden for practitioners.

CSSB 195 would transfer the state's prescription drug monitoring program from DPS, a state-funded government agency, to the Texas State Board of Pharmacy, a self-funded state health regulatory agency that receives no tax dollars from the general revenue fund. This transfer could save the state money while allowing DPS to be more efficient in carrying out its core mission. The program needs funding to continue to operate, and the fees are a necessary part of that funding. The bill would allow the board to use grants to offset or reduce the amount of fees paid by each occupational licensing agency. The increased costs to the agencies could be offset by an increase in fee-generated revenue.

The changes in the House committee substitute were made in consultation with both DPS and the board and were fully agreed upon.

OPPONENTS
SAY:

CSSB 195 would mandate an increase in occupational licensing fees for certain health professionals to fund the transfer of the state's prescription drug monitoring program from DPS to the Texas State Board of Pharmacy and the continued operation of the program. The increased licensing fees could pose a burden to health professionals licensed under these agencies.

NOTES:

Unlike the engrossed Senate version of SB 195, the House committee substitute would:

- change effective dates for implementation of the bill's provisions;
- specify that DPS would have its own portal to the state's prescription drug monitoring program database;
- change the membership of the Interagency Prescription Monitoring Work Group;
- allow the board to use grants to offset or reduce the amount of fees paid by licensing agencies;
- specify the persons who could possess a controlled substance; and
- exempt from certain provisions a person registered by the U.S. Drug Enforcement Administration or a person who was exempt from such registration, among other provisions.