

BILL ANALYSIS

Senate Research Center
86R17648 JSC-D

C.S.S.B. 363
By: Watson
Health & Human Services
3/13/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 363 requires the Department of Public Safety of the State of Texas (DPS) or other law enforcement to have a warrant, subpoena, or other court order in order to access data from the Prescription Monitoring Program. This is necessary to address an issue discovered during the sunset process that revealed DPS has unfettered access to PMP data simply as a relic of the agency's prior administration of the program. Without this change, DPS will continue to be able to access anyone's information within the PMP at will, regardless of an active investigation and without any oversight. (Original Author's/Sponsor Statement of Intent)

C.S.S.B. 363 amends current law relating to access to certain controlled substance prescription information.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 481.076(a), (f), (g), and (h), Health and Safety Code, as follows:

(a) Prohibits the Texas State Board of Pharmacy (TSBP) from permitting any person to have access to information submitted to TSBP under Section 481.074(q) (relating to a requirement that each dispensing pharmacist send all required information to TSBP by electronic transfer) or 481.075 (Official Prescription Program) except:

(1) TSBP, the Texas Medical Board, the Texas Department of Licensing and Regulation with respect to the regulation of podiatrists, rather than the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas Optometry Board for the purpose of investigating a specific license holder or of monitoring for potentially harmful prescribing or dispensing patterns or practices under Section 481.0762;

(2) an authorized employee of TSBP engaged in the administration, investigation, or enforcement of this chapter (Texas Controlled Substances Act) or another law governing illicit drugs in this state or another state, rather than an authorized officer or member of the Department of Public Safety of the State of Texas (DPS) or an authorized employee of TSBP;

(3) DPS or other law enforcement or prosecutorial official, rather than DPS on behalf of a law enforcement or prosecutorial official, engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state, if TSBP is provided a warrant, subpoena, or other court order compelling the disclosure; or

(4)–(7) makes no changes to these subdivisions; or

(8) the Office of the Attorney General conducting an investigation into a violation of Chapter 36 (Medicaid Fraud Prevention), Human Resources Code.

(f) Requires TSBP if it accesses information, rather than the director of DPS if the director permits access to information, under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), to notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless TSBP, rather than the director of DPS, determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(g) Requires TSBP, if TSBP provides access, rather than the director if the director permits access, to information under Subsection (a)(3) relating to a person licensed or regulated by agency listed in Subsection (a)(1), to notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h) Requires TSBP, rather than the director, if TSBP, rather than the director, withholds notification to an agency under Subsection (f), to notify the agency of the disclosure of the information and the reason for withholding notification when TSBP, rather than the director, determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

SECTION 2. Repealer: Section 481.076(a-3) (relating to prohibiting any person other than DPS on behalf of a law enforcement or prosecutorial official from having access to information submitted to TSBP), Health and Safety Code.

Repealer: Section 481.076(a-4) (relating to prohibiting any person other than a medical examiner conducting an investigation from having access to information submitted to TSBP), Health and Safety Code.

Repealer: Section 481.076(a-5) (relating to accessing information as authorized under the Health Insurance Portability and Accountability Act), Health and Safety Code.

SECTION 3. Provides that to the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.