By: Zerwas H.B. No. 2246

A BILL TO BE ENTITLED

AN ACT

relating to certain procedures applicable to electronic prescriptions for Schedule II controlled substances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 481.074(b), (c), (d-1), (e), (f), (g), (h), and (k), Health and Safety Code, are amended to read as follows:

(b) Except in an emergency as defined by rule of the director or as provided by Subsection (o) or Section 481.075(j) or (m), a person may not dispense or administer a controlled substance listed in Schedule II without a [~~the~~] written prescription of a practitioner on an official prescription form or without an electronic prescription that meets the requirements of and is completed by the practitioner in accordance with Section 481.075. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:

(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, department registration number,

and Federal Drug Enforcement Administration number of the prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).

(c) Not later than the seventh day after the date a prescribing practitioner authorizes an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause a written or electronic prescription, completed in the manner required by Section 481.075, to be delivered [~~in person or mailed~~] to the dispensing pharmacist at the pharmacy where the prescription was dispensed. A written prescription may be delivered in person or by mail. The envelope of a prescription delivered by mail must be postmarked not later than the seventh day after the date the prescription was authorized. On receipt of a written [~~the~~] prescription, the dispensing pharmacy shall file the transcription of the telephonically communicated prescription and the pharmacy copy and shall send information to the director as required by Section 481.075. On receipt of an electronic prescription, the pharmacist shall annotate the electronic prescription record with the original authorization and date of the emergency oral or telephonically communicated prescription.

(d-1) Notwithstanding Subsection (d), a prescribing practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance if:

(1) each separate prescription is issued for a legitimate medical purpose by a prescribing practitioner acting in the usual course of professional practice;

(2) the prescribing practitioner provides [~~written~~] instructions on each prescription to be filled at a later date indicating the earliest date on which a pharmacy may fill each prescription;

(3) the prescribing practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the issuance of multiple prescriptions complies with other applicable state and federal laws.

(e) The partial filling of a prescription for a controlled substance listed in Schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or electronic prescription or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription, on the [~~or~~] written record of the emergency oral prescription, or in the electronic prescription record. The remaining portion of the prescription may be filled within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

(f) A prescription for a Schedule II controlled substance [~~written~~] for a patient in a long-term care facility (LTCF) or for a

patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question about whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner before partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record the prescription on an official prescription form or in the electronic prescription record and must indicate on the official prescription form or in the electronic prescription record whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" is considered to have been filled in violation of this chapter. For each partial filling, the dispensing pharmacist shall record on the back of the official prescription form or in the electronic prescription record the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Before any subsequent partial filling, the pharmacist must determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings may not exceed the total quantity prescribed. Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness are valid for a period not to exceed 60 days following the issue date unless sooner terminated by discontinuance of the medication.

(g) A person may not dispense a controlled substance in Schedule III or IV that is a prescription drug under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without a written, electronic, oral, or telephonically [~~or electronically~~] communicated prescription of a practitioner defined by Section 481.002(39)(A) or (D), except that the practitioner may dispense the substance directly to an ultimate user. A prescription for a controlled substance listed in Schedule III or IV may not be filled or refilled later than six months after the date on which the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner. A prescription under this subsection must comply with other applicable state and federal laws.

(h) A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V under a written, electronic, oral, or telephonically [~~or electronically~~] communicated prescription issued by a practitioner defined by Section 481.002(39)(C) and only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(k) A prescription for a controlled substance must show:

(1) the quantity of the substance prescribed:

(A) numerically, followed by the number written as a word, if the prescription is written; [~~or~~]

(B) numerically, if the prescription is electronic; or

(C) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(2) the date of issue;

(2-a) if the prescription is issued for a Schedule II controlled substance to be filled at a later date under Subsection (d-1), the earliest date on which a pharmacy may fill the prescription;

(3) the name, address, and date of birth or age of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(4) the name and strength of the controlled substance prescribed;

(5) the directions for use of the controlled substance;

(6) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(7) the [~~legibly printed or stamped~~] name, address, Federal Drug Enforcement Administration registration number, and telephone number of the practitioner at the practitioner's usual place of business, which must be legibly printed or stamped on a written prescription;

(8) if the prescription is handwritten, the signature of the prescribing practitioner; and

(9) if the prescribing practitioner is licensed in this state, the practitioner's department registration number.

SECTION 2. Sections 481.075(a), (e), (g), (h), (i), and (j), Health and Safety Code, are amended to read as follows:

(a) A practitioner who prescribes a controlled substance listed in Schedule II shall, except as provided by rule adopted under Section 481.0761, record the prescription on an official prescription form or in an electronic prescription that includes the information required by this section.

(e) Each official prescription form or electronic prescription used to prescribe a Schedule II controlled substance must contain:

(1) information provided by the prescribing practitioner, including:

(A) the date the prescription is issued [~~written~~];

(B) the controlled substance prescribed;

(C) the quantity of controlled substance prescribed, shown:

(i) numerically, followed by the number written as a word, if the prescription is written; or

(ii) numerically, if the prescription is electronic;

(D) the intended use of the controlled substance or the diagnosis for which it is prescribed and the instructions for use of the substance;

(E) the practitioner's name, address, department

registration number, and Federal Drug Enforcement Administration number;

(F) the name, address, and date of birth or age of the person for whom the controlled substance is prescribed; and

(G) if the prescription is issued to be filled at a later date under Section 481.074(d-1), the earliest date on which a pharmacy may fill the prescription;

(2) information provided by the dispensing pharmacist, including the date the prescription is filled; and

(3) for a written prescription, the signatures of the prescribing practitioner and the dispensing pharmacist or for an electronic prescription, the prescribing practitioner's electronic signature or other secure method of validation authorized by federal law.

(g) Except for an oral prescription prescribed under Section 481.074(b), the prescribing practitioner shall:

(1) legibly fill in, or direct a designated agent to legibly fill in, on the official prescription form or in the electronic prescription, each item of information required to be provided by the prescribing practitioner under Subsection (e)(1), unless the practitioner determines that:

(A) under rule adopted by the director for this purpose, it is unnecessary for the practitioner or the practitioner's agent to provide the patient identification number; or

(B) it is not in the best interest of the patient for the practitioner or practitioner's agent to provide information

regarding the intended use of the controlled substance or the diagnosis for which it is prescribed; and

(2) sign the official prescription form and give the form to the person authorized to receive the prescription or, in the case of an electronic prescription, electronically sign or validate the electronic prescription as authorized by federal law and transmit the prescription to the dispensing pharmacy.

(h) In the case of an oral prescription prescribed under Section 481.074(b), the prescribing practitioner shall give the dispensing pharmacy the information needed to complete the official prescription form or electronic prescription record.

(i) Each dispensing pharmacist shall:

(1) fill in on the official prescription form or note in the electronic prescription record each item of information given orally to the dispensing pharmacy under Subsection (h) and[~~,~~] the date the prescription is filled, and:

(A) for a written prescription, fill in the dispensing pharmacist's signature; or

(B) for an electronic prescription, appropriately record the identity of the dispensing pharmacist in the electronic prescription record;

(2) retain with the records of the pharmacy for at least two years:

(A) the official prescription form or the electronic prescription record, as applicable; and

(B) the name or other patient identification required by Section 481.074(m) or (n); and

(3) send all information required by the director, including any information required to complete an official prescription form or electronic prescription record, to the director by electronic transfer or another form approved by the director not later than the 15th day after the last day of the month in which the prescription is completely filled.

(j) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be on an official prescription [~~a~~] form or in an electronic prescription record that meets the requirements of this section.

SECTION 3. Section 481.0761(d), Health and Safety Code, is amended to read as follows:

(d) The director by rule shall authorize a practitioner to determine whether it is necessary to obtain a particular patient identification number and to provide that number on the official prescription form or in the electronic prescription record.

SECTION 4. Section 552.118, Government Code, is amended to read as follows:

Sec. 552.118. EXCEPTION: OFFICIAL PRESCRIPTION PROGRAM INFORMATION [~~FORM~~]. Information is excepted from the requirements of Section 552.021 if it is:

(1) information on or derived from an official prescription form or electronic prescription record filed with the director of the Department of Public Safety under Section 481.075, Health and Safety Code; or

(2) other information collected under Section 481.075

of that code.

SECTION 5. Section 157.059(c), Occupations Code, is amended to read as follows:

(c) The physician may not delegate:

(1) the use of a prescription sticker or the use or issuance of an official prescription form; or

(2) the authority to issue an electronic prescription under Section 481.075, Health and Safety Code.

SECTION 6. The change in law made by this Act applies only to the issuance of a prescription on or after the effective date of this Act. The issuance of a prescription before the effective date of this Act is covered by the law in effect when the prescription was issued, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.