SENATE BILL 158

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; AMENDING AND ENACTING SECTIONS OF THE CONTROLLED SUBSTANCES ACT TO PROVIDE FOR THE ESTABLISHMENT OF A PRESCRIPTION DRUG MONITORING PROGRAM TO PREVENT PRESCRIPTION DRUG ABUSE; PROVIDING FOR INFORMATION EXCHANGE WITH OTHER STATES' PRESCRIPTION DRUG MONITORING PROGRAMS; PRESCRIBING CIVIL AND CRIMINAL PENALTIES; REQUIRING CONTROLLED SUBSTANCES TRAINING FOR PRACTITIONERS; PROVIDING FOR FEES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Controlled Substances Act is enacted to read:

"[NEW MATERIAL] CONTROLLED SUBSTANCE PRESCRIBING AND DISPENSING--PRESCRIPTION DRUG MONITORING PROGRAM--RULEMAKING--INFORMATION TECHNOLOGY PROTOCOLS.--

A. The board shall establish and maintain a prescription drug monitoring program to monitor the prescribing and dispensing of controlled substances by practitioners in the state. The board shall promulgate any rules necessary to implement the prescription drug monitoring program, including specification of the information in a prescription needed to meet the requirements of the prescription drug monitoring program. The prescription drug monitoring program shall be accessible to practitioners via a web site portal maintained by the board and shall provide immediate online access upon online request to patient utilization reports prepared pursuant to board rules. The prescription drug monitoring program shall not interfere with the legal use of controlled substances.

B. The board shall create on its prescription drug monitoring program portal a controlled substance prescription dispensing database and shall require dispensers to report within twenty-four hours to the prescription drug monitoring program each time a controlled substance is dispensed. The information a dispenser provides shall include:

(1) the dispenser's federal drug enforcement administration number;

(2) the date the prescription was filled;

(3) the prescription number in a manner established by board rules;

(4) whether the prescription is new or a

refill;

(5) the national drug code for the drug dispensed;

(6) the quantity of the drug dispensed;

(7) the name of the patient for whom the drug is prescribed;

(8) the patient's address;

(9) the patient's date of birth;

(10) the prescriber's drug enforcement administration number;

(11) the date the prescriber issued the prescription;

(12) a classification of the method of payment used to purchase the prescription; and

(13) if available, the indication for which the prescription was prescribed.

C. The prescription drug monitoring program shall provide the information provided pursuant to Subsection B of this section to any legally authorized user of the database, except for the following information:

(1) the dispenser's federal drug enforcement administration number;

(2) the national drug code for the drug dispensed; and

(3) the prescriber's federal drug enforcement

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administration number.

D. In lieu of providing any of the information in Paragraphs (1) and (3) of Subsection C of this section, additional information shall include the name of the dispenser and the name of the prescriber.

E. The board shall register in the prescription drug monitoring database any practitioner required to be licensed to prescribe or dispense controlled substances. The board shall also register any physician-in-training who does not have a personal federal drug enforcement administration license. The board shall by rule establish standards and protocols for using the prescription drug monitoring database to observe patterns of prescribing, dispensing and use of controlled substances to identify for further investigation any apparently inappropriate prescribing, dispensing or use of controlled substances. The board shall develop information technology parameters for conducting electronic surveillance of prescribing patterns in the prescription drug monitoring database to automatically alert the board of possibly improper controlled substance prescribing, dispensing or utilization patterns. The board shall use the prescription drug monitoring database to categorize prescribing, dispensing and utilization patterns by practitioner specialty, by geographic area and any other information that the board deems necessary by rule. The board shall share prescription drug monitoring database data

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with the department of health for the purposes of tracking inappropriate prescribing and misuse of controlled substances, including drug overdose.

F. The board shall promptly review any irregularities detected in the prescribing, dispensing or use of controlled substances. The board shall report the findings of its investigation to the appropriate licensing agency or law enforcement agency as it deems necessary.

G. The board shall use de-identified data obtained from the prescription drug monitoring database to identify and report to state and local public health authorities the geographic areas of the state where anomalous prescribing, dispensing or use of controlled substances is occurring.

H. The board shall develop protocols and a curriculum for creating and maintaining an instructional program accessible on a web site that the board maintains or by other means that the board deems effective to:

(1) educate practitioners on the use of the prescription drug monitoring program and on safe controlled substance prescribing and dispensing practices; and

(2) educate the public on the existence and purpose of the prescription drug monitoring program to provide a deterrent against the diversion of prescription drugs from their prescribed uses.

I. The board shall conduct outreach and education

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to practitioners in methadone maintenance treatment programs, the United States department of veterans affairs and the federal Indian health service to encourage practitioners at these entities to use the prescription drug monitoring program.

J. The board shall enforce the provisions of this section."

SECTION 2. A new section of the Controlled Substances Act is enacted to read:

"[NEW MATERIAL] INFORMATION EXCHANGE WITH OTHER PRESCRIPTION DRUG MONITORING PROGRAMS.--

A. The board may provide prescription drug monitoring information to other states' prescription drug monitoring programs, and this information may be used by those programs consistent with the provisions of the Controlled Substances Act.

B. The board may request and receive prescription drug monitoring information from other states' prescription drug monitoring programs and may use that information consistently with the provisions of the Controlled Substances Act.

C. The board shall develop the capability to transmit information to and receive information from other prescription drug monitoring programs in a secure manner that complies with state and federal privacy laws.

D. The board is authorized to enter into written

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agreements with other states' prescription drug monitoring programs or other entities hosting compatible information-sharing technologies for the purpose of describing the terms and conditions for the sharing of prescription information pursuant to this section."

SECTION 3. A new section of the Controlled Substances Act is enacted to read:

"[NEW MATERIAL] PENALTIES.--A dispenser who knowingly fails to submit prescription drug monitoring information to the board pursuant to the Controlled Substances Act, or who knowingly submits incorrect prescription drug information, shall be subject to disciplinary proceedings by the practitioner's licensing board pursuant to the Uniform Licensing Act."

SECTION 4. Section 30-31-13 NMSA 1978 (being Laws 1972, Chapter 84, Section 13) is amended to read:

"30-31-13. REGISTRATIONS.--

A. The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate

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medical, scientific or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

B. Registration under this section does not entitle a registrant to manufacture and distribute controlled substances in Schedules I or II other than those allowed in the registration.

C. Compliance by manufacturers and distributors with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting registration,

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excluding state registration fees, entitles them to be registered under the Controlled Substances Act.

D. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under Section [~~39 of the Controlled Substances Act~~] 30-31-40 NMSA 1978.

E. As a condition of registration, the board shall require a practitioner who applies for registration under this subsection to complete training in controlled substance prescribing and dispensing developed pursuant to Paragraph (1) of Subsection H of Section 1 of this 2012 act. The board need not require separate registration under [~~this~~] the Controlled Substances Act for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under [~~the Controlled Substances~~] that act in another capacity. Practitioners or scientific investigators registered under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration."

SECTION 5. Section 30-31-11 NMSA 1978 (being Laws 1972, Chapter 84, Section 11, as amended) is amended to read:

"30-31-11. REGULATIONS--FEES.--The board [~~may~~] shall

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promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution, prescribing and dispensing of controlled substances; provided, however, that in no case shall the fees exceed eighty dollars ($80.00) per year. If the board determines to increase any fee, the board shall notify, in addition to any other notice required by law, the affected professional group of the board's intention to increase the fee and the date for the scheduled hearing to review the matter."

SECTION 6. Section 30-31-24 NMSA 1978 (being Laws 1972, Chapter 84, Section 24, as amended) is amended to read:

"30-31-24. CONTROLLED SUBSTANCES--VIOLATIONS OF ADMINISTRATIVE PROVISIONS--VIOLATIONS OF PRESCRIPTION DRUG MONITORING PROGRAM PROVISIONS--PENALTIES.--

A. It is unlawful for [~~any~~] a person:

(1) who is subject to Sections 30-31-11 through 30-31-19 NMSA 1978 to intentionally distribute or dispense a controlled substance in violation of Section 30-31-18 NMSA 1978;

(2) who is a registrant to intentionally manufacture a controlled substance not authorized by [~~his~~] the person's registration or to intentionally distribute or dispense a controlled substance not authorized by [~~his~~] the person's registration to another registrant or other authorized person;

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(3) to intentionally refuse or fail to make, keep or furnish [~~any~~] a record, notification, order form, statement, invoice or information required under the Controlled Substances Act; or

(4) to intentionally refuse an entry into [~~any~~] a premises for [~~any~~] an inspection authorized by the Controlled Substances Act.

B. [~~Any~~] A person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Prescription information submitted to the prescription drug monitoring program established pursuant to Section 1 of this 2012 act is protected health information. A person that has access to the prescription drug monitoring program shall exercise due diligence in protecting this information. A person shall access the prescription drug monitoring program only as necessary in the course of legitimate professional, regulatory or law enforcement duties as the board defines those legitimate duties by rule. With respect to the prescription drug monitoring program, it is unlawful to:

(1) knowingly or intentionally access, use or disclose in a manner not consistent with the provisions of this section any patient-specific information provided to the program pursuant to Subsection A of Section 1 of this 2012 act.

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A person that violates the provisions of this paragraph is guilty of a fourth-degree felony; or

(2) negligently use or disclose patient-specific information in a manner not consistent with the provisions of this section any patient-specific information provided to the program pursuant to Subsection A of Section 1 of this 2012 act. A person that violates the provisions of this paragraph is guilty of a fourth degree felony."

SECTION 7. APPROPRIATION.--Two hundred twenty-five thousand dollars ($225,000) is appropriated from the general fund to the board of pharmacy for expenditure in fiscal year 2013 and subsequent fiscal years to establish and administer a prescription drug monitoring program. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SECTION 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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