LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

# LEGISLATIVE BILL 535

Introduced by Lathrop, 12.

Read first time January 23, 2013

Committee: Health and Human Services

A BILL

FOR AN ACT relating to prescription drugs; to amend section 38-178, Revised Statutes Cumulative Supplement, 2012; to adopt the Prescription Monitoring Program Act; to provide grounds for disciplinary action; to eliminate provisions relating to prescription drug monitoring; to provide an operative date; to repeal the original section; and to outright repeal sections 71-2454 and 71-2455, Revised Statutes Cumulative Supplement, 2012.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Prescription Monitoring Program Act.

Sec. 2. For purposes of the Prescription Monitoring Program Act:

(1) Controlled substance means a drug, a biological, a substance, or an immediate precursor in Schedule II, III, IV, or V of section 28-405;

(2) Department means the Department of Health and Human Services;

(3) Dispense means to deliver a controlled substance to a patient or a research subject pursuant to a prescription, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(4) Dispenser means a person who is lawfully authorized to dispense or to deliver a drug identified pursuant to subsection (1) of section 3 of this act. Dispenser does not include:

(a) A licensed hospital as defined in section 71-419 that distributes controlled substances or such drugs for the purpose of inpatient hospital care or that provides prescriptions for controlled substances at the time of discharge from such a hospital;

(b) A practitioner or other authorized person who administers a controlled substance or such a drug; or

(c) A wholesale distributor of a controlled substance or such a drug;

(5) Interoperability means, with respect to a program,

the ability of that program to share electronically reported prescription information with another state's program;

(6) Patient means the person or animal who is the ultimate user of a controlled substance or a drug identified pursuant to subsection (1) of section 3 of this act, for whom a lawful prescription is issued, or for whom a controlled substance or such a drug is lawfully dispensed;

(7) Practitioner means a physician, dentist, podiatrist, veterinarian, or other person licensed or otherwise permitted to prescribe, dispense, or administer a controlled substance or a drug identified pursuant to subsection (1) of section 3 of this act in the course of his or her licensed professional practice;

(8) Prescribe means to issue a direction or authorization, by prescription, permitting a patient to lawfully obtain controlled substances;

(9) Prescriber means a practitioner or other authorized person who prescribes a controlled substance or a drug identified pursuant to subsection (1) of section 3 of this act;

(10) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(11) Program means a prescription monitoring program, in this state or another state, that collects, manages, analyzes, and provides information regarding controlled substances or drugs identified pursuant to subsection (1) of section 3 of this act; and

(12) State means a state, district, or territory of the United States.

Sec. 3. (1) The department shall establish and maintain a program to monitor the prescribing and dispensing of controlled substances and, if selected by this state, additional drugs identified by the department as demonstrating a potential for abuse by all prescribers or dispensers in this state. The department may collaborate with the Nebraska Health Information Initiative or any successor public-private statewide health information exchange to establish and maintain the program.

(2) Each dispenser shall submit to the department information regarding each prescription dispensed for a controlled substance or a drug identified pursuant to subsection (1) of this section. Any dispenser located outside the boundaries of Nebraska who is licensed and registered by the department shall submit information regarding each prescription dispensed to a patient who resides within Nebraska.

(3) Each dispenser required to report under subsection (2) of this section shall submit to the department, by electronic means, information that includes, but is not limited to:

(a) Dispenser identification number;

(b) Date prescription was filled;

(c) Prescription number;

(d) Whether prescription was new or a refill;

(e) National drug code for drug dispensed;

(f) Quantity dispensed;

(g) Days' supply dispensed;

(h) Number of refills ordered;

(i) Patient identification number;

(j) Patient name;

(k) Patient address;

(l) Patient date of birth;

(m) Patient gender;

(n) Prescriber identification number;

(o) Date prescription issued by prescriber;

(p) Person who received the prescription from the dispenser if other than the patient; and

(q) Source of payment for prescription.

(4) Each dispenser shall submit the required information in accordance with transmission methods and frequency established by the department but no more than one hour after the time each prescription was dispensed.

(5) The department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means. All information required in subsection (3) of this section shall be submitted in the alternative format. If a dispenser is issued a waiver, the dispenser may have up to three days to submit the required information to the department after the date each prescription is dispensed.

Sec. 4. (1) Prescription information submitted to the department under the Prescription Monitoring Program Act shall be confidential and not subject to sections 84-712 to 84-712.09 except as provided in section 5 of this act.

(2) The department shall establish and enforce policies and procedures to ensure that the privacy and confidentiality of patients are maintained and that patient information collected, recorded, transmitted, and stored is protected and not disclosed except as provided in section 5 of this act.

(3) The department shall establish and maintain a process for verifying the credentials and authorizing the use of prescription information by individuals and agencies listed in section 5 of this act.

Sec. 5. (1) The department shall review the prescription information submitted under the Prescription Monitoring Program Act. The review shall include, but not be limited to:

(a) A review to identify information that appears to indicate if a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances. If such information is identified, the department shall notify the practitioners and dispensers who prescribed or dispensed the prescriptions; and

(b) A review to identify information that appears to indicate if a violation of law or breach of professional standards may have occurred. If such information is identified, the department

shall notify the appropriate law enforcement agency, professional credentialing board, or both, and provide prescription information necessary for an investigation.

(2) The department may provide information submitted under the Prescription Monitoring Program Act upon request only to the following persons:

(a) Persons authorized to prescribe or dispense for the purpose of providing medical or pharmaceutical care for their patients or for reviewing information regarding prescriptions that are recorded as having been issued or dispensed by the requester;

(b) A patient who requests the patient's own prescription monitoring information or a parent or legal guardian of a minor child who requests the prescription monitoring information of the minor child in accordance with procedures established by the department;

(c) A professional board under section 38-167 if the request is pursuant to an investigation or is pursuant to the board's official duties and responsibilities;

(d) Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the Uniform Controlled Substances Act pursuant to the agency's official duties and responsibilities;

(e) The investigatory unit of the Division of Medicaid and Long-Term Care of the department that has the legal authority to conduct investigations and utilization review of program services regarding recipients or providers under the medical assistance

program pursuant to the Medical Assistance Act; and

(f) Personnel of the department for purposes of administration and enforcement of the Prescription Monitoring Program Act.

Sec. 6. (1) The department may provide prescription monitoring information to the program of other states. Such information may be used by those programs consistent with the Prescription Monitoring Program Act.

(2) The department may request and receive prescription monitoring information from the program of other states and may use such information consistent with the act.

(3) The department may develop the capability to transmit information to and receive information from other programs employing the standards of interoperability.

(4) The department may enter into written agreements with the program of another state for the purpose of describing the terms and conditions for sharing of prescription information under this section if the department has a written memorandum of understanding in place with that state's program or if Nebraska and the other state are members of an interstate compact for the exchange of prescription information.

Sec. 7. The department may contract with another agency of this state, an agency from another state, or a private vendor, as necessary, to ensure the effective operation of the program. Any contractor shall be bound to comply with the provisions regarding

confidentiality of prescription information in section 4 of this act and shall be subject to the penalties specified in section 8 of this act for unlawful acts.

Sec. 8. (1) A dispenser who knowingly fails to submit data to the department as required by the Prescription Monitoring Program Act shall be subject to disciplinary action by the appropriate professional board under section 38-167.

(2) A prescriber or dispenser authorized to access the data who knowingly discloses the data in violation of state or federal laws relating to the privacy of health care data shall be subject to disciplinary action by the appropriate professional board under section 38-167 and appropriate civil penalties.

(3) A person authorized to receive prescription monitoring information pursuant to the Prescription Monitoring Program Act who uses such information in a manner or for a purpose in violation of the act shall be subject to a civil penalty of not more than one thousand dollars per occurrence.

(4) A person who obtains or attempts to obtain information by fraud or deceit from the program or from a person authorized to receive prescription monitoring information under the act shall be subject to a civil penalty of not more than one thousand dollars per occurrence.

Sec. 9. The department shall adopt and promulgate rules and regulations to carry out the Prescription Monitoring Program Act.

Sec. 10. Section 38-178, Revised Statutes Cumulative

Supplement, 2012, is amended to read:

38-178 Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(12) Use of untruthful, deceptive, or misleading statements in advertisements;

(13) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(14) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(15) Violations of the Uniform Credentialing Act or the

rules and regulations relating to the particular profession;

(16) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(18) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;

(19) Failure to maintain the requirements necessary to obtain a credential;

(20) Violation of an order issued by the department;

(21) Violation of an assurance of compliance entered into under section 38-1,108;

(22) Failure to pay an administrative penalty;

(23) Unprofessional conduct as defined in section 38-179; ~~or~~

(24) Violation of the Automated Medication Systems Act; or ~~.~~

(25) Violation of the Prescription Monitoring Program Act.

Sec. 11. This act becomes operative on January 1, 2015.

Sec. 12. Original section 38-178, Revised Statutes Cumulative Supplement, 2012, is repealed.

Sec. 13. The following sections are outright repealed: Sections 71-2454 and 71-2455, Revised Statutes Cumulative Supplement,

2012.