State of Arkansas *As Engrossed: S1/16/07 S2/1/07*
86th General Assembly **A Bill**
Regular Session, 2007 SENATE BILL 20

By: Senator Altes
By: Representatives Medley, Walters, Wells

For An Act To Be Entitled

AN ACT TO ESTABLISH A PRESCRIPTION DRUG MONITORING PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO ESTABLISH A PRESCRIPTION DRUG MONITORING PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 7 is amended to add an additional subchapter to read as follows:

20-7-501. Title.

This subchapter shall be known and may be cited as the "Prescription Drug Monitoring Program Act".

20-7-502. Purpose.

The General Assembly intends to protect the state health system by improving the state's ability to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical use of controlled substances.

20-7-503. Definitions.

As used in this subchapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by a person licensed in this state

to directly apply controlled substances;

(2)(A) "Dispenser" means a person who delivers Schedule II–V controlled substances.

(B) "Dispenser" does not include:

(i) A licensed hospital pharmacy that distributes Schedule II–V controlled substances:

(a) For the purpose of inpatient hospital care; and

(b) At the time of discharge from a hospital;

(ii) A nursing home or hospice;

(iii) A person licensed in this state to administer Schedule II–V controlled substances; or

(iv) A wholesale distributor of Schedule II–V controlled substances;

(3) "Division" means the Division of Health of the Department of Health and Human Services;

(4) "Interoperability" means the ability of the program to electronically share reported information with another state if the information concerns either the dispensing of a controlled substance:

(A) To a patient who resides in the other state; or

(B) Prescribed by a practitioner whose principal place of business is located in the other state;

(5) "Patient" means the person who is the ultimate user of a Schedule II–V controlled substance for whom a prescription is issued or for whom a drug is dispensed, or both; and

(6) "Schedule II–V controlled substances" means controlled substances that are listed in Schedules II, III, IV, and V under § 5-64-201, et seq.

20-7-504. Requirements for the prescription drug monitoring program.

(a)(1) The Division of Health of the Department of Health and Human Services shall establish and maintain an electronic program for monitoring the prescribing and dispensing of all:

(A) Schedule II–V controlled substances; and

(B) Any other drugs identified by the division as demonstrating a potential for abuse.

(2) The program shall be:

(A) An electronic database containing the information reported under this section;

(B) Be searchable by any field or combination of fields; and

(C) Include reported information in the database consistent with criteria established by the State Board of Health with appropriate safeguards for ensuring the accuracy and completeness of the database.

(3) The division shall take appropriate security measures to protect the integrity of and access to the database.

(b) Each dispenser shall submit to the division by electronic means at least the following information regarding each prescription included under subsection (a) of this section that is dispensed:

(1) The dispenser identification number;

(2) The date the prescription was filled;

(3) The prescription number;

(4) Whether the prescription is new or is a refill;

(5) For each drug dispensed:

(A) The National Drug Code number;

(B) The quantity;

(C) Whether the drug was dispensed as a refill of a prescription or as a first-time request;

(D) The number of days' supply; and

(E) The patient identification number;

(6) The patient's:

(A) Name;

(B) Address; and

(C) Date of birth;

(7) The prescriber's identification number;

(8) The date the prescription was issued by the prescriber;

(9) The name of the person who received the prescription from the dispenser, if other than the patient;

(10) The source of payment for the prescription; and

(11) Other information the board many deem important to meet the requirements of this subchapter.

(c)(1) Each dispenser shall submit the information required under this section in accordance with transmission methods and frequency established by the division.

(2) The division shall require that each dispenser report the required information at least every thirty (30) days, between the first and the fifteenth days of the month following the month the prescription was dispensed.

(d)(1) The division may issue a waiver to a dispenser that is unable to submit prescription information by electronic means.

(2)(A) The waiver may permit the dispenser to submit prescription information by paper form or other means.

(B) The waiver shall require that information required in subsection (b) of this section be submitted in the alternative format.

20-7-505. Access to prescription information.

(a) Except as provided in subsections (c) – (e) of this section, prescription information submitted to the Division of Health of the *Department of Health and Human Services shall be confidential in accordance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 201.*

(b) Except as provided in subsections (c) – (e) of this section, the division shall ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed.

(c)(1) Within thirty (30) days of receipt, the division shall review the prescription information required under this subchapter.

(2)(A) If there is reasonable cause to believe that a violation of law or breach of professional standards has occurred, the division shall notify the appropriate law enforcement or professional licensing, certification, or regulatory agency or entity.

(B) The division shall provide the agency or entity with any prescription monitoring program information that is required for an investigation.

(d) The division may provide data in the prescription monitoring program to the following:

(1) Persons authorized to prescribe or dispense controlled

substances for the purpose of providing medical or pharmaceutical care for their patients;

(2) An individual who requests the individual's own prescription monitoring information in accordance with procedures established under § 16-46-106;

(3) The Arkansas State Medical Board;

(4) The Arkansas State Board of Pharmacy;

(5) The Arkansas State Board of Nursing;

(6) Other divisions of the Department of Health and Human Services; and

(7) Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances.

(e) The division may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identity individual patients or persons who received prescriptions from dispensers.

20-7-506. Authority to contract.

(a) The Division of Health of the Department of Health and Human Services may contract with another agency of this state or with a private vendor to ensure the effective operation of the prescription monitoring program.

(b) Any contractor shall be bound to comply with the provisions regarding confidentiality of prescription information under this subchapter and shall be subject to the penalties specified in this subchapter.

20-7-507. Unlawful acts — Penalties.

(a) A person authorized to have prescription monitoring information under this subchapter who knowingly discloses that information shall be guilty of a Class A misdemeanor.

(b) A person authorized to have prescription monitoring information under this subchapter who uses that information in a manner or for a purpose in violation of this subchapter shall be guilty of a Class B misdemeanor.

(c) A dispenser who knowingly fails to submit to the Division of Health of the Department of Health and Human Services prescription monitoring

information as required by this subchapter or who knowingly submits incorrect prescription information shall be guilty of a Class C misdemeanor.

(d) A dispenser who uses or discloses confidential information received from the prescription monitoring program in a manner or for a purpose in violation of this subchapter shall be subject to disciplinary action by the dispenser's licensing board.

20-7-508. Rules.

(a) The State Board of Health shall promulgate rules necessary to implement this subchapter, including, but not limited to a provision for interoperability.

(b) The board shall apply to the Secretary of the federal Department of Health and Human Services for grants to implement this subchapter in *accordance with the National All Schedules Prescription Electronic Reporting Act of 2005, Pub. L. No. 109-60.*

(c) The board shall seek diligently to receive federal funds to implement this subchapter, including, but not limited to, funds from the National All Schedules Prescription Electronic Reporting Act of 2005, Pub. L. No. 109-60.

20-7-509. Fund availability.

This subsection shall take effect only if funds are available.

/s/ Altes