Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 2089

By: Representative Shelby

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:

20-7-601. Title.

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

20-7-602. 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.

20-7-603. 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 narcotics or Schedule III narcotics.

(B) “Dispenser” does not include:

(i) A licensed hospital pharmacy that distributes Schedule II narcotics and Schedule III narcotics:

(a) For the purpose of inpatient hospital care;

(b) For outpatient services, except for a pharmacy owned by a hospital that has a retail pharmacy permit; or

(c) 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 narcotics or Schedule III narcotics; or

(iv) A wholesale distributor of Schedule II narcotics and Schedule III narcotics;

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

(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;

(4) “Patient” means the person who is the ultimate user of a Schedule II narcotics or Schedule III narcotics for whom a prescription is issued or for whom a drug is dispensed, or both; and

(5) “Schedule II narcotics” means controlled substances that are placed in Schedule II under § 5-64-205; and

(6) “Schedule III narcotics” means controlled substances that are placed in Schedule III under § 5-64-207.

20-7-604. Requirements for the prescription drug monitoring program.

(a)(1) The Department of Health, using the criteria established by the Arkansas State Board of Pharmacy under this subchapter, shall establish and maintain an electronic program for monitoring the prescribing and dispensing of all Schedule II narcotics and Schedule III narcotics.

(2) The program shall:

(A) Be 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 Arkansas State Board of Pharmacy with appropriate safeguards for ensuring the accuracy and completeness of the database.

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

(b)(1) Each dispenser shall submit to the department information regarding prescription drugs as specified by the Arkansas State Board of Pharmacy.

(2) The board shall specify criteria for the types of data to be collected under this subchapter, the criteria for collecting data under this subchapter, and the criteria for evaluating data under this subchapter.

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

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

(d)(1) The department 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.

20-7-605. Access to prescription information.

(a)(1) The prescription drug monitoring program is a noncovered entity under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(2) However, to the extent consistent with this subchapter, the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, apply to the prescription drug monitory program.

(b) Except as provided in subsections (c)—(d) of this section, the Department of Health 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 department shall review the prescription information required under this subchapter.

(2) If on the basis of data collected and evaluated under this subchapter, the Director of the Department of Health has probable cause to believe that a violation of law or a breach of professional conduct has occurred, the director shall:

(A) If the suspected violation involves a physician, notify the Arkansas State Medical Board;

(B) If the suspected violation involves a pharmacist or a pharmacy, notify the Arkansas State Board of Pharmacy; or

(C) If the suspected violation involves an advanced practice nurse holding a certificate of prescriptive authority, notify the Arkansas State Board of Nursing.

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

(1) A person authorized to prescribe or dispense controlled substances to provide medical or pharmaceutical care for his or her 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) The Department of Human Services; and

(7) Under a search warrant issued on probable cause by a court of competent jurisdiction, local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances.

20-7-606. Unlawful acts — Penalties — Exception.

(a) A person authorized to have prescription monitoring information under this subchapter who knowingly discloses that information in a manner

not authorized under this subchapter is 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 is guilty of a Class B misdemeanor.

(c) A dispenser who knowingly fails to submit to the Department of Health prescription monitoring information as required by this subchapter or who knowingly submits incorrect prescription information is 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.

(e) This section does not apply to a physician who does not use the program under this subchapter.

(f) This section does not apply to a pharmacist or a pharmacy that does not use the program under this subchapter.

20-7-607. Rules.

(a) The State Board of Health shall promulgate rules necessary to implement this subchapter, including without limitation to a provision for interoperability.

(b) The board shall apply to the Secretary of the United States 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 funds from the National All Schedules Prescription Electronic Reporting Act of 2005, Pub. L. No. 109-60.

(d) The rules promulgated under this subchapter shall ensure that costs of the program established under this subchapter are not charged to pharmacists or pharmacies.

20-7-608. Fund availability.

This subsection shall take effect only if funds are available as provided in § 20-7-607(c).