State of Arkansas *As Engrossed: S2/21/11 S2/28/11 S3/2/11 H3/7/11*
88th General Assembly
A Bill
Regular Session, 2011 SENATE BILL 345

By: Senators P. Malone, Bledsoe, J. Jeffress, Laverty, B. Pritchard, R. Thompson, Whitaker, Irvin, Burnett, Crumbly, *D. Wyatt*
By: Representatives Summers, *Allen, Cheatham, Gaskill, Hall, Lea, Pennartz, T. Thompson, Tyler, Webb, B. Wilkins*

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:

Subchapter 6 — Prescription Drug Monitoring Program Act

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 purpose of this subchapter to protect the state health system and the citizens of Arkansas by:

(1) Enhancing patient care by providing prescription monitoring information that will ensure legitimate use of controlled substances in health care, including palliative care, research, and other medical pharmacological uses;

(2) Helping curtail the misuse and abuse of controlled substances;

(3) Assisting in combating illegal trade in and diversion of controlled substances; and

(4) Enabling access to prescription information by practitioners, law enforcement agents, and other authorized individuals and agencies and to make prescription information available to practitioners, law enforcement agents, and other authorized individuals and agencies in other states.

20-7-603. Definitions.

As used in this subchapter:

(1) "Controlled substance" means a drug, substance, or immediate precursor in Schedules II-V;

(2) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including without limitation, the prescribing, administering, packaging, labeling, or compounding necessary to prepare the controlled substance for that delivery;

(3)(A) "Dispenser" means a practitioner who dispenses.

(B) "Dispenser" does not include:

(i) A licensed hospital pharmacy when it is distributing controlled substances for the purpose of outpatient services, inpatient hospital care, or at the time of discharge from a hospital, except for a pharmacy owned by a hospital that has a retail pharmacy permit when the pharmacy is distributing controlled substances directly to the public;

(ii) A wholesale distributor of Schedule II-Schedule V controlled substances; or

(iii) A practitioner or other authorized person who administers a controlled substance;

(4) "Exchangeability" means the ability of the program to electronically share reported information with another state's prescription monitoring program 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;

(5) "Investigation" means an active inquiry that is being conducted with a reasonable, good faith belief that the inquiry:

(A) Could lead to the filing of administrative, civil, or criminal proceedings; or

(B) Is ongoing and continuing and a reasonable, good faith anticipation exists for securing an arrest or prosecution in the foreseeable future;

(6) "Patient" means the person or animal who is the ultimate user of a controlled substance for whom a lawful prescription is issued and for whom a controlled substance is lawfully dispensed;

(7) "Practitioner" means:

(A) A physician, dentist, veterinarian, advanced practice nurse, physician assistant, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; and

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

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

(9) "Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance;

(10) "Prescription" means a controlled substance lawfully prescribed and subsequently dispensed;

(11) "Prescription drug monitoring program" means a program that collects, manages, analyzes, and provides information regarding Schedule II, III, IV, and V controlled substance as provided under the Uniform Controlled Substance Act, § 5-64-101 et seq., §§ 5-64-1101 — 5-64-1103, the Food, Drug and Cosmetic Act, § 20-56-201, et seq., or §§ 20-64-501 — 20-64-513;

(12) "Schedule II" means controlled substances that are placed in Schedule II under § 5-64-205;

(13) "Schedule III" means controlled substances that are placed

in Schedule III under § 5-64-207;

(14) "Schedule IV" means controlled substances that are placed in Schedule IV under § 5-64-209;

(15) "Schedule V" means controlled substances that are placed in Schedule V under § 5-64-211; and

(16) "Ultimate user" means a person who lawfully possesses a controlled substance for:

(A) The person's own use;

(B) The use of a member of the person's household; or

(C) Administering to an animal owned by a person or by a member of the person's household.

20-7-604. Requirements for the Prescription Drug Monitoring Program.

(a) The State Board of Health shall create the Prescription Drug Monitoring Program upon the Department of Health procuring adequate funding to establish the program.

(b)(1) Each dispenser shall submit to the department information regarding each controlled substance dispensed.

(2) A dispenser located outside Arkansas and licensed and registered by the Arkansas State Board of Pharmacy shall submit to the department information regarding each controlled-substance prescription *dispensed to an ultimate user whose address is within Arkansas.*

(3) The board shall create a controlled substances database for the Prescription Drug Monitoring Program.

(c) Each dispenser required to report under subsection (b) of this section shall submit to the department by electronic means information that shall include without limitation:

(1) The dispenser's identification number;

(2) The date the prescription was filled;

(3) The prescription number;

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

(5) The National Drug Code number for the controlled substance that is dispensed;

(6) The quantity of the controlled substance dispensed;

(7) The number of days' supply dispensed;

(8) The number of refills ordered;

(9)(A) A patient identifier.

(B) A patient identifier shall not be a Social Security number or a driver's license number;

(10) The patient's name;

(11) The patient's address;

(12) The patient's date of birth;

(13) The patient's gender;

(14) The prescriber's identification number;

(15) The date the prescription was issued by the prescriber; and

(16) The source of the payment for the prescription.

(d) Practitioners are encouraged to access or check the information in the controlled substance database created under this subchapter before prescribing, dispensing, or administering medications.

(e) This subchapter does not prohibit licensing boards from requiring practitioners to access or check the information in the controlled substance database as a part of a review of the practitioner's professional practice.

(f) Each dispenser shall submit the required information in accordance *with transmission methods and frequency established by the department.*

(g) The department shall create a process for patients to address errors, inconsistencies, and other matters in their record as maintained under this section, including in cases of breach of privacy and security.

(h) The department shall limit access to only those employees whose access is reasonably necessary to carry out this section.

20-7-605. Prescription Drug Monitoring Program Advisory Committee — Creation — Members.

(a) The Prescription Drug Monitoring Program Advisory Committee shall be created by the State Board of Health upon the Department of Health procuring adequate funding to establish the program.

(b) The mission of the advisory committee is to consult with and advise the Department of Health on matters related to the establishment, maintenance, operation, and evaluation of the prescription drug monitoring program.

(c) The committee shall consist of:

(1) One (1) representative designated by each of the following organizations:

(A) The Arkansas Academy of Physician Assistants;

(B) The Arkansas Association of Chiefs of Police;

(C) The Arkansas Drug Director;

(D) The Arkansas Medical Society;

(E) The Arkansas Nurses Association;

(F) The Arkansas Optometric Association;

(G) The Arkansas Osteopathic Medical Association;

(H) The Arkansas Pharmacists Association;

(I) The Arkansas Podiatric Medical Association;

(J) The Arkansas Prosecuting Attorneys Association;

(K) The Arkansas Sheriffs Association;

(L) The Arkansas State Dental Association;

(M) The Arkansas Veterinary Medical Association;

(N) The State Board of Health;

(O) The Arkansas Public Defender's Commission; and

(P) A mental health provider or certified drug and alcohol counselor; and

(2) One (1) consumer appointed by the Governor.

20-7-606. Confidentiality.

(a) Prescription information submitted to the Department of Health under this subchapter is confidential and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b)(1) The controlled substances database created in this subchapter and all information contained in the controlled substances database and any records maintained by the department or by an entity contracting with the department that is submitted to, maintained, or stored as a part of the controlled substances database is privileged and confidential, is not a public record, and is not subject to subpoena or discovery in a civil proceeding.

(2) Information in the controlled substances database may be accessed by:

(A) A certified law enforcement officer pursuant to a criminal investigation but only after the law enforcement officer obtains a search warrant signed by a judge that demonstrates probable cause to believe that a violation of federal or state criminal law has occurred, that

specified information contained in the database would assist in the investigation of the crime, and that the specified information should be released to the certified law enforcement officer;

(B) A regulatory body engaged in the supervision of activities of licensing or regulatory boards of practitioners authorized to prescribe or dispense controlled substances; or

(C) A person or entity investigating a case involving breaches of privacy involving the database or its records.

(c) This section does not apply to information, documents, or records created or maintained in the regular course of business of a pharmacy, medical, dental, optometric, or veterinary practitioner, or other entity covered by this subchapter, and all information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil proceeding merely because the information contained in the records was reported to the controlled substances database under this subchapter.

(d) 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 to persons except as listed in § 20-7-607.

(e) The Prescription Drug Monitoring Program shall establish and maintain a process for verifying the credentials and authorizing the use of prescription information by individuals and agencies listed in § 20-7-607.

20-7-607. Providing prescription monitoring information.

(a)(1) The Department of Health may review the Prescription Drug Monitoring Program Information, including without limitation a review to identify information that appears to indicate whether a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances.

(2) If information of misuse or abuse is identified, the department *shall* notify the practitioners and dispensers who prescribed or dispensed the prescriptions.

(b) The department *shall* provide information in the Prescription Drug *Monitoring Program upon request and at no cost only to the following persons:*

(1) A person authorized to prescribe or dispense controlled substances

for the purpose of providing medical or pharmaceutical care for his or her patients or for reviewing information regarding prescriptions that are recorded as having been issued or dispensed by the requester;

(2) A patient who requests his or her own prescription monitoring information;

(3) A parent or legal guardian of a minor child who requests the minor child's prescription drug monitoring program information;

(4)(A) A designated representative of a professional licensing board of the professions of the healing arts representing health care disciplines whose licensees are prescribers pursuant to an investigation of a specific individual, entity or business licensed or permitted by that board.

(B) Except as permitted by subsection (a)(2) of this section, the department shall provide information under subsection (b)(4)(A) of this section only if the requesting board states in writing that the information is necessary for an investigation;

(5) The State Medical Examiner as authorized by law to investigate causes of deaths for cases under investigation pursuant to his or her official duties and responsibilities;

(6) Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances required to be submitted under this subchapter pursuant to the agency's official duties and responsibilities; and

(7) Personnel of the department for purposes of administration and enforcement of this subchapter.

(c) Information collected under this subchapter shall be maintained for three (3) years.

(d) The department may provide information to public or private entities for statistical, research, or educational purposes after encrypting or removing the patient's name, street name and number, patient identification number, month and day of birth, and prescriber information that could be used to identify individual patients, persons who received prescriptions from dispensers, or both.

20-7-608. Information exchange with other prescription drug monitoring programs.

(a) The Department of Health may provide prescription monitoring

information to other states' prescription drug monitoring programs and the information may be used by those programs consistent with this subchapter.

(b) The department may request and receive prescription monitoring information from other states' prescription drug monitoring programs, and may use the information under this subchapter.

(c) The department may develop the capability to transmit information to other prescription drug monitoring programs and receive information from other prescription drug monitoring programs employing the standards of exchangeability.

(d) The department may enter into written agreements with other states' prescription drug monitoring programs for the purpose of describing the terms and conditions for sharing of prescription information under this subchapter.

20-7-609. Authority to contract.

(a) The Department of Health may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the Prescription Drug Monitoring Program.

(b) A contractor shall be bound to comply with the provisions regarding confidentiality of prescription information as outlined in this subchapter and shall be subject to the penalties specified in this subchapter for unlawful acts.

20-7-610. Authority to seek funding.

(a) The Department of Health may make application for, receive, and administer grant funding from public or private sources for the development, implementation, or enhancement of the Prescription Drug Monitoring Program.

(b) A fee shall not be levied against practitioners for the purpose of funding or complying with the Prescription Drug Monitoring Program.

20-7-611. Unlawful acts and penalties.

(a)(1) It is unlawful for a dispenser to purposely fail to submit prescription monitoring information as required under this subchapter.

(2) A violation of subdivision (a)(1) of this section is a Class B misdemeanor.

(b)(1) It is unlawful for a dispenser to purposely submit fraudulent

prescription information.

(2) A violation of subdivision (b)(1) of this section is a Class D felony.

(c)(1) It is unlawful for a person authorized to receive prescription monitoring information to purposely disclose the information in violation of this subchapter.

(2) A violation of subdivision (c)(1) of this section is a Class *C* felony.

(d)(1) It is unlawful for a person authorized to receive prescription drug monitoring program information to use such information in a manner or for a purpose in violation of this subchapter.

(2) A violation of subsection (d)(1) of this section is a Class *C felony.*

(e)(1) It is unlawful for a person to knowingly obtain, use, or disclose, or attempt to obtain use, or disclose information by fraud or deceit from the Prescription Drug Monitoring Program or from a person authorized to receive information from the Prescription Drug Monitoring Program under this subchapter.

(2) A violation of subdivision (e)(1) of this section is a Class *C* felony.

(f) In addition to the criminal penalties provided in this section, a dispenser or practitioner who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of this subchapter may be subject to disciplinary action by the dispenser's or practitioner's licensing board.

(g) In addition to the criminal penalties provided in this section, a law enforcement officer who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of this subchapter may be subject to disciplinary action *by the law enforcement officer's agency or department.*

(h) This subchapter does not limit a person whose privacy has been compromised unlawfully under this section from binging a civil action to address the breach of privacy or to recover all damages to which the person may be entitled per violation, including attorney's fees and costs.

20-76-612. Privacy rights protected.

This subchapter does not give authority to any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly, the courts, or the United States Constitution or the Constitution of the State of Arkansas other than to the extent provided in this subchapter.

20-7-613. Rules.

The State Board of Health shall adopt rules to implement this subchapter.

20-7-614. Effective date.

(a) The Prescription Drug Monitoring Program shall become operational *March 1, 2013* if full funding is available under § 20-7-610.

(b) The Director of the Department of Health may suspend operation of the program if adequate funding under § 20-7-610 ceases.

/s/P. Malone