LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1072

Introduced by Lathrop, 12.

Read first time January 22, 2014

Committee:

A BILL

FOR AN ACT relating to public health; to amend section 38-178, Revised Statutes Cumulative Supplement, 2012; to adopt the Prescription Monitoring and Health Information Exchange Act; to change provisions relating to grounds for disciplinary action; to eliminate provisions relating to prescription drug monitoring; to harmonize provisions; to provide an operative date; to repeal the original section; and to outright repeal section 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 and Health Information Exchange Act.

Sec. 2. For purposes of the Prescription Monitoring and Health Information Exchange Act:

(1) Board means the Board of Pharmacy;

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

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

(4) Delegate means an agent or employee of a dispenser or practitioner to whom the task of inputting or assessing prescription information has been delegated;

(5) 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;

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

(a) A hospital as defined in section 71-419 that distributes controlled substances or such identified drugs for the purpose of inpatient hospital care;

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

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

(7) e-Prescriber platform means an electronic reporting service for prescribers and practitioners to record and submit prescription information to dispensers if such submissions are technologically compatible with a prescription monitoring program organization's health information exchange;

(8) Health information exchange means an organization that shares clinical and administrative data among providers;

(9) Interoperability means the ability of a program to share electronically reported prescription information with another state's program;

(10) Nebraska Health Information Initiative means a public-private statewide health information exchange in Nebraska that operates a health information exchange which facilitates the secure exchange of clinical information among physicians and other health care providers in real time at the point of care;

(11) 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 identified drug is lawfully dispensed;

(12) Practitioner means a physician, a dentist, a

podiatrist, a certified registered nurse anesthetist, a certified nurse midwife, a pharmacist, an optometrist, a nurse practitioner, a physician assistant, or a veterinarian, 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;

(13) Prescribe means to issue a direction or authorization, by prescription, permitting a patient to lawfully obtain a controlled substance or a drug identified pursuant to subsection (1) of section 3 of this act;

(14) Prescriber means a practitioner who is authorized to prescribe;

(15) Prescription means an order for a controlled substance or a drug identified pursuant to subsection (1) of section 3 of this act issued by a practitioner. Prescription does not include a chart order as defined in section 38-2810;

(16) Prescription information means information regarding each prescription;

(17) Prescription monitoring program organization means the organization contracting with the board pursuant to subsection (1) of section 3 of this act;

(18) Program means a prescription monitoring program, in this state or another state, that collects, manages, analyzes, and provides prescription information; and

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

Sec. 3. (1) The board shall establish and maintain a program to monitor the prescribing and dispensing of controlled substances and additional drugs identified by the board as demonstrating a potential for abuse. To carry out the duties described in the Prescription Monitoring and Health Information Exchange Act, the board may contract with an organization which facilitates the secure exchange of clinical information among physicians and other health care providers in real time at the point of care.

(2) The prescription monitoring program organization shall provide access to prescription information generated by dispensers, delegates, practitioners, and prescribers regarding each prescription dispensed for a controlled substance or a drug identified pursuant to subsection (1) of this section. Prescription information shall also include prescription information from any dispenser located outside this state who is licensed and registered by the department regarding each prescription dispensed to a patient who resides within Nebraska. The prescription monitoring program organization shall provide access to the prescription information required by subsection (4) of this section.

(3) Each dispenser shall submit to the prescription monitoring program organization information regarding each prescription dispensed for a controlled substance or a drug

identified pursuant to subsection (1) of this section the prescription information required by subsection (4) of this section. Any dispenser located outside Nebraska who is licensed and registered by the department shall submit information regarding each prescription dispensed to a patient who resides in Nebraska.

(4) Prescription information made accessible on the health information exchange shall include information required by the board.

(5) No person may opt out of or elect against: (a) A dispenser collecting and making available the patient's prescription information; or (b) the prescription monitoring program organization receiving, storing, processing, transmitting, or disposing of the patient's prescription information and data necessary to access the prescription information. A patient may opt out of or elect against a dispenser, practitioner, or prescriber making available any other information to the prescription monitoring program organization.

(6) Beginning two years after the operative date of this act, all dispensers shall electronically record prescription information in accordance with the requirements of the dispenser's e-Prescriber platform not more than one hour after the time each prescription was dispensed.

(7) The board may issue a waiver to a dispenser that is unable to record prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by an alternative format. A dispenser that receives such waiver shall

submit all prescription information required pursuant to subsection (4) of this section in the alternative format to the prescription monitoring program organization which shall make the prescription information accessible on the prescription monitoring program organization's health information exchange through the e-Prescriber platform. If the prescription monitoring program organization issues a waiver to a dispenser, the dispenser shall submit prescription information not more than three days after the date each prescription is dispensed.

(8) A dispenser is not required to compile or submit dispensing data for a prescription drug sample of a nonnarcotic controlled substance listed in Schedule V of section 28-405 for the purpose of assessing a therapeutic response which prescribed according to indication approved by the federal Food and Drug Administration.

Sec. 4. (1) Prescription information submitted to the prescription monitoring program organization under the Prescription Monitoring and Health Information Exchange 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 prescription monitoring program organization shall establish and enforce policies and procedures to ensure that the privacy and confidentiality of the prescription information collected, recorded, transmitted, and stored is protected and not disclosed except as provided in section 5 of this act.

(3) The prescription monitoring program organization 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 prescription monitoring program organization shall make the prescription information available in its health information exchange to:

(a) Practitioners, prescribers, delegates, and dispensers to identify information that appears to indicate if a patient is or has been obtaining prescriptions in a manner that represents a misuse or abuse of a controlled substance or drug identified pursuant to subsection (1) of section 3 of this act. The obligation for practitioners, prescribers, delegates, and dispensers to review prescription information available in the prescription monitoring program organization's health information exchange for indications of a misuse or abuse of a controlled substance or drug identified pursuant to subsection (1) of section 3 of this act begins two years after the operative date of this act;

(b) Health information exchange participants for the purposes of (i) providing medical or pharmaceutical care for their patients, (ii) reviewing claims and payment information regarding prescriptions recorded as having been issued or dispensed, or (iii) other purposes as allowed by the health information exchange participation agreement and applicable law;

(c) A patient who requests the patient's own prescription

information or a parent or legal guardian of a minor child who requests the prescription information of the minor child in accordance with procedures established by the department;

(d) The board for the purposes described in section 6 of this act;

(e) Pursuant to a valid subpoena, local, state, and federal law enforcement or prosecutorial officials engaged in the administration or enforcement of the Uniform Controlled Substances Act or an investigation under the act pursuant to official duties and responsibilities; and

(f) Pursuant to a valid subpoena, 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 services regarding recipients or providers under the medical assistance program created pursuant to the Medical Assistance Act.

(2) Practitioners, prescribers, delegates, and dispensers that identify indications of misuse or abuse of a controlled substance or a drug identified pursuant to subsection (1) of section 3 of this act may report such information to law enforcement, including, but not limited to, the Nebraska State Patrol.

Sec. 6. (1) The board may provide prescription information to the program of other states. Prescription information may be used by those programs consistent with the Prescription Monitoring and Health Information Exchange Act.

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

(3) The board may collaborate with and support the prescription monitoring program organization in creating and maintaining an ability to transmit prescription information to and receive prescription information from other programs employing standards of interoperability.

(4) The board, and the prescription monitoring program organization when necessary, 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 board 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 prescription monitoring program organization 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 comply with the requirements of 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 conduct.

Sec. 8. (1) A person authorized to receive prescription information pursuant to the Prescription Monitoring and Health

Information Exchange Act who uses prescription 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.

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

Sec. 9. The department, with the recommendation of the board, may adopt and promulgate rules and regulations to carry out the Prescription Monitoring and Health Information Exchange 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 and Health Information Exchange 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.