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
88th General Assembly
Regular Session, 2011

A Bill

HOUSE BILL 1029

By: Representative D. Altes

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 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 -- Schedule VI controlled substances.

(B) "Dispenser" does not include:

(i) A licensed hospital pharmacy that distributes Schedule II -- Schedule VI controlled substances:

(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; and

(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 -- Schedule VI controlled substances; or

(iv) A wholesale distributor of Schedule II -- Schedule VI controlled substances;

(3) "Interoperability" means the ability of the program to electronically share reported information with another state if the information concerns 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;

(4) "Patient" means the person who is the ultimate user of Schedule II -- Schedule VI controlled substances for whom a prescription is issued or for whom a drug is dispensed, or both; and

(5) "Schedule II -- Schedule VI controlled substances" means controlled substances under § 5-64-201 et seq.

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 -- Schedule VI controlled substances.

(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 board 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 board.

(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 board.

(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 not a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 201, as it existed on January 1, 2011.

(2) However, to the extent consistent with this subchapter, the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 201, as it existed on January 1, 2011, apply to the prescription drug monitoring program.

(b) Except as provided in subsections (c) and (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 for the purpose of providing 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. Information exchange with prescription monitoring programs in other states.

The Department of Health may:

(1) Provide prescription monitoring information to prescription monitoring programs in other states, and the information may be used by those programs consistent with the provisions of this subchapter;

(2) Request and receive prescription monitoring information from prescription monitoring programs in other states and may use the information under provisions of this subchapter;

(3) Develop the capability to transmit information to and receive information from prescription monitoring programs in other states employing the standards of interoperability under this subchapter; and

(4) Enter into written agreements with prescription monitoring programs in other states to describe the terms and conditions for sharing of prescription information under this subchapter.

20-7-607. 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) Nothing in this section applies to a physician who does not use the program under this subchapter.

(f) Nothing in this section applies to a pharmacist or a pharmacy that does not use the program under this subchapter.

20-7-608. Rules.

(a) The State Board of Health shall promulgate rules necessary to

implement this subchapter, including without limitation 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 no costs of the program established under this subchapter are charged to pharmacists or pharmacies.

20-7-609. Fund availability.

This subsection shall take effect only if funds are available as provided in § 20-7-608(c).