

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 535

Introduced by Lathrop, 12.

Read first time January 23, 2013

Committee:

A BILL

1 FOR AN ACT relating to prescription drugs; to amend section 38-178,
2 Revised Statutes Cumulative Supplement, 2012; to adopt
3 the Prescription Monitoring Program Act; to provide
4 grounds for disciplinary action; to eliminate provisions
5 relating to prescription drug monitoring; to provide an
6 operative date; to repeal the original section; and to
7 outright repeal sections 71-2454 and 71-2455, Revised
8 Statutes Cumulative Supplement, 2012.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Prescription Monitoring Program Act.

3 Sec. 2. For purposes of the Prescription Monitoring
4 Program Act:

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

8 (2) Department means the Department of Health and Human
9 Services;

10 (3) Dispense means to deliver a controlled substance to a
11 patient or a research subject pursuant to a prescription, including
12 the packaging, labeling, or compounding necessary to prepare the
13 controlled substance for such delivery;

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

17 (a) A licensed hospital as defined in section 71-419 that
18 distributes controlled substances or such drugs for the purpose of
19 inpatient hospital care or that provides prescriptions for controlled
20 substances at the time of discharge from such a hospital;

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

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

25 (5) Interoperability means, with respect to a program,

1 the ability of that program to share electronically reported
2 prescription information with another state's program;

3 (6) Patient means the person or animal who is the
4 ultimate user of a controlled substance or a drug identified pursuant
5 to subsection (1) of section 3 of this act, for whom a lawful
6 prescription is issued, or for whom a controlled substance or such a
7 drug is lawfully dispensed;

8 (7) Practitioner means a physician, dentist, podiatrist,
9 veterinarian, or other person licensed or otherwise permitted to
10 prescribe, dispense, or administer a controlled substance or a drug
11 identified pursuant to subsection (1) of section 3 of this act in the
12 course of his or her licensed professional practice;

13 (8) Prescribe means to issue a direction or
14 authorization, by prescription, permitting a patient to lawfully
15 obtain controlled substances;

16 (9) Prescriber means a practitioner or other authorized
17 person who prescribes a controlled substance or a drug identified
18 pursuant to subsection (1) of section 3 of this act;

19 (10) Prescription means an order for a controlled
20 substance issued by a practitioner. Prescription does not include a
21 chart order;

22 (11) Program means a prescription monitoring program, in
23 this state or another state, that collects, manages, analyzes, and
24 provides information regarding controlled substances or drugs
25 identified pursuant to subsection (1) of section 3 of this act; and

1 (12) State means a state, district, or territory of the
2 United States.

3 Sec. 3. (1) The department shall establish and maintain a
4 program to monitor the prescribing and dispensing of controlled
5 substances and, if selected by this state, additional drugs
6 identified by the department as demonstrating a potential for abuse
7 by all prescribers or dispensers in this state. The department may
8 collaborate with the Nebraska Health Information Initiative or any
9 successor public-private statewide health information exchange to
10 establish and maintain the program.

11 (2) Each dispenser shall submit to the department
12 information regarding each prescription dispensed for a controlled
13 substance or a drug identified pursuant to subsection (1) of this
14 section. Any dispenser located outside the boundaries of Nebraska who
15 is licensed and registered by the department shall submit information
16 regarding each prescription dispensed to a patient who resides within
17 Nebraska.

18 (3) Each dispenser required to report under subsection
19 (2) of this section shall submit to the department, by electronic
20 means, information that includes, but is not limited to:

21 (a) Dispenser identification number;

22 (b) Date prescription was filled;

23 (c) Prescription number;

24 (d) Whether prescription was new or a refill;

25 (e) National drug code for drug dispensed;

- 1 (f) Quantity dispensed;
2 (g) Days' supply dispensed;
3 (h) Number of refills ordered;
4 (i) Patient identification number;
5 (j) Patient name;
6 (k) Patient address;
7 (l) Patient date of birth;
8 (m) Patient gender;
9 (n) Prescriber identification number;
10 (o) Date prescription issued by prescriber;
11 (p) Person who received the prescription from the
12 dispenser if other than the patient; and
13 (q) Source of payment for prescription.
14 (4) Each dispenser shall submit the required information
15 in accordance with transmission methods and frequency established by
16 the department but no more than one hour after the time each
17 prescription was dispensed.
18 (5) The department may issue a waiver to a dispenser that
19 is unable to submit prescription information by electronic means.
20 Such waiver may permit the dispenser to submit prescription
21 information by paper form or other means. All information required in
22 subsection (3) of this section shall be submitted in the alternative
23 format. If a dispenser is issued a waiver, the dispenser may have up
24 to three days to submit the required information to the department
25 after the date each prescription is dispensed.

1 Sec. 4. (1) Prescription information submitted to the
2 department under the Prescription Monitoring Program Act shall be
3 confidential and not subject to sections 84-712 to 84-712.09 except
4 as provided in section 5 of this act.

5 (2) The department shall establish and enforce policies
6 and procedures to ensure that the privacy and confidentiality of
7 patients are maintained and that patient information collected,
8 recorded, transmitted, and stored is protected and not disclosed
9 except as provided in section 5 of this act.

10 (3) The department shall establish and maintain a process
11 for verifying the credentials and authorizing the use of prescription
12 information by individuals and agencies listed in section 5 of this
13 act.

14 Sec. 5. (1) The department shall review the prescription
15 information submitted under the Prescription Monitoring Program Act.
16 The review shall include, but not be limited to:

17 (a) A review to identify information that appears to
18 indicate if a person may be obtaining prescriptions in a manner that
19 may represent misuse or abuse of controlled substances. If such
20 information is identified, the department shall notify the
21 practitioners and dispensers who prescribed or dispensed the
22 prescriptions; and

23 (b) A review to identify information that appears to
24 indicate if a violation of law or breach of professional standards
25 may have occurred. If such information is identified, the department

1 shall notify the appropriate law enforcement agency, professional
2 credentialing board, or both, and provide prescription information
3 necessary for an investigation.

4 (2) The department may provide information submitted
5 under the Prescription Monitoring Program Act upon request only to
6 the following persons:

7 (a) Persons authorized to prescribe or dispense for the
8 purpose of providing medical or pharmaceutical care for their
9 patients or for reviewing information regarding prescriptions that
10 are recorded as having been issued or dispensed by the requester;

11 (b) A patient who requests the patient's own prescription
12 monitoring information or a parent or legal guardian of a minor child
13 who requests the prescription monitoring information of the minor
14 child in accordance with procedures established by the department;

15 (c) A professional board under section 38-167 if the
16 request is pursuant to an investigation or is pursuant to the board's
17 official duties and responsibilities;

18 (d) Local, state, and federal law enforcement or
19 prosecutorial officials engaged in the administration, investigation,
20 or enforcement of the Uniform Controlled Substances Act pursuant to
21 the agency's official duties and responsibilities;

22 (e) The investigatory unit of the Division of Medicaid
23 and Long-Term Care of the department that has the legal authority to
24 conduct investigations and utilization review of program services
25 regarding recipients or providers under the medical assistance

1 program pursuant to the Medical Assistance Act; and

2 (f) Personnel of the department for purposes of
3 administration and enforcement of the Prescription Monitoring Program
4 Act.

5 Sec. 6. (1) The department may provide prescription
6 monitoring information to the program of other states. Such
7 information may be used by those programs consistent with the
8 Prescription Monitoring Program Act.

9 (2) The department may request and receive prescription
10 monitoring information from the program of other states and may use
11 such information consistent with the act.

12 (3) The department may develop the capability to transmit
13 information to and receive information from other programs employing
14 the standards of interoperability.

15 (4) The department may enter into written agreements with
16 the program of another state for the purpose of describing the terms
17 and conditions for sharing of prescription information under this
18 section if the department has a written memorandum of understanding
19 in place with that state's program or if Nebraska and the other state
20 are members of an interstate compact for the exchange of prescription
21 information.

22 Sec. 7. The department may contract with another agency
23 of this state, an agency from another state, or a private vendor, as
24 necessary, to ensure the effective operation of the program. Any
25 contractor shall be bound to comply with the provisions regarding

1 confidentiality of prescription information in section 4 of this act
2 and shall be subject to the penalties specified in section 8 of this
3 act for unlawful acts.

4 Sec. 8. (1) A dispenser who knowingly fails to submit
5 data to the department as required by the Prescription Monitoring
6 Program Act shall be subject to disciplinary action by the
7 appropriate professional board under section 38-167.

8 (2) A prescriber or dispenser authorized to access the
9 data who knowingly discloses the data in violation of state or
10 federal laws relating to the privacy of health care data shall be
11 subject to disciplinary action by the appropriate professional board
12 under section 38-167 and appropriate civil penalties.

13 (3) A person authorized to receive prescription
14 monitoring information pursuant to the Prescription Monitoring
15 Program Act who uses such information in a manner or for a purpose in
16 violation of the act shall be subject to a civil penalty of not more
17 than one thousand dollars per occurrence.

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

23 Sec. 9. The department shall adopt and promulgate rules
24 and regulations to carry out the Prescription Monitoring Program Act.

25 Sec. 10. Section 38-178, Revised Statutes Cumulative

1 Supplement, 2012, is amended to read:

2 38-178 Except as otherwise provided in sections 38-1,119
3 to 38-1,123, a credential to practice a profession may be denied,
4 refused renewal, or have other disciplinary measures taken against it
5 in accordance with section 38-185 or 38-186 on any of the following
6 grounds:

7 (1) Misrepresentation of material facts in procuring or
8 attempting to procure a credential;

9 (2) Immoral or dishonorable conduct evidencing unfitness
10 to practice the profession in this state;

11 (3) Abuse of, dependence on, or active addiction to
12 alcohol, any controlled substance, or any mind-altering substance;

13 (4) Failure to comply with a treatment program or an
14 aftercare program, including, but not limited to, a program entered
15 into under the Licensee Assistance Program established pursuant to
16 section 38-175;

17 (5) Conviction of (a) a misdemeanor or felony under
18 Nebraska law or federal law, or (b) a crime in any jurisdiction
19 which, if committed within this state, would have constituted a
20 misdemeanor or felony under Nebraska law and which has a rational
21 connection with the fitness or capacity of the applicant or
22 credential holder to practice the profession;

23 (6) Practice of the profession (a) fraudulently, (b)
24 beyond its authorized scope, (c) with gross incompetence or gross
25 negligence, or (d) in a pattern of incompetent or negligent conduct;

1 (7) Practice of the profession while the ability to
2 practice is impaired by alcohol, controlled substances, drugs, mind-
3 altering substances, physical disability, mental disability, or
4 emotional disability;

5 (8) Physical or mental incapacity to practice the
6 profession as evidenced by a legal judgment or a determination by
7 other lawful means;

8 (9) Illness, deterioration, or disability that impairs
9 the ability to practice the profession;

10 (10) Permitting, aiding, or abetting the practice of a
11 profession or the performance of activities requiring a credential by
12 a person not credentialed to do so;

13 (11) Having had his or her credential denied, refused
14 renewal, limited, suspended, revoked, or disciplined in any manner
15 similar to section 38-196 by another state or jurisdiction based upon
16 acts by the applicant or credential holder similar to acts described
17 in this section;

18 (12) Use of untruthful, deceptive, or misleading
19 statements in advertisements;

20 (13) Conviction of fraudulent or misleading advertising
21 or conviction of a violation of the Uniform Deceptive Trade Practices
22 Act;

23 (14) Distribution of intoxicating liquors, controlled
24 substances, or drugs for any other than lawful purposes;

25 (15) Violations of the Uniform Credentialing Act or the

1 rules and regulations relating to the particular profession;

2 (16) Unlawful invasion of the field of practice of any
3 profession regulated by the Uniform Credentialing Act which the
4 credential holder is not credentialed to practice;

5 (17) Violation of the Uniform Controlled Substances Act
6 or any rules and regulations adopted pursuant to the act;

7 (18) Failure to file a report required by section
8 38-1,124, 38-1,125, or 71-552;

9 (19) Failure to maintain the requirements necessary to
10 obtain a credential;

11 (20) Violation of an order issued by the department;

12 (21) Violation of an assurance of compliance entered into
13 under section 38-1,108;

14 (22) Failure to pay an administrative penalty;

15 (23) Unprofessional conduct as defined in section 38-179;

16 ~~or~~

17 (24) Violation of the Automated Medication Systems Act;

18 or -

19 (25) Violation of the Prescription Monitoring Program

20 Act.

21 Sec. 11. This act becomes operative on January 1, 2015.

22 Sec. 12. Original section 38-178, Revised Statutes
23 Cumulative Supplement, 2012, is repealed.

24 Sec. 13. The following sections are outright repealed:
25 Sections 71-2454 and 71-2455, Revised Statutes Cumulative Supplement,

LB 535

LB 535

1 2012.