

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 57

By: Rader

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5
6 AS INTRODUCED

7 An Act relating to controlled dangerous substances;
8 amending 63 O.S. 2011, Section 2-309D, as last
9 amended by Section 59, Chapter 161, O.S.L. 2020 (63
10 O.S. Supp. 2020, Section 2-309D), which relates to
11 the central repository; authorizing members of the
12 Opioid Overdose Fatality Review Board to access
13 central repository for certain purpose; amending
14 Section 5, Chapter 175, O.S.L. 2018, as last amended
15 by Section 19, Chapter 428, O.S.L. 2019 (63 O.S.
16 Supp. 2020, Section 2-309I), which relates to
17 prescription limits and rules for opioid drugs;
18 modifying applicability of section; defining term;
19 clarifying language; and declaring an emergency.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-309D, as
22 last amended by Section 59, Chapter 161, O.S.L. 2020 (63 O.S. Supp.
23 2020, Section 2-309D), is amended to read as follows:

24 Section 2-309D. A. The information collected at the central
25 repository pursuant to the Anti-Drug Diversion Act shall be
26 confidential and shall not be open to the public. Access to the
27 information shall be limited to:

1 1. Peace officers certified pursuant to Section 3311 of Title
2 70 of the Oklahoma Statutes who are employed as investigative agents
3 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
4 Control;

5 2. The United States Drug Enforcement Administration Diversion
6 Group Supervisor;

7 3. The executive director or chief investigator, as designated
8 by each board, of the following state boards:

- 9 a. Board of Podiatric Medical Examiners,
- 10 b. Board of Dentistry,
- 11 c. State Board of Pharmacy,
- 12 d. State Board of Medical Licensure and Supervision,
- 13 e. State Board of Osteopathic Examiners,
- 14 f. State Board of Veterinary Medical Examiners,
- 15 g. Oklahoma Health Care Authority,
- 16 h. Department of Mental Health and Substance Abuse
17 Services,
- 18 i. Board of Examiners in Optometry,
- 19 j. Board of Nursing,
- 20 k. Office of the Chief Medical Examiner, and
- 21 l. State Board of Health;

22 4. A multicounty grand jury properly convened pursuant to the
23 Multicounty Grand Jury Act;

1 5. Medical practitioners employed by the United States
2 Department of Veterans Affairs, the United States Military, or other
3 federal agencies treating patients in this state; ~~and~~

4 6. At the discretion of the Director of the Oklahoma State
5 Bureau of Narcotics and Dangerous Drugs Control, medical
6 practitioners and their staff, including those employed by the
7 federal government in this state; and

8 7. The members of the Opioid Overdose Fatality Review Board for
9 the purpose of carrying out the duties prescribed by Section 2-1001
10 of this title.

11 B. This section shall not prevent access, at the discretion of
12 the Director of the Oklahoma State Bureau of Narcotics and Dangerous
13 Drugs Control, to investigative information by peace officers and
14 investigative agents of federal, state, tribal, county or municipal
15 law enforcement agencies, district attorneys and the Attorney
16 General in furtherance of criminal, civil or administrative
17 investigations or prosecutions within their respective
18 jurisdictions, designated legal, communications, and analytical
19 employees of the Bureau, and to registrants in furtherance of
20 efforts to guard against the diversion of controlled dangerous
21 substances.

22 C. This section shall not prevent the disclosure, at the
23 discretion of the Director of the Oklahoma State Bureau of Narcotics
24 and Dangerous Drugs Control, of statistical information gathered

1 from the central repository to the general public which shall be
2 limited to types and quantities of controlled substances dispensed
3 and the county where dispensed.

4 D. This section shall not prevent the disclosure, at the
5 discretion of the Director of the Oklahoma State Bureau of Narcotics
6 and Dangerous Drugs Control, of prescription-monitoring-program
7 information to prescription-monitoring programs of other states
8 provided a reciprocal data-sharing agreement is in place.

9 E. The Department of Mental Health and Substance Abuse Services
10 and the State Department of Health may utilize the information in
11 the central repository for statistical, research, substance abuse
12 prevention, or educational purposes, provided that consumer
13 confidentiality is not compromised.

14 F. Any unauthorized disclosure of any information collected at
15 the central repository provided by the Anti-Drug Diversion Act shall
16 be a misdemeanor. Violation of the provisions of this section shall
17 be deemed willful neglect of duty and shall be grounds for removal
18 from office.

19 G. 1. Registrants shall have access to the central repository
20 for the purposes of patient treatment and for determination in
21 prescribing or screening new patients. The patient's history may be
22 disclosed to the patient for the purposes of treatment of
23 information at the discretion of the physician.

1 2. a. Prior to prescribing or authorizing for refill, if one
2 hundred eighty (180) days have elapsed prior to the
3 previous access and check, of opiates, synthetic
4 opiates, semisynthetic opiates, benzodiazepine or
5 carisoprodol to a patient of record, registrants or
6 members of their medical or administrative staff shall
7 be required to access the information in the central
8 repository to assess medical necessity and the
9 possibility that the patient may be unlawfully
10 obtaining prescription drugs in violation of the
11 Uniform Controlled Dangerous Substances Act. The duty
12 to access and check shall not alter or otherwise amend
13 appropriate medical standards of care. The registrant
14 or medical provider shall note in the patient file
15 that the central repository has been checked and may
16 maintain a copy of the information.

17 b. The requirements set forth in subparagraph a of this
18 paragraph shall not apply:

19 (1) to medical practitioners who prescribe the
20 controlled substances set forth in subparagraph a
21 of this paragraph for hospice or end-of-life
22 care, or

23 (2) for a prescription of a controlled substance set
24 forth in subparagraph a of this paragraph that is

1 issued by a practitioner for a patient residing
2 in a nursing facility as defined by Section 1-
3 1902 of this title, provided that the
4 prescription is issued to a resident of such
5 facility.

6 3. Registrants shall not be liable to any person for any claim
7 of damages as a result of accessing or failing to access the
8 information in the central repository and no lawsuit may be
9 predicated thereon.

10 4. The failure of a registrant to access and check the central
11 repository as required under state or federal law or regulation may,
12 after investigation, be grounds for the licensing board of the
13 registrant to take disciplinary action against the registrant.

14 H. The State Board of Podiatric Examiners, the State Board of
15 Dentistry, the State Board of Medical Licensure and Supervision, the
16 State Board of Examiners in Optometry, the State Board of Nursing,
17 the State Board of Osteopathic Examiners and the State Board of
18 Veterinary Medical Examiners shall have the sole responsibility for
19 enforcement of the provisions of subsection G of this section.
20 Nothing in this section shall be construed so as to permit the
21 Director of the State Bureau of Narcotics and Dangerous Drugs
22 Control to assess administrative fines provided for in Section 2-304
23 of this title.

1 I. The Director of the Oklahoma State Bureau of Narcotics and
2 Dangerous Drugs Control, or a designee thereof, shall provide a
3 monthly list to the Directors of the State Board of Podiatric
4 Examiners, the State Board of Dentistry, the State Board of Medical
5 Licensure and Supervision, the State Board of Examiners in
6 Optometry, the State Board of Nursing, the State Board of
7 Osteopathic Examiners and the State Board of Veterinary Medical
8 Examiners of the top twenty prescribers of controlled dangerous
9 substances within their respective areas of jurisdiction. Upon
10 discovering that a registrant is prescribing outside the limitations
11 of his or her licensure or outside of drug registration rules or
12 applicable state laws, the respective licensing board shall be
13 notified by the Bureau in writing. Such notifications may be
14 considered complaints for the purpose of investigations or other
15 actions by the respective licensing board. Licensing boards shall
16 have exclusive jurisdiction to take action against a licensee for a
17 violation of subsection G of this section.

18 J. Information regarding fatal and nonfatal overdoses, other
19 than statistical information as required by Section 2-106 of this
20 title, shall be completely confidential. Access to this information
21 shall be strictly limited to the Director of the Oklahoma State
22 Bureau of Narcotics and Dangerous Drugs Control or designee, the
23 Chief Medical Examiner, state agencies and boards provided in
24 subsection A of this section, and the registrant that enters the

1 information. Registrants shall not be liable to any person for a
2 claim of damages for information reported pursuant to the provisions
3 of Section 2-105 of this title.

4 K. The Director of the Oklahoma State Bureau of Narcotics and
5 Dangerous Drugs Control shall provide adequate means and procedures
6 allowing access to central repository information for registrants
7 lacking direct computer access.

8 L. Upon completion of an investigation in which it is
9 determined that a death was caused by an overdose, either
10 intentionally or unintentionally, of a controlled dangerous
11 substance, the medical examiner shall be required to report the
12 decedent's name and date of birth to the Oklahoma State Bureau of
13 Narcotics and Dangerous Drugs Control. The Oklahoma State Bureau of
14 Narcotics and Dangerous Drugs Control shall be required to maintain
15 a database containing the classification of medical practitioners
16 who prescribed or authorized controlled dangerous substances
17 pursuant to this subsection.

18 M. The Oklahoma State Bureau of Narcotics and Dangerous Drugs
19 is authorized to provide unsolicited notification to the licensing
20 board of a pharmacist or practitioner if a patient has received one
21 or more prescriptions for controlled substances in quantities or
22 with a frequency inconsistent with generally recognized standards of
23 safe practice or if a practitioner or prescriber has exhibited
24 prescriptive behavior consistent with generally recognized standards

1 indicating potentially problematic prescribing patterns. An
2 unsolicited notification to the licensing board of the practitioner
3 pursuant to this section:

4 1. Is confidential;

5 2. May not disclose information that is confidential pursuant
6 to this section; and

7 3. May be in a summary form sufficient to provide notice of the
8 basis for the unsolicited notification.

9 SECTION 2. AMENDATORY Section 5, Chapter 175, O.S.L.
10 2018, as last amended by Section 19, Chapter 428, O.S.L. 2019 (63
11 O.S. Supp. 2020, Section 2-309I), is amended to read as follows:

12 Section 2-309I. A. A practitioner shall not issue an initial
13 prescription for an opioid drug in a quantity exceeding a seven-day
14 supply for treatment of acute pain. Any opioid prescription for
15 acute pain shall be for the lowest effective dose of an immediate-
16 release drug.

17 B. Prior to issuing an initial prescription for an opioid drug
18 in a course of treatment for acute or chronic pain, a practitioner
19 shall:

20 1. Take and document the results of a thorough medical history,
21 including the experience of the patient with nonopioid medication
22 and nonpharmacological pain-management approaches and substance
23 abuse history;

1 2. Conduct, as appropriate, and document the results of a
2 physical examination;

3 3. Develop a treatment plan with particular attention focused
4 on determining the cause of pain of the patient;

5 4. Access relevant prescription monitoring information from the
6 central repository pursuant to Section 2-309D of this title;

7 5. Limit the supply of any opioid drug prescribed for acute
8 pain to a duration of no more than seven (7) days as determined by
9 the directed dosage and frequency of dosage; provided, however, upon
10 issuing an initial prescription for acute pain pursuant to this
11 section, the practitioner may issue one (1) subsequent prescription
12 for an opioid drug in a quantity not to exceed seven (7) days if:

13 a. the subsequent prescription is due to a major surgical
14 procedure or "confined to home" status as defined in
15 42 U.S.C., Section 1395n(a),

16 b. the practitioner provides the subsequent prescription
17 on the same day as the initial prescription,

18 c. the practitioner provides written instructions on the
19 subsequent prescription indicating the earliest date
20 on which the prescription may be filled, otherwise
21 known as a "do not fill until" date, and

22 d. the subsequent prescription is dispensed no more than
23 five (5) days after the "do not fill until" date
24 indicated on the prescription;

1 6. In the case of a patient under the age of eighteen (18)
2 years old, enter into a patient-provider agreement with a parent or
3 guardian of the patient; and

4 7. In the case of a patient who is a pregnant woman, enter into
5 a patient-provider agreement with the patient.

6 C. No less than seven (7) days after issuing the initial
7 prescription pursuant to subsection A of this section, the
8 practitioner, after consultation with the patient, may issue a
9 subsequent prescription for the drug to the patient in a quantity
10 not to exceed seven (7) days, provided that:

11 1. The subsequent prescription would not be deemed an initial
12 prescription under this section;

13 2. The practitioner determines the prescription is necessary
14 and appropriate to the treatment needs of the patient and documents
15 the rationale for the issuance of the subsequent prescription; and

16 3. The practitioner determines that issuance of the subsequent
17 prescription does not present an undue risk of abuse, addiction or
18 diversion and documents that determination.

19 D. Prior to issuing the initial prescription of an opioid drug
20 in a course of treatment for acute or chronic pain and again prior
21 to issuing the third prescription of the course of treatment, a
22 practitioner shall discuss with the patient or the parent or
23 guardian of the patient if the patient is under eighteen (18) years
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1 of age and is not an emancipated minor, the risks associated with
2 the drugs being prescribed, including but not limited to:

3 1. The risks of addiction and overdose associated with opioid
4 drugs and the dangers of taking opioid drugs with alcohol,
5 benzodiazepines and other central nervous system depressants;

6 2. The reasons why the prescription is necessary;

7 3. Alternative treatments that may be available; and

8 4. Risks associated with the use of the drugs being prescribed,
9 specifically that opioids are highly addictive, even when taken as
10 prescribed, that there is a risk of developing a physical or
11 psychological dependence on the controlled dangerous substance, and
12 that the risks of taking more opioids than prescribed or mixing
13 sedatives, benzodiazepines or alcohol with opioids can result in
14 fatal respiratory depression.

15 The practitioner shall include a note in the medical record of
16 the patient that the patient or the parent or guardian of the
17 patient, as applicable, has discussed with the practitioner the
18 risks of developing a physical or psychological dependence on the
19 controlled dangerous substance and alternative treatments that may
20 be available. The applicable state licensing board of the
21 practitioner shall develop and make available to practitioners
22 guidelines for the discussion required pursuant to this subsection.
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1 E. At the time of the issuance of the third prescription for an
2 opioid drug, the practitioner shall enter into a patient-provider
3 agreement with the patient.

4 F. When an opioid drug is continuously prescribed for three (3)
5 months or more for chronic pain, the practitioner shall:

6 1. Review, at a minimum of every three (3) months, the course
7 of treatment, any new information about the etiology of the pain,
8 and the progress of the patient toward treatment objectives and
9 document the results of that review;

10 2. In the first year of the patient-provider agreement, assess
11 the patient prior to every renewal to determine whether the patient
12 is experiencing problems associated with an opioid use disorder as
13 defined by the American Psychiatric Association and document the
14 results of that assessment. Following one (1) year of compliance
15 with the patient-provider agreement, the practitioner shall assess
16 the patient at a minimum of every six (6) months;

17 3. Periodically make reasonable efforts, unless clinically
18 contraindicated, to either stop the use of the controlled substance,
19 decrease the dosage, try other drugs or treatment modalities in an
20 effort to reduce the potential for abuse or the development of an
21 opioid use disorder as defined by the American Psychiatric
22 Association and document with specificity the efforts undertaken;

23 4. Review the central repository information in accordance with
24 Section 2-309D of this title; and

1 5. Monitor compliance with the patient-provider agreement and
2 any recommendations that the patient seek a referral.

3 G. 1. Any prescription for acute pain pursuant to this section
4 shall have the words "acute pain" notated on the face of the
5 prescription by the practitioner.

6 2. Any prescription for chronic pain pursuant to this section
7 shall have the words "chronic pain" notated on the face of the
8 prescription by the practitioner.

9 H. This section shall not apply to a prescription for a patient
10 who is currently in ~~active~~ treatment for cancer, receiving hospice
11 care from a licensed hospice provider or palliative care from a
12 licensed hospice provider, or is a resident of a long-term care
13 facility, or to any medications that are being prescribed for use in
14 the treatment of substance abuse or opioid dependence.

15 I. Every policy, contract or plan delivered, issued, executed
16 or renewed in this state, or approved for issuance or renewal in
17 this state by the Insurance Commissioner, and every contract
18 purchased by the Employees Group Insurance Division of the Office of
19 Management and Enterprise Services, on or after November 1, 2018,
20 that provides coverage for prescription drugs subject to a
21 copayment, coinsurance or deductible shall charge a copayment,
22 coinsurance or deductible for an initial prescription of an opioid
23 drug prescribed pursuant to this section that is either:
24

1 1. Proportional between the cost sharing for a thirty-day
2 supply and the amount of drugs the patient was prescribed; or

3 2. Equivalent to the cost sharing for a full thirty-day supply
4 of the drug, provided that no additional cost sharing may be charged
5 for any additional prescriptions for the remainder of the thirty-day
6 supply.

7 J. Any practitioner authorized to prescribe an opioid drug
8 shall adopt and maintain a written policy or policies that include
9 execution of a written agreement to engage in an informed consent
10 process between the prescribing practitioner and qualifying opioid
11 therapy patient. For the purposes of this section, "qualifying
12 opioid therapy patient" means:

13 1. A patient requiring opioid treatment for more than three (3)
14 months;

15 2. A patient who is prescribed benzodiazepines and opioids
16 together for more than one twenty-four-hour period; or

17 3. A patient who is prescribed a dose of opioids that exceeds
18 one hundred (100) morphine equivalent doses.

19 SECTION 3. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.