

LEGISLATIVE BILL 223

Approved by the Governor May 09, 2017

Introduced by Kuehn, 38; Howard, 9; Lindstrom, 18.

A BILL FOR AN ACT relating to prescription drug monitoring; to amend section 71-2454, Revised Statutes Cumulative Supplement, 2016; to provide for availability and confidentiality of prescription information and certain data as prescribed; to change provisions relating to reporting by veterinarians; to provide for training as prescribed; to define and redefine terms; to harmonize provisions; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-2454, Revised Statutes Cumulative Supplement, 2016, is amended to read:

71-2454 (1) An entity described in section 71-2455 shall establish a system of prescription drug monitoring for the purposes of (a) preventing the misuse of controlled substances that are prescribed and (b) allowing prescribers and dispensers to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes and that the State of Nebraska remains on the cutting edge of medical information technology.

(2) Such system of prescription drug monitoring shall be implemented as follows: Except as provided in subsection (4) of this section, beginning January 1, 2017, all dispensed prescriptions of controlled substances shall be reported; and beginning January 1, 2018, all prescription information shall be reported to the prescription drug monitoring system. The prescription drug monitoring system shall include, but not be limited to, provisions that:

(a) Prohibit any patient from opting out of the prescription drug monitoring system;

(b) Require all prescriptions dispensed in this state or to an address in this state to be entered into the system by the dispenser or his or her designee daily after such prescription is dispensed, including those for patients paying cash for such prescription drug or otherwise not relying on a third-party payor for payment for the prescription drug;

(c) Allow all prescribers or dispensers of prescription drugs to access the system at no cost to such prescriber or dispenser; ~~and~~

(d) Ensure that such system includes information relating to all payors, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act; ~~and -~~

(e) Make the prescription information available to the statewide health information exchange described in section 71-2455 for access by its participants if such access is in compliance with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, except that if a patient opts out of the statewide health information exchange, the prescription information regarding that patient shall not be accessible by the participants in the statewide health information exchange.

Dispensers may begin on February 25, 2016, to report dispensing of prescriptions to the entity described in section 71-2455 which is responsible for establishing the system of prescription drug monitoring.

(3) ~~Prescription~~ Except as provided in subsection (4) of this section, prescription information that shall be submitted electronically to the prescription drug monitoring system shall be determined by the entity described in section 71-2455 and shall include, but not be limited to:

(a) The patient's name, address, and date of birth;

(b) The name and address of the pharmacy dispensing the prescription;

(c) The date the prescription is issued;

(d) The date the prescription is filled;

(e) The name of the drug dispensed or the National Drug Code number as published by the federal Food and Drug Administration of the drug dispensed;

(f) The strength of the drug prescribed;

(g) The quantity of the drug prescribed and the number of days' supply;

and

(h) The prescriber's name and National Provider Identifier number or Drug Enforcement Administration number when reporting a controlled substance.

(4) Beginning ~~July~~ January 1, 2018, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to report a dispensed prescription of controlled substances listed on Schedule II, Schedule III, or Schedule IV pursuant to section 28-405. Each such veterinarian shall indicate that the prescription is an animal prescription and shall include the following information in such report:

(a) The first and last name and address, including city, state, and zip code, of the individual to whom the drug is dispensed in accordance with a valid veterinarian-client-patient relationship;

(b) Reporting status;

(c) The first and last name of the prescribing veterinarian and his or her federal Drug Enforcement Administration number;

(d) The name of the drug dispensed and the prescription number;

(e) The date the prescription is written and the date the prescription is filled;

(f) The number of refills authorized, if any; and

(g) The quantity of the drug dispensed and the number of days' supply.

(5)(a) ~~(5)~~ All prescription drug information submitted pursuant to this section, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system are confidential, are privileged, are not public records, and may be withheld pursuant to section 84-712.05.

(b) No patient-identifying data as defined in section 81-664, including the data collected under subsection (3) of this section, shall be disclosed, made public, or released to any public or private person or entity except to the statewide health information exchange described in section 71-2455 and its participants and to prescribers and dispensers as provided in subsection (2) of this section.

(c) All other data is for the confidential use of the department and the statewide health information exchange described in section 71-2455 and its participants. The department may release such information as Class I, Class II, or Class IV data in accordance with section 81-667 to the private or public persons or entities that the department determines may view such records as provided in sections 81-663 to 81-675.

(6) Before accessing the prescription drug monitoring system, any user shall undergo training on the purpose of the system, access to and proper usage of the system, and the law relating to the system, including confidentiality and security of the prescription drug monitoring system. Such training shall be administered by the statewide health information exchange described in section 71-2455 which shall have access to the prescription drug monitoring system for training and administrative purposes. Users who have been trained prior to the effective date of this act are deemed to be in compliance with the training requirement of this subsection.

(7) ~~(6)~~ For purposes of this section:

(a) Designee means any licensed or registered health care professional credentialed under the Uniform Credentialing Act designated by a prescriber or dispenser to act as an agent of the prescriber or dispenser for purposes of submitting or accessing data in the prescription drug monitoring system and who is directly supervised by such prescriber or dispenser;

(b) Dispenser means a person authorized in the jurisdiction in which he or she is practicing to deliver a prescription to the ultimate user by or pursuant to the lawful order of a prescriber but does not include (i) the delivery of such prescription drug for immediate use for purposes of inpatient hospital care or emergency department care, (ii) the administration of a prescription drug by an authorized person upon the lawful order of a prescriber, (iii) a wholesale distributor of a prescription drug monitored by the prescription drug monitoring system, or (iv) through December 31, 2017, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act when dispensing prescriptions for animals in the usual course of providing professional services; ~~and~~

(c) Participant means an individual or entity that has entered into a participation agreement with the statewide health information exchange described in section 71-2455 which requires the individual or entity to comply with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder; and

(d) ~~(c)~~ Prescriber means a health care professional authorized to prescribe in the profession which he or she practices.

Sec. 2. Original section 71-2454, Revised Statutes Cumulative Supplement, 2016, is repealed.

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.