

CHAPTER 272

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 05-1130

BY REPRESENTATIVE(S) Cloer, Decker, Frangas, Kerr, Boyd, Todd, Vigil, Berens, and Coleman;
also SENATOR(S) Hanna, Sandoval, Spence, and Teck.

AN ACT

**CONCERNING ELECTRONIC MONITORING OF PRESCRIPTION CONTROLLED SUBSTANCES, AND MAKING
AN APPROPRIATION THEREFOR.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 22 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 7
ELECTRONIC MONITORING OF PRESCRIPTION DRUGS**

12-22-701. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

(a) PRESCRIPTION DRUG ABUSE OCCURS IN THIS COUNTRY TO AN EXTENT THAT EXCEEDS OR RIVALS THE ABUSE OF ILLICIT DRUGS;

(b) PRESCRIPTION DRUG ABUSE OCCURS AT TIMES DUE TO THE DECEPTION OF THE AUTHORIZED PRESCRIBERS WHERE PATIENTS SEEK CONTROLLED SUBSTANCES FOR TREATMENT AND THE PRESCRIBER IS WITHOUT KNOWLEDGE OF THE PATIENT'S OTHER MEDICAL PROVIDERS AND TREATMENTS;

(c) ELECTRONIC MONITORING OF PRESCRIPTIONS FOR CONTROLLED SUBSTANCES WOULD PROVIDE A MECHANISM WHEREBY PRESCRIBERS COULD DISCOVER THE EXTENT OF EACH PATIENT'S REQUESTS FOR DRUGS, AND WHETHER OTHER PROVIDERS HAVE PRESCRIBED SIMILAR SUBSTANCES DURING A SIMILAR PERIOD OF TIME.

12-22-702. Definitions. AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

- (1) "BOARD" MEANS THE STATE BOARD OF PHARMACY.
- (2) "COMMITTEE" MEANS THE PRESCRIPTION CONTROLLED SUBSTANCE ABUSE MONITORING ADVISORY COMMITTEE.
- (3) "CONTROLLED SUBSTANCE" MEANS ANY SCHEDULE II, III, IV OR V DRUG AS LISTED IN SECTIONS 18-18-204, 18-18-205, 18-18-206, AND 18-18-207, C.R.S.
- (4) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.
- (5) "DRUG ABUSE" OR "ABUSE" MEANS UTILIZATION OF A CONTROLLED SUBSTANCE FOR NONMEDICAL PURPOSES OR IN A MANNER THAT DOES NOT MEET GENERALLY ACCEPTED STANDARDS OF MEDICAL PRACTICE.
- (6) "PRACTITIONER" SHALL HAVE THE SAME MEANING AS IN SECTION 18-18-102 (29), C.R.S.
- (7) "PRESCRIPTION DRUG OUTLET" MEANS ANY RESIDENT OR NONRESIDENT PHARMACY OUTLET REGISTERED OR LICENSED PURSUANT TO THIS ARTICLE WHERE PRESCRIPTIONS ARE COMPOUNDED AND DISPENSED.
- (8) "PROGRAM" MEANS THE ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM DEVELOPED OR PROCURED BY THE BOARD IN ACCORDANCE WITH SECTION 12-22-704.

12-22-703. Advisory committee - duties - repeal. (1) THERE IS HEREBY CREATED WITHIN THE DIVISION, THE PRESCRIPTION CONTROLLED SUBSTANCE ABUSE MONITORING ADVISORY COMMITTEE. THE COMMITTEE SHALL CONSIST OF THE FOLLOWING ELEVEN MEMBERS:

- (a) THE DIRECTOR OF THE DIVISION OR HIS OR HER DESIGNEE;
 - (b) A PHARMACIST APPOINTED BY THE BOARD;
 - (c) THREE PHYSICIANS APPOINTED BY THE STATE BOARD OF MEDICAL EXAMINERS, ONE OF WHICH IS A PAIN SPECIALIST OR ADDICTION SPECIALIST;
 - (d) A DENTIST APPOINTED BY THE STATE BOARD OF DENTAL EXAMINERS;
 - (e) A VETERINARIAN APPOINTED BY THE STATE BOARD OF VETERINARY MEDICINE;
 - (f) THE DIRECTOR OF THE DIVISION OF ALCOHOL AND DRUG ABUSE IN THE DEPARTMENT OF HUMAN SERVICES OR HIS OR HER DESIGNEE; AND
 - (g) THREE PERSONS APPOINTED BY THE COMMITTEE, ONE OF WHICH IS A REPRESENTATIVE OF LAW ENFORCEMENT.
- (2) THE COMMITTEE SHALL ADVISE AND ASSIST THE BOARD WITH THE DEVELOPMENT, OPERATION, AND MAINTENANCE OF THE ELECTRONIC PRESCRIPTION

DRUG MONITORING PROGRAM; AND WITH THE DEVELOPMENT OF ACCESS AND SECURITY PROTOCOLS FOR THE PROGRAM. THE COMMITTEE SHALL ADVISE THE BOARD REGARDING MANDATORY INFORMATION TO BE REPORTED FOR INCLUSION IN THE PROGRAM.

(3) COMMITTEE MEMBERS SHALL NOT RECEIVE COMPENSATION OR REIMBURSEMENT FOR EXPENSES ASSOCIATED WITH SERVICE ON THE COMMITTEE.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2011. PRIOR TO SUCH REPEAL, THE COMMITTEE SHALL BE REVIEWED AS PROVIDED IN SECTION 2-3-1203, C.R.S.

12-22-704. Prescription drug use monitoring program. (1) THE BOARD SHALL DEVELOP OR PROCURE A PRESCRIPTION CONTROLLED SUBSTANCE ELECTRONIC PROGRAM TO TRACK PRESCRIPTIONS WRITTEN FOR CONTROLLED SUBSTANCES IN COLORADO. THE PROGRAM SHALL TRACK INFORMATION REGARDING CONTROLLED SUBSTANCE PRESCRIPTIONS THAT INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) THE DATE THE PRESCRIPTION WAS DISPENSED;

(b) THE NAME OF THE PATIENT AND THE PRESCRIBER;

(c) THE NAME AND AMOUNT OF THE CONTROLLED SUBSTANCE;

(d) THE METHOD OF PAYMENT;

(e) THE NAME OF THE DISPENSING PHARMACY; AND

(f) ANY OTHER DATA ELEMENTS NECESSARY TO DETERMINE WHETHER A PATIENT IS VISITING MULTIPLE PRESCRIBERS OR PHARMACIES, OR BOTH, TO RECEIVE THE SAME OR SIMILAR MEDICATION.

(2) THE BOARD AND THE COMMITTEE SHALL ESTABLISH A METHOD AND FORMAT FOR PRESCRIPTION DRUG OUTLETS TO CONVEY THE NECESSARY INFORMATION TO THE BOARD OR ITS DESIGNEE. THE METHOD SHALL NOT REQUIRE MORE THAN A ONE-TIME ENTRY OF DATA PER PATIENT PER PRESCRIPTION BY A PRESCRIPTION DRUG OUTLET.

(3) THE DIVISION MAY CONTRACT WITH ANY INDIVIDUAL OR PUBLIC OR PRIVATE AGENCY OR ORGANIZATION IN CARRYING OUT THE DATA COLLECTION AND PROCESSING DUTIES REQUIRED BY THIS PART 7.

12-22-705. Program operation - access. (1) THE BOARD SHALL OPERATE AND MAINTAIN THE PROGRAM. THE COMMITTEE SHALL ADVISE AND ASSIST THE BOARD. THE COMMITTEE SHALL MEET AT LEAST QUARTERLY DURING THE FIRST TWO YEARS OF THE PROGRAM.

(2) THE BOARD SHALL ADOPT ALL RULES NECESSARY TO IMPLEMENT THE PROGRAM. THE COMMITTEE SHALL ADVISE THE BOARD REGARDING PROPOSED RULES.

(3) THE PROGRAM SHALL BE AVAILABLE FOR QUERY ONLY TO THE FOLLOWING PERSONS OR GROUPS OF PERSONS:

(a) BOARD STAFF RESPONSIBLE FOR ADMINISTERING THE PROGRAM;

(b) ANY LICENSED PRACTITIONER WITH THE STATUTORY AUTHORITY TO PRESCRIBE CONTROLLED SUBSTANCES TO THE EXTENT THE QUERY RELATES TO A CURRENT PATIENT OF THE PRACTITIONER TO WHOM THE PRACTITIONER IS PRESCRIBING OR CONSIDERING PRESCRIBING ANY CONTROLLED SUBSTANCE;

(c) PRACTITIONERS ENGAGED IN A LEGITIMATE PROGRAM TO MONITOR A PATIENT'S CONTROLLED SUBSTANCE ABUSE;

(d) LICENSED PHARMACISTS WITH STATUTORY AUTHORITY TO DISPENSE CONTROLLED SUBSTANCES TO THE EXTENT THE INFORMATION REQUESTED RELATES SPECIFICALLY TO A CURRENT PATIENT TO WHOM THE PHARMACIST IS DISPENSING OR CONSIDERING DISPENSING A CONTROLLED SUBSTANCE;

(e) LAW ENFORCEMENT OFFICIALS SO LONG AS THE INFORMATION RELEASED IS SPECIFIC TO AN INDIVIDUAL AND IS PART OF A BONA FIDE INVESTIGATION AND THE REQUEST FOR INFORMATION IS ACCOMPANIED BY AN OFFICIAL COURT ORDER OR SUBPOENA; AND

(f) THE INDIVIDUAL WHO IS THE RECIPIENT OF A CONTROLLED SUBSTANCE PRESCRIPTION SO LONG AS THE INFORMATION RELEASED IS SPECIFIC TO SUCH INDIVIDUAL.

(4) A LICENSED PRACTITIONER OR LICENSED PHARMACIST WHO TRANSMITS DATA IN COMPLIANCE WITH THE OPERATION AND MAINTENANCE OF THE PROGRAM SHALL NOT BE CHARGED A FEE FOR THE TRANSMISSION OF SUCH DATA.

(5) THE STATE BOARD OF PHARMACY MAY, PURSUANT TO A WRITTEN AGREEMENT THAT ENSURES COMPLIANCE WITH THIS PART 7, PROVIDE DATA TO QUALIFIED PERSONNEL OF A PUBLIC OR PRIVATE ENTITY FOR THE PURPOSE OF BONA FIDE RESEARCH OR EDUCATION, SO LONG AS SUCH INFORMATION DOES NOT IDENTIFY A RECIPIENT, PRESCRIBER, OR DISPENSER OF A PRESCRIPTION DRUG.

(6) THE BOARD SHALL PROVIDE A MEANS OF SHARING INFORMATION ABOUT INDIVIDUALS WHOSE INFORMATION IS RECORDED IN THE PROGRAM WITH OUT-OF-STATE HEALTH CARE PRACTITIONERS AND LAW ENFORCEMENT OFFICIALS THAT MEET THE REQUIREMENTS OF PARAGRAPH (b), (c), OR (e) OF SUBSECTION (3) OF THIS SECTION.

12-22-706. Prescription drug monitoring fund - creation - gifts, grants, and donations. (1) THE BOARD IS AUTHORIZED TO SEEK AND ACCEPT FUNDS FROM ANY PUBLIC OR PRIVATE ENTITY FOR THE PURPOSES OF IMPLEMENTING AND MAINTAINING THE PROGRAM. ANY SUCH FUNDS COLLECTED SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE PRESCRIPTION DRUG MONITORING FUND, WHICH FUND IS HEREBY CREATED. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE SOLE PURPOSE OF IMPLEMENTING AND MAINTAINING THE PROGRAM. THE MONEYS IN THE FUND SHALL NOT BE TRANSFERRED TO OR REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

(2) THE PROVISIONS OF THIS PART 7 SHALL NOT BE REQUIRED UNLESS THERE ARE MONEYS IN THE FUND TO IMPLEMENT AND MAINTAIN THE PROGRAM. IF SUFFICIENT GIFTS, GRANTS, OR DONATIONS ARE NOT IDENTIFIED AND GUARANTEED ON OR BEFORE OCTOBER 1, 2006, TO IMPLEMENT THE PROGRAM THIS PART 7 SHALL NOT TAKE EFFECT. NO MONEYS FROM THE GENERAL FUND SHALL BE USED TO IMPLEMENT OR MAINTAIN THE PROGRAM. THE LICENSE AND REGISTRATION FEES COLLECTED PURSUANT TO SECTION 12-22-114 SHALL NOT BE INCREASED TO IMPLEMENT OR MAINTAIN THE PROGRAM.

(3) SUBSEQUENT TO THE IMPLEMENTATION OF THE PROGRAM, THE BOARD SHALL SEEK GIFTS, GRANTS, AND DONATIONS ON AN ANNUAL BASIS FOR THE PURPOSE OF MAINTAINING THE PROGRAM.

(4) IF THE FUND DOES NOT CONTAIN AT LEAST FOUR HUNDRED THOUSAND DOLLARS AS OF OCTOBER 1, 2006, THE BOARD SHALL NOTIFY THE STATE TREASURER AND THE REVISOR OF STATUTES, AND THIS PART 7 SHALL BE REPEALED, EFFECTIVE OCTOBER 1, 2006.

12-22-707. Violations - penalties. A PERSON WHO KNOWINGLY RELEASES, OBTAINS, OR ATTEMPTS TO OBTAIN INFORMATION FROM THE PROGRAM IN VIOLATION OF THIS PART 7 SHALL BE PUNISHED BY A CIVIL FINE OF NOT LESS THAN ONE THOUSAND DOLLARS AND NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION. FINES PAID SHALL BE DEPOSITED IN THE PRESCRIPTION DRUG MONITORING FUND.

12-22-708. Prescription drug outlets - prescribers - responsibilities - liability.

(1) A PRESCRIPTION DRUG OUTLET SHALL SUBMIT INFORMATION IN THE MANNER REQUIRED BY THE BOARD.

(2) A PRESCRIBER, WHO HAS IN GOOD FAITH WRITTEN A PRESCRIPTION FOR A CONTROLLED SUBSTANCE TO A PATIENT, SHALL NOT BE HELD LIABLE FOR INFORMATION SUBMITTED TO THE PROGRAM. A PRESCRIBER OR PRESCRIPTION DRUG OUTLET, WHO HAS IN GOOD FAITH SUBMITTED THE REQUIRED INFORMATION TO THE PROGRAM, SHALL NOT BE HELD LIABLE FOR PARTICIPATION IN THE PROGRAM.

12-22-709. Exemption - waiver. (1) A HOSPITAL LICENSED OR CERTIFIED PURSUANT TO SECTION 25-1.5-103, C.R.S., A PRESCRIPTION DRUG OUTLET LOCATED WITHIN THE HOSPITAL THAT IS DISPENSING A CONTROLLED SUBSTANCE FOR A CHART ORDER OR DISPENSING LESS THAN OR EQUAL TO A TWENTY-FOUR HOUR SUPPLY OF A CONTROLLED SUBSTANCE, AND EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFIED PURSUANT TO SECTION 25-3.5-203, C.R.S., SHALL BE EXEMPT FROM THE REPORTING PROVISIONS OF THIS PART 7. A HOSPITAL PRESCRIPTION DRUG OUTLET LICENSED PURSUANT TO SECTION 12-22-116 SHALL COMPLY WITH THE PROVISIONS OF THIS PART 7 FOR CONTROLLED SUBSTANCES DISPENSED FOR OUTPATIENT CARE THAT HAVE MORE THAN A TWENTY-FOUR HOUR SUPPLY.

(2) A PRESCRIPTION DRUG OUTLET THAT DOES NOT REPORT CONTROLLED SUBSTANCE DATA TO THE PROGRAM DUE TO A LACK OF ELECTRONIC AUTOMATION OF THE OUTLET'S BUSINESS MAY APPLY TO THE BOARD FOR A WAIVER FROM THE REPORTING REQUIREMENTS. THE COMMITTEE SHALL DETERMINE WHETHER A WAIVER SHALL BE GRANTED.

12-22-710. Repeal of part. THIS PART 7 IS REPEALED, EFFECTIVE JULY 1, 2011. PRIOR TO SUCH REPEAL, THE FUNCTIONS UNDER THIS PART 7 AND THE COMMITTEE SHALL BE REVIEWED AS PROVIDED IN SECTIONS 2-3-1203 AND 24-34-104, C.R.S.

SECTION 2. 2-3-1203 (3) (x), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

2-3-1203. Sunset review of advisory committees. (3) (x) July 1, 2011:

(IV) THE PRESCRIPTION CONTROLLED SUBSTANCE ABUSE MONITORING ADVISORY COMMITTEE CREATED IN SECTION 12-22-703, C.R.S.

SECTION 3. 24-34-104 (42), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(i) THE ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM, CREATED IN PART 7 OF ARTICLE 22 OF TITLE 12, C.R.S.

SECTION 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the prescription drug monitoring fund created in section 12-22-706 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations and the executive director's office, for the fiscal year beginning July 1, 2005, the sum of one hundred forty-seven thousand one hundred fifty-six dollars (\$147,156) and 3.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2005, the department of regulatory agencies will receive the sum of four hundred thousand dollars (\$400,000) in federal funds for the implementation of this act. Although the federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds in developing state appropriation amounts.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2005, the sum of twenty-seven thousand seven hundred seven dollars (\$27,707), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies for the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 2005