

CHAPTER 239

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 14-1283

BY REPRESENTATIVE(S) McCann, Becker, Fields, Ginal, Primavera, Schafer, Singer, Tyler, Young, Hullinghorst, Pettersen, Rosenthal, Ryden, Williams, Kagan;
 also SENATOR(S) Newell and Kefalas, Guzman, Roberts, Aguilar, Crowder, Johnston, Jones, Kerr, King, Nicholson, Schwartz, Tochtrop, Todd, Zenzinger.

AN ACT

CONCERNING MODIFICATIONS TO THE ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 12-42.5-402, **amend** (1) and (4); and **add** (1.5) as follows:

12-42.5-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) ~~"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.~~ "BOARD" MEANS THE STATE BOARD OF PHARMACY CREATED IN SECTION 12-42.5-103.

(1.5) "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) "Prescription drug outlet" or "pharmacy" means:

(a) Any resident or nonresident pharmacy outlet registered or licensed pursuant to this article where prescriptions are compounded and dispensed; AND

(b) ANY FEDERALLY OWNED AND OPERATED PHARMACY REGISTERED WITH THE FEDERAL DRUG ENFORCEMENT ADMINISTRATION.

SECTION 2. In Colorado Revised Statutes, 12-42.5-403, **add** (1.5) as follows:

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

12-42.5-403. Prescription drug use monitoring program - program registration required - rules. (1.5) (a) By JANUARY 1, 2015, OR BY AN EARLIER DATE DETERMINED BY THE DIRECTOR OF THE DIVISION, EVERY PRACTITIONER IN THIS STATE WHO HOLDS A CURRENT REGISTRATION ISSUED BY THE FEDERAL DRUG ENFORCEMENT ADMINISTRATION AND EVERY PHARMACIST SHALL REGISTER AND MAINTAIN A USER ACCOUNT WITH THE PROGRAM.

(b) WHEN REGISTERING WITH THE PROGRAM OR AT ANY TIME THEREAFTER, A PRACTITIONER OR PHARMACIST MAY AUTHORIZE UP TO THREE DESIGNEES TO ACCESS THE PROGRAM UNDER SECTION 12-42.5-404 (3) (b), (3) (c), or (3) (d), AS APPLICABLE, ON BEHALF OF THE PRACTITIONER OR PHARMACIST IF:

(I) (A) THE AUTHORIZED DESIGNEE OF THE PRACTITIONER IS EMPLOYED BY, OR IS UNDER CONTRACT WITH, THE SAME PROFESSIONAL PRACTICE AS THE PRACTITIONER; OR

(B) THE AUTHORIZED DESIGNEE OF THE PHARMACIST IS EMPLOYED BY, OR IS UNDER CONTRACT WITH, THE SAME PRESCRIPTION DRUG OUTLET AS THE PHARMACIST; AND

(II) THE PRACTITIONER OR PHARMACIST TAKES REASONABLE STEPS TO ENSURE THAT THE DESIGNEE IS SUFFICIENTLY COMPETENT IN THE USE OF THE PROGRAM; AND

(III) THE PRACTITIONER OR PHARMACIST REMAINS RESPONSIBLE FOR:

(A) ENSURING THAT ACCESS TO THE PROGRAM BY THE PRACTITIONER'S DESIGNEE IS LIMITED TO THE PURPOSES AUTHORIZED IN SECTION 12-42.5-404 (3) (b) OR (3) (c) OR THAT ACCESS TO THE PROGRAM BY THE PHARMACIST'S DESIGNEE IS LIMITED TO THE PURPOSES AUTHORIZED IN SECTION 12-42.5-404 (3) (d), AS THE CASE MAY BE, AND THAT ACCESS TO THE PROGRAM OCCURS IN A MANNER THAT PROTECTS THE CONFIDENTIALITY OF THE INFORMATION OBTAINED FROM THE PROGRAM; AND

(B) ANY NEGLIGENT BREACH OF CONFIDENTIALITY OF INFORMATION OBTAINED FROM THE PROGRAM BY THE PRACTITIONER'S OR PHARMACIST'S DESIGNEE.

(c) A PRACTITIONER OR PHARMACIST IS SUBJECT TO PENALTIES PURSUANT TO SECTION 12-42.5-406 FOR VIOLATING THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (1.5).

(d) ANY INDIVIDUAL AUTHORIZED AS A DESIGNEE OF A PRACTITIONER OR PHARMACIST PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1.5) SHALL REGISTER AS A DESIGNEE OF A PRACTITIONER OR PHARMACIST WITH THE PROGRAM FOR PROGRAM DATA ACCESS IN ACCORDANCE WITH SECTION 12-42.5-404 (3) (b), (3) (c), OR (3) (d), AS APPLICABLE, AND BOARD RULES.

SECTION 3. In Colorado Revised Statutes, 12-42.5-404, **amend** (3) (b), (3) (c), (3) (d), (3) (e), (3) (g), and (5); and **add** (3) (i) and (7) as follows:

12-42.5-404. Program operation - access - rules. (3) The program is available for query only to the following persons or groups of persons:

(b) Any practitioner with the statutory authority to prescribe controlled substances, OR AN INDIVIDUAL DESIGNATED BY THE PRACTITIONER TO ACT ON HIS OR HER BEHALF IN ACCORDANCE WITH SECTION 12-42.5-403 (1.5) (b), 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~~ A PRACTITIONER, OR AN INDIVIDUAL DESIGNATED BY THE PRACTITIONER TO ACT ON HIS OR HER BEHALF IN ACCORDANCE WITH SECTION 12-42.5-403 (1.5) (b), engaged in a legitimate program to monitor a patient's drug abuse;

(d) ~~Pharmacists~~ A PHARMACIST, AN INDIVIDUAL DESIGNATED BY A PHARMACIST IN ACCORDANCE WITH SECTION 12-42.5-403 (1.5) (b) TO ACT ON HIS OR HER BEHALF, OR A PHARMACIST LICENSED IN ANOTHER STATE, to the extent the information requested relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance or to whom the pharmacist is providing clinical patient care services;

(e) Law enforcement officials so long as the information released is specific to an individual patient, PHARMACY, or practitioner and is part of a bona fide investigation, and the request for information is accompanied by an official court order or subpoena;

(g) State regulatory boards within the division and the director of the division so long as the information released is specific to an individual practitioner and is part of a bona fide investigation, and the request for information is accompanied by an official court order or subpoena; ~~and~~

(i) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR PURPOSES OF POPULATION-LEVEL ANALYSIS, BUT ANY USE OF PROGRAM DATA BY THE DEPARTMENT IS SUBJECT TO THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED, AND IMPLEMENTING FEDERAL REGULATIONS, INCLUDING THE REQUIREMENT TO REMOVE ANY IDENTIFYING DATA UNLESS EXEMPTED FROM THE REQUIREMENT.

(5) The board, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, pursuant to a written agreement that ensures compliance with this part 4, may provide data to qualified personnel of a public or private entity for the purpose of bona fide research or education so long as the data does not identify a recipient of, a practitioner who prescribed, or a prescription drug outlet that dispensed, a prescription drug.

(7) THE BOARD SHALL DEVELOP CRITERIA FOR INDICATORS OF MISUSE, ABUSE, AND DIVERSION OF CONTROLLED SUBSTANCES AND, BASED ON THOSE CRITERIA, PROVIDE UNSOLICITED REPORTS OF DISPENSED CONTROLLED SUBSTANCES TO PRESCRIBING PRACTITIONERS AND DISPENSING PHARMACIES FOR PURPOSES OF EDUCATION AND INTERVENTION TO PREVENT AND REDUCE OCCURRENCES OF CONTROLLED SUBSTANCE MISUSE, ABUSE, AND DIVERSION. IN DEVELOPING THE CRITERIA, THE BOARD SHALL CONSULT WITH THE COLORADO DENTAL BOARD, COLORADO MEDICAL BOARD, STATE BOARD OF NURSING, STATE BOARD OF OPTOMETRY, COLORADO PODIATRY BOARD, AND STATE BOARD OF VETERINARY

MEDICINE.

SECTION 4. In Colorado Revised Statutes, **add** 12-42.5-408.5 as follows:

12-42.5-408.5. Examination and analysis of prescription drug monitoring program - recommendations to executive director. (1) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL CREATE A PRESCRIPTION DRUG MONITORING PROGRAM TASK FORCE OR CONSULT WITH AND REQUEST ASSISTANCE FROM THE COLORADO TEAM ASSEMBLED BY THE GOVERNOR'S OFFICE TO DEVELOP A STRATEGIC PLAN TO REDUCE PRESCRIPTION DRUG ABUSE, OR ITS SUCCESSOR GROUP, IN ORDER TO:

(a) EXAMINE ISSUES, OPPORTUNITIES, AND WEAKNESSES OF THE PROGRAM, INCLUDING HOW PERSONAL INFORMATION IS SECURED IN THE PROGRAM AND WHETHER INCLUSION OF PERSONAL IDENTIFYING INFORMATION IN THE PROGRAM AND ACCESS TO THAT INFORMATION IS NECESSARY; AND

(b) MAKE RECOMMENDATIONS TO THE EXECUTIVE DIRECTOR ON WAYS TO MAKE THE PROGRAM A MORE EFFECTIVE TOOL FOR PRACTITIONERS AND PHARMACISTS IN ORDER TO REDUCE PRESCRIPTION DRUG ABUSE IN THIS STATE.

(2) IF THE EXECUTIVE DIRECTOR CONVENES A TASK FORCE OR OBTAINS ASSISTANCE FROM THE COLORADO TEAM, THE APPLICABLE GROUP SHALL SUBMIT ANNUAL REPORTS TO THE EXECUTIVE DIRECTOR AND THE GENERAL ASSEMBLY DETAILING ITS FINDINGS AND RECOMMENDATIONS. NOTWITHSTANDING SECTION 24-1-136 (11), C.R.S., THE REQUIREMENT IN THIS SECTION TO REPORT TO THE GENERAL ASSEMBLY CONTINUES INDEFINITELY.

(3) IF THE EXECUTIVE DIRECTOR CONVENES A TASK FORCE, THE MEMBERS OF THE TASK FORCE SERVE ON A VOLUNTARY BASIS AND ARE NOT ENTITLED TO COMPENSATION OR EXPENSE REIMBURSEMENT.

SECTION 5. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the prescription drug monitoring fund created in section 12-42.5-405 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2014, the sum of \$7,500, or so much thereof as may be necessary, for allocation to the division of professions and occupations for computer system changes related to the implementation of this act.

SECTION 6. 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: May 21, 2014