First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 07-0082.01 Karen Epps **SENATE BILL 07-009**

SENATE SPONSORSHIP

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Senate Committees
Health and Human Services

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A BILL FOR AN ACT

CONCERNING THE TRANSFER OF THE ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Health Care Task Force. Requires the department of regulatory agencies to develop an electronic prescription drug monitoring program.

Transfers the maintenance of the electronic prescription drug monitoring program from the department of regulatory agencies to the executive director of the department of public health and environment.

Requires the department of regulatory agencies to notify the state

treasurer and the revisor of statutes if the department does not receive sufficient moneys to maintain the program. Repeals the program if and when such notice is given.

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

SECTION 1. Article 1.5 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

PART 4

ELECTRONIC MONITORING OF PRESCRIPTION DRUGS

25-1.5-401. [Formerly 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.~~

25-1.5-402. [Formerly 12-22-702] Definitions. As used in this part ~~7~~ 4, unless the context otherwise requires:

(1) "Board" means the state board of ~~pharmacy~~ HEALTH.

(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)~~ (4) "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.

(5) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(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 22 OF TITLE 12, C.R.S., 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~~ 25-1.5-404.

25-1.5-403. [Formerly 12-22-703] Advisory committee - duties - repeal. (1) There is hereby created, within the ~~division~~ DEPARTMENT, the prescription controlled substance abuse monitoring advisory committee. The committee shall consist of the following eleven members:

(a) The EXECUTIVE director ~~of the division~~ or his or her designee;

(b) A pharmacist appointed by the STATE board OF PHARMACY CREATED IN SECTION 12-22-103, C.R.S.;

(c) Three physicians appointed by the state board of medical

examiners, CREATED IN SECTION 12-36-103, C.R.S., one of ~~which~~ WHOM is a pain specialist or addiction specialist;

(d) A dentist appointed by the state board of dental examiners, CREATED IN SECTION 12-35-104, C.R.S.;

(e) A veterinarian appointed by the state board of veterinary medicine, CREATED IN SECTION 12-64-105, C.R.S.;

(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~~ WHOM is a representative of law enforcement.

(2) (a) The committee shall advise and assist the ~~board~~ EXECUTIVE DIRECTOR 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.

(b) THE DEPARTMENT OF REGULATORY AGENCIES SHALL DEVELOP AN ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM AS DESCRIBED IN SECTION 25-1.5-404. THE DEVELOPED PROGRAM SHALL BE TRANSFERRED TO THE EXECUTIVE DIRECTOR WITHIN NINETY DAYS AFTER THE COMPLETION OF THE DEVELOPMENT OF THE PROGRAM. THE PROGRAM SHALL INCLUDE, BUT NOT BE LIMITED TO, AN OPERABLE COMPUTER-BASED PROGRAM PURSUANT TO THIS PART 4.

(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.

25-1.5-404. [Formerly 12-22-704] Prescription drug use monitoring program - repeal. (1) The ~~board~~ DEPARTMENT OF REGULATORY AGENCIES shall develop or procure ~~a prescription controlled substance electronic~~ AN ELECTRONIC PRESCRIPTION DRUG MONITORING program to track prescriptions written for controlled substances in Colorado. PURSUANT TO SECTION 25-1.5-403 (2) (b), THE EXECUTIVE DIRECTOR SHALL ASSUME THE MAINTENANCE AND OPERATION OF THE PROGRAM WITHIN NINETY DAYS AFTER THE COMPLETION OF THE DEVELOPMENT OR PROCUREMENT OF THE PROGRAM. 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~~ EXECUTIVE DIRECTOR or ~~its~~ HIS OR HER 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~~ DEPARTMENT 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~~ 4.

(4) (a) ON AND AFTER THE DATE OF THE TRANSFER OF THE PROGRAM FROM THE DEPARTMENT OF REGULATORY AGENCIES TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-403 (2) (b), THE OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF REGULATORY AGENCIES WHOSE DUTIES AND FUNCTIONS CONCERNED THE DEVELOPMENT OR OPERATION OF THE PROGRAM AND WHOSE EMPLOYMENT IN THE DEPARTMENT IS DEEMED NECESSARY TO CARRY OUT THE PURPOSES OF THIS PART 4 SHALL BE TRANSFERRED TO THE DEPARTMENT AND BECOME EMPLOYEES THEREOF. SUCH EMPLOYEES SHALL RETAIN ALL RIGHTS TO THE STATE PERSONNEL SYSTEM AND RETIREMENT BENEFITS PURSUANT TO THE LAWS OF THIS STATE, AND THEIR SERVICES SHALL BE DEEMED TO HAVE BEEN CONTINUOUS. ALL TRANSFERS AND ANY ABOLISHMENT OF POSITIONS IN THE STATE PERSONNEL SYSTEM SHALL BE MADE AND PROCESSED IN ACCORDANCE WITH STATE PERSONNEL SYSTEM LAWS AND RULES.

(b) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE UPON CERTIFICATION FROM THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES TO THE REVISOR OF STATUTES THAT THE TRANSFER OF DUTIES AND FUNCTIONS HAS OCCURRED.

(5) (a) ON THE DATE OF THE TRANSFER OF THE PROGRAM FROM THE DEPARTMENT OF REGULATORY AGENCIES TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-403 (2) (b), ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, AND RECORDS OF, PERTAINING TO, AND NECESSARY FOR THE IMPLEMENTATION OF THE PROGRAM SHALL BE TRANSFERRED TO THE DEPARTMENT OF PUBLIC

HEALTH AND ENVIRONMENT AND SHALL BECOME THE PROPERTY THEREOF.

(b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE UPON CERTIFICATION FROM THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES TO THE REVISOR OF STATUTES THAT THE TRANSFER OF DUTIES AND FUNCTIONS HAS OCCURRED.

25-1.5-405. [Formerly 12-22-705] Program operation - access. (1) SUBJECT TO AVAILABLE APPROPRIATIONS, the ~~board~~ EXECUTIVE DIRECTOR shall operate and maintain the program. The committee shall advise and assist the ~~board~~ EXECUTIVE DIRECTOR. 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~~ DEPARTMENT 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~~ IF 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~~ IF 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~~ DEPARTMENT may, pursuant to a written agreement that ensures compliance with this part ~~7~~ 4, provide data to qualified personnel of a public or private entity for the purpose of bona fide research or education ~~so long as~~ IF such information does not identify a recipient, prescriber, or dispenser of a prescription drug.

(6) The ~~board~~ DEPARTMENT 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.

25-1.5-406. [Formerly 12-22-706] Prescription drug monitoring fund - creation - gifts, grants, and donations - repeal of part. (1) The ~~board~~ DEPARTMENT is authorized to seek and accept funds from any public or private entity for the ~~purposes~~ PURPOSE 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~~ 4 shall not be required unless there are moneys in the PRESCRIPTION DRUG MONITORING 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~~ MAINTAIN the program, this part ~~7~~ 4 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, C.R.S., shall not be increased to implement or maintain the program.

(3) ~~Subsequent to the~~ AFTER THE INITIAL implementation of the program, the ~~board~~ DEPARTMENT 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~~ DEPARTMENT DOES NOT RECEIVE SUFFICIENT MONEYS TO MAINTAIN THE PROGRAM CREATED IN THIS PART 4, THE DEPARTMENT shall notify the state treasurer and the revisor of statutes, and this part ~~7~~ 4 shall be repealed, effective October 1 ~~2006~~ OF THE FISCAL YEAR IN WHICH SUFFICIENT MONEYS TO MAINTAIN THE PROGRAM WERE NOT RECEIVED.

25-1.5-407. [Formerly 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~~ 4 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.

25-1.5-408. [Formerly 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.

25-1.5-409. [Formerly 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~~ 4. A hospital prescription drug outlet licensed pursuant to section 12-22-116, C.R.S., shall comply with the provisions of this part ~~7~~ 4 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.

25-1.5-410. [Formerly 12-22-710] Repeal of part. This part ~~7~~ 4 is repealed, effective July 1, 2011. Prior to such repeal, the functions

under this part ~~7~~ 4 and the committee shall be reviewed as provided in sections 2-3-1203 and 24-34-104, C.R.S.

SECTION 2. Repeal of relocated provisions. Part 7 of article 22 of title 12, Colorado Revised Statutes, is repealed.

SECTION 3. 24-34-104 (42) (i), Colorado Revised Statutes, is amended 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~~ SECTION 25-1.5-404, C.R.S.;

SECTION 4. 2-3-1203 (3) (x) (IV), Colorado Revised Statutes, is amended to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(x) July 1, 2011:

(IV) The prescription controlled substance abuse monitoring advisory committee created in section ~~12-22-703~~ 25-1.5-403, C.R.S.;

SECTION 5. Effective date. This act shall take effect January 1, 2008.

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.