SB0030

LRB095 04252 RLC 24293 b

95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0030

Introduced 1/31/2007, by Sen. David Luechtefeld

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Controlled Substances Act. Requires the Department of Human Services to establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the State by a practitioner or pharmacist or dispensed to an address within the State by a pharmacy that has obtained a license, permit, or other authorization to operate from the Department of Financial and Professional Regulation. Provides that every dispenser within the State or any other dispenser who has obtained a license, permit, or other authorization to operate from the Department of Financial and Professional Regulation shall report to the Department specified data in a timely manner as prescribed by the Department except that reporting shall not be required for a drug administered directly to a patient or a drug dispensed by a practitioner at a facility licensed by the Department provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of 48 hours. Provides that data for each controlled substance that is dispensed shall include but not be limited to: patient identifier; drug dispensed; date of dispensing; quantity dispensed; prescriber; and dispenser. Provides that the Department of Human Services shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. Repeals provisions establishing the Schedule II controlled substance prescription monitoring program. Makes other changes. Effective January 1, 2008.

LRB095 04252 RLC 24293 b

CORRECTIONAL BUDGET AND IMPACT NOTE ACT MAY APPLY

FISCAL NOTE ACT MAY APPLY

A BILL FOR

AN ACT concerning criminal law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Controlled Substances Act is amended by changing Sections 313 and 406 and adding Section 316.5 as follows:

(720 ILCS 570/313) (from Ch. 56 1/2, par. 1313)

Sec. 313. (a) Controlled substances which are lawfully administered in hospitals or institutions licensed under the "Hospital Licensing Act" shall be exempt from the requirements of Sections 312 and 316 except that the prescription for the controlled substance shall be in writing on the patient's record, signed by the prescriber, dated, and shall state the name, and quantity of controlled substances ordered and the quantity actually administered. The records of such prescriptions shall be maintained for two years and shall be available for inspection by officers and employees of the Department of State Police, and the Department of Professional Regulation.

(b) Controlled substances that can lawfully be administered or dispensed directly to a patient in a long-term care facility licensed by the Department of Public Health as a skilled nursing facility, intermediate care facility, or

long-term care facility for residents under 22 years of age, are exempt from the requirements of Section 312 except that a prescription for a Schedule II controlled substance must be either a written prescription signed by the prescriber or a written prescription transmitted by the prescriber or prescriber's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original prescription and must be maintained for 2 years from the date of issue in the same manner as a written prescription signed by the prescriber.

(c) A prescription that is written for a Schedule II controlled substance to be compounded for direct administration by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion to a patient in a private residence, long-term care facility, or hospice setting may be transmitted by facsimile by the prescriber or the prescriber's agent to the pharmacy providing the home infusion services. The facsimile serves as the original written prescription for purposes of this paragraph (c) and it shall be maintained in the same manner as the original written prescription.

(c-1) A prescription written for a Schedule II controlled substance for a patient residing in a hospice certified by Medicare under Title XVIII of the Social Security Act or licensed by the State may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or practitioner's agent must note on the prescription that the patient is a hospice patient. The

facsimile serves as the original written prescription for purposes of this paragraph (c-1) and it shall be maintained in the same manner as the original written prescription.

(d) Controlled substances which are lawfully administered and/or dispensed in drug abuse treatment programs licensed by the Department shall be exempt from the requirements of Sections 312 and 316.5 ~~316~~, except that the prescription for such controlled substances shall be issued and authenticated on official prescription logs prepared and supplied by the Department. The official prescription logs issued by the Department shall be printed in triplicate on distinctively marked paper and furnished to programs at reasonable cost. The official prescription logs furnished to the programs shall contain, in preprinted form, such information as the Department may require. The official prescription logs shall be properly endorsed by a physician licensed to practice medicine in all its branches issuing the order, with his own signature and the date of ordering, and further endorsed by the practitioner actually administering or dispensing the dosage at the time of such administering or dispensing in accordance with requirements issued by the Department. The duplicate copy shall be retained by the program for a period of not less than three years nor more than seven years; the original and triplicate copy shall be returned to the Department at its principal office in accordance with requirements set forth by the Department.

(Source: P.A. 91-576, eff. 4-1-00; 91-714, eff. 6-2-00.)

(720 ILCS 570/316.5 new)

Sec. 316.5. Electronic system for monitoring controlled substances.

(a) The Department shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the State by a practitioner or pharmacist or dispensed to an address within the State by a pharmacy that has obtained a license, permit, or other authorization to operate from the Department of Financial and Professional Regulation.

(b) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.

(c) Every dispenser within the State or any other dispenser who has obtained a license, permit, or other authorization to operate from the Department of Financial and Professional Regulation shall report to the Department the data required by this Section in a timely manner as prescribed by the Department except that reporting shall not be required for: (1) a drug administered directly to a patient; or (2) a drug dispensed by a practitioner at a facility licensed by the Department provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of 48 hours.

(d) Data for each controlled substance that is dispensed

shall include but not be limited to the following: (1) patient identifier; (2) drug dispensed; (3) date of dispensing; (4) quantity dispensed; (5) prescriber; and (6) dispenser.

(e) The data shall be provided in the electronic format specified by the Department unless a waiver has been granted by the Department to an individual dispenser. The Department shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the Department if the dispenser exceeds these error tolerance rates.

(f) The Department shall be authorized to provide data to: (1) a designated representative of the Department of Financial and Professional Regulation who is involved in a bona fide specific investigation involving a designated person; (2) an Illinois peace officer, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this State, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person; (3) a state-operated Medicaid program; (4) a properly convened grand jury pursuant to a subpoena properly issued for the records; (5) a practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient; (6) in addition to the purposes

authorized under paragraph (1) of this subsection, the Department of Financial and Professional Regulation, for any physician who is: (i) associated in a partnership or other business entity with a physician who is already under investigation by the Department of Financial and Professional Regulation for improper prescribing practices; (ii) in a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or (iii) in a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; (7) in addition to the purposes authorized under paragraph (1) of this subsection, the Department of Financial and Professional Regulation, for any advanced practice nurse who is: (i) associated in a partnership or other business entity with a physician who is already under investigation by the Department of Financial and Professional Regulation for improper prescribing practices; (ii) associated in a partnership or other business entity with an advanced practice nurse practitioner who is already under investigation by the Department of Financial and Professional Regulation for improper prescribing practices; (iii) in a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or (iv) in a designated geographic area for which a report on a physician or another advanced practice nurse

practitioner in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or (8) a judge or a probation officer or parole agent administering a diversion or probation program of a criminal defendant arising out of a violation of this Act or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.

(g) The Department of Healthcare and Family Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.

(h) A person who receives data or any report of the system from the Department shall not provide it to any other person or entity except by order of a court of competent jurisdiction, except that: (1) a peace officer specified in paragraph (f)(2) of this Section who is authorized to receive data or a report may share that information with other peace officers specified in paragraph (f)(2) of this Section authorized to receive data or a report if the peace officers specified in paragraph (f)(2) of this Section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this subsection shall document in writing each person to whom the data or report has been given or received and the day,

month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and (2) a representative of the Department of Healthcare and Family Services may share data or reports regarding overutilization by Medicaid recipients with the Department of Financial and Professional Regulation or with a law enforcement officer designated in paragraph (f)(2) of this Section; and (3) the Department of Healthcare and Family Services may submit the data as evidence in an administrative hearing held in accordance with the Illinois Administrative Procedure Act.

(i) The Department, all peace officers specified in paragraph (f)(2) of this Section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(j) The data and any report obtained therefrom shall not be a public record, except that the Department of Healthcare and Family Services may submit the data as evidence in an administrative hearing held in accordance with the Illinois Administrative Procedure Act.

(k) Knowing failure by a dispenser to transmit data to the Department as required by subsection (c), (d), or (e) of this Section is a Class A misdemeanor.

(l) Knowing disclosure of transmitted data to a person not

authorized by subsections (f) to (h) of this Section or authorized by the Pharmacy Practice Act of 1987, or obtaining information under this Section not relating to a bona fide specific investigation, is a Class 4 felony.

(m) The Department shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall: (1) be conducted in 2 rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and (2) study the use of an interactive system that includes a relational data base with query capability.

(n) Provisions in this Section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (m) of this Section.

(o) The Department may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this Section.

(p)(1) The Department shall work with the Department of Financial and Professional Regulation for the development of a

continuing education program about the purposes and uses of the electronic system for monitoring established in this Section.

(2) The Attorney General shall work with the Illinois State Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this Section.

(3) The Department shall work with the Illinois Law Enforcement Training Standards Board for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this Section.

(720 ILCS 570/406) (from Ch. 56 1/2, par. 1406)

Sec. 406. (a) It is unlawful for any person:

(1) who is subject to Article III knowingly to distribute or dispense a controlled substance in violation of Sections 308 through 314 of this Act; or

(2) who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person; or

(3) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this Act; or

(4) to refuse an entry into any premises for any

inspection authorized by this Act; or

(5) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by a person unlawfully possessing controlled substances, or which is used for possessing, manufacturing, dispensing or distributing controlled substances in violation of this Act.

Any person who violates this subsection (a) is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for each subsequent offense. The fine for each subsequent offense shall not be more than $100,000. In addition, any practitioner who is found guilty of violating this subsection (a) is subject to suspension and revocation of his professional license, in accordance with such procedures as are provided by law for the taking of disciplinary action with regard to the license of said practitioner's profession.

(b) It is unlawful for any person knowingly:

(1) to distribute, as a registrant, a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Section 307 of this Act; or

(2) to use, in the course of the manufacture or distribution of a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person; or

(3) to acquire or obtain possession of a controlled

substance by misrepresentation, fraud, forgery, deception or subterfuge; or

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under this Act, or any record required to be kept by this Act; or

(5) to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another, or any likeness of any of the foregoing, upon any controlled substance or container or labeling thereof so as to render the drug a counterfeit substance; or

(6) to possess without authorization, blank prescription forms or counterfeit prescription forms; or

(7) (Blank).

Any person who violates this subsection (b) is guilty of a Class 4 felony for the first offense and a Class 3 felony for each subsequent offense. The fine for the first offense shall be not more than $100,000. The fine for each subsequent offense shall not be more than $200,000.

(c) (Blank) ~~A person who knowingly or intentionally violates Section 316, 317, 318, or 319 is guilty of a Class A misdemeanor~~.

(Source: P.A. 91-576, eff. 4-1-00.)

(720 ILCS 570/316 rep.)

(720 ILCS 570/317 rep.)

(720 ILCS 570/318 rep.)

(720 ILCS 570/319 rep.)

(720 ILCS 570/320 rep.)

Section 10. The Illinois Controlled Substances Act is amended by repealing Sections 316, 317, 318, 319, and 320.

Section 99. Effective date. This Act takes effect January 1, 2008.

INDEX

Statutes amended in order of appearance