

SENATE BILL NO. 326
INTRODUCED BY T. SCHMIDT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CONTROLLED SUBSTANCE PRESCRIPTION DRUG DATABASE AND A PRESCRIPTION DRUG MONITORING PROGRAM; PROVIDING FOR RULEMAKING AUTHORITY; PROVIDING FOR FEES TO FUND THE PROGRAM; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR REFERRAL FOR ADMINISTRATIVE SANCTIONS FOR FAILING TO SUBMIT INFORMATION OR KNOWINGLY DISCLOSING INFORMATION; PROVIDING FOR CRIMINAL PROSECUTION AND A CIVIL PENALTY IF INFORMATION IS USED OR OBTAINED IN AN UNLAWFUL MANNER; AND PROVIDING FOR CONTINGENT VOIDNESS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Prescription database -- database information -- rulemaking authority.

(1) All outpatient prescriptions filled by any resident or nonresident pharmacy or practitioner for controlled substances from Schedules II through V, as provided in part 2 of this chapter, must be filed with the board electronically in a format established by the board or by another method as required by board rule. Nonresident pharmacies are required to report only prescriptions filled and dispensed to Montana ~~residents~~ ADDRESSES. The board may require the filing of other nonscheduled prescriptions by board rule when the board identifies a nonscheduled drug that is being abused or has the potential for being abused.

(2) The board, in consultation with representative stakeholders from health care, law enforcement, licensing boards, third-party payers, and other interested parties, shall create, operate, and maintain a controlled substance prescription database containing the information submitted pursuant to subsection (1), to be used for the purposes of and subject to the terms, conditions, and immunities described in [section 2].

(3) The database information is HEALTH CARE INFORMATION, AS DEFINED IN 50-16-504, IS confidential, and may be made available only to the following:

- (a) authorized individuals employed by a health care licensing board provided for in Title 37 or in another state that is responsible for conducting investigations related to the licensing and discipline of practitioners;
- (b) peace officers employed by federal, state, and local law enforcement agencies ~~engaged in an active investigation of alleged illegal activity involving controlled substances;~~ WHEN AUTHORIZED BY A SEARCH WARRANT;
- (c) authorized individuals under the direction of the department of public health and human services for

the purpose of monitoring and enforcing that department's responsibilities under the public health, medicare, and medicaid laws;

(d) a licensed practitioner with authority to prescribe controlled substances, to the extent that the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance;

(e) a licensed pharmacist with authority to dispense controlled substances, to the extent that the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance;

(f) an individual who is the recipient of a controlled substance prescription entered into the database or that individual's attorney, upon providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made or the attorney for that person;

(g) a court of competent jurisdiction through a lawful order;

(h) a treating practitioner for an individual in an impaired professional program; and

(i) a prescription drug monitoring program in another state if the data is subject to similar limitations and restrictions as provided in [sections 1 through 3].

(4) THE INFORMATION COLLECTED IN THE DATABASE MAY NOT BE USED FOR ANY COMMERCIAL PURPOSE.

(4)(5) The database information may not be used as evidence in a criminal or ANY civil proceeding OTHER THAN IN AN ADMINISTRATIVE PROCEEDING RELATED TO THE LICENSURE OR DISCIPLINE OF A PRACTITIONER. THE FACT THAT PARTICULAR INFORMATION IS CONTAINED IN THE DATABASE MAY NOT BE USED AS EVIDENCE IN A CRIMINAL PROCEEDING.

(5)(6) The board shall maintain records on the information disclosed from the database, including:

(a) the identification of each individual who requests or receives information from the database and who that individual represents;

(b) the information provided to each individual; and

(c) the date and time that the information is requested or provided.

(7) NO LATER THAN 3 YEARS AFTER THE DATE THAT THE PATIENT'S PRESCRIPTION DATA WAS MADE AVAILABLE TO THE BOARD, THE BOARD SHALL PURGE THE GATHERED INFORMATION FROM THE DATABASE UNLESS THE INFORMATION IS BEING USED AS PART OF AN ACTIVE INVESTIGATION.

(6)(8) All costs associated with recording and submitting data as required in this section are assumed by the dispensing practitioner recording and submitting the data.

(7)(9) The board shall adopt rules to ensure that only authorized individuals have access to the database and only to appropriate information from the database. THE RULES MUST BE CONSISTENT WITH THE PRIVACY

PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA), 42 U.S.C. 1320D, ET SEQ., AND ADMINISTRATIVE RULES ADOPTED IN CONNECTION WITH THAT ACT. The board shall adopt rules to establish the information to be submitted for the purposes of this section and the purposes set forth in [section 2], the method of payment for a prescription, and the fees necessary to support the program.

NEW SECTION. Section 2. Monitoring program -- purpose -- fees. (1) The board shall maintain a program to monitor prescriptions for controlled substances or other drugs of abuse that are filed with the board under [section 1] for the purpose of assisting in identifying and inhibiting the diversion of drugs and providing information to patients and practitioners on the appropriate use of controlled substances in a manner that does not impede access to the drugs for legitimate medical purposes. The monitoring program and any data created by the monitoring program must be administered by the board.

(2) The board may use the information obtained through the monitoring program in identifying activity that it reasonably suspects may be in violation of Title 50, chapter 32, or laws governing programs that provide medical assistance. The board shall report and may provide, upon request, information to the persons listed in [section 1(3)]. The board may provide the relevant information in the board's possession, including information obtained from the monitoring program, to the appropriate law enforcement agency, medicaid or medicare agency, licensing board, or impaired professional program for further investigation or to other appropriate law enforcement or administrative enforcement entities.

(3) Information, which does not identify individual patients, practitioners, or dispensing pharmacists or pharmacies, may be released by the board for educational, research, or public information purposes.

(4) Unless there is shown malice, criminal intent, gross negligence, or reckless, willful, and wanton conduct, the board, any other state agency, or any person or entity in proper possession of information as provided in the database is not subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

- (a) the furnishing of information under the conditions provided in this section;
- (b) the receiving and use of or reliance on information from the database;
- (c) the fact that any information was not furnished; or
- (d) the fact that information was factually incorrect or was released by the board to the wrong person or entity.

(5) A practitioner or a pharmacist may not be held liable for damages to any person in any civil action for injury, death, or loss to person or property on the basis that the practitioner or pharmacist sought or obtained

or did not seek or obtain information from the database.

(6) (a) Each person licensed under Title 37 who prescribes, distributes, or dispenses controlled substances shall pay to the department a nonrefundable fee commensurate with the costs of the program and set by the board by rule.

(b) The board may apply for any available grants and accept any gifts, grants, or donations to assist in developing and maintaining the program required by this section.

NEW SECTION. Section 3. Unlawful acts -- referral for administrative sanctions -- CIVIL PENALTY.

(1) A dispenser who fails to submit prescription information to the board as required by [section 1] must be referred to the appropriate licensing board or regulatory agency for administrative sanctions as considered appropriate by that board or agency.

(2) A person or entity authorized to possess prescription monitoring information pursuant to [sections 1 through 3] who knowingly discloses or uses prescription monitoring information in violation of [sections 1 through 3] must be referred to the appropriate licensing board or regulatory agency for administrative sanctions as considered appropriate by that board or agency.

(3) A person or entity that uses or attempts to obtain database information in the following manner may be prosecuted under the appropriate criminal law:

- (a) by providing false information;
- (b) by any other means than provided for in [sections 1 through 3];
- (c) by providing information to an unauthorized person;
- (d) for a person who is not a patient; or
- (e) for unauthorized purposes.

(4) ANY PERSON OR ENTITY THAT IS NOT PERMITTED TO RECEIVE INFORMATION FROM THE DATABASE PURSUANT TO [SECTION 1] AND THAT KNOWINGLY OR WILLFULLY OBTAINS, DISCLOSES, OR USES THE INFORMATION GATHERED IN THE DATABASE WITHOUT WRITTEN AUTHORIZATION FROM THE PATIENT IS LIABLE FOR A CIVIL PENALTY NOT TO EXCEED \$250,000 FOR EACH VIOLATION.

NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 50, chapter 32, and the provisions of Title 50, chapter 32, apply to [sections 1 through 3].

NEW SECTION. Section 5. Two-thirds vote required -- contingent voidness. Because [section 2] limits governmental liability, Article II, section 18 of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then [section 2(4)] is void.

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