HOUSE BILL NO. 86

INTRODUCED BY V. RICCI

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PRESCRIPTION DRUG LAWS; PROVIDING FOR THE POSITIVE IDENTIFICATION OF POTENTIAL RECIPIENTS OF CONTROLLED SUBSTANCES; ~~REQUIRING ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES IN CERTAIN CIRCUMSTANCES;~~ RESTRICTING ~~FIRST-TIME OPIOID~~ PRESCRIPTIONS FOR OPIOID-NAIVE PATIENTS TO A ~~5-DAY~~ 7-DAY SUPPLY AND PROVIDING EXCEPTIONS; REQUIRING CERTAIN PROFESSIONALS WHO PRESCRIBE OR DISPENSE PRESCRIPTION DRUGS TO REGISTER TO USE THE PRESCRIPTION DRUG REGISTRY; REQUIRING A PRESCRIBER OR AUTHORIZED AGENT TO REVIEW THE PRESCRIPTION DRUG REGISTRY BEFORE PRESCRIBING AN OPIOID OR A BENZODIAZEPINE TO A PATIENT AND PROVIDING EXCEPTIONS; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-2-101 AND 37-7-1503, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Positive identification required.** (1) (a) Except as provided in subsection (2), a pharmacy may not dispense a controlled substance to a potential recipient without first positively identifying the recipient by means of a valid driver's license, a school district or postsecondary education photo identification, a tribal photo identification, or other identification allowed by the board by rule.

(b) Documentation of the recipient's identification must be permanently linked to the record of the dispensed controlled substance and must include:

(i) a copy of the identification presented; or

(ii) a record that includes:

(A) the recipient's name;

(B) the type of identification presented and the unique identification number; and

(C) the government entity that issued the identification.

(2) Positive identification is not required if:

(a) the controlled substance is dispensed directly to the patient and:

(i) the filled prescription is delivered to the patient or the patient's health care provider; or

(ii) the patient is being treated at a health care facility or is housed in a correctional facility; or

(b) the potential recipient of the controlled substance is personally and positively known by a pharmacist or an employee of the pharmacy who is present and identifies the recipient, and the personal identification is documented by recording:

(i) the recipient's name;

(ii) a notation indicating that the recipient was known to a pharmacist or an employee of the pharmacy; and

(iii) the identity of the individual making the personal identification.

~~NEW SECTION.~~ **Section 2. Mandatory electronic prescribing for controlled substances -- exceptions -- penalty.** ~~(1) Except as provided in subsections (2) and (3), a medical practitioner, a naturopath, or a pharmacist prescribing pursuant to a collaborative pharmacy practice agreement may not issue a prescription for a controlled substance in this state unless the prescription is made by electronic prescription from the practitioner, naturopath, or pharmacist to a pharmacy.~~

~~(2) Subsection (1) does not apply if:~~

~~(a) electronic prescribing is not available due to temporary technological or electrical failure;~~

~~(b) the practitioner, naturopath, or pharmacist issuing the prescription is also the dispenser;~~

~~(c) the prescription includes elements that are not supported by the most recently implemented version of the national council for prescription drug programs prescriber/pharmacist interface SCRIPT standard;~~

~~(d) the federal food and drug administration requires the prescription to contain certain elements that are not able to be accomplished with electronic prescribing;~~

~~(e) the prescription is generated pursuant to a standing order or other circumstances when the practitioner, naturopath, or pharmacist may issue a nonpatient-specific prescription;~~

~~(f) the prescription is prescribed under research protocol; or~~

~~(g) the practitioner, naturopath, or pharmacist reasonably determines that it would be impractical for the patient to obtain the controlled substance prescribed by electronic prescription in a timely manner and the delay would adversely impact the patient's medical condition.~~

~~(3) The board that licenses a practitioner, naturopath, or pharmacist may grant a waiver to the~~

~~practitioner, naturopath, or pharmacist, which may not exceed 1 year and may not be renewed, from the requirement in subsection (1) if the practitioner, naturopath, or pharmacist demonstrates:~~

~~(a) economic hardship;~~

~~(b) technological limitations that are not reasonably within the control of the practitioner, naturopath, or pharmacist; or~~

~~(c) other exceptional circumstances.~~

~~(4) A dispensing pharmacist who receives a written, oral, or faxed prescription is not required to verify that the prescription properly falls under one of the exceptions to electronically prescribe contained in subsection (2) or (3).~~

NEW SECTION. **Section 2. Restriction on ~~first-time opioid~~ prescriptions FOR OPIOID-NAIVE PATIENTS -- exceptions.** (1) Except as provided in subsection (2), when a medical practitioner~~, a naturopath, or a pharmacist prescribing pursuant to a collaborative pharmacy practice agreement~~ OR A NATUROPATHIC PHYSICIAN prescribes an opioid ~~for the first time to a~~ TO AN OPIOID-NAIVE patient on an outpatient basis, the prescription may not be for more than a ~~5-day~~ 7-DAY supply.

(2) The restriction imposed under subsection (1) does not apply if:

(a) in the professional medical judgment of the MEDICAL practitioner~~, naturopath, or pharmacist~~ OR NATUROPATHIC PHYSICIAN, a prescription for more than a ~~5-day~~ 7-DAY supply is necessary to treat chronic pain, pain associated with cancer, or pain experienced while the patient is in palliative care; or

(b) the opioid being prescribed is designed for the treatment of opioid abuse or dependence, including but not limited to opioid agonists and opioid antagonists.

NEW SECTION. **Section 3. Mandatory use of prescription drug registry.** A prescriber or an agent of the prescriber shall review a patient's records under the prescription drug registry before the prescriber issues a prescription for an opioid or a benzodiazepine for the patient, unless:

(1) the patient is receiving hospice care;

(2) the prescription is for a number of doses that is intended to last the patient ~~5~~ 7 days or less and cannot be refilled;

(3) the prescription drug is lawfully administered to the patient in a health care facility;

(4) due to an emergency, it is not possible to review the patient's records under the registry before the

prescriber issues a prescription for the patient; ~~or~~

(5) THE PATIENT IS BEING TREATED FOR CHRONIC PAIN AND THE PRESCRIBER REVIEWS THE PATIENT'S RECORDS UNDER THE PRESCRIPTION DRUG REGISTRY EVERY 3 MONTHS; OR

~~(5)~~(6) it is not possible to review the patient's records under the registry because the registry is not operational or because of other technological failure if the failure is reported to the board.

Section 4. Section 37-2-101, MCA, is amended to read:

"37-2-101. Definitions. As used in this part, the following definitions apply:

~~(1) "Collaborative pharmacy practice agreement" has the meaning provided in 37-7-101.~~

~~(1)~~(2)(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

~~(3)~~(2) "Controlled substance" has the meaning provided in 37-7-101.

~~(2)~~(4)(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

~~(5)~~(4) "Dispense" has the meaning provided in 37-7-101.

~~(3)~~(6)(5) "Drug" has the same meaning as provided in 37-7-101.

~~(4)~~(7)(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

~~(5)~~(8)(7) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

~~(9)~~(8) ~~"Naturopath"~~ "NATUROPATHIC PHYSICIAN" means a person licensed under Title 37, chapter 26, to practice naturopathic health care.

~~(10)~~(9) "Opioid" has the meaning of "opiate" in 50-32-101.

(10) "OPIOID-NAIVE PATIENT" MEANS A PATIENT WHO HAS NOT BEEN PRESCRIBED A DRUG CONTAINING AN OPIOID IN THE 90 DAYS PRIOR TO THE ACUTE EVENT OR SURGERY FOR WHICH AN OPIOID IS PRESCRIBED.

~~(6)~~(11) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

~~(7)~~(12) "Pharmacy" has the ~~same~~ meaning ~~as~~ provided in 37-7-101.

~~(8)~~(13) "State" means the state of Montana or any political subdivision of the state."

Section 5. Section 37-7-1503, MCA, is amended to read:

"37-7-1503. Prescription drug registry -- reporting requirements. (1) Each person licensed under Title 37 to prescribe or dispense prescription drugs shall register to use the prescription drug registry at the time of initial licensure or renewal of licensure.

~~(1)~~(2) Except as provided in subsection ~~(2)~~ (3), each entity licensed by the board as a certified pharmacy or as an out-of-state mail order pharmacy that dispenses drugs to patients in Montana shall provide prescription drug order information for controlled substances to the registry by:

(a) electronically transmitting the information in a format established by the board unless the board has granted a waiver allowing the information to be submitted in a nonelectronic manner; and

(b) submitting the information in accordance with time limits set by the board unless the board grants an extension because:

(i) the pharmacy has suffered a mechanical or electronic failure or cannot meet the deadline for other reasons beyond its control; or

(ii) the board is unable to receive electronic submissions.

~~(2)~~(3) ~~This section~~ Subsection (2) does not apply to:

(a) a prescriber who dispenses or administers drugs to the prescriber's patients; or

(b) a prescription drug order for a controlled substance dispensed to a person who is hospitalized."

NEW SECTION. **Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 7, part 4, and the provisions of Title 37, chapter 7, part 4, apply to [section 1].

(2) ~~[Sections 2 and 3] are~~ [SECTION 2] IS intended to be codified as an integral part of Title 37, chapter 2, part 1, and the provisions of Title 37, chapter 2, part 1, apply to ~~[sections 2 and 3]~~ [SECTION 2].

(3) [Section ~~4~~ 3] is intended to be codified as an integral part of Title 37, chapter 7, part 15, and the provisions of Title 37, chapter 7, part 15, apply to [section ~~4~~ 3].

NEW SECTION. **Section 7. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2019.

(2) ~~[Sections 2 and 4] are~~ [SECTION 3] IS effective July 1, 2021.

NEW SECTION. **SECTION 8. TERMINATION.** [SECTION 2] TERMINATES JUNE 30, 2025.

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