

HCS HB 732 -- PRESCRIPTION DRUG MONITORING PROGRAM ACT AND PROFESSIONAL REGISTRATION

SPONSOR: Brandom

COMMITTEE ACTION: Voted "do pass" by the Committee on Professional Registration and Licensing by a vote of 19 to 0.

This substitute establishes the Prescription Drug Monitoring Program Act and changes the laws regarding the Division of Professional Registration and the State Board of Registration for the Healing Arts within the Department of Insurance, Financial Institutions and Professional Registration.

PRESCRIPTION DRUG MONITORING PROGRAM ACT

The substitute:

- (1) Requires the Department of Health and Senior Services to develop a program, subject to appropriations, to establish and maintain a program to monitor the prescribing and dispensing of all Schedule II through Schedule V controlled substances by all licensed professionals who prescribe or dispense these substances in Missouri;
- (2) Requires a dispenser to electronically submit to the department information for each prescription and specifies the frequency of the submissions;
- (3) Allows the department to issue a waiver to a dispenser who is unable to submit the required information electronically. If a waiver is obtained, a dispenser can submit the required information in a paper format or by other approved means;
- (4) Requires the department to reimburse each dispenser for the fees and other direct costs of transmitting the required information;
- (5) Requires all submitted prescription information to be confidential with specified exceptions. The department must review the dispensation information and, if there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the department must notify the appropriate law enforcement or professional regulatory entity and provide dispensation information required for an investigation;
- (6) Authorizes the release of non-personal, general information for statistical, educational, and research purposes;
- (7) Authorizes the department to contract with any other state

agency or with a private vendor to administer the program;

(8) Specifies that a person who violates a provision of the act will be guilty of a class A misdemeanor;

(9) Requires the department to implement an educational course regarding the provisions of the act and, when appropriate, to work with associations for impaired professionals to ensure the intervention, treatment, and ongoing monitoring and followup of patients who have been identified as being addicted to substances monitored by the act;

(10) Requires the department to develop and implement an electronic logbook to monitor the sale of Schedule V controlled substances containing pseudoephedrine; and

(11) Requires the Bureau of Narcotics and Dangerous Drugs within the department to establish beginning January 1, 2012, a two-year statewide pilot project for the reporting of fraudulently obtained prescription controlled substances. The bureau must submit by February 1, 2013, and February 1, 2014, a report to the General Assembly detailing specified information regarding the pilot project.

#### DIVISION OF PROFESSIONAL REGISTRATION

The substitute changes the laws regarding disciplinary and administrative procedures for professions and businesses regulated by the Division of Professional Registration within the Department of Insurance, Financial Institutions and Professional Registration. The division or any board, committee, commission, or office within the division is authorized to enter a default decision against a licensee if he or she fails, upon proper notice, to plead or otherwise defend against a disciplinary proceeding.

#### STATE BOARD OF REGISTRATION FOR THE HEALING ARTS

The substitute:

(1) Requires the State Board of Registration for the Healing Arts within the Department of Insurance, Financial Institutions and Professional Registration to list certain specified information regarding individuals who are licensed or applying for licensure by the board on its web site. The board must disclose specified confidential information to a licensee or applicant upon request without a cost if the information is less than five years old. If the requested information is more than five years old, the board may charge a specified fee;

(2) Removes the provision which authorizes the board to require a doctor licensed in another state to pass an examination prior to waiving the Missouri examination requirement. The board is authorized to require the successful completion of another examination, continuing medical education, or further training prior to issuing a permanent medical license to an applicant who has not actively practiced medicine or held a teaching position for two of the three years before his or her application;

(3) Specifies that, upon a showing of reasonable cause to believe that a licensee or applicant is unable to practice his or her profession, the board must require a licensee or applicant for a license to submit to an examination of his or her skills, a multi-disciplinary evaluation, or a substance abuse evaluation if there is cause to believe that the individual is incompetent, is mentally or physically incapacitated, or excessively uses or abuses alcohol or controlled substances;

(4) Authorizes the board to cause a complaint to be filed with the Administrative Hearing Commission against a licensee for violating a municipal ordinance, prescribing drugs through the Internet without a valid physician-patient relationship, being on a sexual offender registry, violating a probation order or other settlement agreement, unethical or unprofessional conduct involving a minor, negligence, knowingly making false statements, habitual intoxication or dependence, failing to comply with a treatment program, or violating any professional trust or confidence;

(5) Authorizes the board, upon a showing of probable cause, to issue an emergency suspension or restriction on a licensee for engaging in sexual conduct with a patient; sexual misconduct with a minor; possession or use of a controlled substance without a valid prescription; court-determined incapacity or disability; habitual intoxication or alcohol or drug addiction; failing to comply with a treatment program, an aftercare program as part of a board order or settlement agreement, or a licensee's professional health program; or any conduct that is a serious danger to the health, safety, or welfare of a patient or the public. The suspension or restriction will take effect when the document is served to the licensee;

(6) Authorizes the board to initiate a hearing before itself for disciplining a licensee for certain actions. The board's decision is appealable to the circuit court;

(7) Authorizes the board to subpoena a peer review committee, medical executive committee, hospital, pharmacy records, or any person regardless if it is prohibited by another law; and

(8) Changes the board's authority to discipline athletic trainers.

The substitute also:

(1) Removes the requirement that a doctor display his or her certificate of registration in his or her office at all times;

(2) Requires a person prescribing a controlled substance or non-controlled pain medication to document certain information in the patient's medical record prior to prescribing the medication;

(3) Requires a doctor who prescribes any drug, controlled substance, or other treatment through the Internet to establish that there is a valid physician-patient relationship;

(4) Prohibits evidence contesting or challenging the basis of a criminal conviction from being admissible in an administrative hearing; and

(5) Requires the Administrative Hearing Commission to deliver findings of fact and conclusions of law in a disciplinary case to the appropriate agency within 120 days of the date the case became ready for decision.

The provisions regarding the Prescription Drug Monitoring Program Act become effective January 1, 2012.

The provisions of the substitute regarding the pilot project for the reporting of fraudulently obtained prescription controlled substances will expire three years from the effective date and the provisions regarding the Prescription Drug Monitoring Program Act will expire six years from the effective date.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown greater than \$1,540,233 in FY 2012, Unknown greater than \$832,848 in FY 2013, and Unknown greater than \$841,113 in FY 2014. Estimated Net Cost on Other State Funds of \$105,173 in FY 2012, \$124,961 in FY 2013, and \$127,639 in FY 2014.

PROPOSERS: Supporters say that the bill gives the State Board of Registration for the Healing Arts additional powers to protect citizens from dangerous doctors. Currently, the board is unable to act expediently in disciplining or suspending the license of a dangerous doctor. The board is authorized to immediately suspend a bad doctor and to have access to prior discipline action in other states. The bill also makes the administrative procedure consistent with civil procedure.

Testifying for the bill were Representative Brandom; and State

Board of Registration for the Healing Arts, Department of Insurance, Financial Institutions and Professional Registration.

OPPONENTS: Those who oppose the bill have concerns with expanding the board's authority and giving the board free reign to go after a physician without being able to defend himself or herself. The provisions relating to summary restriction and suspension create a clear and present danger because there is no due process. A bad doctor should not be practicing, but he or she should be entitled to due process.

Testifying against the bill were Missouri Association of Osteopathic Physicians and Surgeons; Missouri Association of Nurse Anesthetists; Missouri Pharmacy Association; Missouri Dental Association; and Missouri Retailers Association.

OTHERS: Others testifying on the bill say that discussions have been taking place with the board regarding the civil penalties and discipline issues.

Testifying on the bill were Missouri State Medical Association; and Missouri Society of Anesthesiologists.