CONFERENCE COMMITTEE SUBSTITUTE
FOR
SENATE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NOS. 90 & 68

AN ACT

To amend chapter 195, RSMo, by adding thereto seven new sections relating to a program for the monitoring of certain prescribed controlled substances, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Chapter 195, RSMo, is amended by adding thereto seven new sections, to be known as sections 195.450, 195.453, 195.456, 195.459, 195.462, 195.465, and 195.468, to read as follows:

195.450. 1. Sections 195.450 to 195.468 shall be known and may be cited as the "Narcotics Control Act".

2. As used in sections 195.450 to 195.468, the following terms shall mean:

(1) "Controlled substance", the same meaning given such term in section 195.010;

(2) "Department", the department of health and senior services;
(3) "Dispenser", a person who delivers a Schedule II, III, or IV controlled substance to a patient, but does not include:

(a) A hospital, as defined in section 197.020, that distributes such substances for the purpose of inpatient care or dispenses prescriptions for controlled substances at the time of discharge from such facility;

(b) A practitioner or other authorized person who administers such a substance; or

(c) A wholesale distributor of a Schedule II, III, or IV controlled substance;

(4) "Patient", a person who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, not including a hospice patient enrolled in a Medicare-certified hospice program who has controlled substances dispensed to him or her by such hospice program;

(5) "Prescriber", a person who prescribes a Schedule II, III, or IV controlled substance to a patient;

(6) "Schedule II, III, or IV controlled substance", a controlled substance that is listed in Schedule II, III, or IV of the schedules provided under this chapter or the Controlled Substances Act, 21 U.S.C. Section 812.

3. Notwithstanding any other law to the contrary, the provisions of this section shall not apply to persons licensed under chapter 340.

195.453. 1. The department shall establish and maintain a narcotics control program for the monitoring of prescribing and dispensing of all Schedule II, III, and IV controlled substances
by all professionals licensed to prescribe or dispense such substances in this state. The funding of the program shall be subject to appropriations. In addition to appropriations from the general assembly, the department may apply for available grants and shall be able to accept other gifts, grants, and donations to develop and maintain the program.

2. Each dispenser shall submit to the department by electronic means information regarding each dispensation of a drug included in subsection 1 of this section. The information submitted for each dispensation shall include, but not be limited to:

(1) The dispenser's Drug Enforcement Administration (DEA) number;

(2) The date of the dispensation;

(3) The following, if there is a prescription:
   (a) The prescription number or other unique identifier;
   (b) Whether the prescription is new or a refill; and
   (c) The prescriber's DEA or National Provider Identifier (NPI) number;

(4) The National Drug Code (NDC) for the drug dispensed;

(5) The quantity and dosage of the drug dispensed;

(6) The patient's identification number including, but not limited to, any one of the following:
   (a) The patient's driver's license number;
   (b) The patient's government-issued identification number;
   or
   (c) The patient's insurance cardholder identification
number; and

(7) The patient's name, address, and date of birth.

3. Each dispenser shall submit the information in accordance with transmission standards established by the American Society for Automation in Pharmacy or any successor organization and shall report data within twenty-four hours of dispensation. Beginning January 1, 2019, the department shall begin phasing in a requirement that dispensers report data in real time with all report data to be submitted in real time by January 1, 2020.

4. (1) The department may issue a waiver to a dispenser who is unable to submit dispensation information by electronic means. Such waiver may permit the dispenser to submit dispensation information by paper form or other means, provided all information required in subsection 2 of this section is submitted in such alternative format.

(2) The department may grant an extension to dispensers who are temporarily unable to electronically submit the dispensation information required in subsection 2 of this section in accordance with the time frame established in subsection 3 of this section due to unforeseen circumstances. In cases in which an extension is granted, dispensers shall be responsible for reporting the required data in a subsequent submission.

5. A prescriber shall utilize the program prior to prescribing any Schedule II, III, or IV controlled substance. The provisions of this subsection shall not apply in the following circumstances:
(1) During a medical emergency that, in the professional
opinion of the prescriber, is likely to result in harm to the
patient;

(2) When it is not reasonably possible to utilize the
program due to circumstances beyond the control of the
prescriber;

(3) When the patient has a terminal illness or resides in a
facility licensed under chapter 198;

(4) When the patient is under the care of a hospital, as
defined in section 197.020, or an ambulatory surgical center, as
defined in section 197.200, that distributes controlled
substances for the purpose of inpatient care or issues
prescriptions for controlled substances at the time of discharge
from the facility in which the prescription does not exceed a
five-day supply; provided that such prescriber utilizes the
program or ensures that the program has been utilized since the
patient's admission;

(5) When the controlled substance is administered directly
to the patient in an emergency room setting; or

(6) When there is a previously established prescriber-
patient relationship and a nonopioid controlled substance, other
than a benzodiazepine, is being prescribed.

195.456. 1. Dispensation information submitted to the
department shall be confidential and not subject to public
disclosure under chapter 610 except as provided in subsections 3
to 5 of this section.

2. The department shall maintain procedures to ensure that
the privacy and confidentiality of patients and personal
information collected, recorded, transmitted, and maintained are
not disclosed to persons except as provided in subsections 3 to 5
of this section.

3. The department shall 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 shall notify the appropriate law
enforcement or professional licensing, certification, or
regulatory agency or entity, and provide any dispensation
information required for an investigation.

4. The department may provide data in the narcotics control
program to the following persons:
(1) Persons both in-state and out-of-state authorized to
prescribe or dispense controlled substances for the purpose of
providing medical or pharmaceutical care for their patients;
(2) An individual who requests his or her own dispensation
information in accordance with state law;
(3) The state board of pharmacy;
(4) Any state board charged with regulating a professional
who has the authority to prescribe or dispense controlled
substances that requests data related to a specific professional
under the authority of such board if such board has a current and
open investigation into such professional and the data provided
is limited to such professional;
(5) Local, state, and federal law enforcement or
prosecutorial officials, both in-state and out-of-state, engaged
in the administration, investigation, or enforcement of the laws
governing prescription drugs based on a specific case and under a
subpoena issued by a court of competent jurisdiction or court
order;

(6) The MO HealthNet division within the department of
social services regarding MO HealthNet program recipients; and

(7) A judge or other judicial authority under a subpoena
issued by a court of competent jurisdiction or court order.

5. The department may provide data to public or private
entities for statistical, research, or educational purposes after
removing information that could be used to identify individual
patients, prescribers, dispensers, or persons who received
dispensations from dispensers.

6. Nothing in sections 195.450 to 195.468 shall be
construed to require a dispenser or prescriber, except as
otherwise provided in subsection 5 of section 195.453, to obtain
information about a patient from the database.

7. No dispensation information submitted to the department
shall be used by any local, state, or federal authority to
prevent an individual from owning or obtaining a firearm.

8. No dispensation information submitted to the department
under sections 195.450 to 195.468 shall be the sole basis for
probable cause to obtain an arrest or search warrant as part of a
criminal investigation.

9. Beginning August 28, 2019, the department shall maintain
an individual's prescription and dispensation information
obtained under sections 195.450 to 195.468 for a maximum of two
years from the date of dispensation, after which such information shall be deleted from the program.

10. Any individual who has authority under sections 195.450 to 195.468 to access the program's database shall complete a department-approved training course prior to accessing the database for the first time.

195.459. The department is authorized to contract with any other agency of this state, any state government that currently runs a narcotics control program, or any private vendor. Any contractor shall comply with the provisions regarding confidentiality of prescription and dispensation information in section 195.456.

195.462. 1. The department shall promulgate rules setting forth the procedures and methods of implementing sections 195.450 to 195.468. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2017, shall be invalid and void.

2. Under section 23.253 of the Missouri sunset act:

(1) The provisions of the new program authorized under
sections 195.450 to 195.468 shall automatically sunset six years after the effective date of sections 195.450 to 195.468 unless reauthorized by an act of the general assembly;

(2) If such program is reauthorized, the program authorized under sections 195.450 to 195.468 shall automatically sunset twelve years after the effective date of the reauthorization of sections 195.450 to 195.468; and

(3) Sections 195.450 to 195.468 shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 195.450 to 195.468 is sunset.

195.465. 1. A dispenser who knowingly fails to submit dispensation information to the department as required in sections 195.450 to 195.468 or knowingly submits incorrect dispensation information shall be subject to an administrative penalty in the amount of one thousand dollars for each violation. The penalty shall be assessed through an order issued by the director of the department. Any person subject to an administrative penalty may appeal to the administrative hearing commission under the provisions of chapter 621.

2. Any person who unlawfully and knowingly accesses or discloses or any person authorized to have prescription or dispensation information under sections 195.450 to 195.468 who knowingly discloses such information in violation of sections 195.450 to 195.468 or knowingly uses such information in a manner and for a purpose in violation of sections 195.450 to 195.468 is guilty of a class E felony.
3. A prescriber required to utilize the program under subsection 5 of section 195.453 who knowingly fails to comply with the provisions of such subsection shall be subject to disciplinary action by the prescriber’s respective professional state regulatory board.

195.468. If a political subdivision of this state is operating a program for the monitoring of the prescribing and dispensing of all Schedule II, III, and IV controlled substances by professionals licensed to prescribe or dispense such substances in this state, the political subdivision’s program shall be permitted to continue operating until such time as the department’s program is available for utilization by prescribers and dispensers throughout the state.

[Signature]

Representative Holly Rehder

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Senator Dave Schatz