CHAPTER 140
SB 34-FN - FINAL VERSION

4May2023... 1352h

2023 SESSION

23-0824
05/04

SENATE BILL ***34-FN***

AN ACT relative to the controlled drug prescription health and safety program.

SPONSORS: Sen. Gray, Dist 6; Sen. Bradley, Dist 3; Sen. Birdsell, Dist 19; Sen. Avard, Dist 12

COMMITTEE: Health and Human Services

ANALYSIS

This bill makes various technical changes to the controlled drug prescription health and safety program. The bill is a request of the department of health and human services.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the controlled drug prescription health and safety program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

140:1 Controlled Drug Prescription Health and Safety Program Operation. Amend RSA 126-A:91, VIII and IX to read as follows:

VIII. The [~~program administrator~~] ***commissioner*** may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required by paragraph VI is submitted in this alternative format and within the established time limit.

IX. The [~~program administrator~~] ***commissioner*** may grant a reasonable extension to a dispenser that is unable, for good cause, to submit all the information required by paragraph V within the established time limits.

140:2 Confidentiality. Amend RSA 126-A:92, III to read as follows:

III. The department may use and release information and reports from the program for program analysis and evaluation, statistical analysis, public research, public policy, and educational purposes, provided that the data are aggregated or otherwise de-identified at all levels of use. The department shall not acquire, use or release information from the program for these purposes unless all patient-specific protected health information has been de-identified in accordance with section 164.514(b)(2) of the HIPAA Privacy Rule***, except that the department may use or release county-level data, provided that such data are de-identified and aggregated at all levels of use, and provided that no such county shall have a population of fewer than 20,000 residents as defined by the most recent census data***.

140:3 Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 126-A:93 to read as follows:

126-A:93 Providing Controlled Drug Prescription Health and Safety Information.

I. The [~~program administrator~~] ***commissioner*** may ***authorize designated program staff to*** provide information in the prescription health and safety program upon request only to the following persons:

(a) By electronic or written request to prescribers, dispensers, and the chief medical examiner and delegates within the state who are registered with the program:

(1) For the purpose of providing medical or pharmaceutical care to a specific patient with whom the requester has a practitioner-patient relationship. This shall not include department staff seeking to access the program for state, federal or private agency purposes, or on behalf of the department or other requesting agency;

(2) For reviewing information regarding prescriptions issued or dispensed or for conducting medication reconciliation by the requester;

(3) For the purpose of investigating the death of an individual; or

(4) For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA 329:13-b, and other participating health professional boards.

(b) By written request, to:

(1) A patient who requests his or her own prescription monitoring information.

(2) The board of dentistry, the board of medicine, the board of nursing, the board of registration in optometry, the board of podiatry, the board of veterinary medicine, and the pharmacy board; provided, however, that the request is pursuant to the boards' official duties and responsibilities and the disclosures to each board relate only to its licensees and only with respect to those licensees whose prescribing or dispensing activities indicate possible fraudulent conduct.

(3) Authorized law enforcement officials on a case-by-case basis for the purpose of investigation and prosecution of a criminal offense when presented with a court order based on probable cause. No law enforcement agency or official shall have direct access to query program information.

(4) [Repealed.]

(c) By electronic or written request on a case-by-case basis to:

(1) A controlled prescription drug health and safety program from another state; provided, that there is an agreement in place with the other state to ensure that the information is used or disseminated pursuant to the requirements of this state.

(2) An entity that operates a secure interstate prescription drug data exchange system for the purpose of interoperability and the mutual secure exchange of information among prescription drug monitoring programs, provided that there is an agreement in place with the entity to ensure that the information is used or disseminated pursuant to the requirements of this state.

II. The [~~program administrator~~] ***commissioner or program staff authorized by the commissioner*** shall notify the appropriate regulatory board listed in subparagraph I(b)(2) and the prescriber or dispenser at such regular intervals as may be established by the department if there is reasonable cause to believe a violation of law or breach of professional standards may have occurred. The [~~program administrator~~] ***commissioner or program staff authorized by the commissioner*** shall provide prescription information required or necessary for an investigation.

III. The [~~program administrator~~] ***commissioner or program staff authorized by the commissioner*** shall review the information to identify information that appears to indicate whether a person may be obtaining prescriptions in a manner that may represent misuse or abuse of schedule II-IV controlled substances. When such information is identified, the [~~program administrator~~] ***commissioner or program staff authorized by the commissioner*** shall notify the practitioner who prescribed the prescription.

IV. The [~~program administrator~~] ***commissioner*** shall make a report, at least annually, commencing on November 1, 2021, to the senate president, the speaker of the house of representatives, the oversight committee on health and human services, established in RSA 126-A:13, the advisory council established in RSA 126-A:96 and the licensing boards of all professions required to use the program relative to the effectiveness of the program.

140:4 Advisory Council Established. Amend RSA 126-A:96, I(j) to read as follows:

(j) Two public members appointed by the governor's commission on alcohol and [~~drug abuse prevention, treatment, and recovery~~] ***other drugs***, one of whom may be a member of the commission.

140:5 Rulemaking for Prescribing Controlled Drugs. Amend the introductory paragraph of RSA 318-B:41, II(a)(4)(A) to read as follows:

(4)(A) Querying the ***controlled drug prescription health and safety program (***program***)*** database***, under RSA 126-A:89 through 126-A:96,*** when writing an initial schedule II, III, or IV opioid prescription for the management or treatment of a patient's pain or substance use disorder and then periodically, at least twice a year. Such rules shall include exceptions for:

140:6 New Paragraph; Rulemaking for Prescribing Controlled Drugs. Amend RSA 318-B:41 by inserting after paragraph II the following new paragraph:

II-a.(a) For the purposes of this section "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that might or might not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. It also includes intermittent episodic pain that might require periodic treatment.

(1) For the purpose of this section, chronic pain does not cover or in any way determine treatment for pain from terminal disease.

(2) For the purpose of this subdivision, chronic pain includes but may not be limited to pain defined as "chronic," "intractable," "high impact," "chronic episodic," and "chronic relapsing."

(b) A diagnosis of chronic pain made by a practitioner licensed in any of the states in the United States or the District of Columbia and supported by written documentation of the diagnosis by the treating practitioner shall constitute proof that the patient suffers from chronic pain.

140:7 New Paragraph; Rulemaking for Prescribing Controlled Drugs. Amend RSA 318-B:41 by inserting after paragraph V the following new paragraph:

VI. Except for veterinarians who shall complete continuing education requirements in accordance with RSA 332-B:7-a, XV, all prescribers required to register with the controlled drug prescription health and safety program under RSA 126-A:89-96 who possess a United States Drug Enforcement Administration (DEA) license number shall complete 3 contact hours of free appropriate prescriber's regulatory board-approved online continuing education or pass an online examination, in the area of pain management and addiction disorder or a combination, as a condition for initial licensure and license renewal. Verification of successful completion of the examination or of the required continuing education shall be submitted to the prescriber's regulatory board with the licensee's application for initial licensure or renewal. A list of the prescriber's regulatory boards' approved continuing education courses and online examinations in pain management and addiction disorder, shall be available on the regulatory board’s Internet website.

140:8 Repeal. The following are repealed:

I. RSA 126-A:89, I, relative to the definition of chronic pain.

II. RSA 126-A:97, relative to competency requirements.

140:9 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 30, 2023
Effective Date: August 29, 2023