ARTICLE 15. Prescription Monitoring Program

SECTION 44-53-1610. Citation of article.

This article may be cited as the "South Carolina Prescription Monitoring Act".

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006.

SECTION 44-53-1620. Purpose.

This article is intended to improve the state's ability to identify and stop diversion of prescription drugs in an efficient and cost effective manner that will not impede the appropriate medical utilization of licit controlled substances.

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006.

SECTION 44-53-1630. Definitions.

As used in this article:

(1) "Authorized delegate" means an individual who is approved as having access to the prescription monitoring program and who is directly supervised by an authorized practitioner or pharmacist.

(2) "Controlled substances" means those substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, 44-53-250, and 44-53-270.

(3) "Dispenser" means a person who delivers a Schedule II-IV controlled substance to the ultimate user, but does not include:

(a) a licensed hospital pharmacy that distributes controlled substances for the purpose of inpatient hospital care or dispenses prescriptions for controlled substances at the time of discharge from the hospital;

(b) a practitioner or other authorized person who administers these controlled substances; or

(c) a wholesale distributor of a Schedule II-IV controlled substance.

(4) "Drug control" means the Department of Health and Environmental Control, Bureau of Drug Control.

(5) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, or both.

(6) "Practitioner" means an individual authorized pursuant to state and federal law to prescribe controlled substances.

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006; 2014 Act No. 244 (S.840), § 1, eff June 6, 2014; 2017 Act No. 91 (H.3824), § 2, eff May 19, 2017.

Effect of Amendment

2017 Act No. 91, § 2, in the introductory paragraph, substituted "article" for "section"; redesignated (5), relating to the definition of authorized delegate, as (1), and redesignated accordingly; and added (6), relating to the definition of practitioner.

SECTION 44-53-1640. Authority to establish and maintain prescription monitoring program; electronic submission of information by dispensers; exemptions.

(A) The Department of Health and Environmental Control, Bureau of Drug Control shall establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III, and IV controlled substances by professionals licensed to prescribe or dispense these substances in this State.

(B)(1) A dispenser shall submit to drug control, by electronic means, information regarding each prescription dispensed for a controlled substance. The following information must be submitted for each prescription:

(a) dispenser DEA registration number;

(b) date drug was dispensed;

(c) prescription number;

(d) whether prescription is new or a refill;

(e) NDC code for drug dispensed;

(f) quantity dispensed;

(g) approximate number of days supplied;

(h) patient name;

(i) patient address;

(j) patient date of birth;

(k) prescriber DEA registration number;

(l) date prescription issued by prescriber.

(2) A dispenser shall submit daily to the department the information required pursuant to subsection (B)(1) in accordance with transmission methods and protocols provided in the latest edition of the "ASAP Telecommunications Format for Controlled Substances", developed by the American Society for Automation in Pharmacy.

(3) Drug control may issue a waiver to a dispenser who is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means if all information required pursuant to subsection (B)(1) is submitted in this alternative format.

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006; 2014 Act No. 244 (S.840), § 2, eff June 6, 2014; 2017 Act No. 91 (H.3824), § 3, eff May 19, 2017.

Effect of Amendment

2017 Act No. 91, § 3, in (A), substituted "shall establish" for "may establish".

SECTION 44-53-1645. Requirement to review patient's prescription history.

(A) A practitioner, or the practitioner's authorized delegate, shall review a patient's controlled substance prescription history, as maintained in the prescription monitoring program, before the practitioner issues a prescription for a Schedule II controlled substance. If an authorized delegate reviews a patient's controlled substance prescription history, the practitioner must consult with the authorized delegate regarding the prescription history before issuing a prescription for a Schedule II controlled substance. The consultation must be documented in the patient's medical record.

(B) The requirements of this section do not apply to:

(1) a practitioner issuing a prescription for a Schedule II controlled substance to treat a hospice-certified patient;

(2) a practitioner issuing a prescription for a Schedule II controlled substance that does not exceed a five-day supply for a patient;

(3) a practitioner prescribing a Schedule II controlled substance for a patient with whom the practitioner has an established relationship for the treatment of a chronic condition; however, the practitioner must review the patient's controlled substance history maintained in the prescription monitoring program at least every three months;

(4) a practitioner approving the administration of a Schedule II controlled substance by a health care provider licensed in South Carolina;

(5) a practitioner prescribing a Schedule II controlled substance for a patient in a skilled nursing facility, nursing home, community residential care facility, or an assisted living facility and the patient's medications are stored, given, and monitored by staff; or

(6) a practitioner who is temporarily unable to access the prescription monitoring program due to exigent circumstances; however, the exigent circumstances and the potential adverse impact to the patient if the prescription is not issued timely must be documented in the patient's medical record.

(C) A practitioner is deemed to be in compliance with this section if the practitioner utilizes technology that automatically displays the patient's controlled substance prescription history from the prescription monitoring program in the practitioner's electronic medical record system. The practitioner must be able to demonstrate that this technology has been deployed in his practice, but no additional documentation is required in the patient's medical record.

HISTORY: 2017 Act No. 91 (H.3824), § 1, eff May 19, 2017.

SECTION 44-53-1650. Confidentiality; persons to whom data may be released.

(A) Prescription information submitted to drug control is confidential and not subject to public disclosure under the Freedom of Information Act or any other provision of law, except as provided in subsections (C) and (D).

(B) Drug control shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in subsections (C) and (D).

(C) If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, drug control shall notify the appropriate law enforcement or professional licensure, certification, or regulatory agency or entity and shall provide prescription information required for an investigation.

(D) Drug control may provide data in the prescription monitoring program to the following persons:

(1) a practitioner or pharmacist or authorized delegate who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide patient;

(2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established pursuant to state law;

(3) a designated representative of the South Carolina Department of Labor, Licensing and Regulation responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(4) a local, state, or federal law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of the laws governing licit drugs and who is involved in a bona fide specific drug-related investigation involving a designated person;

(5) the South Carolina Department of Health and Human Services regarding Medicaid program recipients;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) personnel of drug control for purposes of administration and enforcement of this article;

(8) qualified personnel for the purpose of bona fide research or education; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser must be deleted or redacted from such information prior to disclosure. Further, release of the information only may be made pursuant to a written agreement between qualified personnel and the department in order to ensure compliance with this subsection;

(9) a coroner, deputy coroner, medical examiner, or deputy medical examiner who is involved in a specific inquiry into the cause and manner of death of a designated person pursuant to Chapter 5, Title 17;

(10) a practitioner in a prescription report card provided to practitioners in accordance with Section 44-53-1655; and

(11) the presiding judge of a drug court pertaining to a specific case involving a designated person.

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006; 2014 Act No. 244 (S.840), § 3, eff June 6, 2014; 2018 Act No. 168 (H.4488), § 1, eff May 3, 2018; 2018 Act No. 201 (S.918), § 3, eff May 15, 2018; 2018 Act No. 212 (H.4117), § 1, eff May 18, 2018.

Code Commissioner's Note

At the direction of the Code Commissioner, the amendments to (D) made by 2018 Act No. 168, 2018 Act No. 201, and 2018 Act No. 212 were read together and renumbered appropriately.

Effect of Amendment

2018 Act No. 168, § 1, in (D), added (9), authorizing drug control to provide coroners and medical examiners data maintained in the prescription drug monitoring program, and made nonsubstantive changes.

2018 Act No. 201, § 3, in (D), added (10), authorizing drug control to provide practitioners in a prescription report card data maintained in the prescription drug monitoring program.

2018 Act No. 212, § 1, in (D), added (11), authorizing drug control to provide presiding judges of drug courts data maintained in the prescription drug monitoring program.

SECTION 44-53-1655. Practitioner prescription report cards.

Section effective November 15, 2018.

(A) The department shall develop and maintain as part of the prescription monitoring program a system to provide prescription report cards to practitioners to inform the practitioner about certain prescribing trends. The report card must provide, at a minimum:

(1) a comparison of the practitioner's number of prescriptions issued per month by therapeutic class code or by specific substances to peer averages by specialty throughout the State;

(2) a comparison of the practitioner's number of milligrams prescribed per month by therapeutic class code or by specific substances to peer averages by specialty throughout the State;

(3) the total number of patients receiving ninety morphine milligram equivalents (MMEs) or more a day;

(4) the total number of patients receiving opioid medications for thirty days or more;

(5) the total number of patients receiving opioids and benzodiazepines medications at the same time;

(6) the total number of patients issued prescriptions from three or more practitioners;

(7) the total number of patients filling prescriptions at three or more pharmacies;

(8) the total number of patients with controlled substance prescriptions whose dispensing dates overlap;

(9) the total number of patients obtaining refills on their prescriptions more than one week early; and

(10) the total number of prescription drug monitoring program queries made by the practitioner and a ratio of the queries to the number of patients or prescriptions issued.

The report card also must provide data on the number of practitioners registered against which the comparisons of items (1) and (2) are being made and any other demographic data relating to the pool of practitioners and may include regional or nationwide prescribing comparison data that would be useful to the practitioner. Prescription report cards, data, documents, records, and any other information accessed or compiled in preparing prescription report cards, are confidential and not subject to discovery, subpoena, or introduction into evidence in any civil action, unless confidentiality is waived by the practitioner.

(B) The department shall coordinate with the Board of Medical Examiners and any other appropriate professional boards as part of the development and implementation of a prescription report card program. The department may contract with another agency of the State or with a private vendor, as necessary, to ensure effective operation of the report card program, as provided in Section 44-53-1660, and may apply for public or private grants or other funding to develop, implement, and maintain the program.

HISTORY: 2018 Act No. 201 (S.918), § 2, eff November 15, 2018.

SECTION 44-53-1660. Contract for administration by other state agency or private vendor.

Drug control may contract with another agency of this State or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. A contractor shall comply with the provisions regarding confidentiality of prescription information in Section **44-53-1650** and is subject to the penalties specified in Section 44-53-1680 for unlawful acts.

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006.

SECTION 44-53-1670. Promulgation of regulations.

Drug control may promulgate regulations setting forth the procedures and methods for implementing this article.

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006.

SECTION 44-53-1680. Violations and penalties.

(A) A dispenser or authorized delegate who knowingly fails to submit prescription monitoring information to drug control as required by this article, or who knowingly submits incorrect prescription information, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

(B) A person who knowingly discloses prescription monitoring information in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(C) A person who knowingly uses prescription monitoring information in a manner or for a purpose in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(D) A pharmacist or practitioner, licensed in Title 40, who knowingly discloses prescription monitoring information in a manner or for a purpose in violation of this article shall be reported to his respective board for disciplinary action.

(E) Nothing in this chapter requires a pharmacist to obtain information about a patient from the prescription monitoring program. A practitioner or authorized delegate of a practitioner who knowingly fails to review a patient's

controlled substance prescription history, as maintained in the prescription monitoring program, or a practitioner who knowingly fails to consult with his authorized delegate regarding a patient's controlled substance prescription history before issuing a prescription for a Schedule II controlled substance, as required by this article, must be reported to his respective board for disciplinary action.

(F) A pharmacist or practitioner does not have a duty and must not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or practitioner did or did not seek or obtain information from the prescription monitoring program. A pharmacist or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.

HISTORY: 2006 Act No. 396, § 1, eff June 14, 2006; 2014 Act No. 244 (S.840), § 4, eff June 6, 2014; 2017 Act No. 91 (H.3824), § 4, eff May 19, 2017.

Effect of Amendment

2017 Act No. 91, § 4, amended the section, establishing a penalty if a practitioner or authorized delegate fails to review a patient's controlled substance prescription history before prescribing a schedule II controlled substance.