

CHAPTER 303
SB 120 - FINAL VERSION

03/27/2019 1170s
03/27/2019 1304s
2May2019... 1528h
5Jun2019... 2284h
06/27/2019 2644EBA

2019 SESSION

19-0885
01/10

SENATE BILL **120**

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

SPONSORS: Sen. Giuda, Dist 2; Sen. Carson, Dist 14; Sen. Fuller Clark, Dist 21; Rep. Marsh, Carr. 8

COMMITTEE: Health and Human Services

ANALYSIS

This bill makes changes to the controlled drug prescription health and safety program, including:

- I. Transferring the program from the board of pharmacy to the office of professional licensure.
- II. Authorizing the program to share certain information with other state departments.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Nineteen

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:

1 303:1 Controlled Drug Prescription Health and Safety Program; Definitions. Amend the
2 introductory paragraph of RSA 318-B:31, IV to read as follows:

3 IV. "Dispenser" means a person ***or entity*** who is lawfully authorized to deliver a schedule
4 II-IV controlled substance, but does not include:

5 303:2 New Paragraph; Controlled Drug Prescription Health and Safety Program; Definitions.
6 Amend RSA 318-B:31 by inserting after paragraph IV the following new paragraphs:

7 IV-a. "Executive director" means the executive director of the office of professional licensure
8 and certification.

9 IV-b. "Office" means office of professional licensure and certification, established in RSA
10 310-A.

11 303:3 Controlled Drug Prescription Health and Safety Program Established. RSA 318-B:32 is
12 repealed and reenacted to read as follows:

13 318-B:32 Controlled Drug Prescription Health and Safety Program Established.

14 I. The office shall design, establish, and contract with a third party for the implementation
15 and operation of an electronic system to facilitate the confidential sharing of information relating to
16 the prescribing and dispensing of schedule II-IV controlled substances, by prescribers and dispensers
17 within the state.

18 II. The office may establish fees for the establishment, administration, operations and
19 maintenance of the program. The program may also be supported through grants and gifts. The fee
20 charged to individuals requesting their own prescription information shall not exceed the actual cost
21 of providing that information.

22 III. Prescription information held by the program relating to any individual shall be deleted
23 3 years after the initial prescription was dispensed. All de-identified data may be kept for statistical
24 and analytical purposes in perpetuity.

25 IV. The executive director shall establish an advisory council, as provided in RSA 318-B:38.

26 303:4 Controlled Drug Prescription Health and Safety Program Operation. Amend RSA 318-
27 B:33, I to read as follows:

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1 I. The [board] **office** shall develop a system of registration for all prescribers and dispensers
2 of schedule II-IV controlled substances within the state. The system of registration shall be
3 established by rules adopted by the [board] **office**, pursuant to RSA 541-A.

4 303:5 Controlled Drug Prescription Health and Safety Program; Operation. Amend RSA 318-
5 B:33, VI and VII to read as follows:

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

10 VII. The program **administrator** may grant a reasonable extension to a dispenser that is
11 unable, for good cause, to submit all the information required by paragraph IV within the
12 established time limits.

13 303:6 Controlled Drug Prescription Health and Safety Program; Confidentiality. Amend RSA
14 318-B:34, II and III to read as follows:

15 II. The [board] **office** shall establish and maintain procedures to ensure the privacy and
16 confidentiality of patients and patient information.

17 III. The [board] **office** may use and release information and reports from the program for
18 program analysis and evaluation, statistical analysis, public research, public policy, and educational
19 purposes, provided that the data are aggregated or otherwise de-identified.

20 303:7 Controlled Drug Prescription Health and Safety Program; Providing Controlled Drug
21 Prescription Health and Safety Information. Amend the introductory paragraph of RSA 318-B:35, I
22 to read as follows:

23 I. The program **administrator** may provide information in the prescription health and
24 safety program upon request only to the following persons:

25 303:8 Controlled Drug Prescription Health and Safety Program; Information. Amend RSA 318-
26 B:35, I(b)(3) to read as follows:

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

31 303:9 New Subparagraph; Controlled Drug Prescription Health and Safety Program; Providing
32 Controlled Drug Prescription Health and Safety Information. Amend RSA 318-B:35, I(b) by
33 inserting after subparagraph (4) the following new subparagraph:

34 (5) A practitioner or consultant retained by the office to review the system
35 information of an impaired practitioner program participant or a referral who has agreed to be
36 evaluated or monitored through the program and who has separately agreed in writing to the
37 consultant's access to and review of such information.

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1 303:10 Controlled Drug Prescription Health and Safety Program; Providing Controlled Drug
2 Prescription Health and Safety Information. Amend RSA 318-B:35, II and III to read as follows:

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

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

12 **IV. The program administrator shall make a report, at least annually, commencing**
13 **on November 1, 2019, to the senate president, the speaker of the house of representatives,**
14 **the oversight committee on health and human services, established in RSA 126-A:13, the**
15 **advisory council established in RSA 318-B:38 and the licensing boards of all professions**
16 **required to use the program relative to the effectiveness of the program.**

17 303:11 Controlled Drug Prescription Health and Safety Program; Unlawful Act and Penalties.
18 Amend RSA 318-B:36, I and II to read as follows:

19 I. Any ~~[person]~~ **dispenser or prescriber** who fails to submit the information required in
20 RSA 318-B:33 or knowingly submits incorrect information shall be subject to a warning letter and
21 provided with an opportunity to correct the failure. Any ~~[person]~~ **dispenser or prescriber** who
22 subsequently fails to correct or fails to resubmit the information may be subject to discipline by the
23 ~~[board]~~ **appropriate regulatory board**.

24 II. Any ~~[person]~~ **dispenser or prescriber** whose failure to report the dispensing of a
25 schedule II-IV controlled substance that conceals a pattern of diversion of controlled substances into
26 illegal use shall be guilty of a violation and subject to the penalties established under RSA 318-B:26
27 and the ~~[board's]~~ **office's and appropriate regulatory board's** rules as applicable. In addition,
28 such ~~[person]~~ **dispenser or prescriber** may be subject to appropriate criminal charges if the failure
29 to report is determined to have been done knowingly to conceal criminal activity.

30 303:12 Controlled Drug Prescription Health and Safety Program; Rulemaking. Amend the
31 introductory paragraph of RSA 318-B:37 to read as follows:

32 318-B:37 Rulemaking. ~~[By June 30, 2013, the board]~~ **The office** shall adopt rules, pursuant to
33 RSA 541-A, necessary to implement **and maintain** the program including:

34 303:13 Controlled Drug Prescription Health and Safety Program; Advisory Council. RSA 318-
35 B:38 is repealed and reenacted to read as follows:

36 318-B:38 Advisory Council Established.

37 I. There is hereby established an advisory council to carry out the duties under this

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1 subdivision. Members of the council shall not be compensated for serving on the council, or serve on
2 the council for more than one 5-year term except for the attorney general, or designee, or the
3 commissioner of the department of health and human services, or designee. The members of the
4 council shall be as follows:

- 5 (a) A member of the board of medicine, appointed by such board.
- 6 (b) A member of the pharmacy board, appointed by such board.
- 7 (c) A member of the board of dental examiners, appointed by such board.
- 8 (d) A member of the New Hampshire board of nursing, appointed by such board.
- 9 (e) A member of the board of veterinary medicine, appointed by such board.
- 10 (f) A physician appointed by the New Hampshire Medical Society.
- 11 (g) A dentist appointed by the New Hampshire Dental Society.
- 12 (h) A chief of police appointed by the New Hampshire Association of Chiefs of Police.
- 13 (i) A community pharmacist appointed jointly by the New Hampshire Pharmacists
14 Association, the New Hampshire Independent Pharmacy Association, and the New Hampshire
15 Association of Chain Drug Stores.
- 16 (j) Two public members appointed by the governor's commission on alcohol and drug
17 abuse prevention, treatment, and recovery, one of whom may be a member of the commission.
- 18 (k) A hospital administrator appointed by the New Hampshire Hospital Association.
- 19 (l) A nurse practitioner appointed by the New Hampshire Nurse Practitioner Association.
- 20 (m) A veterinarian appointed by the New Hampshire Veterinary Medical Association.
- 21 (n) The attorney general, or designee.
- 22 (o) The commissioner of the department of health and human services, or designee.
- 23 (p) A member of the senate, appointed by the president of the senate.
- 24 (q) Two members of the house of representatives, appointed by the speaker of the house
25 of representatives.

26 II. The council shall:

- 27 (a) Make recommendations to the office relating to the design, implementation, and
28 maintenance of the program, including recommendations relating to:
 - 29 (1) Rules.
 - 30 (2) Legislation.
 - 31 (3) Sources of funding, including grant funds and other sources of federal, private, or
32 state funds;
- 33 (b) Review the program's annual report and make recommendations to the office
34 regarding the operation of the program.
- 35 (c) Provide ongoing advice and consultation on the implementation and operation of the
36 program, including recommendations relating to:
 - 37 (1) Changes in the program to reflect advances in technology and best practices.

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1 (2) Changes to statutory requirements.

2 (3) The design and implementation of an ongoing evaluation component of the
3 program.

4 (d) Advise the executive director regarding the implementation of this subdivision.

5 (e) Adopt rules necessary for the operation of the council.

6 (f) Develop a mission statement for the program and strategic goals for its
7 implementation, develop metrics in conjunction with the legislative budget assistant to measure the
8 program's efficient operation, review the performance of the program against the metrics, and make
9 recommendations to the program and ensure they are incorporated.

10 III. The council shall meet at least quarterly to effectuate its goals. A chairperson shall be
11 elected by the members. A majority of the members of the council constitutes a quorum for the
12 transaction of business. Action by the council shall require the approval of a majority of the
13 members of the council.

14 303:14 Controlled Drug Prescription Health and Safety Program. Amend 2012, 196:3, I to read
15 as follows:

16 I. In the event that there is not adequate funding for the controlled drug prescription health
17 and safety program established in section 2 of this act, the [~~pharmacy board~~] **office** may curtail,
18 temporarily suspend, or cancel the program.

19 303:15 Applicability.

20 I. Members serving on the advisory council under RSA 318-b:38 on the effective date of this
21 act:

22 (a) Who have served for 6 or more years, shall not be eligible to continue in office;

23 (b) Who have served between 5 and 6 years, shall be eligible to continue to serve for one
24 additional year beyond the effective date;

25 (c) Who have served for fewer than 5 years, shall be eligible to serve for a total of 5
26 years.

27 II. Members appointed to serve on the council after the effective date of this act shall be
28 eligible to serve only one 5-year term.

29 303:16 Repeal. The following are repealed:

30 I. RSA 318-B:31, I, relative to the definition of "board."

31 II. 2012, 196:3, III, relative to a reporting requirement.

32

303:17 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 29, 2019

Effective Date: September 27, 2019