CHAPTER 196
SB 286 – FINAL VERSION

03/21/12 1178s
25Apr2012… 1666h
17May2012… 2312h

2012 SESSION

12-2836
01/10

SENATE BILL ***286***

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

SPONSORS: Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Lambert, Dist 13; Sen. Odell, Dist 8; Sen. Carson, Dist 14; Sen. Boutin, Dist 16; Sen. Groen, Dist 6; Sen. Kelly, Dist 10; Sen. Merrill, Dist 21; Sen. D'Allesandro, Dist 20; Sen. Larsen, Dist 15; Sen. Rausch, Dist 19; Sen. De Blois, Dist 18; Sen. Stiles, Dist 24; Sen. Luther, Dist 12; Rep. Reagan, Rock 1; Rep. L. Ober, Hills 27; Rep. Kotowski, Merr 9; Rep. Harding, Graf 11

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill establishes the controlled drug prescription health and safety program. The bill grants the New Hampshire pharmacy board rulemaking authority for the purposes of the bill. Under this bill, the program is prospectively repealed on September 1, 2015.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

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

196:1 Statement of Intent.

I. The general court recognizes that there is a significant problem with the abuse, misuse, and diversion of controlled prescription drugs, resulting in over 100 deaths annually in New Hampshire and thousands of unnecessary visits to health care practitioners and our hospital emergency rooms.

II. The controlled prescription drugs most misused are found in schedules II, III, and IV, such as the stimulants Ritalin and Adderall and pain reliever oxycodone (Oxycontin and others), all in schedule II; the pain medication Vicodin, the number one abused drug in the nation, in schedule III; and tranquilizers (benzodiazepines) such as Valium, Xanax, and Ativan, in schedule IV.

III. The general court understands that health practitioners are challenged everyday with the difficult task of discerning between patients in need of legitimate pain treatment and the "doctor shoppers" who seek a controlled drug prescription for their own addiction or for diversion on the street. Access to a controlled drug prescription health and safety program can help physicians and other health practitioners provide better care to patients truly in need of such medications. A controlled drug prescription health and safety program will also help identify health practitioners who are fraudulently prescribing controlled drugs and adding to prescription drug abuse in New Hampshire.

IV. The general court believes that a controlled drug prescription health and safety program that fully complies with all state and federal Health Insurance Portability and Accountability Act (HIPPA) privacy and security laws and regulations should be established as a tool to improve medical treatment.

V. The general court intends that a controlled drug prescription health and safety program will reduce patient morbidity and mortality associated with controlled drugs by providing a secure program through which the prescriber and the dispenser may access information on a patient's controlled drug prescription history. The program established by this act is designed to create a greater sense of safety, security, and comfort in the health practitioner-patient relationship when controlled drugs are prescribed.

VI. The general court believes, to achieve these goals, New Hampshire should join 48 other

states to enact a controlled drug prescription health and safety program that physicians and other legal practitioners can access when prescribing or dispensing controlled drugs.

196:2 New Subdivision; Controlled Drug Prescription Health and Safety Program. Amend RSA 318-B by inserting after section 30 the following new subdivision:

Controlled Drug Prescription Health and Safety Program

318-B:31 Definitions. In this subdivision:

I. "Board" means the pharmacy board, established in RSA 318:2.

II. "Controlled substance" means controlled drugs as defined in RSA 318-B:1, VI.

III. "Dispense" means to deliver a controlled substance by lawful means and includes the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

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

(a) A licensed hospital pharmacy that dispenses for administration in the hospital;

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

(c) A wholesale distributor of a schedule II-IV controlled substance or its analog.

V. "Patient" means the person or animal who is the ultimate user of a controlled substance for whom a lawful prescription is issued and for whom a controlled substance or other such drug is lawfully dispensed.

VI. "Practitioner" means a physician, dentist, podiatrist, veterinarian, or other person licensed or otherwise permitted to prescribe, dispense, or administer a controlled substance in the course of licensed professional practice.

VII. "Prescribe" means to issue a direction or authorization, by prescription, permitting a patient to lawfully obtain controlled substances.

VIII. "Prescriber" means a practitioner or other authorized person who prescribes a schedule II, III, and/or IV controlled substance.

IX. "Program" means the controlled drug prescription health and safety program that electronically facilitates the confidential sharing of information relating to the prescribing and dispensing of controlled substances listed in schedules II-IV, established by the board pursuant to RSA 318-B:32.

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

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

II. All costs incurred by the board for the implementation and operation of the program shall be supported through grants, gifts, or user contributions. The board may charge a fee to individuals who request their own prescription information. The amount charged for an individual's request for

his or her prescription information shall not exceed the actual cost of providing that information.

III. There shall be no state general funds appropriated for the implementation or operation of the program.

IV. Prescription information relating to any individual, which information does not meet the level established to suggest possible drug abuse or diversion shall be deleted within 6 months after the initial prescription was dispensed. All other information shall be deleted after 3 years.

318-B:33 Controlled Drug Prescription Health and Safety Program Operation.

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

II. All prescribers and dispensers authorized to prescribe or dispense schedule II-IV controlled substances within the state shall be required to register with the program. Only registered prescribers and dispensers shall be eligible to access the program.

III. Each dispenser shall submit to the program the information regarding each dispensing of a schedule II-IV controlled substance. Any dispenser located outside the boundaries of the state of New Hampshire and who is licensed and registered by the board shall submit information regarding each prescription dispensed to a patient who resides within New Hampshire.

IV. Each dispenser required to report under paragraph III of this section shall submit to the program by electronic means information for each dispensing that shall include, but not be limited to:

(a) Dispenser's Drug Enforcement Administration (DEA) registration number.

(b) Prescriber's DEA registration number.

(c) Date of dispensing.

(d) Prescription number.

(e) Number of refills granted.

(f) National Drug Code (NDC) of drug dispensed.

(g) Quantity dispensed.

(h) Number of days supply of drug.

(i) Patient's name.

(j) Patient's address.

(k) Patient's date of birth.

(l) Patient's telephone number, if available.

(m) Date prescription was written by prescriber.

(n) Whether the prescription is new or a refill.

(o) Source of payment for prescription.

V. Each dispenser shall submit the required information in accordance with transmission methods and frequency as established by the program; but no more than 7 days from the date the prescription was dispensed.

VI. The program 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 IV is submitted in this alternative format and within the established time limit.

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

VIII. Any dispenser who in good faith reports to the program as required by paragraphs III and IV shall be immune from any civil or criminal liability as the result of such good faith reporting.

318-B:34 Confidentiality.

I. Information contained in the program, information obtained from it, and information contained in the records of requests for information from the program, is confidential, is not a public record or otherwise subject to disclosure under RSA 91-A, and is not subject to discovery, subpoena, or other means of legal compulsion for release and shall not be shared with an agency or institution, except as provided in this subdivision.

II. The board shall establish and maintain procedures to ensure the privacy and confidentiality of patients and patient information.

318-B:35 Providing Controlled Drug Prescription Health and Safety Information.

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

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

(1) For the purpose of providing medical or pharmaceutical care to a specific patient; or

(2) For reviewing information regarding prescriptions issued or dispensed by the requester.

(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 the program.

(4) A controlled drug prescription health and safety program from another state on a case-by-case basis, if an agreement is in place with the other state to ensure that the information is

used and disseminated pursuant to the requirements of this state.

II. The program 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 board if there is reasonable cause to believe a violation of law or breach of professional standards may have occurred. The program shall provide prescription information required or necessary for an investigation.

III. The program 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 shall notify the practitioner who prescribed the prescription.

318-B:36 Unlawful Act and Penalties.

I. Any person who fails to submit the information required in RSA 318-B:33 or knowingly submits incorrect information shall be subject to a warning letter and provided with an opportunity to correct the failure. Any person who subsequently fails to correct or fails to resubmit the information may be subject to discipline by the board.

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

III. Any person who engages in prescribing or dispensing of controlled substances in schedule II-IV without having registered with the program may be subject to discipline by the appropriate regulatory board.

IV. Any person authorized to receive program information who knowingly discloses such information in violation of this subdivision shall be subject to discipline by the appropriate regulatory board and to all other relevant penalties under state and federal law.

V. Any person authorized to receive program information who uses such information for a purpose in violation of this subdivision shall be subject to disciplinary action by the appropriate regulatory board and to all other relevant penalties under state and federal law.

VI. Unauthorized use or disclosure of program information shall be grounds for disciplinary action by the relevant regulatory board.

VII. Any person who knowingly accesses, alters, destroys, or discloses program information except as authorized in this subdivision or attempts to obtain such information by fraud, deceit, misrepresentation, or subterfuge shall be guilty of a class B felony.

318-B:37 Rulemaking. By June 30, 2013, the board shall adopt rules, pursuant to RSA 541-A, necessary to implement the program including:

I. The criteria for registration by dispensers and prescribers.

II. The criteria for a waiver pursuant to RSA 318-B:33, VI for dispensers with limited electronic access to the program.

III. The criteria for reviewing the prescribing and dispensing information collected by the program.

IV. The criteria for reporting matters to the applicable health care regulatory board for further investigation.

V. The criteria for notifying prescribers of individuals that are engaged in obtaining controlled substances from multiple practitioners or dispensers.

VI. Content and format of all forms required under this subdivision.

318-B:38 Advisory Council Established.

I. There is hereby established an advisory council to assist the board in carrying out its duties under this subdivision. The members of the council shall be as follows:

(a) A representative of the board of medicine, appointed by such board.

(b) A representative of the pharmacy board, appointed by such board.

(c) A representative of the board of dental examiners, appointed by such board.

(d) A representative of the New Hampshire board of nursing, appointed by such board.

(e) A representative of the board of veterinary medicine, appointed by such board.

(f) The attorney general, or designee.

(g) The commissioner of the department of health and human services, or designee.

(h) A representative of the New Hampshire Medical Society, appointed by the society.

(i) A representative of the New Hampshire Dental Society, appointed by the society.

(j) A representative of the New Hampshire Association of Chiefs of Police, appointed by the association.

(k) A representative of a retail pharmacy, appointed jointly by the New Hampshire Pharmacists Association, the New Hampshire Independent Pharmacy Association, and the New Hampshire Association of Chain Drug Stores.

(l) Two public members appointed by the governor's commission on alcohol and drug abuse prevention, intervention, and treatment, one of whom may be a member of the commission.

II. The council shall:

(a) Develop criteria for reviewing the prescribing and dispensing information collected.

(b) Develop criteria for reporting matters to the applicable health care regulatory board for further investigation.

(c) Develop criteria for notifying practitioners who are engaged in obtaining controlled substances from multiple prescribers or dispensers.

(d) Collect information on the outcomes and impact of the program including: satisfaction of users of the program, impact on prescribing patterns, impact on referrals to regulatory boards, and other relevant measures.

(e) Assist the board in meeting its responsibilities in RSA 318-B:32, I to implement and operate the program.

(f) Assist the board in adopting and revising the rules under RSA 541-A to implement the program.

III. The council may meet as often as necessary to effectuate its goals. The first meeting shall be called by the representative of the pharmacy board within 45 days of the effective date of this subdivision. At the first meeting, a chairman shall be elected by the members.

196:3 Applicability; Reports Required.

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

II. The office of the legislative budget assistant shall conduct a performance audit of the program on or before December 31, 2014 for the use of the speaker of the house of representatives, the president of the senate, and the governor, in evaluating the effectiveness of the program established in section 2 of this act, including but not limited to changes in the number and type of drug-related deaths, the number of instances of drug abuse, and the number of instances of overprescribing.

III. The pharmacy board shall report annually to the oversight committee on health and human services relative to the effectiveness of the program established in section 2 of this act.

IV. The pharmacy board shall not accept any grants which require continuation of the program established in section 2 of this act beyond September 1, 2015.

196:4 Repeal. RSA 318-B:31-RSA 318-B:38, relative to the controlled drug prescription health and safety program, is repealed.

196:5 Effective Date.

I. Section 4 of this act shall take effect September 1, 2015.

II. The remainder of this act shall take effect upon its passage.

Approved: June 12, 2012

Effective Date: I. Section 4 shall take effect September 1, 2015.

II. Remainder shall take effect June 12, 2012.