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LEGISLATURE OF NEBRASKA

ONE HUNDRED SEVENTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 86

Introduced by Bostelman, 23.

Read first time January 07, 2021

Committee: Health and Human Services

A BILL FOR AN ACT relating to public health and welfare; to amend sections 38-101 and 71-2454, Revised Statutes Cumulative Supplement, 2020; to require certain credential holders to register for the prescription drug monitoring system; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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Section 1. Section 38-101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

38-101 Sections 38-101 to 38-1,145 and section 2 of this act and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

(1) The Advanced Practice Registered Nurse Practice Act;

(2) The Alcohol and Drug Counseling Practice Act;

(3) The Athletic Training Practice Act;

(4) The Audiology and Speech-Language Pathology Practice Act;

(5) The Certified Nurse Midwifery Practice Act;

(6) The Certified Registered Nurse Anesthetist Practice Act;

(7) The Chiropractic Practice Act;

(8) The Clinical Nurse Specialist Practice Act;

(9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(10) The Dentistry Practice Act;

(11) The Dialysis Patient Care Technician Registration Act;

(12) The Emergency Medical Services Practice Act;

(13) The Environmental Health Specialists Practice Act;

(14) The Funeral Directing and Embalming Practice Act;

(15) The Genetic Counseling Practice Act;

(16) The Hearing Instrument Specialists Practice Act;

(17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;

(18) The Massage Therapy Practice Act;

(19) The Medical Nutrition Therapy Practice Act;

(20) The Medical Radiography Practice Act;

(21) The Medicine and Surgery Practice Act;

(22) The Mental Health Practice Act;

(23) The Nurse Practice Act;

(24) The Nurse Practitioner Practice Act;

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(25) The Nursing Home Administrator Practice Act;

(26) The Occupational Therapy Practice Act;

(27) The Optometry Practice Act;

(28) The Perfusion Practice Act;

(29) The Pharmacy Practice Act;

(30) The Physical Therapy Practice Act;

(31) The Podiatry Practice Act;

(32) The Psychology Practice Act;

(33) The Respiratory Care Practice Act;

(34) The Surgical First Assistant Practice Act;

(35) The Veterinary Medicine and Surgery Practice Act; and

(36) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,145 and section 2 of this act and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (35) of this section, to articles within Chapter 38.

Sec. 2. (1) Except as otherwise provided in subsection (3) of this section, beginning October 1, 2021, each credential holder under the Uniform Credentialing Act and each applicant for a credential under the act shall register with the department for the prescription drug monitoring system established pursuant to section 71-2454 if the credential holder is, or applicant will be, a dispenser or prescriber as defined in section 71-2454.

(2) The department shall establish a system of registration for each such credential holder. The registration shall be valid for the term of the credential, and renewal of the registration shall be a condition of renewal of the credential. There shall be no fee charged for registration.

(3) The following credential holders and applicants for a credential

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are not required to register pursuant to this section:

(a) A credential holder who is not a dispenser or prescriber as defined in section 71-2454;

(b) A veterinarian;

(c) A credential holder who is on active duty in the armed forces of the United States and who does not practice in Nebraska;

(d) A credential holder who is retired and who does not treat patients;

(e) A credential holder who is a researcher and who does not treat patients;

(f) A credential holder who is a faculty member at a college or university and who does not treat patients; and

(g) Any other credential holder who does not treat patients.

Sec. 3. Section 71-2454, Revised Statutes Cumulative Supplement, 2020, is amended to read:

71-2454 (1) An entity described in section 71-2455 shall establish a system of prescription drug monitoring for the purposes of (a) preventing the misuse of controlled substances that are prescribed, (b) allowing prescribers and dispensers to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes, (c) providing information to improve the health and safety of patients, and (d) ensuring that the State of Nebraska remains on the cutting edge of medical information technology.

(2) Such system of prescription drug monitoring shall be implemented as follows: Except as provided in subsection (4) of this section, all prescription drug information shall be reported to the prescription drug monitoring system. The prescription drug monitoring system shall include, but not be limited to, provisions that:

(a) Prohibit any patient from opting out of the prescription drug monitoring system;

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(b) Require any prescription drug that is dispensed in this state or to an address in this state to be entered into the system by the dispenser or his or her delegate no less frequently than daily after such prescription drug is sold, including prescription drugs for patients paying cash or otherwise not relying on a third-party payor for payment;

(c) Allow all prescribers or dispensers of prescription drugs to access the system at no cost to such prescriber or dispenser;

(d) Ensure that such system includes information relating to all payors, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act; and

(e) Make the prescription drug information available to the statewide health information exchange described in section 71-2455 for access by its participants if such access is in compliance with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, except that if a patient opts out of the statewide health information exchange, the prescription drug information regarding that patient shall not be accessible by the participants in the statewide health information exchange.

(3) Except as provided in subsection (4) of this section, prescription drug information that shall be submitted electronically to the prescription drug monitoring system shall be determined by the entity described in section 71-2455 and shall include, but not be limited to:

(a) The patient's name, address, telephone number, if a telephone number is available, gender, and date of birth;

(b) A patient identifier such as a military identification number, driver's license number, state identification card number, or other valid government-issued identification number, insurance identification number, pharmacy software-generated patient-specific identifier, or other identifier associated specifically with the patient;

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(c) The name and address of the pharmacy dispensing the prescription drug;

(d) The date the prescription is issued;

(e) The date the prescription is filled;

(f) The date the prescription is sold to the patient;

(g) The number of refills authorized;

(h) The prescription number of the prescription drug;

(i) The National Drug Code number as published by the federal Food and Drug Administration of the prescription drug;

(j) The strength of the prescription drug prescribed;

(k) The quantity of the prescription drug prescribed and the number of days' supply;

(l) The prescriber's name and National Provider Identifier number or Drug Enforcement Administration number when reporting a controlled substance; and

(m) Additional information as determined by the Health Information Technology Board and as published in the submitter guide for the prescription drug monitoring system.

(4) Beginning July 1, 2018, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to report the dispensing of prescription drugs which are controlled substances listed on Schedule II, Schedule III, Schedule IV, or Schedule V pursuant to section 28-405. Each such veterinarian shall indicate that the prescription is an animal prescription and shall include the following information in such report:

(a) The first and last name and address, including city, state, and zip code, of the individual to whom the prescription drug is dispensed in accordance with a valid veterinarian-client-patient relationship;

(b) Reporting status;

(c) The first and last name of the prescribing veterinarian and his or her federal Drug Enforcement Administration number;

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(d) The National Drug Code number as published by the federal Food and Drug Administration of the prescription drug and the prescription number;

(e) The date the prescription is written and the date the prescription is filled;

(f) The number of refills authorized, if any; and

(g) The quantity of the prescription drug and the number of days' supply.

(5)(a) All prescription drug information submitted pursuant to this section, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system are confidential, are privileged, are not public records, and may be withheld pursuant to section 84-712.05 except for information released as provided in subsection (9) or (10) of this section.

(b) No patient-identifying data as defined in section 81-664, including the data collected under subsection (3) of this section, shall be disclosed, made public, or released to any public or private person or entity except to the statewide health information exchange described in section 71-2455 and its participants, to prescribers and dispensers as provided in subsection (2) of this section, or as provided in subsection (7), (9), or (10) of this section.

(c) All other data is for the confidential use of the department and the statewide health information exchange described in section 71-2455 and its participants. The department, or the statewide health information exchange in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release such information in accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, as Class I, Class II, or Class IV data in accordance with section 81-667,

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except for purposes in accordance with subsection (9) or (10) of this section, to the private or public persons or entities that the department or the statewide health information exchange, in accordance with policies adopted by the Health Information Technology Board, determines may view such records as provided in sections 81-663 to 81-675. In addition, the department, or the statewide health information exchange in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release such information as provided in subsection (9) or (10) of this section.

(6) The statewide health information exchange described in section 71-2455, in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, shall establish the minimum administrative, physical, and technical safeguards necessary to protect the confidentiality, integrity, and availability of prescription drug information.

(7) If the entity receiving the prescription drug information has privacy protections at least as restrictive as those set forth in this section and has implemented and maintains the minimum safeguards required by subsection (6) of this section, the statewide health information exchange described in section 71-2455, in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release the prescription drug information and any other data collected pursuant to this section to:

(a) Other state prescription drug monitoring programs;

(b) State and regional health information exchanges;

(c) The medical director and pharmacy director of the Division of Medicaid and Long-Term Care of the department, or their designees;

(d) The medical directors and pharmacy directors of medicaid-managed care entities, the state's medicaid drug utilization review board, and any other state-administered health insurance program or its designee if any such entities have a current data-sharing agreement with the

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statewide health information exchange described in section 71-2455, and if such release is in accordance with the privacy and security provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and all regulations promulgated thereunder;

(e) Organizations which facilitate the interoperability and mutual exchange of information among state prescription drug monitoring programs or state or regional health information exchanges; or

(f) Electronic health record systems or pharmacy-dispensing software systems for the purpose of integrating prescription drug information into a patient's medical record.

(8) The department, or the statewide health information exchange described in section 71-2455, in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release to patients their prescription drug information collected pursuant to this section. Upon request of the patient, such information may be released directly to the patient or a personal health record system designated by the patient which has privacy protections at least as restrictive as those set forth in this section and that has implemented and maintains the minimum safeguards required by subsection (6) of this section.

(9) In accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, the department, or the statewide health information exchange described in section 71-2455 under policies adopted by the Health Information Technology Board, may release data collected pursuant to this section for statistical, public policy, or educational purposes after removing information which identifies or could reasonably be used to identify the patient, prescriber, dispenser, or other person who is the subject of the information, except as otherwise provided in subsection (10) of this section.

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(10) In accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, the department, or statewide health information exchange described in section 71-2455 under policies adopted by the Health Information Technology Board, may release data collected pursuant to this section for quality measures as approved or regulated by state or federal agencies or for patient quality improvement or research initiatives approved by the Health Information Technology Board.

(11) The statewide health information exchange described in section 71-2455, entities described in subsection (7) of this section, or the department may request and receive program information from other prescription drug monitoring programs for use in the prescription drug monitoring system in this state in accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder.

(12) The statewide health information exchange described in section 71-2455, in collaboration with the department, shall implement technological improvements to facilitate the secure collection of, and access to, prescription drug information in accordance with this section.

(13) Before accessing the prescription drug monitoring system, any user shall undergo training on the purpose of the system, access to and proper usage of the system, and the law relating to the system, including confidentiality and security of the prescription drug monitoring system. Such training shall be administered by the statewide health information exchange described in section 71-2455 or the department. The statewide health information exchange described in section 71-2455 shall have access to the prescription drug monitoring system for training operations, maintenance, and administrative purposes. Users who have been trained prior to May 10, 2017, or who are granted access by an entity

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receiving prescription drug information pursuant to subsection (7) of this section, are deemed to be in compliance with the training requirement of this subsection.

(14) Each dispenser and each prescriber shall register with the department for the prescription drug monitoring system as provided in section 2 of this act.

(15) ~~(14)~~ For purposes of this section:

(a) Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration;

(b) Department means the Department of Health and Human Services;

(c) Delegate means any licensed or registered health care professional credentialed under the Uniform Credentialing Act designated by a prescriber or dispenser to act as an agent of the prescriber or dispenser for purposes of submitting or accessing data in the prescription drug monitoring system and who is supervised by such prescriber or dispenser;

(d) Prescription drug or drugs means a prescription drug or drugs dispensed by delivery to the ultimate user or caregiver by or pursuant to the lawful order of a prescriber but does not include (i) the delivery of such prescription drug for immediate use for purposes of inpatient hospital care or emergency department care, (ii) the administration of a prescription drug by an authorized person upon the lawful order of a prescriber, (iii) a wholesale distributor of a prescription drug monitored by the prescription drug monitoring system, or (iv) the dispensing to a nonhuman patient of a prescription drug which is not a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of section 28-405;

(e) Dispenser means a person authorized in the jurisdiction in which he or she is practicing to deliver a prescription drug to the ultimate user or caregiver by or pursuant to the lawful order of a prescriber;

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(f) Participant means an individual or entity that has entered into a participation agreement with the statewide health information exchange described in section 71-2455 which requires the individual or entity to comply with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder; and

(g) Prescriber means a health care professional authorized to prescribe in the profession which he or she practices.

Sec. 4. Original sections 38-101 and 71-2454, Revised Statutes Cumulative Supplement, 2020, are repealed.