

SENATE BILL NO. 59—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the program to monitor prescriptions for certain controlled substances. (BDR 40-386)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to controlled substances; requiring the uploading of certain information to the database of the program developed by the State Board of Pharmacy and the Investigation Division of the Department of Public Safety to monitor prescriptions for certain controlled substances; authorizing a coroner, medical examiner or deputy thereof who meets certain requirements to access the database of the program; expanding the scope of the program to include certain additional controlled substances; requiring a practitioner to obtain a patient utilization report before prescribing certain controlled substances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires the State Board of Pharmacy and the Investigation
- 2 Division of the Department of Public Safety to develop a computerized program to
- 3 track each prescription for a controlled substance listed in schedule II, III or IV
- 4 filled by a pharmacy or dispensed by a practitioner registered with the Board. The
- 5 program is required to be designed to provide information regarding: (1) the
- 6 inappropriate use by a patient of certain controlled substances to pharmacies,
- 7 practitioners and appropriate state and local governmental agencies to prevent the
- 8 improper or illegal use of such controlled substances; and (2) statistical data
- 9 relating to the use of those controlled substances. (NRS 453.162) **Sections 2-3** of



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10 this bill expand the scope of the program to also track each prescription for a
11 controlled substance listed in schedule V.

12 Existing law requires the Board to allow certain law enforcement officers to
13 have Internet access to the database of the program only for the purpose of
14 investigating a crime related to prescription drugs. (NRS 453.165)

15 **Section 1.3** of this bill requires a law enforcement officer who encounters
16 certain situations involving prescribed controlled substances or who receives a
17 report of a stolen prescription for a controlled substance while acting in his or her
18 official capacity and in the regular course of an investigation to report certain
19 information to his or her employer. **Section 1.3** requires a coroner, medical
20 examiner or deputy thereof who determines, as the result of an investigation of the
21 death of a person, that the person died as the result of using a prescribed controlled
22 substance, to upload certain information to the database of the program or, if the
23 coroner, medical examiner or deputy thereof does not have such access, report such
24 information to a coroner, medical examiner or deputy thereof who has access to the
25 database. **Section 1.3** also requires the employer of the law enforcement officer or a
26 coroner, medical examiner or deputy thereof to upload such reported information to
27 the database of the program as soon as practicable after receiving the information
28 except where the employer of a law enforcement officer determines that uploading
29 the information will interfere with an active criminal investigation. In that case, the
30 employer may postpone uploading the information until after the conclusion of the
31 investigation. **Section 1.3** further provides that each law enforcement officer,
32 employer of a law enforcement officer, coroner, medical examiner or deputy of a
33 coroner or medical examiner who makes a good faith effort to comply with **section**
34 **1.3**, or a regulation adopted pursuant thereto, is immune from civil and criminal
35 liability for any act or omission relating to the transmission of information pursuant
36 to **section 1.3**. **Section 1.6** of this bill authorizes a coroner, medical examiner or
37 deputy thereof who meets certain requirements to access the database of the
38 computerized program to: (1) upload information concerning the death of a person
39 due to using a prescribed controlled substance; or (2) investigate the death of a
40 person.

41 Existing law requires a practitioner to obtain a patient utilization report from
42 the computerized program before initiating a prescription for a controlled substance
43 listed in schedule II, III or IV. **Section 5.5** of this bill additionally requires a
44 practitioner to obtain such a report before initiating a prescription for an opioid that
45 is a controlled substance listed in schedule V.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 453 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 1.3 and 1.6 of this act.

3 **Sec. 1.3. 1. *If a law enforcement officer, while acting in his***
4 ***or her official capacity and in the regular course of an***
5 ***investigation:***

6 ***(a) Encounters a situation in which the law enforcement***
7 ***officer has probable cause to believe that a violation of this***
8 ***chapter involving a prescription for a controlled substance is***
9 ***occurring or has occurred;***



1 (b) Encounters a deceased person who the law enforcement
2 officer believes died as a result of using a prescribed controlled
3 substance; or

4 (c) Receives a report of a stolen prescription for a controlled
5 substance,

6 the law enforcement officer shall report to his or her employer
7 the information required by subsection 3.

8 2. A coroner, medical examiner or deputy thereof who, as the
9 result of an investigation into the cause of a death determines that
10 a person died as the result of using a prescribed controlled
11 substance, shall:

12 (a) If the coroner, medical examiner or deputy thereof has
13 access to the database of the computerized program developed
14 pursuant to NRS 453.162, upload the information required by
15 subsection 3 as soon as practicable; or

16 (b) If the coroner, medical examiner or deputy thereof does
17 not have access to the database of the computerized program
18 developed pursuant to NRS 453.162, report the information to a
19 coroner, medical examiner or deputy thereof who has such access.

20 3. A law enforcement officer or a coroner, medical examiner
21 or deputy thereof who is required to report or upload, as
22 applicable, information pursuant to subsection 1 or 2 shall report
23 or upload, as applicable, the following information, to the extent
24 such information is available and applicable:

25 (a) The name of the person who:

26 (1) Is believed to have violated this chapter;

27 (2) Is believed to have experienced an overdose as a result
28 of using a prescribed controlled substance;

29 (3) Is believed to have died as a result of using a prescribed
30 controlled substance; or

31 (4) Filed the report of a stolen prescription for a controlled
32 substance.

33 (b) The name of the person to whom the controlled substance
34 involved in an event described in subsection 1 or 2 is or was
35 prescribed.

36 (c) If a prescription container for the controlled substance is
37 found in the vicinity of the location of an event described in
38 paragraph (a) or (b) of subsection 1 or subsection 2 or if a
39 prescription for a controlled substance is reported stolen:

40 (1) The name of the prescribing practitioner;

41 (2) The prescription number; and

42 (3) The name of the controlled substance as it appears on
43 the prescription container or prescription order.

44 4. Except as otherwise provided in subsection 5, an employer
45 of a law enforcement officer or a coroner, medical examiner or



1 deputy thereof who receives a report pursuant to subsection 1 or 2
2 shall, as soon as practicable after receiving that report, upload to
3 the database of the program established pursuant to NRS 453.162
4 notice of the occurrence of an event described in subsection 1 or 2,
5 as applicable, and the information received pursuant to subsection
6 3. The employer of a law enforcement officer or a coroner,
7 medical examiner or deputy thereof shall ensure that only a
8 person who is authorized to access the database of the program
9 pursuant to NRS 453.165 or section 1.6 of this act uploads such
10 information.

11 5. If an employer of a law enforcement officer determines
12 that uploading any information to the database of the program
13 pursuant to subsection 4 will interfere with an active criminal
14 investigation, the employer may postpone uploading such
15 information until after the conclusion of the investigation.

16 6. Each law enforcement officer or employer of a law
17 enforcement officer and each coroner, medical examiner and
18 deputy thereof who makes a good faith effort to comply with this
19 section, or a regulation adopted pursuant thereto, is immune from
20 civil and criminal liability for any act or omission relating to the
21 transmission of information pursuant to this section.

22 7. As used in this section, "law enforcement officer" has the
23 meaning ascribed to it in NRS 453.165.

24 **Sec. 1.6. 1. Except as otherwise provided in this section, the**
25 **Board shall allow:**

26 (a) A coroner or medical examiner to have Internet access to
27 the database of the computerized program developed pursuant to
28 NRS 453.162 if the coroner or medical examiner has completed
29 the course of training developed pursuant to subsection 4 of
30 NRS 453.164.

31 (b) A deputy of a coroner or medical examiner to have Internet
32 access to the database of the computerized program developed
33 pursuant to NRS 453.162 if:

34 (1) The deputy has completed the course of training
35 developed pursuant to subsection 4 of NRS 453.164; and

36 (2) The coroner or medical examiner who employs the
37 deputy has submitted the certification required pursuant to
38 subsection 2 to the Board.

39 2. Before the deputy of a coroner or medical examiner may
40 be given access to the database pursuant to subsection 1, the
41 coroner or medical examiner who employs the deputy must certify
42 to the Board that the deputy has been approved to have such
43 access and meets the requirements of subsection 1. Such
44 certification must be made on a form provided by the Board and
45 renewed annually.



3. *When a coroner, medical examiner or deputy thereof accesses the database of the computerized program pursuant to this section, the officer must enter a unique user name assigned to the coroner, medical examiner or deputy thereof and, if applicable, the case number corresponding to the investigation being conducted by the coroner, medical examiner or deputy thereof.*

4. *A coroner, medical examiner or deputy thereof who has access to the database of the computerized program pursuant to subsection 1 may access the database only to:*

(a) *Investigate the death of a person;* or

(b) *Upload information to the database pursuant to section 1.3 of this act.*

5. *The Board or the Division may suspend or terminate access to the database of the computerized program pursuant to this section if a coroner, medical examiner or deputy thereof violates any provision of this section.*

Sec. 2. NRS 453.162 is hereby amended to read as follows:

453.162 1. The Board and the Division shall cooperatively develop a computerized program to track each prescription for a controlled substance listed in schedule II, III ~~and~~, IV *or V* that is filled by a pharmacy that is registered with the Board or that is dispensed by a practitioner who is registered with the Board. The program must:

(a) Be designed to provide information regarding:

(1) The inappropriate use by a patient of controlled substances listed in schedules II, III ~~and~~, IV *and V* to pharmacies, practitioners and appropriate state and local governmental agencies, including, without limitation, law enforcement agencies and occupational licensing boards, to prevent the improper or illegal use of those controlled substances; and

(2) Statistical data relating to the use of those controlled substances that is not specific to a particular patient.

(b) Be administered by the Board, the Investigation Division, the Division of Public and Behavioral Health of the Department and various practitioners, representatives of professional associations for practitioners, representatives of occupational licensing boards and prosecuting attorneys selected by the Board and the Investigation Division.

(c) Not infringe on the legal use of a controlled substance for the management of severe or intractable pain.

(d) Include the contact information of each person who is required to access the database of the program pursuant to NRS 453.164, including, without limitation:

(1) The name of the person;



- 1 (2) The physical address of the person;
- 2 (3) The telephone number of the person; and
- 3 (4) If the person maintains an electronic mail address, the
- 4 electronic mail address of the person.

5 (e) To the extent that money is available, include:

- 6 (1) A means by which a practitioner may designate in the
- 7 database of the program that he or she suspects that a patient is
- 8 seeking a prescription for a controlled substance for an improper or
- 9 illegal purpose. If the Board reviews the designation and determines
- 10 that such a designation is warranted, the Board shall inform
- 11 pharmacies, practitioners and appropriate state agencies that the
- 12 patient is seeking a prescription for a controlled substance for an
- 13 improper or illegal purpose as described in subparagraph (1) of
- 14 paragraph (a).

- 15 (2) The ability to integrate the records of patients in the
- 16 database of the program with the electronic health records of
- 17 practitioners.

18 2. The Board, the Division and each employee thereof are

19 immune from civil and criminal liability for any action relating to

20 the collection, maintenance and transmission of information

21 pursuant to this section and NRS 453.163 and 453.164 *and sections*

22 *1.3 and 1.6 of this act* if a good faith effort is made to comply with

23 applicable laws and regulations.

24 3. The Board and the Division may apply for any available

25 grants and accept any gifts, grants or donations to assist in

26 developing and maintaining the program required by this section.

27 **Sec. 2.5.** NRS 453.163 is hereby amended to read as follows:

28 453.163 1. Except as otherwise provided in this subsection,

29 each person registered pursuant to this chapter to dispense a

30 controlled substance listed in schedule II, III ~~for~~, IV *or V* shall, not

31 later than the end of the next business day after dispensing a

32 controlled substance, upload to the database of the program

33 established pursuant to NRS 453.162 the information described in

34 paragraph (d) of subsection 1 of NRS 453.162. The requirements of

35 this subsection do not apply if the controlled substance is

36 administered directly by a practitioner to a patient in a health care

37 facility, as defined in NRS 439.960, a child who is a resident in a

38 child care facility, as defined in NRS 432A.024, or a prisoner, as

39 defined in NRS 208.085. The Board shall establish by regulation

40 and impose administrative penalties for the failure to upload

41 information pursuant to this subsection.

42 2. The Board and the Division may cooperatively enter into a

43 written agreement with an agency of any other state to provide,

44 receive or exchange information obtained by the program with a

45 program established in that state which is substantially similar to the



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1 program established pursuant to NRS 453.162, including, without
2 limitation, providing such state access to the database of the
3 program or transmitting information to and receiving information
4 from such state. Any information provided, received or exchanged
5 as part of an agreement made pursuant to this section may only be
6 used in accordance with the provisions of this chapter.

7 3. A practitioner who is authorized to write prescriptions for
8 and each person who is authorized to dispense controlled substances
9 listed in schedule II, III ~~IV~~, IV *or V* who makes a good faith effort
10 to comply with applicable laws and regulations when transmitting to
11 the Board or the Division a report or information required by this
12 section or NRS 453.162 or 453.164, or a regulation adopted
13 pursuant thereto, is immune from civil and criminal liability relating
14 to such action.

15 **Sec. 3.** NRS 453.164 is hereby amended to read as follows:

16 453.164 1. The Board shall provide Internet access to the
17 database of the program established pursuant to NRS 453.162 to an
18 occupational licensing board that licenses any practitioner who is
19 authorized to write prescriptions for controlled substances listed in
20 schedule II, III ~~IV~~, IV *or V*.

21 2. The Board and the Division must have access to the program
22 established pursuant to NRS 453.162 to identify any suspected
23 fraudulent or illegal activity related to the dispensing of controlled
24 substances.

25 3. The Board or the Division shall report any activity it
26 reasonably suspects may:

27 (a) Be fraudulent or illegal to the appropriate law enforcement
28 agency or occupational licensing board and provide the law
29 enforcement agency or occupational licensing board with the
30 relevant information obtained from the program for further
31 investigation.

32 (b) Indicate the inappropriate use by a patient of a controlled
33 substance to the occupational licensing board of each practitioner
34 who has prescribed the controlled substance to the patient. The
35 occupational licensing board may access the database of the
36 program established pursuant to NRS 453.162 to determine which
37 practitioners are prescribing the controlled substance to the patient.
38 The occupational licensing board may use this information for any
39 purpose it deems necessary, including, without limitation, alerting a
40 practitioner that a patient may be fraudulently obtaining a controlled
41 substance or determining whether a practitioner is engaged in
42 unlawful or unprofessional conduct. This paragraph shall not be
43 construed to require an occupational licensing board to conduct an
44 investigation or take any action against a practitioner upon receiving
45 information from the Board or the Division.



4. The Board and the Division shall cooperatively develop a course of training for persons who are required *or authorized* to receive access to the database of the program pursuant to subsection 6 *or NRS 453.165 and section 1.6 of this act* and require each such person to complete the course of training before the person is provided with Internet access to the database.

5. Each practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III ~~for~~, IV *or V* shall complete the course of instruction described in subsection 4. The Board shall provide Internet access to the database to each such practitioner or other person who completes the course of instruction.

6. Each practitioner who is authorized to write prescriptions for controlled substances listed in schedule II, III ~~for~~, IV *or V* shall, to the extent the program allows, access the database of the program established pursuant to NRS 453.162 at least once each 6 months to:

(a) Review the information concerning the practitioner that is listed in the database and notify the Board if any such information is not correct; and

(b) Verify to the Board that he or she continues to have access to and has accessed the database as required by this subsection.

7. Information obtained from the program relating to a practitioner or a patient is confidential and, except as otherwise provided by this section and NRS 239.0115, 453.162 and 453.163, must not be disclosed to any person. That information must be disclosed:

(a) Upon ~~the~~ a request ~~for~~ *made on a notarized form prescribed by the Board by* a person about whom the information requested concerns or upon ~~the~~ *such a* request on behalf of that person by his or her attorney; or

(b) Upon the lawful order of a court of competent jurisdiction.

8. If the Board, the Division or a law enforcement agency determines that the database of the program has been intentionally accessed by a person or for a purpose not authorized pursuant to NRS 453.162 to 453.165, inclusive, *and sections 1.3 and 1.6 of this act*, the Board, Division or law enforcement agency, as applicable, must notify any person whose information was accessed by an unauthorized person or for an unauthorized purpose.

Sec. 4. NRS 453.165 is hereby amended to read as follows:

453.165 1. Except as otherwise provided in this section, the Board shall allow a law enforcement officer to have Internet access to the database of the computerized program developed pursuant to NRS 453.162 if:

(a) The primary responsibility of the law enforcement officer is to conduct investigations of crimes relating to prescription drugs;



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(b) The law enforcement officer has been approved by his or her employer to have such access;

(c) The law enforcement officer has completed the course of training developed pursuant to subsection 4 of NRS 453.164; and

(d) The employer of the law enforcement officer has submitted the certification required pursuant to subsection 2 to the Board.

2. Before a law enforcement officer may be given access to the database pursuant to subsection 1, the employer of the officer must certify to the Board that the law enforcement officer has been approved to be given such access and meets the requirements of subsection 1. Such certification must be made on a form provided by the Board and renewed annually.

3. When a law enforcement officer accesses the database of the computerized program pursuant to this section, the officer must enter a unique user name assigned to the officer and *, if applicable,* the case number corresponding to the investigation being conducted by the officer.

4. A law enforcement officer who is given access to the database of the computerized program pursuant to subsection 1 may access the database *for no other purpose than to investigate* :

(a) *Investigate* a crime related to prescription drugs ~~and for no other purpose~~ ; or

(b) *Upload information to the database pursuant to section 1.3 of this act.*

5. The employer of a law enforcement officer who is provided access to the database of the computerized program pursuant to this section shall monitor the use of the database by the law enforcement officer and establish appropriate disciplinary action to take against an officer who violates the provisions of this section.

6. The Board or the Division may suspend or terminate access to the database of the computerized program pursuant to this section if a law enforcement officer or his or her employer violates any provision of this section.

7. As used in this section, "law enforcement officer" means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

Sec. 5. NRS 453.552 is hereby amended to read as follows:

453.552 1. Any penalty imposed for violation of NRS 453.011 to 453.551, inclusive, *and sections 1.3 and 1.6 of this act,* is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

2. Any violation of the provisions of NRS 453.011 to 453.551, inclusive, *and sections 1.3 and 1.6 of this act,* where no other penalty is specifically provided, is a misdemeanor.



1 **Sec. 5.5.** NRS 639.23507 is hereby amended to read as
2 follows:

3 639.23507 1. A practitioner shall, before initiating a
4 prescription for a controlled substance listed in schedule II, III or IV
5 **or an opioid that is a controlled substance listed in schedule V,**
6 obtain a patient utilization report regarding the patient from the
7 computerized program established by the Board and the
8 Investigation Division of the Department of Public Safety pursuant
9 to NRS 453.162 if:

10 (a) The patient is a new patient of the practitioner; or

11 (b) The prescription is for more than 7 days and is part of a new
12 course of treatment for the patient.

13 ↪ The practitioner shall review the patient utilization report to
14 assess whether the prescription for the controlled substance is
15 medically necessary.

16 2. If a practitioner who attempts to obtain a patient utilization
17 report as required by subsection 1 fails to do so because the
18 computerized program is unresponsive or otherwise unavailable, the
19 practitioner:

20 (a) Shall be deemed to have complied with subsection 1 if the
21 practitioner documents the attempt and failure in the medical record
22 of the patient.

23 (b) Is not liable for the failure.

24 3. The Board shall adopt regulations to provide alternative
25 methods of compliance with subsection 1 for a physician while he or
26 she is providing service in a hospital emergency department. The
27 regulations must include, without limitation, provisions that allow a
28 hospital to designate members of hospital staff to act as delegates
29 for the purposes of accessing the database of the computerized
30 program and obtaining patient utilization reports from the
31 computerized program on behalf of such a physician.

32 4. A practitioner who violates subsection 1:

33 (a) Is not guilty of a misdemeanor.

34 (b) May be subject to professional discipline if the appropriate
35 professional licensing board determines that the practitioner's
36 violation was intentional.

37 5. As used in this section, "initiating a prescription" means
38 originating a new prescription for a new patient of a practitioner or
39 originating a new prescription to begin a new course of treatment for
40 an existing patient of a practitioner. The term does not include any
41 act concerning an ongoing prescription that is written to continue a
42 course of treatment for an existing patient of a practitioner.

43 **Sec. 6.** This act becomes effective on July 1, 2017.

