

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 an employee of a law enforcement agency or 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



* S B 5 9 R 3 *

relating to the use of those controlled substances. (NRS 453.162) **Sections 2-3** of this bill expand the scope of the program to also track each prescription for a controlled substance listed in schedule V.

Existing law requires the Board to allow certain law enforcement officers to have Internet access to the database of the program only for the purpose of investigating a crime related to prescription drugs. (NRS 453.165) **Section 4** of this bill instead requires the Board to allow an employee of a law enforcement agency to have Internet access to the database of the program under certain circumstances only for certain purposes.

Section 1.3 of this bill requires a law enforcement officer who has probable cause to believe that a violation of chapter 453 of NRS concerning prescribed controlled substances has occurred or who receives a report of a stolen prescription for a controlled substance while acting in his or her official capacity and in the regular course of an investigation to report certain information to his or her employer. **Section 1.3** requires a coroner, medical examiner or deputy thereof who determines, as the result of an investigation of the death of a person, that the person died as the result of using a prescribed controlled substance, to upload certain information to the database of the program or, if the coroner, medical examiner or deputy thereof does not have such access, report such information to a coroner, medical examiner or deputy thereof who has access to the database. **Section 1.3** also requires the employer of the law enforcement officer or a coroner, medical examiner or deputy thereof to upload such reported information to the database of the program as soon as practicable after receiving the information except where the employer of a law enforcement officer determines that uploading the information will interfere with an active criminal investigation. In that case, the employer may postpone uploading the information until after the conclusion of the investigation. **Section 1.3** further provides that each law enforcement officer, employer of a law enforcement officer, coroner, medical examiner or deputy of a coroner or medical examiner who makes a good faith effort to comply with **section 1.3**, or a regulation adopted pursuant thereto, is immune from civil and criminal liability for any act or omission relating to the transmission of information pursuant to **section 1.3**. **Section 1.6** of this bill authorizes a coroner, medical examiner or deputy thereof who meets certain requirements to access the database of the computerized program to: (1) upload information concerning the death of a person due to using a prescribed controlled substance; or (2) investigate the death of a person. **Section 4** authorizes an employee of a law enforcement agency to access the database of the program to upload the information required by **section 1.3**.

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

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

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

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



1 (a) Encounters a situation in which the law enforcement
2 officer has probable cause to believe that a violation of this
3 chapter involving a prescription for a controlled substance is
4 occurring or has occurred; or

5 (b) Receives a report of a stolen prescription for a controlled
6 substance,

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

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

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

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

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

26 (a) The name of the person who:

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

28 (2) Died as a result of using a prescribed controlled
29 substance; or

30 (3) Filed the report of a stolen prescription for a controlled
31 substance.

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

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

39 (1) The name of the prescribing practitioner;

40 (2) The prescription number; and

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

43 4. Except as otherwise provided in subsection 5, an employer
44 of a law enforcement officer or a coroner, medical examiner or
45 deputy thereof who receives a report pursuant to subsection 1 or 2



* S B 5 9 R 3 *

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

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

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

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

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

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

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

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

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

40 *2. Before the deputy of a coroner or medical examiner may*
41 *be given access to the database pursuant to subsection 1, the*
42 *coroner or medical examiner who employs the deputy must certify*
43 *to the Board that the deputy has been approved to have such*
44 *access and meets the requirements of subsection 1. Such*



* S B 5 9 R 3 *

1 *certification must be made on a form provided by the Board and*
2 *renewed annually.*

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

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

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

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

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

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

21 453.162 1. The Board and the Division shall cooperatively
22 develop a computerized program to track each prescription for a
23 controlled substance listed in schedule II, III ~~for~~, IV *or V* that is
24 filled by a pharmacy that is registered with the Board or that is
25 dispensed by a practitioner who is registered with the Board. The
26 program must:

27 (a) Be designed to provide information regarding:

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

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

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

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



* S B 5 9 R 3 *

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

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

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

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

2. The Board, the Division and each employee thereof are immune from civil and criminal liability for any action relating to the collection, maintenance and transmission of information pursuant to this section and NRS 453.163 and 453.164 *and sections 1.3 and 1.6 of this act* if a good faith effort is made to comply with applicable laws and regulations.

3. The Board and the Division may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

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

453.163 1. Except as otherwise provided in this subsection, each person registered pursuant to this chapter to dispense a controlled substance listed in schedule II, III ~~for~~, IV *or V* shall, not later than the end of the next business day after dispensing a controlled substance, upload to the database of the program established pursuant to NRS 453.162 the information described in paragraph (d) of subsection 1 of NRS 453.162. The requirements of this subsection do not apply if the controlled substance is administered directly by a practitioner to a patient in a health care facility, as defined in NRS 439.960, a child who is a resident in a child care facility, as defined in NRS 432A.024, or a prisoner, as defined in NRS 208.085. The Board shall establish by regulation and impose administrative penalties for the failure to upload information pursuant to this subsection.



2. The Board and the Division may cooperatively enter into a written agreement with an agency of any other state to provide, receive or exchange information obtained by the program with a program established in that state which is substantially similar to the program established pursuant to NRS 453.162, including, without limitation, providing such state access to the database of the program or transmitting information to and receiving information from such state. Any information provided, received or exchanged as part of an agreement made pursuant to this section may only be used in accordance with the provisions of this chapter.

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

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

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

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

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

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

(b) Indicate the inappropriate use by a patient of a controlled substance to the occupational licensing board of each practitioner who has prescribed the controlled substance to the patient. The occupational licensing board may access the database of the program established pursuant to NRS 453.162 to determine which practitioners are prescribing the controlled substance to the patient. The occupational licensing board may use this information for any purpose it deems necessary, including, without limitation, alerting a practitioner that a patient may be fraudulently obtaining a controlled substance or determining whether a practitioner is engaged in



* S B 5 9 R 3 *

1 unlawful or unprofessional conduct. This paragraph shall not be
2 construed to require an occupational licensing board to conduct an
3 investigation or take any action against a practitioner upon receiving
4 information from the Board or the Division.

5 4. The Board and the Division shall cooperatively develop a
6 course of training for persons who are required *or authorized* to
7 receive access to the database of the program pursuant to subsection
8 *6 or NRS 453.165 and section 1.6 of this act* and require each such
9 person to complete the course of training before the person is
10 provided with Internet access to the database.

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

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

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

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

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

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

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

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

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

44 453.165 1. Except as otherwise provided in this section, the
45 Board shall allow *an employee of* a law enforcement ~~officer~~



* S B 5 9 R 3 *

1 *agency* to have Internet access to the database of the computerized
2 program developed pursuant to NRS 453.162 if:

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

5 ~~—(b)}~~ The ~~{law enforcement officer}~~ *employee* has been approved
6 by his or her employer to have such access;

7 ~~{(e)}~~ (b) The ~~{law enforcement officer}~~ *employee* has completed
8 the course of training developed pursuant to subsection 4 of NRS
9 453.164; and

10 ~~{(d)}~~ (c) The ~~{employer of the}~~ law enforcement ~~{officer}~~
11 *agency* has submitted the certification required pursuant to
12 subsection 2 to the Board.

13 2. Before ~~{a}~~ *an employee of a* law enforcement ~~{officer}~~
14 *agency* may be given access to the database pursuant to subsection
15 1, the ~~{employer of the officer}~~ *law enforcement agency* must
16 certify to the Board that the ~~{law enforcement officer}~~ *employee* has
17 been approved to be given such access and meets the requirements
18 of subsection 1. Such certification must be made on a form provided
19 by the Board and renewed annually.

20 3. When *an employee of* a law enforcement ~~{officer}~~ *agency*
21 accesses the database of the computerized program pursuant to this
22 section, the ~~{officer}~~ *employee* must enter a unique user name
23 assigned to the ~~{officer}~~ *employee* and , *if applicable*, the case
24 number corresponding to the investigation ~~{being conducted by the~~
25 ~~officer.}~~ *pursuant to which the employee is accessing the database.*

26 4. ~~{A}~~ *An employee of a* law enforcement ~~{officer}~~ *agency* who
27 is given access to the database of the computerized program
28 pursuant to subsection 1 may access the database *for no other*
29 *purpose than to investigate* :

30 (a) *Investigate* a crime related to prescription drugs ~~{and for no~~
31 ~~other purpose.}~~ ; or

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

34 5. ~~{The employer of a}~~ *A* law enforcement ~~{officer who is}~~
35 *agency whose employees are* provided access to the database of the
36 computerized program pursuant to this section shall monitor the use
37 of the database by the *employees of the* law enforcement ~~{officer}~~
38 *agency* and establish appropriate disciplinary action to take against
39 an ~~{officer}~~ *employee* who violates the provisions of this section.

40 6. The Board or the Division may suspend or terminate access
41 to the database of the computerized program pursuant to this section
42 if a law enforcement ~~{officer}~~ *agency* or ~~{his or her employer}~~
43 *employee thereof* 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.

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

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

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

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

➤ The practitioner shall review the patient utilization report to assess whether the prescription for the controlled substance is medically necessary.

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

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

(b) Is not liable for the failure.

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

4. A practitioner who violates subsection 1:

(a) Is not guilty of a misdemeanor.



1 (b) May be subject to professional discipline if the appropriate
2 professional licensing board determines that the practitioner's
3 violation was intentional.

4 5. As used in this section, "initiating a prescription" means
5 originating a new prescription for a new patient of a practitioner or
6 originating a new prescription to begin a new course of treatment for
7 an existing patient of a practitioner. The term does not include any
8 act concerning an ongoing prescription that is written to continue a
9 course of treatment for an existing patient of a practitioner.

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

