House Bill 2517

Sponsored by Representative BUEHLER; Representatives KENY-GUYER, NOSSE, Senators MONNES ANDERSON, STEINER HAYWARD (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Provides that Director of the Oregon Health Authority may enter into agreements governing sharing and use of information reported to prescription monitoring program with regulatory authorities of other states that administer prescription monitoring programs.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to programs used to monitor the dispensing of prescription drugs; creating new provisions; amending ORS 431A.850 and 431A.865; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 431A.855 to 431A.900.

SECTION 2. The Director of the Oregon Health Authority may enter into agreements governing the sharing and use of information described in ORS 431A.860 (1) with the regulatory authorities of other states that administer prescription monitoring programs. An agreement entered into under this section must adhere to the disclosure limitations listed under ORS 431A.865 (2), except that a practitioner or pharmacist licensed to practice in another state is not required to certify the purpose for which the information is being requested. An agreement entered into under this section may:

(1) Provide for the direct transmission of information between electronic systems, provided that any electronic system to which the authority transmits information meets the confidentiality, security and privacy standards adopted by the authority under ORS 431A.855;

(2) Provide for the establishment of a single electronic system through which the authority and other regulatory authorities may access the information, provided that the established electronic system meets the confidentiality, security and privacy standards adopted by the authority under ORS 431A.855; or

(3) Provide for the direct transmission of information to practitioners or pharmacists licensed to practice in another state.

SECTION 3. ORS 431A.850 is amended to read:

431A.850. As used in ORS 431A.855 to 431A.900:

(1) "Dispense" and "dispensing" have the meanings given those terms in ORS 689.005.

(2) "Drug outlet" has the meaning given that term in ORS 689.005.

(3) "Health professional regulatory board" has the meaning given that term in ORS 676.160.

(4) "Pharmacist" means:

(a) A pharmacist as defined in ORS 689.005; or

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(b) An individual licensed to practice pharmacy in another state, if the requirements for licensure are similar, as determined by the Oregon Health Authority, to the requirements for being licensed as a pharmacist as defined in ORS 689.005.

[*(4)*] **(5)** "Practitioner" means:

(a) A practitioner as defined in ORS 689.005; or

(b) An individual licensed to practice a profession in [*California, Idaho or Washington,*] **another state,** if the requirements for licensure are similar, as determined by the [*Oregon Health*] authority, to the requirements for being licensed as a practitioner as defined in ORS 689.005.

[*(5)*] **(6)** "Prescription" has the meaning given that term in ORS 475.005.

[*(6)*] **(7)** "Prescription drug" has the meaning given that term in ORS 689.005.

SECTION 4. ORS 431A.865, as amended by section 1, chapter 100, Oregon Laws 2016, is amended to read:

431A.865. (1)(a) Except as provided under subsection (2) of this section, prescription monitoring information submitted under ORS 431A.860 to the prescription monitoring program established in ORS 431A.855:

(A) Is protected health information under ORS 192.553 to 192.581.

(B) Is **confidential and** not subject to disclosure [*pursuant to*] **under** ORS 192.410 to 192.505.

(b) Except as provided under subsection (2)(a)(G) of this section, prescription monitoring information submitted under ORS 431A.860 to the prescription monitoring program may not be used to evaluate a practitioner's professional practice.

(2)(a) To the extent that the law or regulation is applicable to the prescription monitoring program, if a disclosure of prescription monitoring information, other than the sex of a patient for whom a drug was prescribed, complies with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and regulations adopted under [*it*] **that law**, including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.553 to 192.581, the Oregon Health Authority shall disclose the information:

(A) To a practitioner or pharmacist, or, if a practitioner or pharmacist authorizes the authority to disclose the information to a member of the practitioner's or pharmacist's staff, to a member of the practitioner's or pharmacist's staff. If a practitioner or pharmacist authorizes disclosing the information to a member of the practitioner's or pharmacist's staff under this subparagraph, the practitioner or pharmacist remains responsible for the use or misuse of the information by the staff member. To receive information under this subparagraph, or to authorize the receipt of information by a staff member under this subparagraph, a practitioner or pharmacist must certify that the requested information is for the purpose of evaluating the need for or providing medical or pharmaceutical treatment for a patient to whom the practitioner or pharmacist anticipates providing, is providing or has provided care.

(B) In accordance with subparagraph (A) of this paragraph, to a practitioner or pharmacist or to a member of the practitioner's or pharmacist's staff through a health information technology system that is used by the practitioner or pharmacist or a member of the practitioner's or pharmacist's staff to access information about patients if:

(i) The practitioner or pharmacist or a member of the practitioner's or pharmacist's staff is authorized to access the information in the health information technology system;

(ii) The information is not permanently retained in the health information technology system, except for purposes of conducting audits and maintaining patient records; and

(iii) The health information technology system meets any privacy and security requirements and other criteria, including criteria required by the federal Health Insurance Portability and Accountability Act, established by the authority by rule.

(C) To a practitioner in a form that catalogs all prescription drugs prescribed by the practitioner according to the number assigned to the practitioner by the Drug Enforcement Administration of the United States Department of Justice.

(D) To the State Medical Examiner or designee of the State Medical Examiner, for the purpose of conducting a medicolegal investigation or autopsy.

(E) To designated representatives of the authority or any vendor or contractor with whom the authority has contracted to establish or maintain the electronic system [*of the prescription monitoring program*] **established under ORS 431A.855**.

(F) Pursuant to a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency engaged in an authorized drug-related investigation involving a person to whom the requested information pertains.

(G) To a health professional regulatory board that certifies in writing that the requested information is necessary for an investigation related to licensure, license renewal or disciplinary action involving the applicant, licensee or registrant to whom the requested information pertains.

[*(H) To a prescription monitoring program of another state if the confidentiality, security and privacy standards of the requesting state are determined by the authority to be equivalent to those of the authority.*]

(H) Pursuant to an agreement entered into under section 2 of this 2017 Act.

(b) The authority may disclose information from the prescription monitoring program that does not identify a patient, practitioner or drug outlet:

(A) For educational, research or public health purposes;

(B) To a local public health authority, as defined in ORS 431.003; or

(C) To officials of the authority who are conducting special epidemiologic morbidity and mortality studies in accordance with ORS 413.196 and rules adopted under ORS 431.001 to 431.550 and 431.990.

(c) The [*Oregon Health*] authority shall disclose information relating to a patient maintained in the electronic system [*operated pursuant to the prescription monitoring program*] **established under ORS 431A.855** to that patient at no cost to the patient within 10 business days after the authority receives a request from the patient for the information.

(d)(A) A patient may request the authority to correct any information [*about the patient*] **related to the patient that is maintained in the electronic system established under ORS 431A.855** that is erroneous. The authority shall grant or deny a request to correct information within 10 business days after the authority receives the request.

(B) If the authority denies a patient's request to correct information under this paragraph, or fails to grant a patient's request to correct information under this paragraph within 10 business days after the authority receives the request, the patient may appeal the denial or failure to grant the request. Upon receiving notice of an appeal under this subparagraph, the authority shall conduct a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, the authority has the burden in the contested case hearing of establishing that the information [*included in the prescription monitoring program*] is correct.

(e) The information in the prescription monitoring program may not be used for any commercial purpose.

(f) In accordance with ORS 192.553 to 192.581 and federal [*privacy regulations,*] **laws and regulations related to privacy,** any person authorized to prescribe or dispense a prescription drug [*and*] who is entitled to access a patient's prescription monitoring information may discuss **the information with** or release the information to other health care providers involved with the patient's care for the [*purposes*] **purpose** of providing safe and appropriate care coordination.

(3)(a) The authority shall maintain records of the information disclosed through the prescription monitoring program including[*, but not limited to*]:

(A) The identity of each person who requests or receives information from the program and any organization the person represents;

(B) The information released to each person or organization; and

(C) The date and time the information was requested and the date and time the information was provided.

(b) Records maintained as required by this subsection may be reviewed by the Prescription Monitoring Program Advisory Commission.

(4) Information in the prescription monitoring program that identifies an individual patient must be removed no later than three years from the date the information is entered into the program.

(5) The authority shall notify the Attorney General and each [*affected*] individual [*of*] **affected by** an improper disclosure of information from the prescription monitoring program.

(6)(a) If the authority or a person or entity required to report or authorized to receive or release [*controlled substance*] prescription information under this section violates this section or ORS 431A.860 or 431A.870, a person injured by the violation may bring a civil action against the authority, person or entity and may recover damages in the amount of $1,000 or actual damages, whichever is greater.

(b) Notwithstanding paragraph (a) of this subsection, the authority and a person or entity required to report or authorized to receive or release [*controlled substance*] prescription information under this section are immune from civil liability for violations of this section or ORS 431A.860 or 431A.870 unless the authority, person or entity acts with malice, criminal intent, gross negligence, recklessness or willful intent.

(7) Nothing in ORS 431A.855 to 431A.900 requires a practitioner or pharmacist who prescribes or dispenses a prescription drug to obtain information about a patient from the prescription monitoring program. A practitioner or pharmacist who prescribes or dispenses a prescription drug may not be held liable for damages in any civil action on the basis that the practitioner or pharmacist did or did not request or obtain information from the prescription monitoring program.

(8) The authority shall, at regular intervals, ensure compliance of a health information technology system described in subsection (2) of this section with the privacy and security requirements and other criteria established by the authority [*by rule*] under subsection (2) of this section.

SECTION 5. (1) Section 2 of this 2017 Act and the amendments to ORS 431A.850 and 431A.865 by sections 3 and 4 of this 2017 Act become operative January 1, 2018.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, powers and functions conferred on the authority by section 2 of this 2017 Act and the amendments to ORS 431A.850 and 431A.865 by sections 3 and 4 of this 2017 Act.

SECTION 6. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect

on its passage.