

5409--A

2011-2012 Regular Sessions

I N S E N A T E

May 18, 2011

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to requiring pharmacists and practitioners to check the controlled substance abuse registry before prescribing analgesics

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

1 Section 1. This act shall be known and may be cited as the "Michael
2 David Israel controlled substance registry reform act".

3 S 2. Section 3308 of the public health law is amended by adding a new
4 subdivision 7 to read as follows:

5 7. THE COMMISSIONER SHALL DEVELOP A SYSTEM TO ENSURE COMPLIANCE WITH
6 SECTION THIRTY-THREE HUNDRED TWENTY-THREE OF THIS ARTICLE. SUCH SYSTEM
7 SHALL, AT A MINIMUM:

8 (A) CROSS-CHECK THE PRESCRIPTIONS SUBMITTED BY PHARMACISTS WITH THE
9 PRACTITIONERS CONSULTING THE REGISTRY PURSUANT TO SECTION THIRTY-THREE
10 HUNDRED TWENTY-THREE OF THIS ARTICLE.

11 (B) ESTABLISH AN APPROPRIATE FINE SCALE FOR PRACTITIONERS FOUND BY THE
12 DEPARTMENT TO NOT BE CONSULTING THE REGISTRY IN VIOLATION OF SECTION
13 THIRTY-THREE HUNDRED TWENTY-THREE OF THIS ARTICLE FOLLOWED BY MORE SERI-
14 OUS PUNISHMENTS FOR REPEAT OFFENSES.

15 S 3. The public health law is amended by adding a new section 3323 to
16 read as follows:

17 S 3323. PRACTITIONERS' AND PHARMACISTS' DUTIES PRIOR TO PRESCRIBING
18 ANALGESICS. EVERY PRACTITIONER AND PHARMACIST SHALL, PRIOR TO PRESCRIB-
19 ING ANY ANALGESIC, CONSULT THE CENTRAL REGISTRY ESTABLISHED PURSUANT TO
20 THIS ARTICLE TO DETERMINE:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 1. WHAT OTHER PRESCRIPTIONS THE PATIENT BEING PRESCRIBED SUCH ANALGES-
2 IC IS CURRENTLY TAKING;

3 2. WHETHER SUCH PATIENT MAY BE UNDER TREATMENT WITH A PRESCRIPTION
4 ANALGESIC BY ANOTHER PRACTITIONER; AND

5 3. WHETHER SUCH PATIENT'S PRESCRIPTION HISTORY INDICATES A POSSIBILITY
6 OF DRUG ABUSE, ADDICTION OR DIVERSION.

7 S 4. Paragraphs (d) and (e) of subdivision 1 of section 3371 of the
8 public health law, as amended by chapter 178 of the laws of 2010, are
9 amended and a new paragraph (f) is added to read as follows:

10 (d) to a central registry established pursuant to this article; [and]

11 (e) to a practitioner to inform him or her that a patient may be under
12 treatment with a controlled substance by another practitioner[.]; OR

13 (F) TO A PHARMACIST TO INFORM THE PHARMACIST THAT A PERSON WHO
14 PRESENTS OR HAS PRESENTED A PRESCRIPTION FOR ONE OR MORE PRESCRIPTION
15 ANALGESICS AT THE PHARMACY MAY HAVE ALSO OBTAINED ONE OR MORE
16 PRESCRIPTION ANALGESICS FROM ANOTHER PHARMACY.

17 S 5. The public health law is amended by adding a new section 3323-a
18 to read as follows:

19 S 3323-A. PAIR REPORTING PROGRAM. 1. ESTABLISHMENT OF SYSTEM. THE
20 COMMISSIONER SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION,
21 ESTABLISH AND MAINTAIN A SYSTEM FOR COLLECTING, MONITORING AND REPORTING
22 DATA CONCERNING THE PRESCRIBING AND DISPENSING OF SCHEDULE II, III, IV,
23 OR V CONTROLLED SUBSTANCES, OR ANY OTHER SUBSTANCES SPECIFIED BY THE
24 COMMISSIONER, THAT ARE PRESCRIBED OR DISPENSED. SUCH SYSTEM SHALL ALLOW
25 PRACTITIONERS AND PHARMACISTS TO MONITOR AND REPORT SUCH DATA BY MEANS
26 OF AN INTERNET PORTAL AND A WEBSITE AND ANY OTHER ELECTRONIC MEANS
27 DEEMED APPROPRIATE BY THE COMMISSIONER. SUCH SYSTEM SHALL ENABLE PRACTI-
28 TIONERS AND PHARMACISTS TO MONITOR AND REPORT SUCH DATA AT THE TIME A
29 PRESCRIPTION IS ISSUED OR SUCH SUBSTANCE IS DISPENSED. THE COMMISSIONER
30 SHALL ADOPT AND SUCH SYSTEM SHALL MAINTAIN PROCEDURES AND SAFEGUARDS TO
31 ENSURE THE PRIVACY AND CONFIDENTIALITY OF PATIENT INFORMATION AND TO
32 ENSURE THAT ANY DATA COLLECTED OR REPORTED IS NOT UNLAWFULLY ACCESSED OR
33 DISCLOSED. THE COMMISSIONER SHALL ALSO ESTABLISH ACCEPTABLE ERROR TOLER-
34 ANCE RATES FOR DATA AND PROCEDURES FOR PRACTITIONERS AND PHARMACISTS TO
35 FOLLOW IN THE EVENT OF A TECHNOLOGICAL FAILURE.

36 2. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE MEANING GIVEN TO
37 TERMS IN SECTION THIRTY-THREE HUNDRED TWO OF THIS ARTICLE SHALL BE
38 CONTROLLING, PROVIDED THAT:

39 (A) "PAIR" SHALL MEAN PRESCRIPTION ANALGESICS INFORMATION REGISTRY.

40 (B) PATIENT IDENTIFIER SHALL MEAN A PATIENT'S:

41 (1) FULL NAME;

42 (2) ADDRESS;

43 (3) DATE OF BIRTH; AND

44 (4) SOCIAL SECURITY NUMBER OR AN ALTERNATIVE IDENTIFICATION NUMBER
45 ESTABLISHED BY THE COMMISSIONER.

46 3. REPORTING REQUIREMENTS. A PRACTITIONER OR PHARMACIST THAT DISPENSES
47 SCHEDULE II, III, IV OR V CONTROLLED SUBSTANCES SHALL REPORT THE FOLLOW-
48 ING INFORMATION REGARDING EACH DISPENSATION IN A MANNER CONSISTENT WITH
49 SUBDIVISION FOUR OF THIS SECTION:

50 (A) PATIENT IDENTIFIER;

51 (B) NATIONAL DRUG CODE OF THE DRUG DISPENSED;

52 (C) METRIC QUANTITY OF DRUG DISPENSED;

53 (D) DATE OF DISPENSING;

54 (E) ESTIMATED DAY'S SUPPLY DISPENSED;

55 (F) DRUG ENFORCEMENT ADMINISTRATION REGISTRATION NUMBER OF THE PRES-
56 CRIBER;

1 (G) SERIAL NUMBER ASSIGNED BY THE DISPENSER; AND

2 (H) THE DRUG ENFORCEMENT ADMINISTRATION REGISTRATION NUMBER OF THE
3 DISPENSER.

4 4. DATA REPORTED. EVERY PRACTITIONER OR PHARMACIST WITHIN THE STATE OR
5 ANY OTHER DISPENSER WHO HAS OBTAINED A LICENSE, PERMIT OR OTHER AUTHORI-
6 ZATION TO OPERATE FROM THE COMMISSIONER OF EDUCATION, OR ANY AGENT THERE-
7 OF, SHALL REPORT TO THE PAIR SYSTEM THE DATA SPECIFIED IN PARAGRAPH (A)
8 OR (B) OF THIS SUBDIVISION THROUGH AN INTERNET PORTAL AND WEBSITE MAIN-
9 TAINED BY THE COMMISSIONER AND ANY OTHER METHOD DEEMED APPROPRIATE BY
10 THE COMMISSIONER, UPON ISSUING A PRESCRIPTION OR DISPENSING A SCHEDULE
11 II, III, IV, OR V CONTROLLED SUBSTANCE OR ANY OTHER SUBSTANCE SPECIFIED
12 BY THE COMMISSIONER; PROVIDED THAT SUCH REPORTING SHALL NOT BE REQUIRED
13 FOR ANY SUCH SUBSTANCE ADMINISTERED DIRECTLY TO A PATIENT, OR FOR SUCH
14 SUBSTANCE DISPENSED PURSUANT TO SECTION THREE THOUSAND THREE HUNDRED
15 THIRTY-FOUR, THREE THOUSAND THREE HUNDRED THIRTY-SEVEN OR THREE THOUSAND
16 THREE HUNDRED FORTY-TWO OF THIS ARTICLE OR ANY RULE OR REGULATION
17 PROMULGATED UNDER THOSE SECTIONS.

18 (A) DATA TO BE REPORTED BY PRACTITIONERS. DATA CONCERNING SCHEDULE II,
19 III, IV, OR V CONTROLLED SUBSTANCES OR ANY OTHER SUBSTANCES SPECIFIED BY
20 THE COMMISSIONER THAT ARE PRESCRIBED SHALL INCLUDE BUT NOT BE LIMITED TO
21 THE FOLLOWING: PRACTITIONER PRESCRIPTION NUMBER; PRACTITIONER NATIONAL
22 IDENTIFICATION NUMBER; PATIENT NAME; PATIENT ADDRESS, INCLUDING STREET,
23 CITY, STATE, ZIP CODE; PATIENT DATE OF BIRTH; PATIENT'S SEX; PATIENT'S
24 SOCIAL SECURITY NUMBER; DATE PRESCRIPTION ISSUED; METRIC QUANTITY;
25 NATIONAL DRUG CODE NUMBER OF THE DRUG; NUMBER OF DAYS SUPPLY; PRACTI-
26 TIONER DRUG ENFORCEMENT ADMINISTRATION NUMBER; DATE PRESCRIPTION WRIT-
27 TEN; SERIAL NUMBER OF OFFICIAL PRESCRIPTION FORM, OR AN IDENTIFIER
28 DESIGNATED BY THE DEPARTMENT; PAYMENT METHOD; AND NUMBER OF REFILLS
29 AUTHORIZED.

30 (B) DATA TO BE REPORTED BY PHARMACISTS. DATA CONCERNING SCHEDULE II,
31 III, IV, OR V CONTROLLED SUBSTANCES OR ANY OTHER SUBSTANCES SPECIFIED BY
32 THE COMMISSIONER THAT ARE DISPENSED SHALL INCLUDE BUT NOT BE LIMITED TO
33 THE FOLLOWING: PHARMACY PRESCRIPTION NUMBER; PHARMACY'S NATIONAL IDEN-
34 TIFICATION NUMBER; PATIENT NAME; PATIENT ADDRESS, INCLUDING STREET,
35 CITY, STATE, ZIP CODE; PATIENT DATE OF BIRTH; PATIENT'S SEX; PATIENT'S
36 SOCIAL SECURITY NUMBER; DATE PRESCRIPTION FILLED; METRIC QUANTITY;
37 NATIONAL DRUG CODE NUMBER OF THE DRUG; NUMBER OF DAYS SUPPLY; PRACTI-
38 TIONER DRUG ENFORCEMENT ADMINISTRATION NUMBER; DATE PRESCRIPTION WRIT-
39 TEN; SERIAL NUMBER OF OFFICIAL PRESCRIPTION FORM, OR AN IDENTIFIER
40 DESIGNATED BY THE COMMISSIONER; PAYMENT METHOD; NUMBER OF REFILLS
41 AUTHORIZED; AND REFILL NUMBER.

42 (C) DATA TO BE REPORTED BY FACILITIES. UPON A PATIENT'S ADMISSION TO
43 AN INPATIENT OR OUTPATIENT TREATMENT FACILITY FOR DRUG ABUSE, OR UPON
44 SUCH PATIENT'S ADMISSION TO A DETOXIFICATION CENTER OR ANY OTHER FACILI-
45 TY, INCLUDING A GENERAL HOSPITAL, THAT TREAT SUCH PATIENT'S DRUG ABUSE
46 OR ADDICTION, SUCH HOSPITAL, DETOXIFICATION CENTER OR TREATMENT FACILITY
47 SHALL REPORT SUCH PATIENT'S TREATMENT TO THE DEPARTMENT WITHIN SEVEN
48 DAYS OF ADMISSION. THE HOSPITAL, DETOXIFICATION CENTER OR TREATMENT
49 FACILITY SHALL REPORT THROUGH THE PAIR SYSTEM THE FOLLOWING DATA:
50 PATIENT NAME; PATIENT ADDRESS, INCLUDING STREET, CITY, STATE, ZIP CODE;
51 PATIENT DATE OF BIRTH; PATIENT'S SEX; PATIENT'S SOCIAL SECURITY NUMBER;
52 LENGTH OF PATIENT'S STAY; THE TYPE OF TREATMENT PATIENT RECEIVES AND THE
53 CONTROLLED SUBSTANCE PATIENT WAS ADMITTED FOR; AND DATE PATIENT WAS
54 RELEASED. SUCH INFORMATION SHALL BE SUBMITTED TO THE ASPIRIN SYSTEM
55 WITHIN SEVEN DAYS OF PATIENT'S ADMISSION. SUCH INFORMATION SHALL BE
56 TRANSMITTED IN A MANNER CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

1 5. DUTY TO CONSULT DATABASE; PROHIBITIONS. EVERY PRACTITIONER OR PHAR-
2 MACIST WITHIN THE STATE, INCLUDING ANY OTHER DISPENSER WHO HAS OBTAINED
3 A LICENSE, PERMIT, OR OTHER AUTHORIZATION TO OPERATE FROM THE COMMIS-
4 SIONER OF EDUCATION, SHALL MAKE INQUIRY TO THE ON-LINE CONTROLLED
5 SUBSTANCE REPORTING SYSTEM ESTABLISHED PURSUANT TO SUBDIVISION ONE OF
6 THIS SECTION PRIOR TO PRESCRIBING OR DISPENSING ANY SCHEDULE II, III,
7 IV, OR V CONTROLLED SUBSTANCE OR ANY OTHER SUBSTANCE SPECIFIED BY THE
8 COMMISSIONER; PROVIDED THAT THIS SUBDIVISION AND PARAGRAPHS (A) AND (B)
9 HEREOF, SHALL NOT APPLY TO ANY SUCH SUBSTANCE ADMINISTERED DIRECTLY TO A
10 PATIENT OR FOR ANY SUCH SUBSTANCE DISPENSED PURSUANT TO SECTIONS THREE
11 THOUSAND THREE HUNDRED THIRTY-FOUR, THREE THOUSAND THREE HUNDRED THIR-
12 TY-SEVEN OR THREE THOUSAND THREE HUNDRED FORTY-TWO OF THIS ARTICLE AND
13 ANY RULE PROMULGATED THEREUNDER.

14 (A) NO PRACTITIONER SHALL PRESCRIBE ANY SCHEDULE II, III, IV, OR V
15 CONTROLLED SUBSTANCE OR ANY OTHER SUBSTANCE SPECIFIED BY THE COMMISSION-
16 ER WITHOUT REVIEWING A PATIENT'S CONTROLLED SUBSTANCE PRESCRIPTION
17 HISTORY AS SET FORTH IN THE ON-LINE CONTROLLED SUBSTANCE REPORTING
18 SYSTEM TO DETERMINE THAT SUCH PRESCRIPTION IS MEDICALLY NECESSARY AND
19 WOULD NOT OTHERWISE VIOLATE SECTION THREE THOUSAND THREE HUNDRED FIFTY
20 OF THIS ARTICLE, OR, FOR PRESCRIPTIONS ELIGIBLE FOR REIMBURSEMENT BY THE
21 MEDICAID PROGRAM, SECTION ONE HUNDRED FORTY-FIVE-B OF THE SOCIAL
22 SERVICES LAW.

23 (B) NO PHARMACIST SHALL DISPENSE ANY SCHEDULE II, III, IV, OR V
24 CONTROLLED SUBSTANCE OR ANY OTHER SUBSTANCE SPECIFIED BY THE COMMISSION-
25 ER WITHOUT CONFIRMING THE EXISTENCE OF A MATCHING REPORT PROVIDED BY A
26 PRACTITIONER THROUGH THE ON-LINE CONTROLLED SUBSTANCE REPORTING SYSTEM.

27 6. REPORTING PERIOD. THE DATA IDENTIFIED IN SUBDIVISION THREE OF THIS
28 SECTION SHALL BE TRANSMITTED IMMEDIATELY ON THE DATE OF DISPENSING
29 UNLESS THE DEPARTMENT GRANTS AN EXTENSION. SUCH AN EXTENSION SHALL BE
30 GRANTED BY THE DEPARTMENT FOR ELECTRONIC OR MECHANICAL FAILURES AND FOR
31 ANY OTHER REASON PROMULGATED BY THE COMMISSIONER.

32 7. WAIVERS. A PRACTITIONER OR PHARMACIST WHO DOES NOT HAVE AN AUTO-
33 MATED RECORDKEEPING SYSTEM CAPABLE OF PRODUCING AN ELECTRONIC REPORT IN
34 THE FORMAT ESTABLISHED BY "ASAP TELECOMMUNICATIONS FORMAT FOR CONTROLLED
35 SUBSTANCES", SHALL BE GRANTED A WAIVER FROM THE ELECTRONIC REPORTING
36 REQUIREMENT IF THE DISPENSER:

37 (A) MAKES A WRITTEN REQUEST TO THE BRANCH WITHIN TWENTY-FOUR HOURS OF
38 DISCOVERY AND OF THE CIRCUMSTANCES NECESSITATING THE REQUEST, OR ON THE
39 NEXT DATE THAT STATE OFFICES ARE OPEN FOR BUSINESS FOLLOWING THE DISCOV-
40 ERY; AND

41 (B) AGREES IN WRITING TO IMMEDIATELY BEGIN REPORTING THE DATA BY
42 SUBMITTING A COMPLETED "PAIR REPORTING FORM" OR COMPARABLE DOCUMENT
43 APPROVED IN WRITING AND PROMULGATED BY THE DEPARTMENT.

44 8. PATIENT IDENTIFICATION NUMBER. (A) A PATIENT OR THE PERSON OBTAIN-
45 ING THE CONTROLLED SUBSTANCE ON BEHALF OF THE PATIENT SHALL DISCLOSE TO
46 THE DISPENSER THE PATIENT'S SOCIAL SECURITY NUMBER FOR PURPOSES OF THE
47 DISPENSER'S MANDATORY REPORTING TO PAIR.

48 (B) IF A PATIENT IS AN ADULT WHO DOES NOT HAVE A SOCIAL SECURITY
49 NUMBER, THE PATIENT'S DRIVER'S LICENSE NUMBER SHALL BE DISCLOSED.

50 (C) IF A PATIENT IS AN ADULT WHO HAS NOT BEEN ASSIGNED A SOCIAL SECU-
51 RITY NUMBER OR A DRIVER'S LICENSE NUMBER, THE NUMBER 000-00-0000 SHALL
52 BE USED.

53 (D) IF A PATIENT IS A CHILD WHO DOES NOT HAVE A SOCIAL SECURITY NUMBER
54 OR A DRIVER'S LICENSE NUMBER, THE SOCIAL SECURITY NUMBER, DRIVER'S
55 LICENSE NUMBER, OR THE NUMBER "000-00-0000", AS APPLICABLE, OF THE
56 PARENT OR GUARDIAN SHALL BE USED.

1 (E) IF A PATIENT IS AN ANIMAL, THE OWNER'S SOCIAL SECURITY NUMBER,
2 DRIVER'S LICENSE NUMBER, OR THE NUMBER "000-00-0000", AS APPLICABLE,
3 SHALL BE USED.

4 9. THE COMMISSIONER SHALL HAVE THE POWER TO ISSUE RULES AND REGU-
5 LATIONS REGARDING THE USE OF SUCH ELECTRONIC SYSTEMS AND SHALL PROMUL-
6 GATE SUCH POLICIES AND REGULATIONS AS NECESSARY TO ENSURE THE PRIVACY OF
7 PATIENT INFORMATION AND INTEGRITY OF DATA TRANSMISSION.

8 S 6. This act shall take effect immediately; provided, however, that
9 section three of this act shall take effect on the one hundred twentieth
10 day after it shall have become a law.