S T A T E O F N E W Y O R K

2819

2011-2012 Regular Sessions

I N S E N A T E

February 2, 2011

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing a prescription monitoring program

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

Section 1. Article 33 of the public health law is amended by adding a new title 5-A to read as follows:

TITLE V-A

PRESCRIPTION MONITORING PROGRAM

SECTION 3355. SHORT TITLE.
3356. DEFINITIONS.
3357. ESTABLISHMENT OF A PRESCRIPTION MONITORING PROGRAM.
3358. ADVISORY BOARD.
3359. REPORTING OF PRESCRIPTION MONITORING INFORMATION.
3360. ACCESS TO THE PRESCRIPTION MONITORING INFORMATION; CONFIDENTIALITY.
3361. EDUCATION AND TREATMENT.
3362. UNLAWFUL ACTS AND PENALTIES.
3363. EVALUATION, DATA ANALYSIS AND REPORTING.
3364. RULES AND REGULATIONS.
3365. SEVERABILITY.

S 3355. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "PRESCRIPTION MONITORING ACT".

S 3356. DEFINITIONS. 1. "BOARD" MEANS THE ADVISORY BOARD ESTABLISHED UNDER SECTION THIRTY-THREE HUNDRED FIFTY-EIGHT OF THIS TITLE.

2. "DISPENSER" MEANS A PERSON AUTHORIZED IN THIS STATE TO DISTRIBUTE TO THE ULTIMATE USER A SUBSTANCE MONITORED BY THE PRESCRIPTION MONITORING PROGRAM, BUT DOES NOT INCLUDE:

(A) A LICENSED HOSPITAL PHARMACY THAT DISTRIBUTES SUCH SUBSTANCES FOR THE PURPOSES OF INPATIENT HOSPITAL CARE OR THE DISPENSING OF

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

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PRESCRIPTIONS FOR CONTROLLED SUBSTANCES AT THE TIME OF DISCHARGE FROM SUCH A FACILITY;

(B) A LICENSED NURSE OR MEDICATION AIDE WHO ADMINISTERS SUCH A SUBSTANCE AT THE DIRECTION OF A LICENSED PHYSICIAN; OR

(C) A WHOLESALE DISTRIBUTOR OF A SUBSTANCE MONITORED BY THE PRESCRIPTION MONITORING PROGRAM.

3. "PRESCRIBER" MEANS A LICENSED HEALTH CARE PROFESSIONAL WITH PRESCRIPTIVE AUTHORITY.

4. "PRESCRIPTION MONITORING INFORMATION" MEANS INFORMATION SUBMITTED TO AND MAINTAINED BY THE PRESCRIPTION MONITORING PROGRAM.

5. "PRESCRIPTION MONITORING PROGRAM" MEANS A PROGRAM ESTABLISHED UNDER SECTION THIRTY-THREE HUNDRED FIFTY-SEVEN OF THIS TITLE.

S 3357. ESTABLISHMENT OF A PRESCRIPTION MONITORING PROGRAM. 1. THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN, WITH THE CONSULTATION OF THE BOARD, AN ELECTRONIC SYSTEM FOR MONITORING THE FOLLOWING SUBSTANCES DISPENSED IN THE STATE: FEDERALLY CONTROLLED SUBSTANCES, ADDITIONAL STATE SPECIFIED CONTROLLED SUBSTANCES, AND DRUGS OF CONCERN DOCUMENTED TO DEMONSTRATE A POTENTIAL FOR ABUSE, PARTICULARLY THOSE IDENTIFIED BY LAW ENFORCEMENT AND ADDICTION TREATMENT PROFESSIONALS.

2. THE DEPARTMENT MAY CONTRACT WITH A VENDOR TO ESTABLISH AND MAINTAIN THE ELECTRONIC MONITORING SYSTEM PURSUANT TO GUIDELINES WHICH THE DEPARTMENT SHALL PROMULGATE.

S 3358. ADVISORY BOARD. 1. THERE IS HEREBY ESTABLISHED AN ADVISORY BOARD TO ASSIST THE DEPARTMENT IN CARRYING OUT THE DUTIES OF THIS ARTICLE. THE ADVISORY BOARD SHALL CONSIST OF THE FOLLOWING MEMBERS:

(A) A REPRESENTATIVE OF THE STATE BOARD OF MEDICINE, APPOINTED BY THE BOARD.

(B) A REPRESENTATIVE OF THE STATE BOARD OF PHARMACY, APPOINTED BY THE BOARD.

(C) A REPRESENTATIVE OF THE STATE BOARD OF DENTAL EXAMINERS, APPOINTED BY THE BOARD.

(D) A REPRESENTATIVE OF THE STATE BOARD OF NURSING, APPOINTED BY THE BOARD.

(E) THE ATTORNEY GENERAL OR HIS OR HER DESIGNEE.

(F) A REPRESENTATIVE OF THE DEPARTMENT, APPOINTED BY THE COMMISSIONER.

(G) A REPRESENTATIVE OF THE NEW YORK STATE MEDICAL SOCIETY, APPOINTED BY THE SOCIETY.

(H) A REPRESENTATIVE OF THE NEW YORK STATE DENTAL ASSOCIATION, APPOINTED BY THE ASSOCIATION.

(I) A REPRESENTATIVE OF THE NEW YORK STATE ASSOCIATION OF CHIEFS OF POLICE, APPOINTED BY THE ASSOCIATION.

(J) A REPRESENTATIVE OF RETAIL PHARMACY, APPOINTED BY THE NEW YORK STATE PHARMACISTS ASSOCIATION.

2. THE DEPARTMENT SHALL SEEK AND THE BOARD SHALL PROVIDE INPUT AND ADVICE REGARDING THE DEVELOPMENT AND OPERATION OF THE ELECTRONIC MONITORING SYSTEM, INCLUDING BUT NOT LIMITED TO:

(A) WHICH STATE CONTROLLED SUBSTANCES SHOULD BE MONITORED;

(B) WHICH DRUGS OF CONCERN DEMONSTRATE A POTENTIAL FOR ABUSE AND SHOULD BE MONITORED;

(C) DESIGN AND IMPLEMENTATION OF EDUCATIONAL COURSES IDENTIFIED IN SECTION THIRTY-THREE HUNDRED SIXTY-ONE OF THIS TITLE;

(D) PROPER ANALYSIS AND INTERPRETATION OF PRESCRIPTION MONITORING INFORMATION;

(E) DESIGN AND IMPLEMENTATION OF AN EVALUATION COMPONENT; AND

(F) POTENTIAL NOMINEES TO THE BOARD.

S 3359. REPORTING OF PRESCRIPTION MONITORING INFORMATION. 1. EACH DISPENSER SHALL SUBMIT TO THE DEPARTMENT, BY ELECTRONIC MEANS, OR OTHER FORMAT SPECIFIED IN A WAIVER GRANTED BY THE DEPARTMENT, INFORMATION SPECIFIED BY THE DEPARTMENT, INCLUDING:

(A) A PATIENT IDENTIFIER,

(B) THE DRUG PRESCRIBED OR DISPENSED,

(C) THE DATE OF THE PRESCRIPTION OR DISPENSING,

(D) THE QUANTITY PRESCRIBED OR DISPENSED,

(E) THE PRESCRIBER, AND

(F) THE DISPENSER.

2. EACH DISPENSER SHALL SUBMIT THE REQUIRED INFORMATION AS FREQUENTLY AS SPECIFIED BY THE DEPARTMENT.

3. THE DEPARTMENT MAY GRANT A WAIVER OF ELECTRONIC SUBMISSION TO ANY DISPENSER FOR GOOD CAUSE, INCLUDING FINANCIAL HARDSHIP, AS DETERMINED BY THE DEPARTMENT. THE WAIVER SHALL STATE THE FORMAT AND FREQUENCY WITH WHICH THE DISPENSER SHALL SUBMIT THE REQUIRED INFORMATION.

S 3360. ACCESS TO THE PRESCRIPTION MONITORING INFORMATION; CONFIDENTIALITY. 1. EXCEPT AS INDICATED IN SUBDIVISIONS TWO, THREE, AND FOUR OF THIS SECTION, PRESCRIPTION MONITORING INFORMATION SUBMITTED TO THE DEPARTMENT SHALL BE CONFIDENTIAL AND NOT SUBJECT TO PUBLIC OR OPEN RECORDS LAWS.

2. THE DEPARTMENT SHALL REVIEW THE PRESCRIPTION MONITORING INFORMATION. IF THERE IS REASONABLE CAUSE TO BELIEVE A VIOLATION OF LAW OR BREACH OF OCCUPATIONAL STANDARDS MAY HAVE OCCURRED, THE DEPARTMENT SHALL NOTIFY THE APPROPRIATE LAW ENFORCEMENT AND OCCUPATIONAL LICENSING, CERTIFICATION OR REGULATORY AGENCY OR ENTITY, AND PROVIDE PRESCRIPTION MONITORING INFORMATION REQUIRED FOR AN INVESTIGATION.

3. THE DEPARTMENT MAY PROVIDE PRESCRIPTION MONITORING INFORMATION FOR PUBLIC RESEARCH, POLICY OR EDUCATION PURPOSES, TO THE EXTENT ALL INFORMATION REASONABLY LIKELY TO REVEAL THE PATIENT OR OTHER PERSON WHO IS THE SUBJECT OF THE INFORMATION HAS BEEN REMOVED.

4. THE FOLLOWING PERSONS, AFTER SUCCESSFUL COMPLETION OF THE EDUCATIONAL COURSES IDENTIFIED IN SUBDIVISION ONE OF SECTION THIRTY-THREE HUNDRED SIXTY-ONE OF THIS TITLE, MAY ACCESS THE PRESCRIPTION MONITORING INFORMATION IN THE SAME OR SIMILAR MANNER, AND FOR THE SAME OR SIMILAR PURPOSES, AS THOSE PERSONS ARE AUTHORIZED TO ACCESS SIMILAR CONFIDENTIAL INFORMATION UNDER FEDERAL AND STATE LAW AND REGULATION.

(A) A CRIMINAL JUSTICE AGENCY WHICH ENFORCES THE LAWS OF THIS STATE OR THE UNITED STATES RELATING TO CONTROLLED SUBSTANCES AND WHICH HAS INITIATED AN ACTIVE INVESTIGATION INVOLVING A SPECIFIC VIOLATION OF LAW.

(B) A PRACTITIONER, AS DEFINED IN SECTION THIRTY-THREE HUNDRED TWO OF THIS ARTICLE, OR AN EMPLOYEE OF THE PRACTITIONER WHO IS ACTING ON BEHALF OF AND AT THE DIRECTION OF THE PRACTITIONER, WHO REQUESTS SUCH INFORMATION AND CERTIFIES THAT THE INFORMATION IS NECESSARY TO PROVIDE MEDICAL TREATMENT TO A CURRENT PATIENT.

(C) A PHARMACIST, AS DEFINED IN SECTION THIRTY-THREE HUNDRED TWO OF THIS ARTICLE, OR A PHARMACY INTERN OR PHARMACY TECHNICIAN WHO IS ACTING ON BEHALF OF AND AT THE DIRECTION OF THE PHARMACIST, WHO REQUESTS SUCH INFORMATION AND CERTIFIES THAT THE REQUESTED INFORMATION WILL BE USED TO DISPENSE CONTROLLED SUBSTANCES TO A CURRENT PATIENT.

(D) A PATIENT WHO IS IDENTIFIED IN THE RECORD UPON A WRITTEN REQUEST FOR THE PURPOSE OF VERIFYING THAT INFORMATION.

5. A PERSON WHO HAS KNOWLEDGE BY VIRTUE OF HIS OR HER OFFICE OF THE CONTROLLED SUBSTANCES PRESCRIBED TO OR OBTAINED BY A PARTICULAR PERSON SHALL DISCLOSE SUCH KNOWLEDGE TO A PHARMACY TO INFORM THE PHARMACY THAT SUCH PERSON WHO PRESENTS OR HAS PRESENTED A PRESCRIPTION FOR ONE OR MORE

CONTROLLED SUBSTANCES AT THE PHARMACY MAY HAVE ALSO OBTAINED ONE OR MORE CONTROLLED SUBSTANCES AT ANOTHER PHARMACY WHERE THE CIRCUMSTANCES INDICATE A POSSIBILITY OF DRUG ABUSE OR DIVERSION, POTENTIAL HARM TO THE PERSON, OR SIMILAR GROUNDS UNDER REGULATIONS OF THE COMMISSIONER.

6. THE DEPARTMENT SHALL BE IMMUNE FROM CIVIL LIABILITY ARISING FROM INACCURACY OF ANY OF THE INFORMATION SUBMITTED TO THE DEPARTMENT PURSUANT TO THIS TITLE.

S 3361. EDUCATION AND TREATMENT. 1. THE DEPARTMENT OF HEALTH SHALL, IN CONSULTATION WITH THE BOARD, IMPLEMENT THE FOLLOWING EDUCATION COURSES:

(A) AN ORIENTATION COURSE DURING THE IMPLEMENTATION PHASE OF THE PRESCRIPTION MONITORING PROGRAM.

(B) A COURSE FOR PERSONS WHO ARE AUTHORIZED TO ACCESS THE PRESCRIPTION MONITORING INFORMATION BUT WHO DID NOT PARTICIPATE IN THE ORIENTATION COURSE.

(C) A COURSE FOR PERSONS WHO ARE AUTHORIZED TO ACCESS THE PRESCRIPTION MONITORING INFORMATION BUT WHO HAVE VIOLATED LAWS OR BREACHED OCCUPATIONAL STANDARDS INVOLVING DISPENSING, PRESCRIBING AND USE OF SUBSTANCES MONITORED BY THE PRESCRIPTION MONITORING PROGRAM.

(D) A CONTINUING EDUCATION COURSE FOR HEALTH CARE PROFESSIONALS DEVELOPED BY THE AMERICAN SOCIETY OF ADDICTION MEDICINE AND THE STATE MEDICAL SOCIETY ON PRESCRIBING PRACTICES, PHARMACOLOGY AND IDENTIFICATION, TREATMENT AND REFERRAL OF PATIENTS ADDICTED TO OR ABUSING SUBSTANCES MONITORED BY THE PRESCRIPTION MONITORING PROGRAM.

WHEN APPROPRIATE, THE DEPARTMENT, IN CONSULTATION WITH THE BOARD, SHALL DEVELOP THE CONTENT OF THE EDUCATION COURSES DESCRIBED IN PARAGRAPHS (A), (B) AND (C) OF THIS SUBDIVISION.

2. THE DEPARTMENT, IN CONSULTATION WITH THE BOARD, SHALL STRONGLY RECOMMEND THE APPLICATION OF A COURSE TO INFORM THE PUBLIC ABOUT USE, DIVERSION AND ABUSE OF, AND ADDICTION TO, SUBSTANCES MONITORED BY THE PRESCRIPTION MONITORING PROGRAM.

3. THE DEPARTMENT, IN CONSULTATION WITH THE BOARD, SHALL, WHEN APPROPRIATE:

(A) WORK WITH ASSOCIATIONS FOR IMPAIRED PROFESSIONALS TO ENSURE INTERVENTION, TREATMENT AND ONGOING MONITORING AND FOLLOW-UP; AND

(B) ENSURE THAT INDIVIDUAL PATIENTS WHO ARE IDENTIFIED AND WHO HAVE BECOME ADDICTED TO SUBSTANCES MONITORED BY THE PRESCRIPTION MONITORING PROGRAM RECEIVE ADDICTION TREATMENT.

S 3362. UNLAWFUL ACTS AND PENALTIES. 1. A DISPENSER WHO KNOWINGLY FAILS TO SUBMIT PRESCRIPTION MONITORING INFORMATION TO THE DEPARTMENT AS REQUIRED BY THIS TITLE SHALL BE SUBJECT TO A FINE OF ONE THOUSAND FIVE HUNDRED DOLLARS.

2. A PERSON AUTHORIZED TO HAVE PRESCRIPTION MONITORING INFORMATION PURSUANT TO THIS TITLE WHO KNOWINGLY DISCLOSES SUCH INFORMATION IN VIOLATION OF THIS TITLE SHALL BE SUBJECT TO A FINE OF ONE THOUSAND DOLLARS.

3. A PERSON AUTHORIZED TO HAVE PRESCRIPTION MONITORING INFORMATION PURSUANT TO THIS TITLE WHO USES SUCH INFORMATION IN A MANNER OR FOR A PURPOSE IN VIOLATION OF THIS TITLE SHALL BE SUBJECT TO A FINE OF FIVE HUNDRED DOLLARS.

S 3363. EVALUATION, DATA ANALYSIS AND REPORTING. 1. THE DEPARTMENT SHALL, IN CONSULTATION WITH THE BOARD, DESIGN AND IMPLEMENT AN EVALUATION COMPONENT TO IDENTIFY COST-BENEFITS OF THE PRESCRIPTION MONITORING PROGRAM, AND OTHER INFORMATION RELEVANT TO POLICY, RESEARCH AND EDUCATION INVOLVING SUBSTANCES MONITORED BY THE PRESCRIPTION MONITORING PROGRAM.

2. THE DEPARTMENT SHALL REPORT TO THE LEGISLATURE ON A PERIODIC BASIS, NO LESS THAN ANNUALLY, ABOUT THE COST-BENEFITS AND OTHER INFORMATION NOTED IN SUBDIVISION ONE OF THIS SECTION.

S 3364. RULES AND REGULATIONS. THE DEPARTMENT SHALL PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS TITLE.

S 3365. SEVERABILITY. IF ANY PROVISION OF THIS TITLE OR APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THE TITLE WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISIONS OR APPLICATIONS, AND TO THIS END THE PROVISIONS OF THIS TITLE ARE SEVERABLE.

S 2. The department of health shall, within 180 days after the effective date of this act, and after consultation with the Prescription Monitoring Program Advisory Board, establish regulations requiring pharmacists to access the prescription monitoring program before filling a prescription for a controlled substance. The department of health shall also establish protocols to be followed by pharmacists after accessing such information.

S 3. The Prescription Monitoring Program Advisory Board shall, within 180 days after the effective date of this act, make recommendations and submit a written report to the legislature concerning integrating prescribers into the electronic submission requirements of the prescription monitoring program as well as any possible changes to the official New York state prescription form for controlled substances to include more information concerning a patient's controlled substance use.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.