SENATE, No. 2119

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED MAY 19, 2014

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Implements certain recommendations of the SCI report entitled “Scenes from an Epidemic” concerning prescription drug and heroin abuse.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning drug abuse and amending and supplementing various parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) a. For the purposes of this section:

"Commercial motor vehicle" means every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

"Controlled dangerous substance" has the meaning given the term in N.J.S.2C:35-2.

“Dealer” means any person actively engaged in the business of buying, selling, or exchanging motor vehicles or motorcycles and who has an established place of business.

"Hidden compartment" means a container, space, or enclosure that conceals, hides, or otherwise prevents the discovery of the contents of the container, space, or enclosure and includes, but is not limited to, any of the following: false, altered, or modified fuel tanks; original factory equipment on a vehicle that has been modified to conceal, hide, or prevent the discovery of the modified equipment's contents; or a compartment, space, box, or other closed container that is added or attached to existing compartments, spaces, boxes, or closed containers integrated or attached to a vehicle.

“Manufacturer” means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

"Mobile home” means a house trailer serving as a permanent home and connected to utilities.

"Motor home" means a motor vehicle built on a truck or bus chassis which is equipped to serve as a self-contained living quarters for recreational travel.

"Motor vehicle” means every vehicle propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Noncommercial truck” means every motor vehicle designed primarily for transportation of property, and which is not a "commercial motor vehicle."

“Recreation vehicle” means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

camping or travel purposes and used solely as a family or personal conveyance.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Vehicle" means every device in, upon, or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles and includes, but is not limited to, a motor vehicle, commercial motor vehicle, trailer, noncommercial truck, semitrailer, mobile home, recreation vehicle, or motor home.

b. A person who, with the intent to facilitate the unlawful concealment or transportation of a controlled dangerous substance, knowingly designs, builds, constructs, or fabricates, or publishes plans or instructions to design, build, construct, or fabricate, a vehicle with a hidden compartment, or modifies or alters any portion of a vehicle in order to create or add a hidden compartment, is guilty of a crime of the third degree.

c. A person who knowingly operates, possesses, or uses a vehicle with a hidden compartment with knowledge that the hidden compartment is used or intended to be used to facilitate the unlawful concealment or transportation of a controlled dangerous substance is guilty of a crime of the fourth degree.

d. This section shall not apply to:

(1) any law enforcement officer acting in the performance of the law enforcement officer's duties;

(2) any licensed motor vehicle dealer or motor vehicle manufacturer that in the ordinary course of business repairs, purchases, receives in trade, leases, or sells a motor vehicle; or

(3) any box, safe, container, or other item added to a vehicle for the purpose of securing valuables, electronics, or firearms provided that, at the time of discovery, the box, safe, container, or other item added to the vehicle does not contain a controlled substance or visible residue of a controlled substance.

e. This section shall not be construed to impose a duty on a licensed motor vehicle dealer to know, discover, report, repair, or disclose the existence of a hidden compartment.

2. (New Section) a. As used in this section:

"Health care professional" means a person who is licensed, registered, or otherwise authorized to practice as a health care professional pursuant to Title 45 or Title 52 of the Revised Statutes.

"Improper prescribing" means the prescribing or ordering of a drug in an indiscriminate manner, or not in good faith, or without good cause, or otherwise in violation of any State or federal law or regulation, and which constitutes professional misconduct as determined by the board. For the purposes of this section, the issuance of an initial improper prescription or order and any refill of that initial prescription or order shall each be counted as a separate instance of improper prescribing.

b. Notwithstanding the provisions of subsection a. of section 12 of P.L.1978, c.73 (C.45:1-25) to the contrary, and in addition to any other penalty provided by law, a health care professional who engages in improper prescribing shall be liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation.

3. Section 25 of P.L.2007, c.244 (C.45:1-45) is amended to read as follows:

25. Prescription Monitoring Program; requirements.

a. There is established the Prescription Monitoring Program in the Division of Consumer Affairs in the Department of Law and Public Safety. The program shall consist of an electronic system for monitoring controlled dangerous substances that are dispensed in or into the State by a pharmacist in an outpatient setting.

b. Each pharmacy permit holder shall submit, or cause to be submitted, to the division, by electronic means in a format and at such intervals as are specified by the director, information about each prescription for a controlled dangerous substance dispensed by the pharmacy that includes:

(1) The surname, first name, and date of birth of the patient for whom the medication is intended;

(2) The street address and telephone number of the patient;

(3) The date that the medication is dispensed;

(4) The number or designation identifying the prescription and the National Drug Code of the drug dispensed;

(5) The pharmacy permit number of the dispensing pharmacy;

(6) The prescribing practitioner's name and Drug Enforcement Administration registration number;

(7) The name, strength, and quantity of the drug dispensed, the number of refills ordered, and whether the drug was dispensed as a refill or a new prescription;

(8) The date that the prescription was issued by the practitioner;

(9) The source of payment for the drug dispensed; and

(10) Such other information, not inconsistent with federal law, regulation, or funding eligibility requirements, as the director determines necessary.

The pharmacy permit holder shall submit the information to the division with respect to the prescriptions dispensed during the reporting period not less frequently than once every ⟦30 days⟧ business day, or according to a schedule to be determined by the director if federal law, regulation, or funding eligibility otherwise requires.

c. The division may grant a waiver of electronic submission to any pharmacy permit holder for good cause, including financial hardship, as determined by the director. The waiver shall state the format in which the pharmacy permit holder shall submit the required information.

d. The requirements of this act shall not apply to: the direct administration of a controlled dangerous substance to the body of an ultimate user; or the administration or dispensing of a controlled dangerous substance that is otherwise exempted as determined by the Secretary of Health and Human Services pursuant to the "National All Schedules Prescription Electronic Reporting Act of 2005," Pub.L.109-60.

(cf: P.L.2007, c.244, s.25)

4. Section 26 of P.L.2007, c.244 (C.45:1-46) is amended to read as follows:

26. a. The division shall maintain procedures to ensure privacy and confidentiality of patients and that patient information collected, recorded, transmitted, and maintained is not disclosed, except as permitted in this section, including, but not limited to, the use of a password-protected system for maintaining this information and permitting access thereto as authorized under sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), and a requirement that a person as listed in subsection d. of this section provide on-line affirmation of the person's intent to comply with the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) as a condition of accessing the information.

b. The prescription monitoring information submitted to the division shall be confidential and not be subject to public disclosure under P.L.1963, c.73 (C.47:1A-1 et seq.), or P.L.2001, c.404 (C.47:1A-5 et al.).

c. The division shall review the prescription monitoring information provided by a pharmacy permit holder pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). If the division determines that a violation of law or regulations, or a breach of the applicable standards of practice, may have occurred, the division shall notify the appropriate law enforcement agency or professional licensing board, and provide the prescription monitoring information required for an investigation.

d. The division may provide prescription monitoring information to the following persons:

(1) a practitioner authorized to prescribe, dispense, or administer controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient of the practitioner. ⟦Nothing⟧ Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing, or administering medications beyond that which may be required as part of the practitioner's professional practice;

(2) a pharmacist authorized to dispense controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient. ⟦Nothing⟧ Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice;

(3) a designated representative of the State Board of Medical Examiners, New Jersey State Board of Dentistry, New Jersey Board of Nursing, New Jersey State Board of Optometrists, New Jersey State Board of Pharmacy, State Board of Veterinary Medical Examiners, or any other board in this State or another state that regulates the practice of persons who are authorized to prescribe or dispense controlled dangerous substances, as applicable, who certifies that he is engaged in a bona fide specific investigation of a designated practitioner whose professional practice was or is regulated by that board;

(4) an officer of a State, federal, or municipal law enforcement ⟦officer⟧ agency who is ⟦acting pursuant to a court order and certifies that the officer⟧ is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information shall comply with security protocols established by the director by regulation, which shall at minimum include the following:

(a) clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information;

(b) official documentation signed by a representative of the law enforcement agency agreeing to all security requirements;

(c) designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information;

(d) a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information;

(e) submission to periodic audits to ensure compliance with security requirements; and

(f) penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties;

(5) a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) authorized personnel of the division or vendor or contractor responsible for establishing and maintaining the program; and

(8) the controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement.

e. A person listed in subsection d. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify, by means of entering an on-line statement in a form and manner prescribed by regulation of the director, the reasons for seeking to obtain that information.

f. The division shall offer an on-line tutorial for those persons listed in subsection d. of this section, which shall, at a minimum, include: how to access prescription monitoring information; the rights and responsibilities of persons who are the subject of or access this information and the other provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and the regulations adopted pursuant thereto, regarding the permitted uses of that information and penalties for violations thereof; and a summary of the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164 and a hypertext link to the federal Department of Health and Human Services website for further information about the specific provisions of the privacy rule.

g. The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes.

(cf: P.L.2007, c.244, s.26)

5. (New section) Prior to prescribing or dispensing a Schedule II controlled dangerous substance to a patient, a practitioner or pharmacist, as applicable, shall access the prescription monitoring information, as authorized pursuant to subsection d. of section 26 of P.L.2007, c.244 (C.45:1-46), to determine if the patient has received other prescriptions that indicate, in the professional judgment of the practitioner or pharmacist, prescription abuse or diversion.

6. (New section) a. The Division of Consumer Affairs in the Department of Law and Public Safety shall have the authority to gather information on any significant business relationships involving the medical practice of a licensee of the State Board of Medical Examiners. The division may, at the time of a licensee's biennial license renewal, require that a licensee provide information on any medical practice in which the licensee is an owner, part owner, partner, associate, shareholder, or employee, or in which the licensee otherwise has a significant financial interest. This information may include, but need not be limited to, the following:

(1) the name and address of the practice;

(2) any party that conducts business on the premises of the practice, including those not formally associated with the practice;

(3) any non-medical personnel employed by the practice;

(4) any non-medical business with which the practice is associated, including a management company; and

(5) any financial relationship related to the medical practice with any individual who is not a health care professional.

b. The State Board of Medical Examiners shall not approve a licensee's renewal application unless the applicant provides all information required by the division pursuant to subsection a. of this section.

7. Section 1 of P.L.1997, c.249 (C.45:9-22.19) is amended to read as follows:

1. a. A physician licensed pursuant to chapter 9 of Title 45 of the Revised Statutes may prescribe a Schedule II controlled dangerous substance for the use of a patient in any quantity which does not exceed a 30-day supply, as defined by regulations adopted by the State Board of Medical Examiners in consultation with the Department of Health **[**and Senior Services**]**. The physician shall document the diagnosis and the medical need for the prescription in the patient's medical record, in accordance with guidelines established by the State Board of Medical Examiners.

b. A physician may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled dangerous substance, provided that the following conditions are met:

(1) each separate prescription is issued for a legitimate medical purpose by the physician acting in the usual course of professional practice;

(2) the physician provides written instructions on each prescription, other than the first prescription if it is to be filled immediately, indicating the earliest date on which a pharmacy may fill each prescription;

(3) the physician determines that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the physician complies with all other applicable State and federal laws and regulations.

c. The State Board of Medical Examiners shall, by regulation, adopt a policy setting forth clear standards for the use of prescription drugs in pain management. The policy shall emphasize the primary goal of ensuring that suffering patients find relief, and shall also consider the need to protect the public health and safety by limiting access to controlled dangerous substances. In developing the policy, the State Board of Medical Examiners shall consider the provisions of the model policy established by the Federation of State Medical Boards.

(cf: P.L.2009, c.165, s.1)

8. Section 20 of P.L.2003, c.280 (C.45:14-59) is amended to read as follows:

20. The Division of Consumer Affairs in the Department of Law and Public Safety shall establish the format for uniform, non-reproducible, non-erasable safety paper prescription blanks, to be known as New Jersey Prescription Blanks, which format shall include an identifiable logo or symbol that will appear on all prescription blanks and additional security features to prevent erasure or duplication of prescription blanks that can be accomplished with widely available computer technology. The prescription blanks for each prescriber or health care facility shall be numbered consecutively and, if the prescriber or health care facility has a National Provider Identifier, the prescription blank shall include the National Provider Identifier. The division shall approve a sufficient number of vendors to ensure production of an adequate supply of New Jersey Prescription Blanks for practitioners and health care facilities Statewide, but shall limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

(cf: P.L.2007, c.244, s.22)

9. a. The Director of the Division of Consumer Affairs, in consultation with the State Board of Medical Examiners, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of section 3 of this act.

b. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 4 through 6 and 8 of this act.

c. The State Board of Medical Examiners, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

seq.), shall adopt rules and regulations to effectuate the purposes of section 7 of this act.

10. Sections 1 and 2 of this act shall take effect immediately. Sections 3 through 8 shall take effect on the first day of the seventh month next following the date of enactment, but the State Board of Medical Examiners and the Director of the Division of Consumer Affairs may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill implements certain of the recommendations of the State Commission of Investigation's July 2013 report entitled "Scenes from an Epidemic: A Report on the SCI's Investigation of Prescription Pill and Heroin Abuse." The recommendations expand on current law in several areas to strengthen the ability of law enforcement agencies to combat illicit drug distribution and drug use, increase civil penalties related to prescription drug abuse, and impose stronger controls over access to prescription drugs.

Section 1 of the bill would implement recommendation number eight from the report to make it a crime of the third degree to knowingly design, build, construct, or fabricate a motor vehicle equipped with a hidden compartment to be used to unlawfully conceal a controlled dangerous substance, or to alter a motor vehicle to add such a hidden compartment. This section would also make it a crime of the fourth degree to operate or possess a vehicle with a hidden compartment.

Section 2 of the bill would implement recommendation number two from the report to provide that, in addition to any other penalty provided by law, a health care professional who engages in improper prescribing is liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation. Current law provides a maximum fine of $10,000 for the first violation and $20,000 for a second or subsequent violation. This section also specifies that any prescription and any refill of a prescription is each to be counted as a separate instance of improper prescribing.

Section 3 of the bill would implement the third part of recommendation number five from the report to require pharmacies to submit information on dispensed prescriptions at least once each business day, or according to a schedule to be determined by the Director of the Division of Consumer Affairs if federal law, regulation, or funding eligibility otherwise requires. Pharmacies are currently required by the Division of Consumer Affairs to report once each 15 days.

Section 4 of the bill would implement the first part of recommendation number five from the report to provide greater access to prescription monitoring information by law enforcement agencies. Under the bill, an officer of a law enforcement agency who is engaged in a bona fide specific investigation of a designated practitioner or patient may access prescription monitoring information without a court order or grand jury subpoena (required by current law), so long as the agency complies with security protocols established by the director by regulation. The security protocols must, at minimum, include: clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information; official documentation signed by a representative of the law enforcement agency agreeing to all security requirements; designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information; a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information; submission to periodic audits to ensure compliance with security requirements; and penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties.

Section 5 of the bill would implement the second part of recommendation number five from the report to require health care practitioners who prescribe, and pharmacists who dispense, Schedule II drugs to check the information available through the prescription monitoring program prior to doing so in order to determine if the patient has received other prescriptions that indicate prescription abuse or diversion.

Section 6 of the bill would implement recommendation number four from the report to grant the Division of Consumer Affairs authority to gather information on any significant business relationships involving the medical practice of a licensee of the State Board of Medical Examiners. The division may, at the time of a licensee's biennial license renewal, require that a licensee provide information on any medical practice in which the licensee is an owner, part owner, partner, associate, shareholder, or employee, or in which the licensee otherwise has a significant financial interest. This information may include, but need not be limited to: the name and address of the practice; parties that conduct business on the premises of the practice, including those not formally associated with the practice; non-medical personnel employed by the practice; any non-medical business associations, including associations with management companies; and any financial relationships related to the medical practice with individuals who are not health care professionals. The State Board of Medical Examiners would be prohibited from approving a licensee's renewal application unless the applicant provides all information required by the division.

Section 7 of the bill would implement recommendation number one from the report to direct the State Board of Medical Examiners to adopt regulations setting forth clear standards for the use of prescription drugs in pain management. This section would require that the standards emphasize the primary goal of ensuring that suffering patients find relief, and also consider the need to protect the public health and safety by limiting access to controlled dangerous substances. In developing the standards, the State Board of Medical Examiners would be required to consider the provisions of the model policy established by the Federation of State Medical Boards.

Section 8 of the bill would implement recommendation number six from the report to require that New Jersey Prescription Blanks incorporate additional security features to prevent erasure or duplication of prescription blanks that can be accomplished with widely available computer technology. It is expected that this provision will encourage the adoption of regulations similar or identical to those proposed by the Division of Consumer Affairs in November 2012. This section would also require the Division of Consumer Affairs to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.