ASSEMBLY, No. 288

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Requires the Division of Consumer Affairs to establish electronic monitoring system for pain management agreements, to be linked to, and used in association with, Prescription Monitoring Program.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning pain management agreements and the Prescription Monitoring Program, supplementing Title 45 of the Revised Statutes, and amending P.L.2015, c.74.

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

1. (New section) a. Whenever a health care practitioner enters into a pain management agreement with a patient, or an existing pain management agreement is terminated, the health care practitioner named in the agreement shall furnish to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety such information, in such a format and at such intervals, as the director shall prescribe by regulation, for inclusion in an electronic system that will be used to monitor the status of pain management agreements in association with the dispensation of Schedule II controlled dangerous substances. The pain management agreement monitoring system established pursuant to this subsection shall be cross-referenced with the electronic Prescription Monitoring Program system that has been established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45), and, at a minimum: (1) shall identify the first name, surname, and birth date of the patient who entered into the pain management agreement; the type of medications that have been authorized under the agreement; any limits that have been imposed on the patient's acceptance of prescriptions from other practitioners; and, if the agreement has been terminated, the reason for, and date of, such termination; and (2) shall be made available to any practitioner, pharmacist, or other person who accesses prescription monitoring information, pursuant to section 8 of P.L.2015, c.74 (C.45:1-46.1), when prescribing or dispensing a Schedule II controlled dangerous substance to a patient with chronic pain.

b. As used in this section, "pain management agreement" means a written contract or agreement that: (1) is executed between a health care practitioner and a patient, prior to the commencement of treatment for chronic pain using a Schedule II controlled dangerous substance, as a means to prevent the possible development of chemical dependency in the patient; (2) documents the understanding of both the health care practitioner and the patient regarding the patient's pain management plan; (3) identifies the patient's rights in association with treatment, and the patient's obligations in relation to the responsible use, discontinuation of use, and storage of Schedule II controlled dangerous substances, including any restrictions on the refill of prescriptions or the acceptance of Schedule II prescriptions from other health care

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.

practitioners; (4) identifies the specific medications and other modes of treatment, including physical therapy or exercise, relaxation, or psychological counseling, that are included a part of the pain management plan; and (5) allows for termination of the agreement by the patient, at any time, or by the health care practitioner if there is reason for the practitioner to believe that the patient is not complying with the terms of the agreement or has misrepresented their level of pain or level of compliance with the agreement.

2. Section 8 of P.L.2015, c.74 (C.45:1-46.1) is amended to read as follows:

8. a. (1) (a) Except as provided in subsection b. of this section, a practitioner, or **[**other**]** another person who is authorized by a practitioner to access prescription monitoring information pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46) , shall access prescription monitoring information the first time the practitioner or other person prescribes a Schedule II controlled dangerous substance to a new patient for acute or chronic pain. **[**In addition, for any prescription of**]** If the new patient is being prescribed a Schedule II controlled dangerous substance for the treatment of chronic pain, the practitioner or other person accessing the prescription monitoring information pursuant to this subparagraph shall additionally access any linked information that has been compiled pursuant to section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) in relation to the existence or termination of any pain management agreements.

(b) Whenever a Schedule II controlled dangerous substance **[**for**]** is prescribed to a new or current patient for acute or chronic pain **[**which is written**]**, either on or after the effective date of P.L.2015, c.74 (C.45:1-46.1 et al.) **[**a**]**, the practitioner or other authorized person shall access prescription monitoring information on a quarterly basis during the period of time the patient continues to receive such prescriptions. If the new or current patient continues to receive prescriptions for Schedule II controlled dangerous substances for the treatment of chronic pain, the practitioner or other person accessing prescription monitoring information on a quarterly basis pursuant to this subparagraph shall additionally access, at the same quarterly intervals, any linked information that has been compiled pursuant to section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) in relation to the existence or termination of pain management agreements.

(2) (a) A pharmacist shall not dispense a Schedule II controlled dangerous substance to any person without first accessing the prescription monitoring information, as authorized pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46), in order to determine if the person has received other prescriptions that

indicate misuse, abuse, or diversion, if the pharmacist has a reasonable belief that the person may be seeking **[**a**]** the controlled dangerous substance, in whole or in part, for any purpose other than the treatment of an existing medical condition, such as for purposes of misuse, abuse, or diversion.

A pharmacist shall not dispense a Schedule II controlled dangerous substance to any person for the treatment of chronic pain without first accessing the information that has been compiled pursuant to section 1 of P.L. ,c. (C.) (pending before the Legislature as this bill) and linked to the Prescription Monitoring Program, in order to determine whether the person is subject to, and is acting in compliance with, a pain management agreement, or was previously subject to a pain management agreement that has been terminated by the practitioner on the basis of the patient's misrepresentation of facts or failure to adequately comply with the medication regimen, if the pharmacist has a reasonable belief that the person may be seeking the controlled dangerous substance, in whole or in part, for any purpose other than the treatment of chronic pain, such as for purposes of misuse, abuse, or diversion.

(b) A pharmacist shall not dispense a prescription to a person other than the patient for whom the prescription is intended, unless the person picking up the prescription provides personal identification to the pharmacist, and the pharmacist, as required by subsection b. of section 25 of P.L.2007, c.244 (C.45:1-45), inputs that identifying information into the Prescription Monitoring Program if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. The provisions of this subparagraph shall not take effect until the director determines that the Prescription Monitoring Program has the technical capacity to accept such information.

b. The provisions of subsection a. of this section shall not apply to:

(1) a veterinarian;

(2) a practitioner or the practitioner's agent administering methadone, or another controlled dangerous substance designated by the director as appropriate for treatment of a patient with a substance abuse disorder, as interim treatment for a patient on a waiting list for admission to an authorized substance abuse treatment program;

(3) a practitioner administering a controlled dangerous substance directly to a patient;

(4) a practitioner prescribing a controlled dangerous substance to be dispensed by an institutional pharmacy, as defined in N.J.A.C.13:39-9.2;

(5) a practitioner prescribing a controlled dangerous substance in the emergency department of a general hospital, provided that the

quantity prescribed does not exceed a five-day supply of the substance;

(6) a practitioner prescribing a controlled dangerous substance to a patient under the care of a hospice;

(7) a situation in which it is not reasonably possible for the practitioner or pharmacist to access the Prescription Monitoring Program in a timely manner, no other individual authorized to access the Prescription Monitoring Program is reasonably available, and the quantity of controlled dangerous substance prescribed or dispensed does not exceed a five-day supply of the substance;

(8) a practitioner or pharmacist acting in compliance with regulations promulgated by the director as to circumstances under which consultation of the Prescription Monitoring Program would result in a patient's inability to obtain a prescription in a timely manner, thereby adversely impacting the medical condition of the patient;

(9) a situation in which the Prescription Monitoring Program is not operational as determined by the division or where it cannot be accessed by the practitioner due to a temporary technological or electrical failure, as set forth in regulation;

(10) a practitioner or pharmacist who has been granted a waiver due to technological limitations that are not reasonably within the control of the practitioner or pharmacist, or other exceptional circumstances demonstrated by the practitioner or pharmacist, pursuant to a process established in regulation, and in the discretion of the director; or

(11) a practitioner who is prescribing a controlled dangerous substance to a patient immediately after the patient has undergone an operation, procedure, or treatment for acute trauma, when less than a 30-day supply is prescribed.

(cf: P.L.2015, c.74, s.8)

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

b. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Consumer Affairs shall adopt, immediately upon filing with the Office of Administrative Law, and no later than the 90th day after the effective date of this act, such regulations as the director deems necessary to implement the provisions of this act. Regulations adopted pursuant to this subsection shall be effective until the adoption of rules and regulations pursuant to subsection a. of this section, and shall be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

4. This act shall take effect immediately.

STATEMENT

This bill would require health care practitioners in the State to submit information to the Division of Consumer Affairs (DCA) regarding the existence or termination of pain management agreements. This information would be included by DCA in an electronic system that will be used to monitor the status of pain management agreements in association with the dispensation of Schedule II controlled dangerous substances under the State's Prescription Monitoring Program (PMP).

"Pain management agreement" would be defined by the bill to mean a written contract or agreement that: (1) is executed between a health care practitioner and a patient, prior to the commencement of treatment for chronic pain using a Schedule II controlled dangerous substance, as a means to prevent the possible development of chemical dependency in the patient; (2) documents the understanding of both the health care practitioner and the patient regarding the patient's pain management plan; (3) identifies the patient's rights in association with treatment, and the patient's obligations in relation to the responsible use, discontinuation of use, and storage of Schedule II controlled dangerous substances, including any restrictions on the refill of prescriptions or the acceptance of Schedule II prescriptions from other health care practitioners; (4) identifies the specific medications and other modes of treatment, including physical therapy or exercise, relaxation, or psychological counseling, that are included as a part of the pain management plan; and (5) allows for termination of the agreement by the patient, at any time, or by the health care practitioner if there is reason for the practitioner to believe that the patient is not complying with the terms of the agreement or has misrepresented their level of pain or level of compliance with the agreement.

The pain management agreement monitoring system established under the bill would be cross-referenced with the existing electronic PMP system, and, at a minimum: (1) would identify the first name, surname, and birth date of the patient who entered into the agreement; the type of medications that have been authorized under the agreement; any limits that have been imposed on the patient's acceptance of prescriptions from other practitioners; and, if the agreement has been terminated, the reason for, and date of, such termination; and (2) would be made available to any practitioner, pharmacist, or other person who accesses prescription monitoring information, pursuant to section 8 of P.L.2015, c.74 (C.45:1-46.1), when prescribing or dispensing a Schedule II controlled dangerous substance to a patient with chronic pain.

A practitioner or other person authorized by a practitioner to access the PMP would be required to review prescription monitoring information, as well as any linked pain management agreement information, the first time the practitioner or other person prescribes a Schedule II controlled dangerous substance to a patient with chronic pain, and on a quarterly basis thereafter while the patient is continuing to receive prescriptions for Schedule II controlled dangerous substances for the treatment of chronic pain. A pharmacist would similarly be prohibited from dispensing a Schedule II controlled dangerous substance to any person for the treatment of chronic pain without first accessing prescription monitoring information, as well as any linked pain management agreement information, if the pharmacist has a reasonable belief that the person may be seeking the controlled dangerous substance for any purpose other than chronic pain treatment.