ASSEMBLY, No. 3356

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblywoman NANCY J. PINKIN
District 18 (Middlesex)

SYNOPSIS

Exempts physicians from controlled dangerous substance registration requirements of Division of Consumer Affairs.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning physicians and amending P.L.1970, c.226 and P.L.2007, c.244.

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

1. Section 10 of P.L.1970, c.226 (C.24:21-10) is amended to read as follows:

10. Registration requirements. a. Every person who manufactures, distributes, or dispenses any controlled dangerous substance within this State or who proposes to engage in the manufacture, distribution, or dispensing of any controlled dangerous substance within this State, shall obtain a registration issued by the division in accordance with rules and regulations promulgated by it.

b. Persons registered by the director under this act to manufacture, distribute, dispense, or conduct research with controlled dangerous substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

c. The following persons shall not be required to register and may lawfully have under their control or possess controlled dangerous substances under the provisions of P.L.1970, c.226 (C.24:21-1 et seq.), as amended and supplemented; provided, however, that nothing in this section shall be construed as conferring on a person who is not registered or licensed as a practitioner or as a pharmacist any authority, right, or privilege that is not granted him by the laws of this State:

(1) An agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled dangerous substance if such agent is acting in the usual course of his business or employment;

(2) A common carrier or warehouseman, or an employee thereof, whose possession of any controlled dangerous substance is in the usual course of his business or employment;

(3) An ultimate user or a person in possession of any controlled dangerous substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance;

(4) Peace officers or employees in the performance of their official duties requiring possession or control of controlled dangerous substances; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is authorized for the purpose of aiding peace officers in performing their official duties; or

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 thus is new matter.

(5) A physician licensed pursuant to Title 45 of the Revised Statutes.

d. The director may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

e. A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled dangerous substances.

f. The director is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

(cf: P.L.2007, c.244, s.9)

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

26. Access to prescription information.

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 h. or i. of this section provide 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). The review shall include, but not be limited to:

(1) a review to identify whether any person is obtaining a prescription in a manner that may be indicative of misuse, abuse, or diversion of a controlled dangerous substance. The director shall establish guidelines regarding the terms "misuse," "abuse," and "diversion" for the purposes of this review. When an evaluation of the information indicates that a person may be obtaining a prescription for the same or a similar controlled dangerous substance from multiple practitioners or pharmacists during the same time period, the division may provide prescription monitoring information about the person to practitioners and pharmacists; and

(2) a review to identify whether a violation of law or regulation or a breach of the applicable standards of practice by any person

may have occurred, including, but not limited to, diversion of a controlled dangerous substance. If the division determines that such a violation or breach 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. (Deleted by amendment, P.L.2015, c.74)

e. (Deleted by amendment, P.L.2015, c.74)

f. (Deleted by amendment, P.L.2015, c.74)

g. (Deleted by amendment, P.L.2015, c.74)

h. (1) A practitioner <u>other than a physician</u> shall register to access prescription monitoring information upon initial application for, or renewal of, the practitioner's CDS registration. <u>A physician shall register to access prescription monitoring information upon initial application for, or renewal of, the physician’s license to practice medicine or surgery.</u>

(2) The division shall provide to a pharmacist who is employed by a current pharmacy permit holder online access to prescription monitoring information for the purpose of providing health care to a current patient or verifying information with respect to a patient or a prescriber.

(3) The division shall provide to a practitioner who has a current CDS registration <u>and to a licensed physician</u> online access to prescription monitoring information for the purpose of providing health care to a current patient or verifying information with respect to a patient or a prescriber. The division shall also grant online access to prescription monitoring information to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice, in order to minimize the burden to practitioners to the extent practicable while protecting the confidentiality of the prescription monitoring information obtained. The director shall establish, by regulation, the terms and conditions under which a practitioner may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, and such other matters as the division may deem appropriate.

(4) The division shall provide online access to prescription monitoring information to as many medical or dental residents as are authorized by a faculty member of a medical or dental teaching facility to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director shall establish, by regulation, the terms and conditions under which a faculty member of a medical or dental teaching facility may delegate that authorization, including procedures for authorization

and termination of authorization, provisions for maintaining confidentiality, provisions regarding the duration of a medical or dental resident's authorization to access prescription monitoring information, and such other matters as the division may deem appropriate.

(5) (a) The division shall provide online access to prescription monitoring information to:

(i) as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information;

(ii) as many medical scribes working in a hospital's emergency department as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information; and

(iii) as many licensed athletic trainers working in a clinical setting as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information.

(b) The director shall establish, by regulation, the terms and conditions under which a practitioner may delegate authorization pursuant to subparagraph (a) of this paragraph, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, provisions regarding the duration of a certified medical assistant's, medical scribe's, or licensed athletic trainer's authorization to access prescription monitoring information, and provisions addressing such other matters as the division may deem appropriate.

(6) The division shall provide online access to prescription monitoring information to as many registered dental assistants as are authorized by a licensed dentist to access that information and for whom the licensed dentist is responsible for the use or misuse of that information. The director shall establish, by regulation, the terms and conditions under which a licensed dentist may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, provisions regarding the duration of a registered dental assistant's authorization to access prescription monitoring information, and such other matters as the division may deem appropriate.

(7) A person listed in this subsection, as a condition of accessing prescription monitoring information pursuant thereto, shall certify that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner. Such certification shall be furnished through means of an online statement or alternate means authorized by the director, in a form and manner prescribed by rule or regulation adopted by the director. If the information is being accessed by an authorized person using an electronic system authorized pursuant to

subsection q. of this section, the certification may be furnished through the electronic system.

i. The division may provide online access to prescription monitoring information, or may provide access to prescription monitoring information through any other means deemed appropriate by the director, to the following persons:

(1) authorized personnel of the division or a vendor or contractor responsible for maintaining the Prescription Monitoring Program;

(2) authorized personnel of the division responsible for administration of the provisions of P.L.1970, c.226 (C.24:21-1 et seq.);

(3) the State Medical Examiner, a county medical examiner, a deputy or assistant county medical examiner, or a qualified designated assistant thereof, who certifies that the request is for the purpose of investigating a death pursuant to P.L.1967, c.234 (C.52:17B-78 et seq.);

(4) a controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement, or which participates with the division in a system that facilitates the secure sharing of information between states;

(5) a designated representative of the State Board of Medical Examiners, New Jersey State Board of Dentistry, State Board of Nursing, New Jersey State Board of Optometrists, 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 the representative is engaged in a bona fide specific investigation of a designated practitioner or pharmacist whose professional practice was or is regulated by that board;

(6) a State, federal, or municipal law enforcement officer 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, pharmacist, or patient. A law enforcement agency that obtains prescription monitoring information shall comply with security protocols established by the director by regulation;

(7) a designated representative of a state Medicaid or other program who certifies that the representative is engaged in a bona fide investigation of a designated practitioner, pharmacist, or patient;

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

(9) a licensed mental health practitioner providing treatment for substance abuse to patients at a residential or outpatient substance abuse treatment center licensed by the Division of Mental Health and Addiction Services in the Department of Human Services, who

certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The director shall establish, by regulation, the terms and conditions under which a mental health practitioner may request and receive prescription monitoring information. 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 mental health practitioner to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the mental health practitioner's professional practice.

j. A person listed in subsection i. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify the reasons for seeking to obtain that information. Such certification shall be furnished through means of an online statement or alternate means authorized by the director, in a form and manner prescribed by rule or regulation adopted by the director.

k. The division shall offer an online tutorial for those persons listed in subsections h. and i. of this section, which shall, at a minimum, include: how to access prescription monitoring information; the rights of persons who are the subject of this information; the responsibilities of persons who access this information; a summary of 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.

l. The division may request and receive prescription monitoring information from prescription monitoring programs in other states and may use that information for the purposes of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). When sharing data with programs in another state, the division shall not be required to obtain a memorandum of understanding unless required by the other state.

m. The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes, in accordance with the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

n. Nothing shall be construed to prohibit the division from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental

health care practitioners, and other licensed health care professionals.

o. (1) A current patient of a practitioner may request from that practitioner that patient's own prescription monitoring information that has been submitted to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). A parent or legal guardian of a child who is a current patient of a practitioner may request from that practitioner the child's prescription monitoring information that has been submitted to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

(2) Upon receipt of a request pursuant to paragraph (1) of this subsection, a practitioner or health care professional authorized by that practitioner may provide the current patient or parent or legal guardian, as the case may be, with access to or a copy of the prescription monitoring information pertaining to that patient or child.

(3) The division shall establish a process by which a patient, or the parent or legal guardian of a child who is a patient, may request a pharmacy permit holder that submitted prescription monitoring information concerning a prescription for a controlled dangerous 【substances】 substance for that patient or child to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) to correct information that the person believes to have been inaccurately entered into that patient's or child's prescription profile. Upon confirmation of the inaccuracy of any such entry into a patient's or child's prescription profile, the pharmacy permit holder shall be authorized to correct any such inaccuracies by submitting corrected information to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). The process shall provide for review by the Board of Pharmacy of any disputed request for correction, which determination shall be appealable to the director.

p. The division shall take steps to ensure that appropriate channels of communication exist to enable any licensed health care professional, licensed pharmacist, mental health practitioner, pharmacy permit holder, or other practitioner who has online access to the Prescription Monitoring Program pursuant to this section to seek or provide information to the division related to the provisions of this section.

q. (1) The division may make prescription monitoring information available on electronic systems that collect and display health information, such as an electronic system that connects hospital emergency departments for the purpose of transmitting and obtaining patient health data from multiple sources, or an electronic system that notifies practitioners of information pertaining to the treatment of overdoses; provided that the division determines that

any such electronic system has appropriate security protections in place.

(2) Practitioners who are required to access prescription monitoring information pursuant to section 8 of P.L.2015, c.74 (C.45:1-46.1) may discharge that responsibility by accessing one or more authorized electronic systems into which the prescription monitoring information maintained by the division has been integrated.

(cf: P.L.2017, c.341, s.3)

3. This act shall take effect immediately.

STATEMENT

This bill eliminates the requirement that physicians register with the Division of Consumer Affairs in the Department of Law and Public Safety as a condition of possessing and dispensing controlled dangerous substances in New Jersey. Nothing in the bill will affect the requirement for physicians to register with the federal Drug Enforcement Administration as a condition of prescribing, dispensing, conducting research with, or engaging in other authorized activities involving controlled dangerous substances.