



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0433/P5
MPG:emw&kjf:jm

DOA:.....Potts, BB0148 - Move prescription drug monitoring program to controlled substances board.

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

SAFETY AND PROFESSIONAL SERVICES

PROFESSIONAL LICENSURE

Current law requires the Pharmacy Examining Board (PEB) to establish by rule and administer a prescription drug monitoring program (PDMP). The PDMP requires pharmacies and physicians or other practitioners to generate a record documenting each dispensing of a prescription drug by the pharmacy or practitioner that is covered by the PDMP, generally a controlled substance or other drug the PEB identifies as having a substantial potential for abuse. Among other requirements, the pharmacy or practitioner must deliver records generated under the PDMP to the PEB.

This bill transfers the PDMP to the Controlled Substances Board (CSB), which, like the PEB, is attached to DSPS.

Also, under current law, the membership of the CSB consists of all of the following six members:

1. The attorney general or his or her designee.
2. The secretary of health services or his or her designee.
3. The secretary of agriculture, trade and consumer protection or his or her designee.

4. The chairperson of the PEB.
5. One psychiatrist for a three-year term.
6. One pharmacologist for a three-year term.

The bill adds all of the following to the membership of the CSB, for a total of nine members:

1. The chairperson of the Medical Examining Board or his or her designee.
2. The chairperson of the Dentistry Examining Board or his or her designee.
3. The chairperson of the Board of Nursing or his or her designee.

Also under current law, the rules promulgated under the PDMP must permit the PEB to disclose a record generated under the PDMP to relevant state and local agencies. The bill specifies that those agencies include law enforcement and that the circumstances under which the CSB, under the bill, may disclose a record generated under the PDMP include circumstances indicating suspicious or critically dangerous conduct or practices of a pharmacy, pharmacist, practitioner, or patient. The bill requires the CSB to define “suspicious or critically dangerous conduct or practices” for purposes of the PDMP.

Current law further requires the PEB to specify by rule the discipline for failure to comply with the PDMP. Under the bill, the rules promulgated by the CSB must permit the board to refer to the appropriate board for discipline, or the appropriate law enforcement agency for investigation and possible prosecution, a pharmacist, pharmacy, or practitioner that fails to comply with the PDMP, including by failure to generate a record that is required by the PDMP.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.405 (5g) of the statutes is amended to read:

15.405 (5g) CONTROLLED SUBSTANCES BOARD. There is created in the department of safety and professional services a controlled substances board consisting of the attorney general, the secretary of health services, and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board, the chairperson of the medical examining board, the chairperson of the dentistry examining board, and the chairperson of the board of nursing, or a designee; and one psychiatrist and one pharmacologist appointed for 3-year terms.

SECTION 2. 20.165 (1) (hg) of the statutes is amended to read:

20.165 (1) (hg) *General program operations; medical examining board; prescription drug monitoring program.* Biennially, the amounts in the schedule for the licensing, rule-making, and regulatory functions of the medical examining board and the affiliated credentialing boards attached to the medical examining board, except for preparing, administering, and grading examinations; and for the ~~pharmacy examining~~ controlled substances board's operation of the prescription drug monitoring program under s. ~~450.19~~ 961.385. Ninety percent of all moneys received for issuing and renewing credentials under ch. 448 shall be credited to this appropriation.

SECTION 3. 146.82 (1) of the statutes is amended to read:

146.82 (1) CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. 253.12 (2), 255.40, or 979.01; records generated or disclosed pursuant to rules promulgated under s. ~~450.19~~ 961.385; testimony authorized under s. 905.04 (4) (h); or releases made for purposes of health care operations, as defined in [45 CFR 164.501](#), and as authorized under [45 CFR 164](#), subpart E.

SECTION 4. 450.11 (1b) (bm) of the statutes is amended to read:

450.11 (1b) (bm) A pharmacist or other person dispensing or delivering a drug shall legibly record the name on each identification card presented under par. (b) to the pharmacist or other person, and the name of each person to whom a drug is dispensed or delivered subject to par. (e) 2., and shall maintain that record for a time established by the board by rule or, for a record that is subject to s. ~~450.19~~ 961.385,

until the name is delivered to the controlled substances board under s. 450.19 961.385, whichever is sooner.

SECTION 5. 450.19 of the statutes is renumbered 961.385, and 961.385 (1) (ar), (2) (a) 3., (c) and (f) and (2m) (b), as renumbered, are amended to read:

961.385 (1) (ar) "Practitioner" has the meaning given in s. 450.01 (17) but does not include a veterinarian licensed under ch. 453 89.

****NOTE: This is reconciled s. 450.19 (1) (ar). This SECTION has been affected by drafts with the following LRB numbers: -0433/P4 and -1053/P2.

961.385 (2) (a) 3. The prescription order is for a monitored prescription drug that is a substance listed in the schedule in s. 961.22 and is not a narcotic drug, as defined in s. 961.01 (15), and the prescription order is for a number of doses that is intended to last the patient 7 days or less.

(c) Specify the persons to whom a record may be disclosed and the circumstances under which the disclosure may occur. The rule promulgated under this paragraph shall permit the board to ~~share~~ disclose a record generated by the program ~~with~~ to relevant state and local boards and agencies, including law enforcement, and relevant agencies of other states, including under circumstances indicating suspicious or critically dangerous conduct or practices of a pharmacy, pharmacist, practitioner, or patient. The board shall define what constitutes suspicious or critically dangerous conduct or practices for purposes of the rule promulgated under this paragraph.

(f) ~~Specify~~ Permit the board to refer to the appropriate board for discipline for failure, or the appropriate law enforcement agency for investigation and possible prosecution, a pharmacist, pharmacy, or practitioner that fails to comply with rules

promulgated under this subsection, including by failure to generate a record that is required by the program.

(2m) (b) After consultation with representatives of licensed pharmacists and pharmacies, and subject to the approval of the secretary of safety and professional services, the board may delay the requirement that a record delivered to the board contain the name recorded under s. 450.11 (1b) (bm) for an additional period beyond the date specified in par. (a).

SECTION 9138. Nonstatutory provisions; Safety and Professional Services.

(1) TRANSFER OF PRESCRIPTION DRUG MONITORING PROGRAM.

(a) *Assets and liabilities.* The assets and liabilities of the pharmacy examining board that the secretary of safety and professional services determines to be primarily related to the prescription drug monitoring program become the assets and liabilities of the controlled substances board on the effective date of this paragraph.

(b) *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, of the pharmacy examining board that the secretary of safety and professional services determines to be primarily related to the prescription drug monitoring program is transferred to the controlled substances board.

(c) *Contracts.* All contracts that were entered into by the pharmacy examining board, or by the department of safety and professional services on behalf of the pharmacy examining board, that the secretary of safety and professional services determines to be primarily related to the prescription drug monitoring program, and that are in effect on the effective date of this paragraph, remain in effect and are

transferred to the controlled substances board. The controlled substances board shall carry out any obligations under such a contract until the contract is modified or rescinded by the controlled substances board to the extent allowed under the contract.

(d) *Rules and orders.* All rules promulgated, and all orders issued, by the pharmacy examining board that the secretary of safety and professional services determines to be primarily related to the prescription drug monitoring program, and that are in effect on the effective date of this paragraph, remain in effect until their specified expiration date or until modified, amended, rescinded, or repealed by the controlled substances board.

(e) *Pending matters.* Any matter pending with the pharmacy examining board that the secretary of safety and professional services determines to be primarily related to the prescription drug monitoring program is transferred to the controlled substances board, and all materials submitted to or actions taken by the pharmacy examining board with respect to the pending matter are considered as having been submitted to or taken by the controlled substances board.

(END)