CHAPTER 27
FORMERLY
HOUSE BILL NO. 91
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO CONTROLLED SUBSTANCES.

WHEREAS, Delaware has a robust prescription monitoring program that tracks the prescription of controlled substances; and

WHEREAS, the prescription monitoring program's database allows the state to determine specific prescribers who are prescribing extraordinary quantities of particular controlled substances or prescribing them in a manner that raises either legal or professional concerns; and

WHEREAS, a mechanism should be created to allow an informed group of individuals to screen potential cases of legal or professional misconduct highlighted by the prescription monitoring program's database and refer those cases to appropriate professional oversight organizations for further review.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4798. The Delaware Prescription Monitoring Program.

(*l*) The Office of Controlled Substances shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in this section.

(1) If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the Office of Controlled Substances shall notify the appropriate law enforcement or professional licensure, certification, or regulatory agency or entity and shall provide prescription information required for an investigation. <u>If there is reasonable cause to believe a breach of professional standards may have occurred, the PMP Advisory Committee shall notify the professional licensure, certification, or regulatory agency or entity and shall provide prescription information required for an investigation. In determining whether reasonable cause exists under this paragraph, the Office of Controlled Substances shall regularly examine data generated by the PMP, and promptly seek the direct input of the PMP Advisory Committee with respect to any cases that meet objective thresholds set by the PMP Advisory Committee. Agencies receiving referrals pursuant to this subsection shall promptly inform the Office of Controlled Substances of the disposition of any referral, and the reason for that disposition.</u>

(2) The Office of Controlled Substances may provide data in the prescription monitoring program in the form of a report to the following persons:

a. A prescriber, or other person authorized by the prescriber, or a dispenser, or other person authorized by the dispenser, who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide patient;

b. An individual who requests the individual's own prescription monitoring information in accordance with procedures established pursuant to regulations;

c. A designated representative of any Board or Commission pursuant to § 8735(a) of Title 29 responsible for the licensure, regulation, or discipline of prescribers, dispensers or other persons authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

d. A local, state, or federal law-enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of the laws governing controlled substances and who is involved in a bona fide specific drug-related investigation in which a report of suspected criminal activity involving controlled substances by an identified suspect has been made, and provided that such information be relevant and material to such investigation, limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and include identifying information only ~~if nonidentifying information could not be used~~ upon a showing of need;"

e. The Delaware Department of Health and Social Services regarding Medicaid program recipients;

f. A properly convened grand jury pursuant to a subpoena properly issued for the records;

g. Personnel of the Division of Professional Regulation for purposes of administration and enforcement of this section;

h. A licensed chemical dependency professional or licensed professional counselor of mental health who requests information and certifies that the requested information is for a patient enrolled in a substance abuse treatment program receiving treatment from, or under the direction of the chemical dependency professional or professional counselor of mental health.

i. The Chief Medical Examiner or licensed physician designee who requests information and certifies the request is for the purpose of investigating the death of an individual.

j. Qualified personnel for the purpose of bona fide research or education; however, data elements that would reasonably identify a specific recipient, prescriber or dispenser must be deleted or redacted from such information prior to disclosure; and further provided that, release of the information may be made only pursuant to a written agreement between qualified personnel and the Office of Controlled Substances in order to ensure compliance with this subsection.

k. A law enforcement or regulatory agency in connection with any referral required by paragraph (*l*)(1) of this section.

l. The PMP Advisory Committee.

(v) A PMP Advisory Committee is hereby established to provide input, advice, and guidance to the Office of Controlled Substances regarding the maintenance of the PMP. Its duties and powers shall include, but not be limited to, all of the following:

(1) Development of specific criteria for use by the Office of Controlled Substances in referring prescription monitoring information to the Advisory Committee for consideration of notification of law enforcement or professional licensing agencies under paragraph (*l*)(1) of this section.

(2) Discussion of referrals made under paragraph (v)(1) of this section and recommendations to the Office of Controlled Substances regarding notification of law enforcement or professional licensing agencies under paragraph (*l*)(1) of this section.

(3) Recommending improvements in the operation of the PMP, including interoperability with other state PMPs and electronic health information systems and improvements of prescriber and dispenser access to and use of the PMP.

(w) In carrying out its duties under subsection (v) of this section:

(1) Information provided to the PMP Advisory Committee shall be provided in a redacted manner that does not identify the patient, prescriber, dispenser, or other person who is the subject of the information. If the PMP Advisory Committee determines that a referral should be made pursuant to subsection (*l*) of this section, the Office of Controlled Substances shall make the appropriate referral using unredacted information.

(2) The PMP Advisory Committee's documents and meetings in connection with paragraphs (v)(1) and (v)(2) of this section shall not constitute public information, and shall not be subject to open record laws.

(3) The PMP Advisory Committee shall consist of the following members:

a. A member designated by the Medical Society of Delaware.

b. A member designated by the Delaware Pharmacists Society.

c. A member designated by the Secretary of Health and Social Services.

d. A representative with knowledge of state and federal patient privacy laws and regulations designated by the Delaware Department of Justice.

e. A representative designated by the Secretary of Homeland Security.

f. Two public members with relevant experience nominated by the Governor and confirmed by the Senate.

(4) The members of the PMP Advisory Committee shall serve at the pleasure of their respective designating agencies. The members shall elect a chairman from among their membership.

Approved May 30, 2017