House of Representatives

General Assembly

File No. 186

January Session, 2017

Substitute House Bill No. 7052

House of Representatives, March 23, 2017

The Committee on General Law reported through REP. BARAM of the 15th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PREVENTING PRESCRIPTION OPIOID DIVERSION AND ABUSE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (j) of section 21a-254 of the general statutes is amended by adding subdivision (11) as follows (*Effective from passage*):

(NEW) (11) The commissioner may provide controlled substance prescription information obtained in accordance with subdivisions (3) and (4) of this subsection to other state agencies, pursuant to an agreement between the commissioner and the head of such agency, provided the information is obtained for a study of disease prevention and control related to opioid abuse or the study of morbidity and mortality caused by overdoses of controlled substances. The provision of such information shall be in accordance with all applicable state and federal confidentiality requirements.

Sec. 2. Section 21a-262 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Commissioner of Consumer Protection may receive, take into custody or destroy excess or undesired controlled substances and may in his or her discretion deliver, upon application, to any hospital, laboratory, incorporated college, scientific institution or any state or municipal agency or institution not operated for private gain, any controlled substances that have come into his or her custody by authority of this section. In the case of a care-giving or correctional or juvenile training institution having an institutional pharmacy, the Commissioner of Consumer Protection shall deliver such controlled substances only to the licensed pharmacist in charge of such pharmacy. The Commissioner of Consumer Protection may receive and take into custody excess or undesired controlled substances from pharmacists, manufacturers and wholesalers or any other registrant. Said commissioner shall keep a full and complete record of all substances received and of all substances disposed of, showing the exact kinds, quantities and forms of such substances, the persons from whom received and to whom delivered, by whose authority received, delivered and destroyed, and the dates of the receipt, disposal or destruction. Controlled substances and preparations shall at all times be properly safeguarded and securely kept. Minimum security and safeguard standards for the storage, manufacture, sale or distribution of all controlled substances shall be established by regulations adopted hereunder. Controlled substances seized or held as contraband or controlled substances, the title to which cannot be resolved, which controlled substances are not held by law enforcement agencies or court officials as evidence in criminal proceedings, shall be, upon the order of the court, destroyed by the seizing authority or delivered to the Commissioner of Consumer Protection as soon as possible upon resolution of the case or upon ascertaining the status of the unclaimed substance. The agent of the Commissioner of Consumer Protection shall issue a receipt for all such substance obtained. Any loss, destruction or theft of controlled substances shall be reported by a registrant within seventy-two hours to the Commissioner of Consumer Protection as follows: (1) Where, through breakage of the container or other accident, otherwise than in transit, controlled substances are lost

or destroyed, the person having title thereto shall make a signed statement as to the kinds and quantities of controlled substances lost or destroyed and the circumstances involved, and immediately forward the statement to the Commissioner of Consumer Protection. A copy of such statement shall be retained by the registrant; (2) where controlled substances are lost by theft, or otherwise lost or destroyed in transit, the consignee shall, immediately upon ascertainment of the occurrence, file with the Commissioner of Consumer Protection a signed statement of the facts, including a list of the controlled substances stolen, lost or destroyed and documentary evidence that the local authorities were notified. A copy of the statement shall be retained by the registrant. As used in this section, "care-giving institution", "correctional or juvenile training institution", "institutional pharmacy" and "pharmacist" have the same meanings as provided in section 20-571.

(b) For each long-term care facility, two or more of the following persons may jointly dispose of excess stock of controlled substances: A nursing home administrator, a pharmacist consultant, a director of nursing services or an assistant director of nursing services. Such facility shall maintain documentation of any such destruction and disposal for a period of three years and such documentation shall be maintained in a separate log and on a form prescribed by the department.

(c) For each outpatient surgical facility, as defined in section 19a-493b, two or more of the following persons may jointly dispose of excess stock of controlled substances: An administrator, a clinical director or chief of staff, or a nursing supervisor. Such facility shall maintain documentation of any such destruction and disposal for a period of three years and such documentation shall be maintained in a separate log and on a form prescribed by the department.

(d) A registered nurse licensed by the Department of Public Health and employed by a home health care agency, as defined in section 19a-490, may, along with a designated representative of the patient,

oversee the destruction and disposal of the patient's controlled substances, using the recommendations for the proper disposal of prescription drugs on the Internet web site of the Department of Consumer Protection. Such registered nurse shall maintain written or electronic documentation for a period of three years of any such destruction and disposal on a form prescribed by the Commissioner of Consumer Protection. Such written or electronic documentation shall be maintained with the patient's medical record. Nothing in this subsection shall prevent the registered nurse and patient representative from depositing the patient's controlled substances in a police department prescription drug drop box.

Sec. 3. Section 21a-249 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2018*):

(a) All prescriptions for controlled drugs shall include (1) the name and address of the patient, or the name and address of the owner of an animal and the species of the animal, (2) whether the patient is an adult or a child, or his specific age, (3) the compound or preparation prescribed and the amount thereof, (4) directions for use of the medication, (5) the name and address of the prescribing practitioner, (6) the date of issuance, and (7) the Federal Registry number of the practitioner. No prescription blank containing a prescription for a schedule II substance shall contain more than one prescription. No prescription or order for a controlled substance issued by a practitioner to an inanimate object or thing shall be considered a valid prescription within the meaning of this chapter.

(b) **[**Written prescriptions shall be written in ink or in indelible pencil or by typewriter. No duplicate, carbon or photographic copies and no printed or rubber-stamped orders shall be considered valid prescriptions within the meaning of this chapter. No prescription or order for any controlled substance issued by a practitioner to an inanimate object or thing shall be considered a valid prescription within the meaning of this chapter.**]** Each licensed practitioner who the Department of Consumer Protection authorizes to prescribe controlled

substances, within the scope of practice of his or her license, shall electronically transmit the controlled substance prescription to a pharmacy. Electronically transmitted prescriptions shall be promptly printed out in hardcopy or created as an electronic record and filed by the prescriber. Electronically transmitted prescriptions shall be consistent with the requirements of the federal Controlled Substances Act, 21 USC 801, as amended from time to time. All records shall be kept on the premises of the licensed practitioner and maintained in such form as to be readily available for inspection by the commissioner, his or her authorized agent or other persons, as authorized in section 21a-265, at reasonable times and shall be kept on file for three years. For purposes of this subsection and subsections (c), (d) and (e) of this section, the term "electronically transmit" means to transmit by computer modem or other similar electronic device.

(c) A licensed practitioner shall not be required to electronically transmit a prescription when:

(1) Electronic transmission is not available due to a temporary technological or electrical failure. For purposes of this subsection, "temporary technological or electrical failure" means failure of a computer system, application or device or the loss of electrical power to such system, application or device, or any other service interruption to such system, application or device that reasonably prevents the practitioner from utilizing his or her certified application to electronically transmit the prescription in accordance with subsection (b) of this section. In the event of a temporary technological or electrical failure, the practitioner shall, without undue delay, reasonably attempt to correct any cause for the failure that is within his or her control. A practitioner who issues a prescription, but fails to electronically transmit the prescription, as permitted by this subsection, shall document the reason for the practitioner's failure to electronically transmit the prescription in the patient's medical record as soon as practicable, but in no instance more than seventy-two hours following the end of the technological or electrical failure that prevented the electronic transmittal of the prescription;

(2) The practitioner reasonably determines that it would be impractical for the patient to obtain substances prescribed by an electronically transmitted prescription in a timely manner and that such delay would adversely impact the patient's medical condition, provided if such prescription is for a controlled substance, the quantity of such controlled substance does not exceed a five-day supply for the patient, if the controlled substance was used in accordance with the directions for use. A practitioner who issues a prescription, but fails to electronically transmit the prescription, as permitted by this subsection, shall document the reason for the practitioner's failure to electronically transmit the prescription in the patient's medical record;

(3) The prescription is to be dispensed by a pharmacy located outside this state. A practitioner who issues a prescription, but fails to electronically transmit the prescription, as permitted by this subsection, shall document the reason for the practitioner's failure to electronically transmit the prescription in the patient's medical record;

(4) Use of an electronically transmitted prescription may negatively impact patient care, such as a prescription containing two or more products to be compounded by a pharmacist, a prescription for direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, a prescription that contains long or complicated directions, a prescription that requires certain elements to be included by the federal Food and Drug and Administration, or an oral prescription communicated to a pharmacist by a health care practitioner for a patient in a chronic and convalescent nursing home, licensed pursuant to chapter 368v; or

(5) Before July 1, 2019, the practitioner demonstrates, in a form and manner prescribed by the commissioner, that such practitioner does not have the technological capacity to issue electronically transmitted prescriptions. For the purposes of this subsection, "technological capacity" means possession of a computer system, hardware or device that can be used to electronically transmit controlled substance prescriptions consistent with the requirements of the federal

Controlled Substances Act, 21 USC 801, as amended from time to time.

(d) Any prescription issued instead of an electronically transmitted prescription pursuant to subsection (c) of this section may be issued as a written order or, to the extent permitted by the federal Controlled Substance Act, 21 USC 801, as from time to time amended, as an oral order or transmitted by facsimile machine. Such oral order or order transmitted by facsimile machine shall be promptly reduced to writing on a prescription blank or a hardcopy printout or created as an electronic record and filed by the pharmacist filling it. No duplicate, carbon or photographic copies and no printed or rubber-stamped orders shall be considered valid prescriptions within the meaning of this chapter.

[(c)**]** (e) Prescriptions for schedule II substances **[**, if in writing,**]** shall be **[**signed**]** electronically transmitted by the prescribing practitioner at the time of issuance and previously signed orders for such schedule II substances shall not be considered valid prescriptions within the meaning of this chapter. No practitioner shall prescribe, dispense or administer schedule II sympathomimetic amines as anorectics, except as may be authorized by regulations adopted by the Departments of Public Health and Consumer Protection acting jointly. To the extent permitted by the federal Controlled Substances Act, 21 USC 801, as from time to time amended, in an emergency, the dispensing of schedule II substances may be made upon the oral order of a prescribing registrant known to or confirmed by the filling pharmacist who shall promptly reduce the oral order to writing on a prescription blank, provided, in such case, such oral order shall be confirmed by the proper completion and mailing or delivery of a prescription prepared by the prescribing registrant to the pharmacist filling such oral order within seventy-two hours after the oral order has been given. Such prescription of the registrant shall be affixed to the temporary prescription prepared by the pharmacist and both prescriptions shall be maintained on file as required in this chapter. The Department of Public Health and the Department of Consumer Protection, acting jointly, may adopt regulations, in accordance with chapter 54, allowing

practitioners to prescribe, dispense or administer schedule II sympathomimetic amines as anorectics under certain specific circumstances. Nothing in this subsection shall be construed to require a licensed pharmacist to determine the diagnosis of a patient prior to dispensing a prescription for such substances to a patient.

[(d) To the extent permitted by the federal Controlled Substances Act, 21 USC 801, as from time to time amended, a prescribing practitioner may issue an oral order or an electronically transmitted prescription order and, except as otherwise provided by regulations adopted pursuant to sections 21a-243, 21a-244 and 21a-244a, such oral order or electronically transmitted prescription order shall be promptly reduced to writing on a prescription blank or a hardcopy printout or created as an electronic record and filed by the pharmacist filling it. For the purposes of subsections (d) and (h) of this section the term "electronically transmitted" means transmitted by facsimile machine, computer modem or other similar electronic device.

(e) To the extent permitted by the federal Controlled Substances Act, in an emergency the dispensing of schedule II substances may be made upon the oral order of a prescribing registrant known to or confirmed by the filling pharmacist who shall promptly reduce the oral order to writing on a prescription blank, provided, in such cases such oral order shall be confirmed by the proper completion and mailing or delivery of a prescription prepared by the prescribing registrant to the pharmacist filling such oral order within seventy-two hours after the oral order has been given. Such prescription of the registrant shall be affixed to the temporary prescription prepared by the pharmacist and both prescriptions shall be maintained on file as required in this chapter.**]**

(f) All prescriptions for controlled substances shall comply fully with any additional requirements of the federal food and drug laws, the federal Controlled Substances Act, and state laws and regulations adopted under this chapter.

(g) Repealed by P.A. 82-419, S. 46, 47.

(h) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under federal food and drug laws, shall not be dispensed without a written, electronically transmitted or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(i) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(j) A pharmacy may sell and dispense controlled substances upon the prescription of a prescribing practitioner, as defined in subdivision (22) of section 20-571.

(k) Pharmacies shall file filled prescriptions for controlled substances separately from other prescriptions. All schedule II prescriptions shall be filed in a separate file or in an electronic file. All schedule III, IV and V prescriptions shall be filed in another separate file or in an electronic file, except as otherwise provided for in regulations adopted pursuant to section 21a-243, 21a-244 or 21a-244a. All written controlled substance prescriptions shall, immediately upon filling, be filed chronologically and consecutively.

(l) Any pharmacy may transfer prescriptions for controlled substances included in schedules III, IV and V to any other pharmacy in accordance with the requirements set forth in the federal Controlled Substances Act 21 USC 801 et seq. and the regulations promulgated thereunder, as from time to time amended.

(m) A practitioner authorized to prescribe controlled substances shall not prescribe anabolic steroids for the sole purpose of enhancing a patient's athletic ability or performance.

(n) Each pharmacy, as defined in section 20-571, shall accept an electronically transmitted prescription for a controlled substance from

a practitioner, as defined in section 21a-316. All records shall be kept on the premises of the pharmacy and maintained current and separate from other business records in such form as to be readily available at the pharmacy for inspection by the Commissioner of Consumer Protection, his or her authorized agent or other persons, as authorized in section 21a-265, at reasonable times and shall be kept on file for three years. Prescription records received from the practitioner electronically may be stored electronically, provided the files are maintained in the pharmacy computer system for not less than three years. If the electronically transmitted prescription is printed, it shall be filed as required in subsection (l) of this section.

Sec. 4. (NEW) (*Effective October 1, 2017*) (a) As used in this section:

(1) "Opioid drug" has the same meaning as provided in 42 CFR 8.2, as amended from time to time;

(2) "Prescribing practitioner" has the same meaning as provided in section 20-14c of the general statutes; and

(3) "Voluntary nonopioid directive form" means a form that is voluntarily filed by a patient with a prescribing practitioner that indicates such patient's request to not be issued a prescription or medication order for an opioid drug.

(b) The Department of Public Health, in consultation with the Departments of Consumer Protection and Mental Health and Addiction Services, shall establish a voluntary nonopioid directive form and publish such form on its Internet web site for public use. Any person who does not wish to be issued a prescription or medication order for an opioid drug may file such form with a prescribing practitioner. Upon receipt of a voluntary nonopioid directive form, a prescribing practitioner shall document such receipt in the patient's medical record.

(c) The voluntary nonopioid directive form established by the department shall allow a patient to appoint a duly authorized

guardian or health care proxy to override a previously recorded voluntary nonopioid directive form. Such patient, duly authorized guardian or health care proxy may revoke the directive, orally or in writing, for any reason, at any time.

(d) An electronically transmitted prescription to a pharmacy shall be presumed to be valid for the purposes of this section and a pharmacist shall not be held in violation of this section for dispensing a controlled substance in contradiction to a voluntary nonopioid directive form.

(e) No prescribing practitioner acting with reasonable care shall be liable for damages in a civil action or subject to criminal prosecution or be deemed to have violated the standard of care for such prescribing practitioner for refusing to issue a prescription or medication order for an opioid pursuant to a voluntary nonopioid directive form.

(f) No person acting in good faith as a duly authorized guardian or health care proxy shall be liable for damages in a civil action or subject to criminal prosecution for revoking or overriding a voluntary nonopioid directive form.

(g) A prescribing practitioner who wilfully fails to comply with a patient's voluntary nonopioid directive form may be subject to disciplinary action pursuant to section 19a-17 of the general statutes.

Sec. 5. Section 20-14o of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) As used in this section:

(1) "Opioid drug" has the same meaning as provided in 42 CFR 8.2, as amended from time to time;

(2) "Adult" means a person who is at least eighteen years of age;

(3) "Prescribing practitioner" has the same meaning as provided in section 20-14c;

(4) "Minor" means a person who is under eighteen years of age;

(5) "Opioid agonist" means a medication that binds to the opiate receptors and provides relief to individuals in treatment for abuse of or dependence on an opioid drug;

(6) "Opiate receptor" means a specific site on a cell surface that interacts in a highly selective fashion with an opioid drug;

(7) "Palliative care" means specialized medical care to improve the quality of life of patients and their families facing the problems associated with a life-threatening illness; and

(8) "Opioid antagonist" has the same meaning as provided in section 17a-714a.

(b) When issuing a prescription for an opioid drug to an adult patient for the first time for outpatient use, a prescribing practitioner who is authorized to prescribe an opioid drug shall not issue a prescription for more than a seven-day supply of such drug, as recommended in the National Centers for Disease Control and Prevention's Guideline for Prescribing Opioids for Chronic Pain.

(c) A prescribing practitioner shall not issue a prescription for an opioid drug to a minor for more than a seven-day supply of such drug at any time. **[**When issuing a prescription for an opioid drug to a minor for less than a seven-day supply of such drug, the prescribing practitioner shall discuss the risks associated with use of an opioid drug, including, but not limited to, the risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines and other central nervous system depressants, and the reasons why the prescription is necessary with (1) the minor, and (2) the custodial parent, guardian or other person having legal custody of the minor if such parent, guardian or other person is present at the time of issuance.**]**

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, if, in the professional medical judgment of a prescribing practitioner, more than a seven-day supply of an opioid drug is

required to treat an adult patient's or minor patient's acute medical condition, as determined by the prescribing practitioner, or is necessary for the treatment of chronic pain, pain associated with a cancer diagnoses or for palliative care, then the prescribing practitioner may issue a prescription for the quantity needed to treat the acute medical condition, chronic pain, pain associated with a cancer diagnosis or pain experienced while the patient is in palliative care. The condition triggering the prescription of an opioid drug for more than a seven-day supply shall be documented in the patient's medical record and the practitioner shall indicate that an alternative to the opioid drug was not appropriate to address the medical condition.

(e) The provisions of subsections (b), (c) and (d) of this section shall not apply to medications designed for the treatment of abuse of or dependence on an opioid drug, including, but not limited to, opioid agonists and opioid antagonists.

(f) When issuing a prescription for an opioid drug to an adult or minor patient, the prescribing practitioner shall discuss with the patient the risks associated with the use of such opioid drug, including, but not limited to, the risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines and other central nervous system depressants, and the reasons the prescription is necessary, and, if applicable, with the custodial parent, guardian or other person having legal custody of the minor if such parent, guardian or other person is present at the time of issuance of the prescription.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	21a-254(j)
Sec. 2	*from passage*	21a-262
Sec. 3	*January 1, 2018*	21a-249
Sec. 4	*October 1, 2017*	New section
Sec. 5	*July 1, 2017*	20-14o

Statement of Legislative Commissioners:
In Section 3, Subsecs. (b), (c), (d) and (n), several references to electronic transmissions of prescriptions were changed for consistency with each other and with the defined term in Subsec. (b), and Subsec. (c) was restructured for clarity.

GL *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill results in no fiscal impact to the state or municipalities, in its two provisions that affect state agencies. First, the Department of Consumer Protection is permitted to share certain prescription information with other state agencies, which can be done in the normal course of business. Second, multiple state agencies with expertise in pharmacies and health are directed to develop a non-opioid directive for patients. Other provisions of the bill pertain to pharmacies, certain registered nurses, medication prescribers, and patients.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 7052

AN ACT PREVENTING PRESCRIPTION OPIOID DIVERSION AND ABUSE.

SUMMARY

This bill contains various provisions on controlled substance abuse prevention, particularly as it relates to opioid drugs. It:

1. generally requires prescriptions for controlled substances to be transmitted electronically to a pharmacy, which must have the technology to accept such prescriptions;

2. allows the Department of Consumer Protection (DCP) commissioner to share certain prescription drug monitoring program information with other state agencies for certain studies involving drug abuse;

3. allows certain registered nurses to destroy or dispose of their patient's controlled substances;

4. creates a process by which patients may request to not be prescribed an opioid drug; and

5. requires practitioners, when prescribing opioids, to discuss with all patients, rather than only minors, the risks associated with opioid drug use.

By law, the following health providers may prescribe medication within the scope of their practice: physicians, dentists, podiatrists, optometrists, physician assistants, advanced practice registered nurses, nurse-midwives, and veterinarians.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage for drug monitoring information sharing and nurse drug disposal; July 1, 2017 for discussion of opioid risks; October 1, 2017 for voluntary nonopioid directive forms; and January 1, 2018 for electronic prescription requirements.

§ 3 — ELECTRONIC PRESCRIPTION FOR CONTROLLED SUBSTANCES

The bill, with exceptions, requires prescriptions for controlled substances to be electronically transmitted. "Electronically transmit" means to transmit by computer modem or other similar electronic device. Current law allows prescriptions to be written or given orally. Written prescriptions must, among other things, be in ink, indelible pencil, or by typewriter and only original prescriptions are considered valid. Oral prescriptions must, among other things, be promptly reduced to writing.

Under the bill, prescribing practitioners of controlled substances, within the scope of their license, must electronically transmit controlled substance prescriptions to a pharmacy. The prescriber must promptly print the prescription in hardcopy or create it in an electronic record. The electronic transmitted prescriptions must be consistent with the requirements of the federal Controlled Substances Act (21 U.S.C. § 801). All records must be kept on the prescriber's premises and maintained in a form that is readily available for inspection, at reasonable times, by the DCP commissioner, his authorized agent, or other authorized personnel. These files must be kept for three years.

Exceptions

Under the bill, prescribing practitioners are not required to electronically transmit a prescription when (1) there are temporary technological or electrical failures; (2) the prescriber reasonably determines that it is impractical for the patient to obtain substances prescribed by an electronically transmitted prescription in a timely manner and the delay would adversely impact the patient's medical condition; (3) the prescription is to be dispensed by an out-of-state pharmacy; (4) the prescription needs special attention and could

negatively impact the patient care (e.g., compounding); and (5) the prescriber demonstrates, until July 1, 2019, that he or she does not have the technological capacity.

The bill allows any prescription under any of these exceptions to be issued as a written order or, to the extent allowed by federal law, as an oral order or transmitted by fax. Any oral order or order transmitted by fax must be promptly reduced to writing on a prescription blank, a hardcopy printout, or created as an electronic record and filed by the pharmacist filling the order. The bill prohibits duplicates, carbon or photographic copies, and printed or rubber-stamped orders from being considered a valid controlled substance prescription.

Temporary Technological or Electrical Failure. Under the bill, a prescribing practitioner is not required to electronically transmit a prescription when electronic transmission is not available because of temporary technological or electrical failures.

In the event of a temporary technological or electrical failure, the prescriber must, without undue delay, reasonably attempt to correct any cause for the failure that is within his or her control. A prescriber who issues a prescription under this exception must document the reason for failing to electronically transmit the prescription in the patient's medical record as soon as practicable, but must do so within 72 hours after the end of the technological or electrical failure.

"Temporary technological or electrical failure" means a computer system, application, or device failure or the loss of electrical power or any other service interruption to such system, application, or device, that reasonably prevents the prescriber from using his or her certified application to electronically transmit the prescription.

Delay that Adversely Impacts Patient's Health. The bill does not require electronic prescriptions when the prescriber reasonably determines that it would be impractical for the patient to obtain the prescribed substances by an electronically transmitted prescription in a timely manner and that such delay would adversely impact the

patient's medical condition. The bill specifies that if the prescription is for a controlled substance, the quantity must not exceed a five-day supply. A prescriber who issues a prescription under this exception must document the reason and place it in the patient's medical record.

Out-of-state Pharmacy. The bill allows a prescribing practitioner to provide a prescription that is not electronically transmitted, if the prescription is going to be dispensed by an out-of-state pharmacy. The prescriber who issues a prescription under this exception must document the reason and place it in the patient's medical record.

Certain Prescriptions that Need Special Attention. Under the bill, a practitioner is not required to electronically transmit a prescription when doing so may negatively impact patient care, such as a prescription (1) containing two or more products that a pharmacist compounds; (2) for direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion; (3) that contains long or complicated directions; (4) that requires certain elements to be included by the federal Food and Drug and Administration; or (5) that must be orally communicated to a pharmacist for a patient in a chronic and convalescent nursing home.

Lack of Technological Capacity. Under the bill, prescribing practitioners are not required to electronically transmit a prescription when the practitioner demonstrates, until July 1, 2019, that he or she does not have the technological capacity. The practitioner must demonstrate this in a DCP-prescribed form and manner.

"Technological capacity" means possessing a computer system, hardware, or device that can be used to electronically transmit controlled substance prescriptions consistent with the federal Controlled Substances Act (21 U.S.C. § 801).

Pharmacy Technology

The bill requires pharmacies to accept a prescribing practitioner's electronically transmitted controlled substances prescription. All records must be kept on the pharmacy's premises and maintained in a

form that is readily available for inspection, at reasonable times, by the DCP commissioner, his authorized agent, or other authorized personnel. The records must be kept on file for three years and such records may be stored electronically, provided the files are maintained in the pharmacy's computer system for at least three years. If the electronically transmitted prescription is printed, it must be filed in the same way as when pharmacies transfer controlled substance prescriptions to other pharmacies.

§ 1 — PRESCRIPTION DRUG MONITORING PROGRAM INFORMATION SHARING

The bill allows the DCP commissioner to provide certain controlled substance prescription information obtained as part of the prescription drug monitoring program (e.g., pharmacy and vender records) to other state agencies. The sharing must be through an agreement between the DCP commissioner and the head of the other agency, provided that the information is obtained for a study of (1) disease prevention and control related to opioid abuse or (2) morbidity and mortality caused by overdoses of controlled substances. The transfer of such information must be done in accordance with all applicable state and federal confidentiality requirements (e.g., Health Insurance Portability and Accountability Act of 1996).

By law, under the prescription drug monitoring program, DCP collects information on controlled substance prescriptions to prevent improper or illegal drug use or improper prescribing.

§ 2 — CONTROLLED SUBSTANCE DISPOSAL BY CERTAIN NURSES

The bill allows a registered nurse employed by a home health care agency, along with a patient's designated representative, to oversee the destruction and disposal of the patient's controlled substances. They must use the recommendations for proper disposal of prescription drugs on DCP's website (e.g., add undesirable substances such as salt, sawdust, or used coffee grounds).

The nurse must maintain written or electronic documentation of

such destruction or disposal on a DCP-prescribed form for three years. This documentation must be kept with the patient's medical record.

Nothing in the bill prevents the nurse and patient's representative from depositing the patient's controlled substances in a police department prescription drop box.

§ 4 — VOLUNTARY NONOPIOID DIRECTIVE FORM

The bill requires the Department of Public Health (DPH), in consultation with DCP and the Department of Mental Health and Addiction Services, to establish a voluntary nonopioid directive form and publish it on its Internet website for public use.

A "voluntary nonopioid directive form" means a form that is voluntarily filed by a patient with a prescribing practitioner that indicates such patient's request not to be issued a prescription or medication order for an opioid drug.

Anyone who does not wish to be issued a prescription or medication order for an opioid drug may file such a form with a prescribing practitioner. Upon receiving the form, the prescribing practitioner must document receipt of the form in the patient's medical record.

Revocation

The form must allow a patient to appoint a duly authorized guardian or health care proxy to override a previously recorded voluntary nonopioid directive form. The patient, duly authorized guardian, or health care proxy may revoke the directive orally or in writing at any time and for any reason.

Presumption of Valid Prescription

An electronically transmitted prescription to a pharmacy is presumed to be valid for the purposes of complying with this form and a pharmacist must not be held in violation for dispensing a controlled substance in contradiction to a voluntary nonopioid directive form.

Liability

The bill immunizes prescribing practitioners acting with reasonable care from damages in a civil action. They also cannot be subject to criminal prosecution or be deemed to have violated the standard of care for refusing to issue a prescription or medication order for an opioid pursuant to a voluntary nonopioid directive form.

Under the bill, no one acting in good faith as a duly authorized guardian or health care proxy may be held liable for damages in a civil action or subject to criminal prosecution for revoking or overriding a voluntary nonopioid directive form.

Disciplinary Action

Under the bill, a prescribing practitioner who willfully fails to comply with a patient's voluntary nonopioid directive form may be subject to certain DPH disciplinary actions.

By law, DPH can take the following actions, among others:

1. suspend or revoke the person's DPH license or permit,
2. issue a letter of reprimand to or censure the person,
3. place him or her on probation, or
4. take summary action against the person's DPH license or permit if he or she has been found guilty of a state or federal felony or is subject to disciplinary action in another jurisdiction.

§ 5 — DISCUSSION OF RISK ON OPIOID ADDICTION

The bill requires a prescribing practitioner to discuss with all patients the risks associated with opioid drug use. Current law requires such discussion with minor patients (i.e., under age 18) along with their custodial parent, guardian, or legal custodian. As under current law, the bill requires the practitioner to discuss

1. the associated risks of addiction and overdose;

2. the dangers of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants; and

3. why the prescription is necessary.

BACKGROUND

Controlled Substances

Controlled substances are drugs whose use and distribution is monitored because of their abuse potential or risk. Controlled substances are categorized in order of their abuse risk and placed into schedules. Drugs with the highest abuse potential, no medical use and not prescribable are placed in Schedule I and those with the lowest abuse potential are placed in Schedule V.

COMMITTEE ACTION

General Law Committee

Joint Favorable
Yea 17 Nay 0 (03/07/2017)