LC 181
2016 Regular Session
1/11/16 (SCT/ps)

D R A F T

SUMMARY

Requires Oregon Health Authority to disclose prescription monitoring information to practitioner or pharmacist or member of practitioner's or pharmacist's staff for use in certain health information technology systems.

Permits pharmacists and certain health care professionals to prescribe and pharmacists to distribute unit-of-use packages of naloxone. Permits certain employees of social service agencies to administer naloxone under specified conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to prescription drugs; creating new provisions; amending ORS 431A.865 and 689.681; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 431A.865 is amended to read:

431A.865. (1)(a) Except as provided under subsection (2) of this section, prescription monitoring information submitted under ORS 431A.860 to the prescription monitoring program established in ORS 431A.855:

(A) Is protected health information under ORS 192.553 to 192.581.

(B) Is not subject to disclosure pursuant to ORS 192.410 to 192.505.

(b) Except as provided under subsection [*(2)(a)(E)*] **(2)(a)(G)** of this section, prescription monitoring information submitted under ORS 431A.860 to the prescription monitoring program may not be used to evaluate a practitioner's professional practice.

(2)(a) To the extent that the law or regulation is applicable to the prescription monitoring program, if a disclosure of prescription monitoring information, other than the sex of a patient for whom a drug was prescribed,

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

complies with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and regulations adopted under it, including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations [*adopted under those laws*], including 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.553 to 192.581, the Oregon Health Authority shall disclose the information:

(A) To a practitioner or pharmacist, or, if a practitioner or pharmacist authorizes the authority to disclose the information to a member of the practitioner's or pharmacist's staff, to a member of the practitioner's or pharmacist's staff. If a practitioner or pharmacist authorizes disclosing the information to a member of the practitioner's or pharmacist's staff under this subparagraph, the practitioner or pharmacist remains responsible for the use or misuse of the information by the staff member. To receive information under this subparagraph, or to authorize the receipt of information by a staff member under this subparagraph, a practitioner or pharmacist must certify that the requested information is for the purpose of evaluating the need for or providing medical or pharmaceutical treatment for a patient to whom the practitioner or pharmacist anticipates providing, is providing or has provided care.

(B) In accordance with subparagraph (A) of this paragraph, to a practitioner or pharmacist or to a member of the practitioner's or pharmacist's staff through a health information technology system that is used by the practitioner or pharmacist or a member of the practitioner's or pharmacist's staff to access information about patients if:

(i) The practitioner or pharmacist or a member of the practitioner's or pharmacist's staff is authorized to access the information in the health information technology system;

(ii) The information is not permanently retained in the health information technology system, except for purposes of conducting audits

and maintaining patient records; and

(iii) The health information technology system meets any privacy and security requirements and other criteria, including criteria required by the federal Health Insurance Portability and Accountability Act, established by the authority by rule.

[*(B)*] **(C)** To a practitioner in a form that catalogs all prescription drugs prescribed by the practitioner according to the number assigned to the practitioner by the Drug Enforcement Administration of the United States Department of Justice.

(D) To the State Medical Examiner or designee of the State Medical Examiner, for the purpose of conducting a medicolegal investigation or autopsy.

[*(C)*] **(E)** To designated representatives of the authority or any vendor or contractor with whom the authority has contracted to establish or maintain the electronic system of the prescription monitoring program.

[*(D)*] **(F)** Pursuant to a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency engaged in an authorized drug-related investigation involving a person to whom the requested information pertains.

[*(E)*] **(G)** To a health professional regulatory board that certifies in writing that the requested information is necessary for an investigation related to licensure, **license** renewal or disciplinary action involving the applicant, licensee or registrant to whom the requested information pertains.

[*(F)*] **(H)** To a prescription monitoring program of another state if the confidentiality, security and privacy standards of the requesting state are determined by the authority to be equivalent to those of the authority.

[*(G) To the State Medical Examiner or designee of the State Medical Examiner, for the purpose of conducting a medicolegal investigation or autopsy.*]

(b) The authority may disclose information from the prescription monitoring program that does not identify a patient, practitioner or drug outlet:

(A) For educational, research or public health purposes;

(B) To a local public health authority, as defined in ORS 431.003; or

(C) To officials of the authority who are conducting special epidemiologic morbidity and mortality studies in accordance with ORS 413.196 and rules adopted under ORS 431.001 to 431.550 and 431.990.

(c) The Oregon Health Authority shall disclose information relating to a patient maintained in the electronic system operated pursuant to the prescription monitoring program [*established under ORS 431A.855*] to that patient at no cost to the patient within 10 business days after the authority receives a request from the patient for the information.

(d)(A) A patient may request the authority to correct any information about the patient that is erroneous. The authority shall grant or deny a request to correct information within 10 business days after the authority receives the request.

(B) If the authority denies a patient's request to correct information under this paragraph, or fails to grant a patient's request to correct information under this paragraph within 10 business days after the authority receives the request, the patient may appeal the denial or failure to grant the request. Upon [*receipt*] **receiving notice** of an appeal under this subparagraph, the authority shall conduct a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, [*in the contested case hearing,*] the authority has the burden **in the contested case hearing** of establishing that the information included in the prescription monitoring program is correct.

(e) The information in the prescription monitoring program may not be used for any commercial purpose.

(f) In accordance with ORS 192.553 to 192.581 and federal privacy regulations, any person authorized to prescribe or dispense a prescription drug and who is entitled to access a patient's prescription monitoring information may discuss or release the information to other health care providers involved with the patient's care[*, in order to provide*] **for the purposes of providing** safe and appropriate care coordination.

(3)(a) The authority shall maintain records of the information disclosed through the prescription monitoring program including, but not limited to:

(A) The identity of each person who requests or receives information from the program and [*the organization, if any,*] **any organization** the person represents;

(B) The information released to each person or organization; and

(C) The date and time the information was requested and the date and time the information was provided.

(b) Records maintained as required by this subsection may be reviewed by the Prescription Monitoring Program Advisory Commission.

(4) Information in the prescription monitoring program that identifies an individual patient must be removed no later than three years from the date the information is entered into the program.

(5) The authority shall notify the Attorney General and each affected individual of an improper disclosure of information from the prescription monitoring program.

(6)(a) If the authority or a person or entity required to report or authorized to receive or release controlled substance prescription information under this section violates this section or ORS 431A.860 or 431A.870, a person injured by the violation may bring a civil action against the authority, person or entity and may recover damages in the amount of $1,000 or actual damages, whichever is greater.

(b) Notwithstanding paragraph (a) of this subsection, the authority and a person or entity required to report or authorized to receive or release controlled substance prescription information under this section are immune from civil liability for violations of this section or ORS 431A.860 or 431A.870 unless the authority, person or entity acts with malice, criminal intent, gross negligence, recklessness or willful intent.

(7) Nothing in ORS 431A.855 to 431A.900 requires a practitioner or pharmacist who prescribes or dispenses a prescription drug to obtain information about a patient from the prescription monitoring program. A practi-

tioner or pharmacist who prescribes or dispenses a prescription drug may not be held liable for damages in any civil action on the basis that the practitioner or pharmacist did or did not request or obtain information from the prescription monitoring program.

SECTION 2. ORS 689.681 is amended to read:

689.681. (1) As used in this section:

(a) "Opiate" means a narcotic drug that contains:

(A) Opium;

(B) Any chemical derivative of opium; or

(C) Any synthetic or semisynthetic drug with opium-like effects.

(b) "Opiate overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of ingesting opiates in an amount larger than can be physically tolerated.

(2) The Oregon Health Authority shall establish by rule protocols and criteria for training on lifesaving treatments for opiate overdose. The criteria must specify:

(a) The frequency of required retraining or refresher training; and

(b) The curriculum for the training, including:

(A) The recognition of symptoms and signs of opiate overdose;

(B) Nonpharmaceutical treatments for opiate overdose, including rescue breathing and proper positioning of the victim;

(C) Obtaining emergency medical services;

(D) The proper administration of naloxone to reverse opiate overdose; and

(E) The observation and follow-up that is necessary to avoid the recurrence of overdose symptoms.

(3) Training that meets the protocols and criteria established by the authority under subsection (2) of this section must be subject to oversight by a licensed physician or certified nurse practitioner and may be conducted by public health authorities, organizations or other appropriate entities that provide services to individuals who take opiates.

(4)**(a)** Notwithstanding any other provision of law, a pharmacy, a health care professional **or a pharmacist** with prescription and dispensing privileges or any other person designated by the State Board of Pharmacy by rule may distribute unit-of-use packages of naloxone, and the necessary medical supplies to administer the naloxone, to a person who:

[*(a)*] **(A)** Conducts training that meets the protocols and criteria established by the authority under subsection (2) of this section, so that the person may possess and distribute naloxone and necessary medical supplies to persons who successfully complete the training; or

[*(b)*] **(B)** Has successfully completed training that meets the protocols and criteria established by the authority under subsection (2) of this section, so that the person may possess and administer naloxone to any individual who appears to be experiencing an opiate overdose.

(b) A pharmacist or a health care professional with prescription privileges may prescribe unit-of-use packages of naloxone, and the necessary medical supplies to administer the naloxone, for a person who meets the requirements of paragraph (a) of this subsection.

(5) A person who has successfully completed the training described in this section is immune from civil liability for any act or omission committed during the course of providing the treatment pursuant to the authority granted by this section, if the person is acting in good faith and the act or omission does not constitute wanton misconduct.

SECTION 3. Section 4 of this 2016 Act is added to and made a part of ORS chapter 689.

SECTION 4. (1) For purposes of this section, "social services agency" includes, but is not limited to, homeless shelters and crisis centers.

(2) An employee of a social services agency may administer to a patron of the social services agency a unit-of-use package of naloxone that was not distributed to the employee if:

(a) The employee conducts or has successfully completed opiate

overdose training under ORS 689.681;

(b) The unit-of-use package of naloxone was distributed to another employee of the social services agency who conducts or has completed the opiate overdose training under ORS 689.681;

(c) The patron appears to be experiencing an opiate overdose as defined in ORS 689.681; and

(d) The administration of naloxone occurs on the premises of the social services agency.

(3) For the purposes of protecting public health and safety, the Oregon Health Authority may adopt rules for the administration of naloxone under this section.

SECTION 5. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.
