

SENATE BILL No. 200

AN ACT concerning the state board of pharmacy; expanding the pharmacist's scope of practice to include initiation of therapy for certain health conditions; authorizing the collaborative drug therapy management advisory committee to adopt a statewide protocol for such therapy; adding to the list of persons who may receive prescription monitoring program data; providing requirements for data security and user and delegate access; increasing the number of members of the prescription monitoring program advisory committee; amending K.S.A. 65-1626a, 65-1682, 65-1683, 65-1685, 65-1687 and 65-1689 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) A pharmacist may initiate therapy within the framework of a statewide protocol for the following health conditions:

- (1) Influenza;
- (2) streptococcal pharyngitis; or
- (3) urinary tract infection.

(b) The collaborative drug therapy management advisory committee established pursuant to K.S.A. 65-1677, and amendments thereto, may adopt a statewide protocol for each condition listed in subsection (a). In establishing such statewide protocols, the committee shall specify:

(1) The medications or categories of medications included in the protocol for each health condition;

(2) the training or qualifications required for pharmacists to implement the protocols;

(3) requirements for documentation and maintenance of records, including patient inclusion and exclusion criteria, medical referral criteria, patient assessment tools based on current clinical guidelines, follow-up monitoring or care plans and the pharmacist's adherence to the applicable protocols; and

(4) communication requirements, including, but not limited to, notification to the patient's personal or primary care provider.

(c) The board may deny an application or renewal or revoke or suspend the license of a pharmacist upon a finding that the pharmacist has violated the provisions of this section or failed to practice within the framework of statewide protocols established pursuant to this section by the collaborative drug therapy management advisory committee.

(d) This section shall take effect and be in force on and after July 1, 2022.

Sec. 2. On and after July 1, 2022, K.S.A. 65-1626a is hereby amended to read as follows: 65-1626a. (a) For the purpose of the pharmacy act of the state of Kansas, the following ~~persons~~ *individuals* shall be deemed to be engaged in the practice of pharmacy:

(1) ~~Persons-Individuals~~ who publicly profess to be a pharmacist, or publicly profess to assume the duties incident to being a pharmacist and their knowledge of drugs or drug actions, or both; and

(2) ~~persons-individuals~~ who attach to their name any words or abbreviation indicating that they are a pharmacist licensed to practice pharmacy in Kansas.

(b) *As used in this section:*

(1) "Practice of pharmacy" means:

(A) The interpretation and evaluation of prescription orders;

(B) the compounding, dispensing and labeling of drugs and devices pursuant to prescription orders;

(C) the administering of vaccine pursuant to a vaccination protocol;

(D) the participation in drug selection according to state law and participation in drug utilization reviews;

(E) the proper and safe storage of prescription drugs and prescription devices and the maintenance of proper records thereof in accordance with law;

(F) consultation with patients and other health care practitioners about the safe and effective use of prescription drugs and prescription

devices;

(G) performance of collaborative drug therapy management pursuant to a written collaborative practice agreement with one or more physicians who have an established physician-patient relationship; ~~and~~

(H) participation in the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy; *and*

(I) initiation of therapy for the conditions specified in section 1, and amendments thereto.

~~Nothing in this section shall be construed to add any additional requirements for registration or for a permit under the pharmacy act of the state of Kansas or for approval under subsection (g) of K.S.A. 65-1643, and amendments thereto, or to prevent persons other than pharmacists from engaging in drug utilization review, or to require persons lawfully in possession of prescription drugs or prescription devices to meet any storage or record keeping requirements except such storage and record keeping requirements as may be otherwise provided by law or to affect any person consulting with a health care practitioner about the safe and effective use of prescription drugs or prescription devices.~~

(2) "Collaborative drug therapy management" means a practice of pharmacy where a pharmacist performs certain pharmaceutical-related patient care functions for a specific patient which have been delegated to the pharmacist by a physician through a collaborative practice agreement. A physician who enters into a collaborative practice agreement is responsible for the care of the patient following initial diagnosis and assessment and for the direction and supervision of the pharmacist throughout the collaborative drug therapy management process. Nothing in this subsection shall be construed to permit a pharmacist to alter a physician's orders or directions, diagnose or treat any disease, independently prescribe drugs or independently practice medicine and surgery.

(3) "Collaborative practice agreement" means a written agreement or protocol between one or more pharmacists and one or more physicians that provides for collaborative drug therapy management. Such collaborative practice agreement shall contain certain specified conditions or limitations pursuant to the collaborating physician's order, standing order, delegation or protocol. A collaborative practice agreement shall be: (A) Consistent with the normal and customary specialty, competence and lawful practice of the physician; and (B) appropriate to the pharmacist's training and experience.

(4) "Physician" means a person licensed to practice medicine and surgery in this state.

(c) Nothing in this section shall be construed to:

(1) Add any additional requirements for registration or for a permit under the pharmacy act of the state of Kansas or for approval under K.S.A. 65-1643(g), and amendments thereto;

(2) prevent persons other than pharmacists from engaging in drug utilization review;

(3) require persons lawfully in possession of prescription drugs or prescription devices to meet any storage or record keeping requirements except such storage and record keeping requirements as may be otherwise provided by law; or

(4) affect any person consulting with a healthcare practitioner about the safe and effective use of prescription drugs or prescription devices.

Sec. 3. K.S.A. 65-1682 is hereby amended to read as follows: 65-1682. As used in this act, unless the context otherwise requires:

(a) "Audit trail information" means information produced

regarding requests for prescription monitoring program data that the board and advisory committee use to monitor compliance with this act.

(b) "Board" means the state board of pharmacy.

(c) "Delegate" means:

(1) *A registered nurse, licensed practical nurse, respiratory therapist, emergency medical responder, paramedic, dental hygienist, pharmacy technician or pharmacy intern who has registered for access to the program database as an agent of a practitioner or pharmacist to request program data on behalf of the practitioner or pharmacist;*

(2) *a death investigator who has registered for limited access to the program database as an agent of a medical examiner, coroner or another person authorized under law to investigate or determine causes of death; or*

(3) *an individual authorized to access the program database by the board in rules and regulations.*

~~(b)~~(d) "Dispenser" means a practitioner, *pharmacy* or pharmacist who delivers a scheduled substance or drug of concern to an ultimate user, but does not include:

(1) A licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a medical care facility as defined in K.S.A. 65-425, and amendments thereto, practitioner or other authorized person who administers such a substance;

(3) a registered wholesale distributor of such substances;

(4) a veterinarian licensed by the Kansas board of veterinary examiners who dispenses or prescribes a scheduled substance or drug of concern; or

(5) a practitioner who has been exempted from the reporting requirements of this act in rules and regulations promulgated by the board.

~~(e)~~(e) "Drug of concern" means any drug that demonstrates a potential for abuse and is designated as a drug of concern in rules and regulations promulgated by the board.

~~(d)~~(f) "Patient" means the ~~person~~ *individual* who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, ~~or both.~~

~~(e)~~(g) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(h) *"Pharmacy" means a premises, laboratory, area or other place currently registered with the board where scheduled substances or drugs of concern are offered for sale or dispensed in this state.*

~~(f)~~(i) "Practitioner" means ~~a person~~ *an individual* licensed to practice medicine and surgery, dentist, podiatrist, optometrist or other ~~person~~ *individual* authorized by law to prescribe or dispense scheduled substances and drugs of concern.

~~(g)~~(j) *"Program" means the prescription monitoring program.*

(k) "Scheduled substance" means controlled substances included in schedules II, III or IV of the schedules designated in K.S.A. 65-4107, 65-4109 and 65-4111, and amendments thereto, respectively, or the federal controlled substances act ~~(, 21 U.S.C. § 812).~~

Sec. 4. K.S.A. 65-1683 is hereby amended to read as follows: 65-1683. (a) The board shall establish and maintain a prescription monitoring program for the monitoring of scheduled substances and drugs of concern dispensed in this state or dispensed to an address in this state.

(b) Each dispenser shall submit to the board by electronic means information required by the board regarding each prescription dispensed for a substance included under subsection (a). The board shall promulgate rules and regulations specifying the nationally

recognized telecommunications format to be used for submission of information that each dispenser shall submit to the board. Such information may include, but not be limited to:

- (1) The dispenser identification number;
- (2) the date the prescription is filled;
- (3) the prescription number;
- (4) whether the prescription is new or is a refill;
- (5) the national drug code for the drug dispensed;
- (6) the quantity dispensed;
- (7) the number of days' supply of the drug;
- (8) the patient identification number;
- (9) the patient's name;
- (10) the patient's address;
- (11) the patient's date of birth;
- (12) the prescriber identification number;
- (13) the date the prescription was issued by the prescriber; ~~and~~
- (14) the source of payment for the prescription;
- (15) *the diagnosis code;*
- (16) *the patient's species code; and*
- (17) *the date the prescription was sold.*

(c) The board shall promulgate rules and regulations specifying the transmission methods and frequency of the dispenser submissions required under subsection (b).

~~(d) The board may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided that all information required by rules and regulations is submitted in this alternative format. The board may, in consultation with the advisory committee, enable features and include additional information to enhance the program database. Such information may include, but not be limited to:~~

- ~~(1) The date or fact of death;~~
- ~~(2) the dispensation or administration of emergency opioid antagonists, as defined by K.S.A. 65-16,127, and amendments thereto;~~
- ~~and~~
- ~~(3) the data related to an overdose event.~~

(e) The board is hereby authorized to apply for and to accept grants and may accept any donation, gift or bequest made to the board for furthering any phase of the prescription monitoring program.

(f) The board shall remit all moneys received by it under subsection (e) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the non-federal gifts and grants fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.

Sec. 5. K.S.A. 65-1685 is hereby amended to read as follows: 65-1685. (a) ~~The prescription monitoring~~ program database, all information contained therein and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, *including audit trail information*, shall be privileged and confidential, shall not be subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of entities charged with administrative oversight of those ~~persons~~ *individuals* engaged in the prescribing or dispensing of scheduled substances and drugs of concern, shall not be a public record

and shall not be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, except as provided in subsections (c) and (d).

(b) The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted and maintained is not disclosed to ~~persons~~ *individuals* except as provided in subsections (c) and (d).

(c) The board is hereby authorized to provide data in the ~~prescription monitoring~~ program to the following ~~persons~~ *individuals*:

(1) ~~Persons~~ *Individuals* authorized to prescribe or dispense scheduled substances and drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established by the board;

(3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those ~~persons~~ *individuals* engaged in the prescribing or dispensing of scheduled substances and drugs of concern;

(4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern subject to the requirements in K.S.A. 22-2502, and amendments thereto;

(5) designated representatives from the department of health and environment regarding authorized medicaid program recipients *or practitioners*;

(6) ~~persons~~ *individuals* authorized by a grand jury subpoena, inquisition subpoena or court order in a criminal action;

(7) personnel of the prescription monitoring program advisory committee for the purpose of operation of the program;

(8) personnel of the board for purposes of *operation of the program and* administration and enforcement of this act or the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto;

(9) ~~persons~~ *individuals* authorized to prescribe or dispense scheduled substances and drugs of concern, when an individual is obtaining prescriptions in a manner that appears to be misuse, abuse or diversion of scheduled substances or drugs of concern; ~~and~~

(10) medical examiners, coroners or other ~~persons~~ *individuals* authorized under law to investigate or determine causes of death;

(11) *persons operating a practitioner or pharmacist impaired provider program in accordance with K.S.A. 65-4924, and amendments thereto, for the purpose of reviewing drugs dispensed to a practitioner or pharmacist enrolled in the program;*

(12) *delegates of individuals authorized by paragraphs (1), (9) and (10);*

(13) *individuals or organizations notified by the advisory committee as provided in subsection (g);*

(14) *practitioners or pharmacists conducting research approved by an institutional review board who have obtained patient consent for the release of program data; and*

(15) *an overdose fatality review board established by the state of Kansas.*

(d) *An individual registered for access to the program database shall notify the board in writing within 30 calendar days of any action that would disqualify the individual from being authorized to receive program data as provided in subsection (c).*

(e) *The state board of healing arts, board of nursing, Kansas dental board and board of examiners in optometry shall notify the*

board in writing within 30 calendar days of any denial, suspension, revocation or other administrative limitation of a practitioner's license or registration that would disqualify the practitioner from being authorized to receive program data as provided in subsection (c).

(f) A practitioner or pharmacist shall notify the board in writing within 30 calendar days of any action that would disqualify a delegate from being authorized to receive program data on behalf of the practitioner or pharmacist.

~~(d)~~(g) The prescription monitoring program advisory committee established pursuant to K.S.A. 65-1689, and amendments thereto, is authorized to review and analyze ~~the~~ program data for purposes of identifying patterns and activity of concern.

(1) If a review of information appears to indicate ~~a person~~ *an individual* may be obtaining prescriptions in a manner that may represent misuse or abuse of ~~controlled~~ *scheduled* substances and drugs of concern, the advisory committee is authorized to notify the prescribers and dispensers who prescribed or dispensed the prescriptions. *If the review does not identify a recent prescriber as a point of contact for potential clinical intervention, the advisory committee is authorized to notify the disability and behavioral health services section of the Kansas department for aging and disability services for the purpose of offering confidential treatment services. Further disclosure of information is prohibited.* If the review identifies patterns or other evidence sufficient to create a reasonable suspicion of criminal activity, the advisory committee is authorized to notify the appropriate law enforcement agency.

(2) If a review of information appears to indicate that a violation of state or federal law relating to prescribing ~~controlled~~ *scheduled* substances and drugs of concern may have occurred, or that a prescriber or dispenser has knowingly prescribed, dispensed or obtained ~~controlled~~ *scheduled* substances and drugs of concern in a manner that is inconsistent with recognized standards of care for the profession, the advisory committee shall determine whether a report to the professional licensing, certification or regulatory agencies charged with administrative oversight of those ~~persons~~ *individuals* engaged in prescribing or dispensing of ~~controlled~~ *scheduled* substances and drugs of concern or to the appropriate law enforcement agency is warranted.

(A) For purposes of such determination the advisory committee may, in consultation with the appropriate regulatory agencies and professional organizations, establish criteria regarding appropriate standards and utilize volunteer peer review committees of professionals with expertise in the particular practice to create such standards and review individual cases.

(B) The peer review committee or committees appointed herein shall have authority to request and receive information in the ~~prescription monitoring~~ program database from the director of the ~~prescription monitoring~~ program.

(C) If the determination is made that a referral to a regulatory or law enforcement agency is not warranted but educational or professional advising might be appropriate, the advisory committee may refer the prescribers or dispensers to other such resources.

(3) *If a review of information appears to indicate that program data has been accessed or used in violation of state or federal law, the advisory committee shall determine whether a report to the professional licensing, certification or regulatory agencies charged with administrative oversight of those individuals engaged in prescribing or dispensing of scheduled substances and drugs of concern is warranted and may make such report.*

(e) The board is hereby authorized to provide ~~data in the~~

~~prescription monitoring~~ program data to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual practitioners, dispensers, patients or ~~persons~~ individuals who received prescriptions from dispensers.

(f) The board is hereby authorized to provide a medical care facility with its program data for statistical, research or education purposes after removing information that could be used to identify individual practitioners or individuals who received prescriptions from dispensers.

(g) The board may, in its discretion, block any user's access to the program database if the board has reason to believe that access to the data is or may be used by such user in violation of state or federal law.

Sec. 6. K.S.A. 65-1687 is hereby amended to read as follows: 65-1687. *(a) All information collected for the prescription monitoring program database and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be retained for five years. ~~Such information and records shall then be destroyed unless a law enforcement entity or an entity charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern has submitted a written request to the board for retention of specific information or records in accordance with procedures adopted by the board~~*

(b) Program data shall not be stored outside of the program database, with the following exceptions:

(1) Temporary storage necessary to deliver program data to electronic health records or pharmacy management systems approved by the board;

(2) retention of specific information or records related to an investigation or proceeding under administrative or criminal law;

(3) program data provided under K.S.A. 65-1685(e), and amendments thereto; or

(4) board retention of information for purposes of operation of the program and administration and enforcement of this act or the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto.

Sec. 7. K.S.A. 65-1689 is hereby amended to read as follows: 65-1689. *(a) There is hereby created the ~~prescription monitoring~~ program advisory committee which, subject to the oversight of the board, shall be responsible for the operation of the ~~prescription monitoring~~ program. The advisory committee shall consist of at least ~~nine~~ 10 members appointed by the board as follows:*

(1) Two licensed physicians, one nominated by the Kansas medical society and one nominated by the Kansas association of osteopathic medicine;

(2) two licensed pharmacists nominated by the Kansas pharmacists association;

(3) one person representing the Kansas bureau of investigation nominated by the attorney general;

(4) one person representing the university of Kansas school of medicine nominated by the dean of such school;

(5) one person representing the university of Kansas school of pharmacy nominated by the dean of such school;

(6) one licensed dentist nominated by the Kansas dental association; ~~and~~

(7) one person representing the Kansas hospital association nominated by such association;;

(8) one licensed advanced practice provider nominated by either

the board of nursing or the state board of healing arts; and

(9) the board may also appoint other persons authorized to prescribe or dispense scheduled substances and drugs of concern, recognized experts and representatives from law enforcement.

(b) The appointments to the advisory committee shall be for terms of three years.

(c) The advisory committee shall elect a chairperson from among its members who shall serve a one-year term. The chairperson may serve consecutive terms.

(d) The advisory committee, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting when it is considering matters relating to identifiable patients or providers.

(e) Upon the expiration of the term of office of any member of the advisory committee on or after the effective date of this act, and in any case of a vacancy existing on or after the effective date of this act, a successor shall be appointed by the board pursuant to this section.

(f) All members of the advisory committee shall serve without compensation.

Sec. 8. K.S.A. 65-1682, 65-1683, 65-1685, 65-1687 and 65-1689 are hereby repealed.

Sec. 9. On and after July 1, 2022, K.S.A. 65-1626a is hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.