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February 28, 2022

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1151

By: Standridge of the Senate

and

Worthen of the House

An Act relating to the Anti-Drug Diversion Act; amending 63 O.S. 2021, Sections 2-309B and 2-309D, which relate to definitions and central repository information; modifying definition; prohibiting and allowing certain disclosures; providing for confidentiality of certain records; updating statutory language; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2021, Section 2-309B, is amended to read as follows:

Section 2-309B. For the purposes of the Anti-Drug Diversion Act:

1. "Bureau" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

2. "Dispenser" means a person who distributes a Schedule II controlled dangerous substance, but does not include a licensed hospital pharmacy or a licensed nurse or medication aide who

1 administers such a substance at the direction of a licensed
2 physician;

3 3. "Dispenser's registration number" means the dispenser's
4 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
5 registration number or, in the case of a pharmacist, the National
6 Association of Boards of Pharmacy number for the pharmacy where the
7 dispensation is made;

8 4. "Exception report" means an output of data indicating
9 Schedule II controlled dangerous substance dispensation which is
10 outside expected norms for a prescriber practicing a particular
11 specialty or field of health care, for a dispenser doing business in
12 a particular location, or for a recipient;

13 5. "Recipient" means the person for whom a prescription is
14 prescribed and who is the lawful intended ultimate user;

15 6. "Recipient's agent" means a person who is authorized by the
16 ultimate user to pick up the recipient's medication and deliver it
17 to the recipient or a person who claims a prescription other than
18 the person to whom the medication is prescribed;

19 7. "Recipient's identification number" and "recipient's agent's
20 identification number" means the unique number contained on ~~a valid~~
21 ~~passport, military identification card, driver license, or~~
22 ~~identification card issued to a recipient pursuant to Section 6-105~~
23 ~~of Title 47 of the Oklahoma Statutes or similar statute of another~~
24 ~~state if the recipient is not a resident of the State of Oklahoma,~~

1 ~~or, if the recipient is less than eighteen (18) years old and has no~~
2 ~~such identification, the unique number contained on a valid~~
3 ~~passport, military identification card, driver license, or~~
4 ~~identification card issued to the recipient's parent or guardian~~
5 ~~pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes or~~
6 ~~similar statute of another state if the parent or guardian is not a~~
7 ~~resident of the State of Oklahoma, or, if the controlled dangerous~~
8 ~~substance is obtained for an animal, the unique number contained on~~
9 ~~the animal owner's valid driver license or identification card~~
10 ~~issued pursuant to Section 6-105 of Title 47 of the Oklahoma~~
11 ~~Statutes or similar statute of another state if the owner is not a~~
12 ~~resident of the State of Oklahoma. Nonresident drug outlets~~
13 ~~registered pursuant to the Oklahoma Pharmacy Act and resident drug~~
14 ~~outlets defined in Section 353.1 of Title 59 of the Oklahoma~~
15 ~~Statutes are exempt from the picture identification requirement if~~
16 ~~the nonresident and resident drug outlets have obtained the~~
17 ~~identification of the patient through the prescription benefit plan~~
18 ~~of the patient forms of identification listed in 8 CFR~~
19 ~~274a.2(b)(1)(v)(A) and (B);~~

20 8. "Registrant" means a person, persons, corporation or other
21 entity who has been issued by the Director of the Oklahoma State
22 Bureau of Narcotics and Dangerous Drugs Control a registration
23 pursuant to Section 2-302 of this title; and
24

1 9. "State" means any state, territory, or possession of the
2 United States, the District of Columbia, or foreign nation.

3 SECTION 2. AMENDATORY 63 O.S. 2021, Section 2-309D, is
4 amended to read as follows:

5 Section 2-309D. A. The information collected at the central
6 repository pursuant to the Anti-Drug Diversion Act shall be
7 confidential and shall not be open to the public. Access to the
8 information shall be limited to:

9 1. Peace officers certified pursuant to Section 3311 of Title
10 70 of the Oklahoma Statutes who are employed as investigative agents
11 of the Oklahoma State Bureau of Narcotics and Dangerous Drugs
12 Control;

13 2. The United States Drug Enforcement Administration Diversion
14 Group Supervisor;

15 3. The executive director or chief investigator, as designated
16 by each board, of the following state boards:

- 17 a. Board of Podiatric Medical Examiners,
- 18 b. Board of Dentistry,
- 19 c. ~~State~~ Board of Pharmacy,
- 20 d. State Board of Medical Licensure and Supervision,
- 21 e. State Board of Osteopathic Examiners,
- 22 f. State Board of Veterinary Medical Examiners,
- 23 g. Oklahoma Health Care Authority,
- 24

- h. Department of Mental Health and Substance Abuse Services,
- i. Board of Examiners in Optometry,
- j. Oklahoma Board of Nursing,
- k. Office of the Chief Medical Examiner, and
- l. State Board of Health;

4. A multicounty grand jury properly convened pursuant to the Multicounty Grand Jury Act;

5. Medical practitioners employed by the United States Department of Veterans Affairs, the United States Military, or other federal agencies treating patients in this state;

6. At the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, medical practitioners and their staff, including those employed by the federal government in this state; and

7. The members of the Opioid Overdose Fatality Review Board for the purpose of carrying out the duties prescribed by Section 2-1001 of this title.

B. This section shall not prevent access, at the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, to investigative information by peace officers and investigative agents of federal, state, tribal, county or municipal law enforcement agencies, district attorneys and the Attorney General in furtherance of criminal, civil or administrative

1 investigations or prosecutions within their respective
2 jurisdictions, designated legal, communications, and analytical
3 employees of the Bureau, and to registrants in furtherance of
4 efforts to guard against the diversion of controlled dangerous
5 substances.

6 C. This section shall not prevent the disclosure, at the
7 discretion of the Director of the Oklahoma State Bureau of Narcotics
8 and Dangerous Drugs Control, of statistical information gathered
9 from the central repository to the general public ~~which shall be~~
10 ~~limited to types and quantities of controlled substances dispensed~~
11 ~~and the county where dispensed~~ for statistical, research, substance
12 abuse prevention, or educational purposes, provided that consumer
13 confidentiality is not compromised.

14 D. This section shall not prevent the disclosure, at the
15 discretion of the Director of the Oklahoma State Bureau of Narcotics
16 and Dangerous Drugs Control, of prescription-monitoring-program
17 information to prescription-monitoring programs of other states
18 provided a reciprocal data-sharing agreement is in place.

19 E. The Department of Mental Health and Substance Abuse Services
20 and the State Department of Health may utilize the information in
21 the central repository for statistical, research, substance abuse
22 prevention, or educational purposes, provided that consumer
23 confidentiality is not compromised.

1 F. Any unauthorized disclosure of any information collected at
2 the central repository provided by the Anti-Drug Diversion Act shall
3 be a misdemeanor. Violation of the provisions of this section shall
4 be deemed willful neglect of duty and shall be grounds for removal
5 from office.

6 G. 1. Registrants shall have access to the central repository
7 for the purposes of patient treatment and to aid in the
8 determination in prescribing or screening new patients. The
9 physician or designee shall provide, upon request by the patient,
10 the history of the patient or the query history of the patient.

11 2. a. Prior to prescribing or authorizing for refill, if one
12 hundred eighty (180) days have elapsed prior to the
13 previous access and check, of opiates, synthetic
14 opiates, semisynthetic opiates, benzodiazepine or
15 carisoprodol to a patient of record, registrants or
16 members of their medical or administrative staff shall
17 be required to access the information in the central
18 repository to assess medical necessity and the
19 possibility that the patient may be unlawfully
20 obtaining prescription drugs in violation of the
21 Uniform Controlled Dangerous Substances Act. The duty
22 to access and check shall not alter or otherwise amend
23 appropriate medical standards of care. The registrant
24 or medical provider shall note in the patient file

1 that the central repository has been checked and may
2 maintain a copy of the information.

3 b. The requirements set forth in subparagraph a of this
4 paragraph shall not apply:

5 (1) to medical practitioners who prescribe the
6 controlled substances set forth in subparagraph a
7 of this paragraph for hospice or end-of-life
8 care, or

9 (2) for a prescription of a controlled substance set
10 forth in subparagraph a of this paragraph that is
11 issued by a practitioner for a patient residing
12 in a nursing facility as defined by Section 1-
13 1902 of this title, provided that the
14 prescription is issued to a resident of such
15 facility.

16 3. Registrants shall not be liable to any person for any claim
17 of damages as a result of accessing or failing to access the
18 information in the central repository and no lawsuit may be
19 predicated thereon.

20 4. The failure of a registrant to access and check the central
21 repository as required under state or federal law or regulation may,
22 after investigation, be grounds for the licensing board of the
23 registrant to take disciplinary action against the registrant.

1 H. The ~~State~~ Board of Podiatric Medical Examiners, the ~~State~~
2 Board of Dentistry, the State Board of Medical Licensure and
3 Supervision, the ~~State~~ Board of Examiners in Optometry, the ~~State~~
4 Oklahoma Board of Nursing, the State Board of Osteopathic Examiners
5 and the State Board of Veterinary Medical Examiners shall have the
6 sole responsibility for enforcement of the provisions of subsection
7 G of this section. Nothing in this section shall be construed so as
8 to permit the Director of the State Bureau of Narcotics and
9 Dangerous Drugs Control to assess administrative fines provided for
10 in Section 2-304 of this title.

11 I. The Director of the Oklahoma State Bureau of Narcotics and
12 Dangerous Drugs Control, or a designee thereof, shall provide a
13 monthly list to the Directors of the ~~State~~ Board of Podiatric
14 Medical Examiners, the ~~State~~ Board of Dentistry, the State Board of
15 Medical Licensure and Supervision, the ~~State~~ Board of Examiners in
16 Optometry, the ~~State~~ Oklahoma Board of Nursing, the State Board of
17 Osteopathic Examiners and the State Board of Veterinary Medical
18 Examiners of the top twenty prescribers of controlled dangerous
19 substances within their respective areas of jurisdiction. Upon
20 discovering that a registrant is prescribing outside the limitations
21 of his or her licensure or outside of drug registration rules or
22 applicable state laws, the respective licensing board shall be
23 notified by the Bureau in writing. Such notifications may be
24 considered complaints for the purpose of investigations or other

1 actions by the respective licensing board. Licensing boards shall
2 have exclusive jurisdiction to take action against a licensee for a
3 violation of subsection G of this section.

4 J. Information regarding fatal and nonfatal overdoses, other
5 than statistical information as required by Section 2-106 of this
6 title, shall be completely confidential. Access to this information
7 shall be strictly limited to the Director of the Oklahoma State
8 Bureau of Narcotics and Dangerous Drugs Control or designee, the
9 Chief Medical Examiner, state agencies and boards provided in
10 subsection A of this section, and the registrant that enters the
11 information. Registrants shall not be liable to any person for a
12 claim of damages for information reported pursuant to the provisions
13 of Section 2-105 of this title.

14 K. The Director of the Oklahoma State Bureau of Narcotics and
15 Dangerous Drugs Control shall provide adequate means and procedures
16 allowing access to central repository information for registrants
17 lacking direct computer access.

18 L. Upon completion of an investigation in which it is
19 determined that a death was caused by an overdose, either
20 intentionally or unintentionally, of a controlled dangerous
21 substance, the medical examiner shall be required to report the
22 decedent's name and date of birth to the Oklahoma State Bureau of
23 Narcotics and Dangerous Drugs Control. The Oklahoma State Bureau of
24 Narcotics and Dangerous Drugs Control shall be required to maintain

1 a database containing the classification of medical practitioners
2 who prescribed or authorized controlled dangerous substances
3 pursuant to this subsection.

4 M. The Oklahoma State Bureau of Narcotics and Dangerous Drugs
5 Control is authorized to provide unsolicited notification to the
6 licensing board of a pharmacist or practitioner if a patient has
7 received one or more prescriptions for controlled substances in
8 quantities or with a frequency inconsistent with generally
9 recognized standards of safe practice. An unsolicited notification
10 to the licensing board of the practitioner pursuant to this section:

11 1. Is confidential;

12 2. May not disclose information that is confidential pursuant
13 to this section; and

14 3. May be in a summary form sufficient to provide notice of the
15 basis for the unsolicited notification.

16 N. Except as otherwise provided for in subsections A and B of
17 this section, any information collected at the central repository,
18 as outlined in Section 2-309C of this title, shall:

19 1. Be confidential by law and privileged;

20 2. Not be subject to the Oklahoma Open Records Act;

21 3. Not be subject to subpoena; and

22 4. Not be subject to discovery or admissible in evidence in any
23 private civil action.

SECTION 3. It being immediately necessary for the preservation
of the public peace, health or safety, an emergency is hereby
declared to exist, by reason whereof this act shall take effect and
be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
February 28, 2022 - DO PASS AS AMENDED