STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 295 By: McCortney

AS INTRODUCED

An Act relating to controlled dangerous substances; amending 63 O.S. 2021, Section 2-309D, as amended by Section 2, Chapter 69, O.S.L. 2022 (63 O.S. Supp. 2022, Section 2-309D), which relates to central repository information; requiring the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to establish certain procedures; directing the Bureau to revise certain inaccurate information; requiring certain description and inclusion of information; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 2-309D, as amended by Section 2, Chapter 69, O.S.L. 2022 (63 O.S. Supp. 2022, Section 2-309D), is amended to read as follows:

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

1. Peace officers certified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes who are employed as investigative agents

of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

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

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

a. Board of Podiatric Medical Examiners,

b. Board of Dentistry,

c. Board of Pharmacy,

d. State Board of Medical Licensure and Supervision,

e. State Board of Osteopathic Examiners,

f. State Board of Veterinary Medical Examiners,

g. Oklahoma Health Care Authority,

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

C. This section shall not prevent the disclosure, at the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, of statistical information gathered from the central repository to the general public for statistical, research, substance abuse prevention, or educational purposes, provided that consumer confidentiality is not compromised.

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

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

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

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

b. (1) The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall establish procedures by which a patient may:

(a) request and obtain his or her own controlled substances history or, in appropriate circumstances, that of a patient who lacks capacity to make health care decisions and for whom the individual has legal authority to make such decisions and would have legal access to the patient's health care records, or

(b) seek review of any part of his or her controlled substances history or, in appropriate circumstances, that of a patient who lacks capacity to make health care decisions and for whom the individual has legal authority to make such decisions and would have legal access to the patient's health care records, that such individual disputes.

(2) Such procedures shall require the Bureau to promptly revise any information accessible through the central repository that the Bureau determines to be inaccurate. Such procedures

shall be described on the Bureau's website and included with the controlled substances history provided to an individual pursuant to a request made under this subparagraph.

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

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

(1) to medical practitioners who prescribe the controlled substances set forth in subparagraph a

of this paragraph for hospice or end-of-life care, or

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

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

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

H. The Board of Podiatric Medical Examiners, the Board of Dentistry, the State Board of Medical Licensure and Supervision, the Board of Examiners in Optometry, the Oklahoma Board of Nursing, the State Board of Osteopathic Examiners and the State Board of Veterinary Medical Examiners shall have the sole responsibility for enforcement of the provisions of subsection G of this section. Nothing in this section shall be construed so as to permit the

Director of the State Bureau of Narcotics and Dangerous Drugs Control to assess administrative fines provided for in Section 2-304 of this title.

I. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, or a designee thereof, shall provide a monthly list to the Directors of the Board of Podiatric Medical Examiners, the Board of Dentistry, the State Board of Medical Licensure and Supervision, the Board of Examiners in Optometry, the Oklahoma Board of Nursing, the State Board of Osteopathic Examiners and the State Board of Veterinary Medical Examiners of the top twenty prescribers of controlled dangerous substances within their respective areas of jurisdiction. Upon discovering that a registrant is prescribing outside the limitations of his or her licensure or outside of drug registration rules or applicable state laws, the respective licensing board shall be notified by the Bureau in writing. Such notifications may be considered complaints for the purpose of investigations or other actions by the respective licensing board. Licensing boards shall have exclusive jurisdiction to take action against a licensee for a violation of subsection G of this section.

J. Information regarding fatal and nonfatal overdoses, other than statistical information as required by Section 2-106 of this title, shall be completely confidential. Access to this information shall be strictly limited to the Director of the Oklahoma State

Bureau of Narcotics and Dangerous Drugs Control or designee, the Chief Medical Examiner, state agencies and boards provided in subsection A of this section, and the registrant that enters the information. Registrants shall not be liable to any person for a claim of damages for information reported pursuant to the provisions of Section 2-105 of this title.

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

L. Upon completion of an investigation in which it is determined that a death was caused by an overdose, either intentionally or unintentionally, of a controlled dangerous substance, the medical examiner shall be required to report the decedent's name and date of birth to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be required to maintain a database containing the classification of medical practitioners who prescribed or authorized controlled dangerous substances pursuant to this subsection.

M. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control is authorized to provide unsolicited notification to the licensing board of a pharmacist or practitioner if a patient has received one or more prescriptions for controlled substances in

quantities or with a frequency inconsistent with generally recognized standards of safe practice. An unsolicited notification to the licensing board of the practitioner pursuant to this section:

1. Is confidential;

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

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

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

1. Be confidential by law and privileged;

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

3. Not be subject to subpoena; and

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

SECTION 2. This act shall become effective November 1, 2023.

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