TITLE 36
PUBLIC HEALTH AND SAFETY
Chapter 431 — State and Local Administration and Enforcement of Health Laws
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PUBLIC HEALTH AND SAFETY

ADMINISTRATION OF HEALTH LAWS

PRESCRIPTION MONITORING PROGRAM

(Definitions)

431.960 Definitions for ORS 431.962 to 431.978 and 431.992. As used in ORS 431.962 to 431.978 and 431.992:

(1) "Dispense" and "dispensing" have the meanings given those terms in ORS 689.005.

(2) "Drug outlet" has the meaning given that term in ORS 689.005.

(3) "Health professional regulatory board" has the meaning given that term in ORS 676.160.

(4) "Practitioner" means:

(a) A practitioner as defined in ORS 689.005; or

(b) An individual licensed to practice a profession in California, Idaho or Washington, if the requirements for licensure are similar, as determined by the Oregon Health Authority, to the requirements for being licensed as a practitioner as defined in ORS 689.005.

(5) "Prescription" has the meaning given that term in ORS 475.005.

(6) "Prescription drug" has the meaning given that term in ORS 689.005. [2009 c.799 §1; 2013 c.550 §1]

Note: 431.960 to 431.978 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Program)

431.962 Establishment of program; rules; report to commission. (1)(a) The Oregon Health Authority, in consultation with the Prescription Monitoring Program Advisory Commission, shall establish and maintain a prescription monitoring program for monitoring and reporting prescription drugs dispensed by pharmacies in Oregon that are classified in schedules II through IV under the federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified by the State Board of Pharmacy by rule under ORS 475.035.

(b)(A) To fulfill the requirements of this subsection, the authority shall establish, maintain and operate an electronic system to monitor and report drugs described in paragraph (a) of this subsection that are dispensed by prescription.

(B) The system must operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a week.

(C) The authority may contract with a state agency or private entity to ensure the effective operation of the electronic system.

(2) In consultation with the commission, the authority shall adopt rules for the operation of the electronic prescription monitoring program established under subsection (1) of this section, including but not limited to standards for:

(a) Reporting data;

(b) Providing maintenance, security and disclosure of data;

(c) Ensuring accuracy and completeness of data;

(d) Complying 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;

(e) Ensuring accurate identification of persons or entities requesting information from the database;

(f) Accepting printed or nonelectronic reports from pharmacies that do not have the capability to provide electronic reports; and

(g) Notifying a patient, before or when a drug classified in schedules II through IV is dispensed to the patient, about the prescription monitoring program and the entry of the prescription in the system.

(3) The authority shall submit an annual report to the commission regarding the prescription monitoring program established under this section. [2009 c.799 §2; 2011 c.720 §184; 2013 c.550 §2]

Note: See note under 431.960.

431.964 Duty of pharmacy to report to program; exceptions. (1) Not later than one week after dispensing a prescription drug that is subject to the prescription monitoring program established under ORS 431.962, a pharmacy shall electronically report to the Oregon Health Authority:

(a) The name, address, date of birth and sex of the patient for whom the prescription drug was prescribed;

(b) The identity of the pharmacy that dispensed the prescription drug and the date on which the prescription drug was dispensed;

(c) The identity of the practitioner who prescribed the prescription drug and the date on which the prescription drug was prescribed;

(d) The national drug code number for the prescription drug;

(e) The prescription number assigned to the prescription drug;

(f) The quantity of the prescription drug dispensed;

(g) The number of days for which the prescription drug was dispensed; and

(h) The number of refills of the prescription authorized by the practitioner and the number of the refill that the pharmacy dispensed.

(2) Notwithstanding subsection (1) of this section, the authority may not:

(a) Require the reporting of prescription drugs administered directly to a patient or dispensed pursuant to ORS 127.800 to 127.897;

(b) Collect or use Social Security numbers in the prescription monitoring program; or

(c) Disclose under ORS 431.966 (2)(a) the sex of the patient for whom a drug was prescribed. The sex of the patient may be disclosed only for the purpose of research or epidemiological study under ORS 431.966 (2)(b).

(3) Upon receipt of the data reported pursuant to subsection (1) of this section, the authority shall record the data in the electronic system operated pursuant to the prescription monitoring program.

(4)(a) The authority may grant a pharmacy a waiver of the electronic submission requirement of subsection (1) of this section for good cause as determined by the authority. The waiver shall state the

format, method and frequency of the alternate nonelectronic submissions from the pharmacy and the duration of the waiver.

(b) As used in this subsection, "good cause" includes financial hardship.

(5) This section does not apply to pharmacies in institutions as defined in ORS 179.010. [2009 c.799 §3; 2011 c.720 §185; 2013 c.550 §3]

Note: See note under 431.960.

431.966 Disclosure of information; corrections; records; immunity from liability. (1)(a) Except as provided under subsection (2) of this section, prescription monitoring information submitted under ORS 431.964 to the prescription monitoring program established in ORS 431.962:

(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) of this section, prescription monitoring information submitted under ORS 431.964 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, 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) 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.

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

(F) 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 431.260; 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 431.110.

(c) The authority shall disclose information relating to a patient maintained in the electronic system operated pursuant to the prescription monitoring program established under ORS 431.962 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 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 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 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, 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 431.964 or 431.968, 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 431.964 or 431.968 unless the

authority, person or entity acts with malice, criminal intent, gross negligence, recklessness or willful intent.

(7) Nothing in ORS 431.962 to 431.978 and 431.992 requires a practitioner or pharmacist who prescribes or dispenses a prescription drug to obtain information about a patient from the prescription monitoring program. A practitioner 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. [2009 c.799 §4; 2011 c.720 §186; 2013 c.550 §4]

Note: See note under 431.960.

431.968 Duty of pharmacist to fill prescription. A pharmacist may not refuse to fill a valid prescription solely because the pharmacist cannot receive patient information from the prescription monitoring program established under ORS 431.962 at the time the patient requests that the prescription be filled. [2009 c.799 §5]

Note: See note under 431.960.

431.970 Reports to health professional regulatory boards. If a practitioner or pharmacist authorized to obtain controlled substance prescription information from the prescription monitoring system established under ORS 431.962 discloses or uses information obtained from the system in violation of ORS 431.966, the Oregon Health Authority shall report the individual to the appropriate health professional regulatory board. [2009 c.799 §7; 2011 c.720 §187]

Note: See note under 431.960.

431.972 Fees. (1) As used in this section, “board” means:

(a) The Oregon Medical Board;

(b) The Oregon Board of Dentistry;

(c) The Oregon Board of Naturopathic Medicine;

(d) The Oregon State Board of Nursing;

(e) The Oregon Board of Optometry; and

(f) The State Board of Pharmacy.

(2)(a) In addition to other licensing fees imposed by a board on licensees, a board shall adopt rules imposing a fee of $25 per year on each person licensed by the board who is authorized to prescribe or dispense controlled substances. A board shall collect the fee at the same time the board collects other licensing fees imposed on licensees.

(b) A board shall retain 10 percent of the fees collected under paragraph (a) of this subsection to cover the costs of accounting and collection of the fees.

(c) On the first day of each calendar quarter, a board shall transmit 90 percent of the fees collected under paragraph (a) of this subsection during the preceding calendar quarter to the Electronic Prescription Monitoring Fund established in ORS 431.974. [2009 c.799 §8]

Note: See note under 431.960.

431.974 Electronic Prescription Monitoring Fund. (1) The Electronic Prescription Monitoring Fund is established in the State Treasury, separate and distinct from the General Fund. The Electronic Prescription Monitoring Fund consists of moneys transmitted to the fund under ORS 431.972 and any

other moneys deposited in accordance with law. Interest earned by the fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Authority for the purpose of carrying out the provisions of ORS 431.962 to 431.978 and 431.992.

(2) The authority may accept grants, donations, gifts or moneys from any source for deposit into the fund established by this section. [2009 c.799 §11; 2011 c.720 §188]

Note: See note under 431.960.

(Commission)

431.976 Prescription Monitoring Program Advisory Commission; purposes; members. (1) The Prescription Monitoring Program Advisory Commission is created for the purposes of:

(a) Studying issues related to the prescription monitoring program established under ORS 431.962;

(b) Reviewing the program's annual report and making recommendations to the Oregon Health Authority regarding the operation of the program; and

(c) Developing criteria used to evaluate program data.

(2) The commission shall consist of 11 members appointed by the authority as follows:

(a) A person nominated by the Pain Management Commission;

(b) A person who dispenses controlled substances nominated by an association representing pharmacists;

(c) A practicing dentist nominated by an association representing dentists;

(d) A practicing physician nominated by an association representing physicians;

(e) A practicing doctor of osteopathy nominated by an association representing osteopathic physicians and surgeons;

(f) A nurse authorized to prescribe controlled substances nominated by an association representing nurses;

(g) A practicing naturopathic physician nominated by an association representing naturopathic physicians;

(h) A practicing optometrist, nominated by an association representing optometrists;

(i) A representative of the authority with expertise in administering addiction services; and

(j) Two members of the public, one of whom must be an expert in information technology. [2009 c.799 §9; 2011 c.720 §189]

Note: See note under 431.960.

431.978 Term; meetings; rules; quorum; expenses. (1) The term of office of each member of the Prescription Monitoring Program Advisory Commission is four years, but a member serves at the pleasure of the Oregon Health Authority. Before the expiration of the term of a member, the authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the authority shall make an appointment to become immediately effective.

(2) The commission shall elect one of its members to serve as chairperson.

(3) The commission shall meet at least once annually at a time and place specified by the chairperson of the commission. The commission may meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission.

(4) The commission may adopt rules necessary for the operation of the commission.

(5) A majority of the members of the commission constitutes a quorum for the transaction of business.

(6) Official action by the commission requires the approval of a majority of the members of the commission.

(7) The authority shall provide staff support to the commission.

(8) Members of the commission are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the commission shall be paid out of funds appropriated to the authority for that purpose.

(9) All agencies of state government, as defined in ORS 174.111, are directed to assist the commission in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the commission consider necessary to perform their duties. [2009 c.799 §10; 2011 c.720 §190]

Note: See note under 431.960.

PENALTIES

431.992 Civil penalty for violation of ORS 431.964 to 431.968. (1) In addition to any other penalty provided by law, the Attorney General may impose a civil penalty not to exceed $10,000 for each violation of ORS 431.964, 431.966 or 431.968. Each improper release of information from the prescription monitoring program in violation of ORS 431.966 is a separate violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) The Department of Justice may adopt rules as required to carry out the provisions of this section.

(4) Penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund. [2009 c.799 §6]