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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 1041

February 15, 2007

Authored by Abeler; Thissen; Howes; Moe; Peterson, A., and others

The bill was read for the first time and referred to the Committee on Health and Human Services

March 21, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to health; requiring health plans to establish a plan to monitor prescribing
1.3 of controlled substances; establishing a controlled substances prescription
1.4 electronic reporting system; requiring an evaluation report; amending Minnesota
1.5 Statutes 2006, section 152.11, by adding a subdivision; proposing coding for new
1.6 law in Minnesota Statutes, chapters 62Q; 152; 256B.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. **[62Q.138] PRESCRIBING OF CONTROLLED SUBSTANCES.**

1.9 All health plan companies and other entities administering health plans, including
1.10 but not limited to entities described in section 60A.23, subdivision 8, shall develop and
1.11 implement a plan to:

1.12 (1) monitor the prescribing of controlled substances listed in section 152.02,
1.13 subdivisions 3 and 4, and those substances defined by the Board of Pharmacy under
1.14 section 152.02, subdivisions 8 and 12, by enrolled providers or providers under contract;

1.15 (2) require enrolled providers or providers under contract to report information
1.16 related to potential patient abuse of the controlled substances to the health plan company
1.17 or administrative entity, and the Board of Pharmacy; and

1.18 (3) provide education to enrollees on the proper use of controlled substances.

1.19 Sec. 2. Minnesota Statutes 2006, section 152.11, is amended by adding a subdivision to
1.20 read:

1.21 **Subd. 2d. Identification requirement for schedule II or III controlled substance.**

1.22 No person may dispense a controlled substance included in schedule II or III without
1.23 requiring the person purchasing the controlled substance to present valid photographic

2.1 identification, unless the person purchasing the controlled substance, or if applicable the
2.2 person for whom the controlled substance prescription is written, is known to the dispenser.

2.3 **Sec. 3. [152.126] SCHEDULE II AND III CONTROLLED SUBSTANCES**
2.4 **PRESCRIPTION ELECTRONIC REPORTING SYSTEM.**

2.5 Subdivision 1. **Definitions.** For purposes of this section, the terms defined in this
2.6 subdivision have the meanings given.

2.7 (a) "Board" means the Minnesota State Board of Pharmacy established under
2.8 chapter 151.

2.9 (b) "Controlled substances" means those substances listed in section 152.02,
2.10 subdivisions 3 and 4, and those substances defined by the board pursuant to section
2.11 152.02, subdivisions 8 and 12.

2.12 (c) "Dispense" or "dispensing" has the meaning given in section 151.01, subdivision
2.13 30. Dispensing does not include the direct administering of a controlled substance to a
2.14 patient by a licensed health care professional.

2.15 (d) "Dispenser" means a person authorized by law to dispense a controlled substance,
2.16 pursuant to a valid prescription. A dispenser does not include a licensed hospital pharmacy
2.17 that distributes controlled substances for inpatient hospital care.

2.18 (e) "Prescriber" means a licensed health care professional who is authorized to
2.19 prescribe a controlled substance under section 152.12, subdivision 1.

2.20 (f) "Prescription" has the meaning given in section 151.01, subdivision 16.

2.21 **Subd. 2. Prescription electronic reporting system.** (a) By January 1, 2009, the
2.22 board shall establish an electronic system for reporting the information required under
2.23 subdivision 4 for all controlled substances dispensed within the state. Data for controlled
2.24 substance prescriptions that are dispensed in a quantity small enough to provide treatment
2.25 to a patient for a period of 48 hours or less need not be reported.

2.26 (b) The board may contract with a vendor for the purpose of obtaining technical
2.27 assistance in the design, implementation, and maintenance of the electronic reporting
2.28 system. The vendor's role shall be limited to providing technical support to the board
2.29 concerning the software, databases, and computer systems required to interface with the
2.30 existing systems currently used by pharmacies to dispense prescriptions and transmit
2.31 prescription data to other third parties.

2.32 (c) The board may issue a waiver to a dispenser that is unable to submit dispensing
2.33 information by electronic means. The waiver may permit the dispenser to submit
2.34 dispensing information by paper form or other means, provided all information required
2.35 by subdivision 4 is submitted in this alternative format.

3.1 Subd. 3. **Prescription Electronic Reporting Advisory Committee.** (a) The
3.2 board shall convene an advisory committee. The committee must include at least one
3.3 representative of:

3.4 (1) the Department of Health;

3.5 (2) the Department of Human Services;

3.6 (3) each health-related licensing board that licenses prescribers;

3.7 (4) a professional medical association, which may include an association of pain
3.8 management and chemical dependency specialists;

3.9 (5) a professional pharmacy association;

3.10 (6) a consumer privacy or security advocate; and

3.11 (7) a consumer or patient rights organization.

3.12 (b) The advisory committee shall advise the board on the development and operation
3.13 of the electronic reporting system, including, but not limited to:

3.14 (1) technical standards for electronic prescription drug reporting;

3.15 (2) proper analysis and interpretation of prescription monitoring data; and

3.16 (3) an evaluation process for the program.

3.17 Subd. 4. **Reporting requirements and notice.** (a) Each dispenser must submit the
3.18 following data to the board or its designated vendor, subject to the notice required under
3.19 paragraph (d):

3.20 (1) prescriber DEA number;

3.21 (2) dispenser DEA number;

3.22 (3) name of the patient for whom the prescription was written;

3.23 (4) date of birth of the patient for whom the prescription was written;

3.24 (5) date the prescription was written;

3.25 (6) date the prescription was filled;

3.26 (7) NDC code for drug dispensed; and

3.27 (8) quantity of controlled substance dispensed.

3.28 (b) The dispenser must submit the required information according to the format and
3.29 protocols specified in the "ASAP Telecommunications Format for Controlled Substances,"
3.30 May 1995 edition, published by the American Society for Automation in Pharmacy, which
3.31 is hereby adopted by reference, by a procedure established by the board.

3.32 (c) A dispenser is not required to submit this data for those controlled substance
3.33 prescriptions dispensed for:

3.34 (1) individuals residing in licensed skilled nursing or intermediate care facilities;

3.35 (2) individuals receiving assisted living services under chapter 144G or through a
3.36 medical assistance home and community-based waiver;

4.1 (3) individuals receiving medication intravenously;
4.2 (4) individuals receiving hospice and other palliative or end-of-life care; and
4.3 (5) individuals receiving services from a home care provider regulated under chapter
4.4 144A.

4.5 (d) A dispenser must not submit data under this subdivision unless a conspicuous
4.6 notice of the reporting requirements of this section is given to the patient for whom the
4.7 prescription was written.

4.8 Subd. 5. **Use of data by board.** (a) The board shall develop and maintain a database
4.9 of the data reported under subdivision 4. The board shall maintain data that could identify
4.10 an individual prescriber or dispenser in encrypted form. The database may be used by
4.11 permissible users identified under subdivision 6 for the identification of:

4.12 (1) individuals receiving prescriptions for controlled substances from prescribers
4.13 who subsequently obtain controlled substances from dispensers in quantities or with a
4.14 frequency inconsistent with generally recognized standards of dosage for those controlled
4.15 substances; and

4.16 (2) individuals presenting forged or otherwise false or altered prescriptions for
4.17 controlled substances to dispensers.

4.18 (b) No permissible user identified under subdivision 6 may access the database
4.19 for the sole purpose of identifying prescribers of controlled substances for unusual or
4.20 excessive prescribing patterns without a valid search warrant or court order.

4.21 (c) No personnel of a state or federal occupational licensing board or agency may
4.22 access the database for the purpose of obtaining information to be used to initiate or
4.23 substantiate a disciplinary action against a prescriber.

4.24 (d) Data reported under subdivision 4 shall be retained by the board in the database
4.25 for a six-month period, and shall be removed from the database six months from the
4.26 date the data was received.

4.27 Subd. 6. **Access to reporting system data.** (a) Except as indicated in this
4.28 subdivision, the data submitted to the board under subdivision 4 is private data on
4.29 individuals as defined in section 13.02, subdivision 12, and not subject to public disclosure.

4.30 (b) Except as specified in subdivision 5, the following persons shall be considered
4.31 permissible users and may access the data submitted under subdivision 4 in the same or
4.32 similar manner, and for the same or similar purposes, as those persons who are authorized
4.33 to access similar private data on individuals under federal and state law:

4.34 (1) a prescriber, to the extent the information relates specifically to a current patient
4.35 of the prescriber, to whom the practitioner is prescribing or considering prescribing any
4.36 controlled substance;

5.1 (2) a dispenser to the extent the information relates specifically to a current patient to
5.2 whom that dispenser is dispensing or considering dispensing any controlled substance;

5.3 (3) an individual who is the recipient of a controlled substance prescription for
5.4 which data was submitted under subdivision 4;

5.5 (4) personnel of the board specifically assigned to conduct a bona fide investigation
5.6 of a specific board licensee;

5.7 (5) personnel of the board engaged in the collection of controlled substance
5.8 prescription information as part of the assigned duties and responsibilities under this
5.9 section;

5.10 (6) authorized personnel of a vendor under contract with the board who are engaged
5.11 in the design, implementation, and maintenance of the electronic reporting system as part
5.12 of the assigned duties and responsibilities of their employment, provided that access to data
5.13 is limited to the minimum amount necessary to test and maintain the system databases;

5.14 (7) federal, state, and local law enforcement authorities engaged in a bona fide
5.15 investigation of a specific person; and

5.16 (8) personnel of the medical assistance program assigned to use the data collected
5.17 under this section to identify recipients whose usage of controlled substances may warrant
5.18 restriction to a single primary care physician, a single outpatient pharmacy, or a single
5.19 hospital.

5.20 (c) Any permissible user identified in paragraph (b), who directly accesses
5.21 the data electronically, shall implement and maintain a comprehensive information
5.22 security program that contains administrative, technical, and physical safeguards that
5.23 are appropriate to the user's size and complexity, and the sensitivity of the personal
5.24 information obtained. The permissible user shall identify reasonably foreseeable internal
5.25 and external risks to the security, confidentiality, and integrity of personal information
5.26 that could result in the unauthorized disclosure, misuse, or other compromise of the
5.27 information and assess the sufficiency of any safeguards in place to control the risks.

5.28 (d) The board shall not release data submitted under this section unless it is provided
5.29 with evidence, satisfactory to the board, that the person requesting the information is
5.30 entitled to receive the data. Access to the data by law enforcement authorities must be
5.31 accompanied by a valid search warrant.

5.32 (e) The board shall not release the name of a prescriber without the written consent
5.33 of the prescriber or a valid search warrant or court order. The board shall provide a
5.34 mechanism for a prescriber to submit to the board a signed consent authorizing the release
5.35 of the prescriber's name when data containing the prescriber's name is requested.

6.1 (f) The board shall maintain a log of all persons who access the data and shall ensure
6.2 that any permissible user complies with paragraph (c) prior to attaining direct access to
6.3 the data.

6.4 Subd. 7. **Disciplinary action.** (a) A dispenser who knowingly fails to submit data to
6.5 the board as required under this section is subject to disciplinary action by the appropriate
6.6 health-related licensing board.

6.7 (b) A prescriber or dispenser authorized to access the data who knowingly discloses
6.8 the data in violation of state or federal laws relating to the privacy of health care data
6.9 shall be subject to disciplinary action by the appropriate health-related licensing board,
6.10 and appropriate civil penalties.

6.11 Subd. 8. **Evaluation and reporting.** (a) The board shall evaluate the prescription
6.12 electronic reporting system to determine if the system is cost-effective and whether it is
6.13 negatively impacting appropriate prescribing practices of controlled substances. The
6.14 board may contract with a vendor to design and conduct the evaluation.

6.15 (b) The board shall submit the evaluation of the system to the legislature by January
6.16 15, 2010.

6.17 Subd. 9. **Immunity from liability; no requirement to obtain information.** (a) A
6.18 pharmacist, prescriber, or other dispenser making a report to the program in good faith
6.19 under this section is immune from any civil, criminal, or administrative liability, which
6.20 might otherwise be incurred or imposed as a result of the report, or on the basis that the
6.21 pharmacist or prescriber did or did not seek or obtain or use information from the program.

6.22 (b) Nothing in this section shall require a pharmacist, prescriber, or other dispenser
6.23 to obtain information about a patient from the program, and the pharmacist, prescriber
6.24 or other dispenser, if acting in good faith, is immune from any civil, criminal, or
6.25 administrative liability that might otherwise be incurred or imposed for requesting,
6.26 receiving, or using information from the program.

6.27 Sec. 4. **[256B.0636] PRESCRIBING OF CONTROLLED SUBSTANCES; ABUSE**
6.28 **PREVENTION.**

6.29 The commissioner shall develop and implement a plan to:

6.30 (1) monitor the prescribing of controlled substances listed in section 152.02,
6.31 subdivisions 3 and 4, and those substances defined by the board of pharmacy under section
6.32 152.02, subdivisions 8 and 12, by enrolled providers and providers under contract with
6.33 participating managed care plans;

7.1 (2) require enrolled providers and providers under contract with participating
7.2 managed care plans to report information related to potential patient abuse of the
7.3 controlled substances to the commissioner, and the board of pharmacy; and

7.4 (3) provide education to Minnesota health care program enrollees on the proper use
7.5 of controlled substances.

7.6 **Sec. 5. FEDERAL GRANTS.**

7.7 The Board of Pharmacy shall apply for any applicable federal grants or other nonstate
7.8 funds to establish and fully implement the prescription electronic reporting system.

7.9 **Sec. 6. BOARD OF PHARMACY.**

7.10 The Board of Pharmacy shall not increase the license fees of pharmacists or
7.11 pharmacies in order to adequately fund the prescription electronic reporting system under
7.12 Minnesota Statutes, section 152.126, without specific authority from the legislature.

7.13 **Sec. 7. BOARD OF MEDICAL PRACTICE.**

7.14 The board of medical practice shall convene a work group to discuss the appropriate
7.15 prescribing of controlled substances listed in Minnesota Statutes, section 152.02,
7.16 subdivisions 3 and 4, and those substances defined by the Board of Pharmacy under
7.17 Minnesota Statutes, section 152.02, subdivisions 7, 8, and 12, for pain management, and
7.18 shall report to the legislature by December 15, 2007.

7.19 **Sec. 8. EFFECTIVE DATE.**

7.20 (a) Section 3 is effective July 1, 2007, or upon receiving sufficient nonstate funds to
7.21 implement the prescription electronic reporting program, whichever is later. In the event
7.22 that nonstate funds are not secured by the Board of Pharmacy to adequately fund the
7.23 implementation of the prescription electronic reporting program, the board is not required
7.24 to implement section 3 without a subsequent appropriation from the legislature.

7.25 (b) Sections 5 and 6 are effective the day following final enactment.