

FIRST REGULAR SESSION

# SENATE BILL NO. 155

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

Pre-filed December 3, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0532S.03I

## AN ACT

To amend chapter 195, RSMo, by adding thereto six new sections relating to the monitoring of certain prescribed controlled substances, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 195, RSMo, is amended by adding thereto six new sections, to be known as sections 195.450, 195.453, 195.456, 195.459, 195.462, and 195.465, to read as follows:

**195.450. 1. Sections 195.450 to 195.465 shall be known and may be cited as the "Narcotics Control Act".**

**2. As used in sections 195.450 to 195.465, the following terms shall mean:**

**(1) "Controlled substance", the same meaning as given such term in section 195.010;**

**(2) "Department", the department of health and senior services;**

**(3) "Dispenser", a person who delivers a Schedule II, III, or IV controlled substance to a patient, but does not include:**

**(a) A hospital, as defined in section 197.020, that distributes such substances for the purpose of inpatient care or dispenses prescriptions for controlled substance at the time of discharge from such facility;**

**(b) A practitioner or other authorized person who administers such a substance; or**

**(c) A wholesale distributor of a controlled substance;**

**(4) "Patient", a person who is an ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, not including a hospice patient enrolled in a Medicare-certified hospice program who has controlled substances dispensed to him or her by such hospice program;**

21           **(5) "Schedule II, III, or IV controlled substance", a controlled**  
22 **substance that is listed in Schedule II, III, or IV of the schedules**  
23 **provided under this chapter or the Controlled Substances Act, 21 U.S.C.**  
24 **Section 812.**

25           **3. The provisions of sections 195.450 to 195.465 shall not apply to**  
26 **persons licensed under chapter 340.**

**195.453. 1. The department shall establish and maintain a**  
2 **narcotics control program for the monitoring of prescribing and**  
3 **dispensing all Schedule II, III, and IV controlled substances by**  
4 **professionals licensed to prescribe or dispense such substances in this**  
5 **state. The funding of the narcotics control program shall be subject to**  
6 **appropriations. In addition to appropriations from the general**  
7 **assembly, the department may apply for available grants and shall be**  
8 **able to accept other gifts, grants, and donations to develop and**  
9 **maintain the program.**

10           **2. Each dispenser shall submit to the department by electronic**  
11 **means information regarding each dispensation of a drug included in**  
12 **subsection 1 of this section. The information submitted for each**  
13 **dispensation shall include:**

- 14           **(1) The pharmacy's Drug Enforcement Agency (DEA) number;**
- 15           **(2) The date of the prescription;**
- 16           **(3) The following, if there is a prescription:**
  - 17           **(a) The prescription number or other unique identifier;**
  - 18           **(b) Whether the prescription is new or a refill; and**
  - 19           **(c) The prescriber's DEA or National Provider Identification**
- 20 **(NPI) number;**
- 21           **(4) The National Drug Code (NDC) for the drug dispensed;**
- 22           **(5) The quantity and dosage of the drug dispensed;**
- 23           **(6) The patient's identification number including, but not limited**  
24 **to, any one of the following:**
  - 25           **(a) The patient's drivers license number;**
  - 26           **(b) The patient's government-issued identification number; or**
  - 27           **(c) The patient's insurance cardholder identification number;**
- 28 **and**
- 29           **(7) The patient's name, address, and date of birth.**

30 **The addition of any further information to the list of data required to**  
31 **be submitted in this subsection shall be the sole purview of the general**

32 assembly.

33           **3. Each dispenser shall submit the information in accordance**  
34 **with transmission standards established by the American Society for**  
35 **Automation in Pharmacy or any successor organization and shall report**  
36 **data within twenty-four hours of dispensation. Beginning January 1,**  
37 **2021, the department shall begin phasing in a requirement that**  
38 **dispensers report data in real time with all report data to be submitted**  
39 **in real time by January 1, 2022.**

40           **4. (1) The department may issue a waiver to a dispenser who is**  
41 **unable to submit the dispensation information by electronic**  
42 **means. Such waiver may permit the dispenser to submit dispensation**  
43 **information by paper form or other means, provided all information**  
44 **required in subsection 2 of this section is submitted in such alternative**  
45 **format.**

46           **(2) The department may grant an extension to dispensers who**  
47 **are temporarily unable to electronically submit the dispensation**  
48 **information required in subsection 2 of this section in accordance with**  
49 **the time frame established in subsection 3 of this section due to**  
50 **unforeseen circumstances. In cases in which an extension is granted,**  
51 **dispensers shall be responsible for reporting the required data in a**  
52 **subsequent transmission.**

**195.456. 1. Dispensation information submitted to the**  
2 **department shall be confidential and not subject to public disclosure**  
3 **under chapter 610 except as provided in subsections 3 to 5 of this**  
4 **section.**

5           **2. The department shall maintain procedures to ensure that the**  
6 **privacy and confidentiality of patients and personal information**  
7 **collected, recorded, transmitted, and maintained are not disclosed to**  
8 **persons except as provided in subsections 3 to 5 of this section.**

9           **3. The department shall review the dispensation information**  
10 **and, if there is reasonable cause to believe a violation of law or breach**  
11 **of professional standards may have occurred, the department shall**  
12 **notify the appropriate law enforcement or professional licensing board,**  
13 **and provide any dispensation information required for an**  
14 **investigation.**

15           **4. The department may provide data in the narcotics control**  
16 **program to the following persons:**

17           **(1) Persons both in-state and out-of-state authorized to prescribe**  
18 **or dispense controlled substances for the purpose of providing medical**  
19 **or pharmaceutical care for their patients;**

20           **(2) An individual who requests his or her own dispensation**  
21 **information in accordance with state law;**

22           **(3) Any state board charged with regulating a professional who**  
23 **has the authority to prescribe or dispense controlled substances that**  
24 **requests data related to a specific professional under the authority of**  
25 **such board if such board has a current and open investigation into such**  
26 **professional and the data is limited to such professional;**

27           **(4) Local, state, and federal law enforcement or prosecutorial**  
28 **officials, both in-state and out-of-state, engaged in the investigation or**  
29 **enforcement of the laws governing prescription drugs only when based**  
30 **on a specific case and under a subpoena or court order issued by a**  
31 **court of competent jurisdiction; and**

32           **(5) The MO HealthNet division within the department of social**  
33 **services regarding MO HealthNet program recipients.**

34           **5. The department may provide data to public or private entities**  
35 **for statistical, research, or educational purposes only after removing**  
36 **information that could be used to identify individual patients,**  
37 **prescribers, dispensers, or persons who received dispensations from**  
38 **dispensers.**

39           **6. Nothing in sections 195.450 to 195.465 shall be construed to**  
40 **require a pharmacist or prescriber to obtain information about a**  
41 **patient from the database.**

42           **7. No dispensation information submitted to the department shall**  
43 **be used by any local, state, or federal authority to prevent an**  
44 **individual from owning or obtaining a firearm.**

45           **8. No dispensation information submitted to the department shall**  
46 **be the sole basis for probable cause to obtain an arrest or search**  
47 **warrant as part of a criminal investigation.**

48           **9. Beginning August 28, 2021, the department shall maintain an**  
49 **individual's prescription and dispensation information obtained under**  
50 **sections 195.450 to 195.465 for a maximum of three years from the date**  
51 **of dispensation, after which such information shall be deleted from the**  
52 **program.**

195.459. 1. The department is authorized to contract with any

2 other agency of this state, a political subdivision of this state, any other  
3 state with a private vendor, or any state government that currently  
4 operates a narcotics control program. Any contractor shall comply  
5 with the provisions regarding confidentiality or prescription  
6 information in section 195.456.

7 2. If a political subdivision of this state is operating a narcotics  
8 control program, the political subdivision's program shall be permitted  
9 to continue operating until such time as the department's program is  
10 available for utilization by prescribers and dispensers throughout the  
11 state.

195.462. The department shall promulgate rules setting forth the  
2 procedures and methods of implementing sections 195.450 to  
3 195.465. Any rule or portion of a rule, as that term is defined in section  
4 536.010, that is created under the authority delegated in this section  
5 shall become effective only if it complies with and is subject to all of  
6 the provisions of chapter 536 and, if applicable, section 536.028. This  
7 section and chapter 536 are nonseverable, and if any powers vested in  
8 the general assembly pursuant to chapter 536 to review, to delay the  
9 effective date, or to disapprove and annul a rule are subsequently held  
10 unconstitutional, then the grant of rulemaking authority and any rule  
11 proposed or adopted after August 28, 2019, shall be invalid and void.

195.465. 1. A dispenser who knowingly fails to submit  
2 dispensation information to the department as required in sections  
3 195.450 to 195.465 or knowingly submits the incorrect dispensation  
4 information shall be subject to an administrative penalty in the amount  
5 of one thousand dollars for each violation. The penalty shall be  
6 assessed through an order issued by the director of the  
7 department. Any person subject to an administrative penalty may  
8 appeal to the administrative hearing commission under the provisions  
9 of chapter 621.

10 2. Any person who unlawfully or knowingly accesses or discloses,  
11 or any person authorized to have prescription or dispensation  
12 information under sections 195.450 to 195.465 who knowingly discloses  
13 such information in violation of sections 195.450 to 195.465 or  
14 knowingly uses such information in a manner and for a purpose in  
15 violation of sections 195.450 to 195.465 is guilty of a class E felony.