

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE BILL NO. 63

101ST GENERAL ASSEMBLY
2021

0510S.02T

AN ACT

To repeal section 338.710, RSMo, and to enact in lieu thereof two 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Section A. Section 338.710, RSMo, is repealed and two new
2 sections enacted in lieu thereof, to be known as sections
3 195.450 and 338.710, to read as follows:

**195.450. 1. As used in this section, the following
2 terms shall mean:**

3 (1) "Controlled substance", as such term is defined in
4 section 195.010;

5 (2) "Dispenser", a person who delivers a Schedule II,
6 III, or IV controlled substance to a patient, but does not
7 include:

8 (a) A hospital, as such term is defined in section
9 197.020, that distributes such substances for the purpose of
10 inpatient care or dispenses prescriptions for controlled
11 substances at the time of discharge from such facility;

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

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

15 (3) "Health care provider", as such term is defined in
16 section 376.1350;

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

26 2. (1) There is hereby established within the office
27 of administration the "Joint Oversight Task Force for
28 Prescription Drug Monitoring", which shall be authorized to
29 supervise the collection and use of patient dispensation
30 information for prescribed Schedule II, III, or IV
31 controlled substances as submitted by dispensers in this
32 state under this section. The joint oversight task force
33 shall consist of the following members:

34 (a) Two members of the state board of registration for
35 the healing arts who are licensed physicians or surgeons;

36 (b) Two members of the state board of pharmacy who are
37 licensed pharmacists;

38 (c) One member of the state board of nursing who is an
39 advanced practice registered nurse; and

40 (d) One member of the Missouri dental board who is a
41 licensed dentist.

42 (2) The task force members shall be appointed by their
43 respective state regulatory boards and shall serve a term
44 not to exceed their term on such regulatory board, but in no
45 case shall any term on the joint oversight task force exceed
46 four years. Any member shall serve on the joint oversight
47 task force until his or her successor is appointed. Any
48 vacancy on the joint oversight task force shall be filled in

49 the same manner as the original appointment. A chair of the
50 joint oversight task force shall be selected by the members
51 of the joint oversight task force.

52 (3) Members shall serve on the joint oversight task
53 force without compensation, but may be reimbursed for their
54 actual and necessary expenses from moneys appropriated to
55 the office of administration. The office of administration
56 shall provide technical, legal, and administrative support
57 services as required by the joint oversight task force;
58 provided, that the office of administration shall not have
59 access to dispensation information or any other individually
60 identifiable patient information submitted and retained
61 under this section. The joint oversight task force shall be
62 authorized to hire such staff as is necessary, subject to
63 appropriations, to administer the provisions of this section.

64 (4) The joint oversight task force shall be considered
65 a public body and shall be subject to the provisions of
66 chapter 610.

67 3. (1) The joint oversight task force shall enter
68 into a contract with a vendor, through a competitive bid
69 process under chapter 34, for the operation of a program to
70 monitor the dispensation of prescribed Schedule II, III, and
71 IV controlled substances. The vendor shall be responsible
72 for the collection and maintenance of patient dispensation
73 information submitted to the vendor by dispensers in this
74 state and shall comply with the provisions of this section
75 and the rules and regulations promulgated by the joint
76 oversight task force.

77 (2) In addition to appropriations from the general
78 assembly, the joint oversight task force may apply for
79 available grants and shall be able to accept other gifts,
80 grants, and donations to develop and maintain the program.

81 (3) The joint oversight task force shall be authorized
82 to cooperate with the MO HealthNet division within the
83 department of social services for the purposes of applying
84 for and accepting any available federal moneys or other
85 grants to develop and maintain the program; provided, that
86 the joint oversight task force shall retain all authority
87 over the program granted to it under this section and the MO
88 HealthNet division shall not have access to the program or
89 the information submitted to the program beyond such access
90 as is granted to the division under this section.

91 4. Dispensation information submitted to the vendor
92 under this section shall be as follows for each dispensation
93 of a Schedule II, III, or IV controlled substance in this
94 state:

95 (1) The pharmacy's Drug Enforcement Administration
96 (DEA) number;

97 (2) The date of the dispensation;

98 (3) The following, if there is a prescription:

99 (a) The prescription number or other unique identifier;

100 (b) Whether the prescription is new or a refill; and

101 (c) The prescriber's DEA or National Provider
102 Identifier (NPI) number;

103 (4) The National Drug Code (NDC) for the drug
104 dispensed;

105 (5) The quantity and dosage of the drug dispensed;

106 (6) The patient's identification number including, but
107 not limited to, any one of the following:

108 (a) The patient's driver's license number;

109 (b) The patient's government-issued identification
110 number; or

111 (c) The patient's insurance cardholder identification
112 number; and

113 (7) The patient's name, address, and date of birth.

114 The addition of any further information to the list of
115 dispensation information required to be submitted in this
116 subsection shall be the sole purview of the general assembly.

117 5. Each dispenser shall submit the information to the
118 vendor electronically within twenty-four hours of
119 dispensation. Beginning January 1, 2023, the vendor shall
120 begin phasing in a requirement that dispensers report
121 patient dispensation information in real time, with all
122 dispensation information to be submitted in real time by
123 January 1, 2024. The joint oversight task force may
124 promulgate rules regarding alternative forms of transmission
125 or waivers of the time frame established under this
126 subsection due to unforeseen circumstances.

127 6. Beginning August 28, 2023, the vendor shall
128 maintain an individual's dispensation information obtained
129 under this section for a maximum of three years from the
130 date of dispensation, after which such information shall be
131 deleted from the program.

132 7. (1) The vendor shall treat patient dispensation
133 information and any other individually identifiable patient
134 information submitted under this section as protected health
135 information under the federal Health Insurance Portability
136 and Accountability Act of 1996 (HIPAA), P.L. 104-191, and
137 the regulations promulgated thereunder. Such information
138 shall only be accessed and utilized in accordance with the
139 privacy and security provisions of HIPAA and the provisions
140 of this section.

141 (2) Dispensation information and any other
142 individually identifiable patient information submitted

143 under this section shall be confidential and not subject to
144 public disclosure under chapter 610.

145 8. (1) The patient dispensation information submitted
146 under this section shall only be utilized for the provision
147 of health care services to the patient. Prescribers,
148 dispensers, and other health care providers shall be
149 permitted to access a patient's dispensation information
150 collected by the vendor in course of providing health care
151 services to the patient. The vendor shall provide
152 dispensation information to the individual patient, upon his
153 or her request.

154 (2) The patient dispensation information submitted
155 under this section shall be shared with any health
156 information exchange operating in this state, upon the
157 request of the health information exchange. Charges
158 assessed to the health information exchange by the vendor
159 shall not exceed the cost of the actual technology
160 connection or recurring maintenance thereof. Any health
161 information exchange receiving patient dispensation
162 information under this subdivision shall comply with the
163 provisions of subsection 7 of this section and such patient
164 dispensation information shall only be utilized in
165 accordance with the provisions of this section. For
166 purposes of this subdivision, "health information exchange"
167 means the electronic exchange of individually identifiable
168 patient information among unaffiliated organizations
169 according to nationally-recognized standards as administered
170 by a health information organization, which shall not
171 include an organized health care arrangement, as defined in
172 45 CFR 160.103, or a research institution that oversees and
173 governs the electronic exchange of individually identifiable

174 information among unaffiliated organizations for research
175 purposes only.

176 9. The dispensation information of MO HealthNet
177 program recipients submitted under this section may be
178 shared with the MO HealthNet division for purposes of
179 providing the division and MO HealthNet providers patient
180 dispensation history and facilitating MO HealthNet claims
181 processing and information retrieval; provided, that no
182 patient dispensation information submitted under this
183 section shall be utilized for any purpose prohibited under
184 this section.

185 10. The joint oversight task force may provide data to
186 public and private entities for statistical, research, or
187 educational purposes only after removing information that
188 could be used to identify individual patients, prescribers,
189 dispensers, or persons who received dispensations from
190 dispensers.

191 11. No patient dispensation information shall be
192 provided to local, state, or federal law enforcement or
193 prosecutorial officials, both in-state and out-of-state, or
194 any regulatory board, professional or otherwise, for any
195 purposes other than those explicitly set forth in HIPAA and
196 any regulations promulgated thereunder.

197 12. No dispensation information submitted under this
198 section shall be used by any local, state, or federal
199 authority to prevent an individual from owning or obtaining
200 a firearm.

201 13. No dispensation information submitted under this
202 section shall be the basis for probable cause to obtain an
203 arrest or search warrant as part of a criminal investigation.

204 14. (1) A dispenser who knowingly fails to submit
205 dispensation information to the vendor as required under

206 this section, or who knowingly submits incorrect
207 dispensation information, shall be subject to an
208 administrative penalty in the amount of one thousand dollars
209 for each violation. The penalty shall be assessed through
210 an order issued by the joint oversight task force. Any
211 person subject to an administrative penalty may appeal to
212 the administrative hearing commission under the provisions
213 of chapter 621.

214 (2) Any person who unlawfully and purposefully
215 accesses or discloses, or any person authorized to have
216 patient dispensation information under this section who
217 purposefully discloses, such information in violation of
218 this section or purposefully uses such information in a
219 manner and for a purpose in violation of this section is
220 guilty of a class E felony.

221 15. (1) The provisions of this section shall
222 supercede any local laws, ordinances, orders, rules, or
223 regulations enacted by a county, municipality, or other
224 political subdivision of this state for the purpose of
225 monitoring the prescription or dispensation of prescribed
226 controlled substances within the state. Any such
227 prescription drug monitoring program in operation prior to
228 August 28, 2021, shall cease operation within this state
229 when the vendor's program under this section is available
230 for utilization by prescribers and dispensers throughout the
231 state.

232 (2) The joint oversight task force may enter into an
233 agreement, or authorize the vendor to enter into an
234 agreement, with any prescription drug monitoring program
235 operated by a county, municipality, or other political
236 subdivision of this state prior to August 28, 2021, to
237 transfer patient dispensation information from the county,

238 municipality, or other program to the vendor's program
239 created under this section; provided, that such patient
240 dispensation information shall be subject to the provisions
241 of this section.

242 16. The provisions of this section shall not apply to
243 persons licensed under chapter 340.

244 17. The joint oversight task force shall promulgate
245 rules and regulations to implement the provisions of this
246 section. Any rule or portion of a rule, as that term is
247 defined in section 536.010, that is created under the
248 authority delegated in this section shall become effective
249 only if it complies with and is subject to all of the
250 provisions of chapter 536 and, if applicable, section
251 536.028. This section and chapter 536 are nonseverable and
252 if any of the powers vested with the general assembly
253 pursuant to chapter 536 to review, to delay the effective
254 date, or to disapprove and annul a rule are subsequently
255 held unconstitutional, then the grant of rulemaking
256 authority and any rule proposed or adopted after August 28,
257 2021, shall be invalid and void.

338.710. 1. There is hereby created in the Missouri
2 board of pharmacy the "RX Cares for Missouri Program". The
3 goal of the program shall be to promote medication safety
4 and to prevent prescription drug abuse, misuse, and
5 diversion in Missouri.

6 2. The board, in consultation with the department,
7 shall be authorized to expend, allocate, or award funds
8 appropriated to the board to private or public entities to
9 develop or provide programs or education to promote
10 medication safety or to suppress or prevent prescription
11 drug abuse, misuse, and diversion in the state of Missouri.
12 In no case shall the authorization include, nor the funds be

13 expended for, any state prescription drug monitoring program
14 including, but not limited to, such as are defined in 38 CFR
15 1.515. Funds disbursed to a state agency under this section
16 may enhance, but shall not supplant, funds otherwise
17 appropriated to such state agency.

18 3. The board shall be the administrative agency
19 responsible for implementing the program in consultation
20 with the department. The board and the department may enter
21 into interagency agreements between themselves to allow the
22 department to assist in the management or operation of the
23 program. The board may award funds directly to the
24 department to implement, manage, develop, or provide
25 programs or education pursuant to the program.

26 4. After a full year of program operation, the board
27 shall prepare and submit an evaluation report to the
28 governor and the general assembly describing the operation
29 of the program and the funds allocated. Unless otherwise
30 authorized by the general assembly, the program shall expire
31 on August 28, [2019] **2026**.

✓