House Bill 3440

Sponsored by Representative WILLIAMSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Specifies that Oregon Health Authority may use prescription monitoring information to determine whether practitioners are prescribing opioids or opiates in compliance with guidelines for prescribing opioids and opiates. Specifies that authority may inform health regulatory board with jurisdiction over practitioner of practitioner's prescribing practices with respect to opioids or opiates for educational purposes.

Removes special training requirement from statutes governing prescribing, dispensing and distributing naloxone.

Specifies that reimbursing cost of inpatient treatment for opioid or opiate abuse or dependency for first two weeks of treatment and cost of initial 30-day supply of medication prescribed for purpose of treating opioid or opiate abuse or dependency does not require prior authorization.

Specifies that individual may not be denied entry into specialty court in this state solely for reason that individual is taking, or intends to take, medication prescribed by licensed health care practitioner for treatment of drug abuse or dependency.

Requires authority to publish and report information related to opioids and opiates.

Establishes Task Force on Opioid and Opiate Abuse and Dependency for purpose of studying opioid and opiate abuse and dependency. Requires task force to report to Legislative Assembly on or before September 15, 2018. Sunsets task force on December 31, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to drugs; creating new provisions; amending ORS 431A.865 and 689.681 and sections 4 and 6, chapter 100, Oregon Laws 2016; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

PRESCRIPTION DRUG MONITORING PROGRAM

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 431A.855 to 431A.900.

SECTION 2. (1) Through the use of prescription monitoring information, the Oregon Health Authority shall:

(a) Adopt rules setting forth guidelines for prescribing opioids and opiates; and

(b) Determine annually whether each practitioner prescribing opioids or opiates in this state is in compliance with rules adopted by the authority setting forth guidelines for prescribing opioids and opiates.

(2) After making a determination under subsection (1) of this section, the authority may use prescription monitoring information to inform the health professional regulatory board that has jurisdiction over a practitioner of the practitioner's prescribing practices with respect to opioids and opiates.

(3) A health professional regulatory board that is informed of a practitioner's prescribing practices with respect to opioids and opiates under subsection (2) of this section shall provide educational materials and training, as the health professional regulatory board deems nec-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

essary, to the practitioner about rules adopted by the authority setting forth guidelines for prescribing opioids and opiates.

SECTION 3. ORS 431A.865, as amended by section 1, chapter 100, Oregon Laws 2016, is amended to read:

431A.865. (1)(a) Except as provided under subsection (2) of this section, prescription monitoring information submitted under ORS 431A.860 to the prescription monitoring program established in ORS 431A.855:

(A) Is protected health information under ORS 192.553 to 192.581.

(B) Is **confidential and** not subject to disclosure [*pursuant to*] **under** ORS 192.410 to 192.505.

(b) Except as provided under subsection (2)(a)(G) of this section, prescription monitoring information submitted under ORS 431A.860 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,*] **that law,** including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations, 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) In accordance with subparagraph (A) of this paragraph, to a practitioner or pharmacist or to a member of the practitioner's or pharmacist's staff through a health information technology system that is used by the practitioner or pharmacist or a member of the practitioner's or pharmacist's staff to access information about patients if:

(i) The practitioner or pharmacist or a member of the practitioner's or pharmacist's staff is authorized to access the information in the health information technology system;

(ii) The information is not permanently retained in the health information technology system, except for purposes of conducting audits and maintaining patient records; and

(iii) The health information technology system meets any privacy and security requirements and other criteria, including criteria required by the federal Health Insurance Portability and Accountability Act, established by the authority by rule.

(C) 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.

(D) To the State Medical Examiner or designee of the State Medical Examiner, for the purpose of conducting a medicolegal investigation or autopsy.

(E) 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.*] **established under ORS 431A.855.**

(F) 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.

(G) To a health professional regulatory board**:**

(i) As described in section 2 of this 2017 Act; or

(ii) That certifies in writing that the requested information is necessary for an investigation related to licensure, license renewal or disciplinary action involving the applicant, licensee or registrant to whom the requested information pertains.

(H) 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.

(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 431.003; 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 431.001 to 431.550 and 431.990.

(c) The [*Oregon Health*] authority shall disclose information relating to a patient maintained in the electronic system [*operated pursuant to the prescription monitoring program*] **established under ORS 431A.855** 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*] **related to the patient that is maintained in the electronic system established under ORS 431A.855** 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 receiving notice of an appeal under this subparagraph, the authority shall conduct a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, the authority has the burden in the contested case hearing 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,*] **laws and regulations related to privacy,** any person authorized to prescribe or dispense a prescription drug and who is entitled to access a patient's prescription monitoring information may discuss **the information with** or release the information to other health care providers involved with the patient's care for the purposes of providing 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 any organization 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*] **affected by** an improper disclosure of information from the prescription monitoring program **of the disclosure**.

(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 431A.860 or 431A.870, 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 431A.860 or 431A.870 unless the authority, person or entity acts with malice, criminal intent, gross negligence, recklessness or willful intent.

(7) Nothing in ORS 431A.855 to 431A.900 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.

(8) The authority shall, at regular intervals, ensure compliance of a health information technology system described in subsection (2) of this section with the privacy and security requirements and other criteria established by the authority [*by rule*] under subsection (2) of this section.

SECTION 4. When initially adopting rules setting forth guidelines for prescribing opioids and opiates under section 2 of this 2017 Act, the Oregon Health Authority shall adopt rules that are in accordance with the Oregon Opioid Prescribing Guidelines: Recommendations for the Safe Use of Opioid Medications, as endorsed by the Oregon Medical Board in January 2017.

NALOXONE

SECTION 5. ORS 689.681, as amended by section 2, chapter 100, Oregon Laws 2016, is amended to read:

689.681. (1) As used in this section:

(a) "Opiate" means a narcotic drug that contains:

(A) Opium;

(B) Any chemical derivative of opium; or

(C) Any synthetic or semisynthetic drug with opium-like effects.

(b) "Opiate overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of ingesting opiates in an amount larger than can be physically tolerated.

[*(2) The Oregon Health Authority shall establish by rule protocols and criteria for training on lifesaving treatments for opiate overdose. The criteria must specify:*]

[*(a) The frequency of required retraining or refresher training; and*]

[*(b) The curriculum for the training, including:*]

[*(A) The recognition of symptoms and signs of opiate overdose;*]

[*(B) Nonpharmaceutical treatments for opiate overdose, including rescue breathing and proper positioning of the victim;*]

[*(C) Obtaining emergency medical services;*]

[*(D) The proper administration of naloxone to reverse opiate overdose; and*]

[*(E) The observation and follow-up that is necessary to avoid the recurrence of overdose symptoms.*]

[*(3) Training that meets the protocols and criteria established by the authority under subsection (2) of this section must be subject to oversight by a licensed physician or certified nurse practitioner and may be conducted by public health authorities, organizations or other appropriate entities that provide services to individuals who take opiates.*]

[*(4)*] **(2)** Notwithstanding any other provision of law, a pharmacy, a health care professional or a pharmacist with prescription and dispensing privileges or any other person designated by the State Board of Pharmacy by rule may distribute [*unit-of-use packages of naloxone,*] **naloxone** and the necessary medical supplies to administer the naloxone[*, to a person who:*]**.**

[*(a) Conducts training that meets the protocols and criteria established by the authority under subsection (2) of this section, so that the person may possess and distribute naloxone and necessary medical supplies to persons who successfully complete the training; or*]

[*(b) Has successfully completed training that meets the protocols and criteria established by the authority under subsection (2) of this section, so that the person may possess and administer naloxone to any individual who appears to be experiencing an opiate overdose.*]

[*(5)*] **(3)** A person [*who has successfully completed the training*] described in this section is immune from civil liability for any act or omission committed during the course of [*providing the treatment*] **distributing naloxone** pursuant to the authority granted by this section, if the person is acting in good faith and the act or omission does not constitute wanton misconduct.

SECTION 6. Section 4, chapter 100, Oregon Laws 2016, is amended to read:

Sec. 4. In accordance with rules adopted by the State Board of Pharmacy under ORS 689.205, a pharmacist may prescribe [*unit-of-use packages of*] naloxone[,] and the necessary medical supplies to administer the naloxone[*, to a person who meets the requirements of ORS 689.681 (4)*].

SECTION 7. Section 6, chapter 100, Oregon Laws 2016, is amended to read:

Sec. 6. (1) For purposes of this section, "social services agency" includes, but is not limited to, homeless shelters and crisis centers.

(2) An employee of a social services agency may administer to an individual [*a unit-of-use package of*] naloxone that was not distributed to the employee [*if:*] **if the individual appears to be experiencing an opiate overdose as defined in ORS 689.681.**

[*(a) The employee conducts or has successfully completed opiate overdose training under ORS 689.681;*]

[*(b) The unit-of-use package of naloxone was distributed to another employee of the social services*

agency who conducts or has completed the opiate overdose training under ORS 689.681; and]

[*(c) The individual appears to be experiencing an opiate overdose as defined in ORS 689.681.*]

(3) For the purposes of protecting public health and safety, the Oregon Health Authority may adopt rules for the administration of naloxone under this section.

PRIOR AUTHORIZATION

SECTION 8. (1) In reimbursing the cost of inpatient treatment for opioid or opiate abuse or dependency, the Oregon Health Authority may not require prior authorization of payment for the treatment for the first two weeks of the treatment.

(2) In reimbursing the cost of medication prescribed for the purpose of treating opioid or opiate abuse or dependency, the authority may not require prior authorization of payment for the initial 30-day supply of the medication.

SECTION 9. (1) In reimbursing the cost of inpatient treatment for opioid or opiate abuse or dependency, an insurer offering a health benefit plan as defined in ORS 743B.005 may not require prior authorization of payment for the treatment for the first two weeks of the treatment.

(2) In reimbursing the cost of medication prescribed for the purpose of treating opioid or opiate abuse or dependency, an insurer offering a health benefit plan as defined in ORS 743B.005 may not require prior authorization of payment for the initial 30-day supply of the medication.

(3) This section is not subject to ORS 743A.001.

SECTION 10. Section 9 of this 2017 Act applies to reimbursements made pursuant to health benefit plans entered into or renewed on or after the effective date of this 2017 Act.

SPECIALTY COURTS

SECTION 11. (1) As used in this section, "specialty court" has the meaning given that term in ORS 137.680.

(2) An individual may not be denied entry into a specialty court in this state solely for the reason that the individual is taking, or intends to take, medication prescribed by a licensed health care practitioner for the treatment of drug abuse or dependency.

TREATMENT INFORMATION

SECTION 12. (1) The Oregon Health Authority shall develop and regularly update a web-based, searchable inventory of the following:

(a) Each opioid and opiate abuse or dependency treatment provider located in this state;

(b) Treatment options offered by each opioid and opiate abuse or dependency treatment provider located in this state; and

(c) The maximum capacity of each opioid and opiate abuse or dependency treatment provider located in this state.

(2) The authority shall post the inventory developed under subsection (1) of this section on a website of the authority.

SECTION 13. (1) In developing the inventory required by section 12 of this 2017 Act, the

Oregon Health Authority shall analyze the data to determine whether identifiable geographic regions have insufficient treatment options for, or capacity to treat individuals suffering from, opioid or opiate abuse or dependency.

(2) Not later than September 15 of each year, the authority shall report to the interim committees of the Legislative Assembly related to health care, in the manner provided by ORS 192.245, on identifiable geographic regions that have insufficient treatment options for, or capacity to treat individuals suffering from, opioid or opiate abuse or dependency.

ANNUAL REPORTING

SECTION 14. (1) From resources available to the Oregon Health Authority, the authority shall compile statistics on the total number of opioid and opiate overdoses and the total number of opioid and opiate overdose related deaths occurring in this state.

(2) Not less than once every three months, the authority shall report to the Governor and each local health department, as defined in ORS 431.003, the statistics compiled under subsection (1) of this section.

(3) Not later than September 15 of each year, the authority shall report to the interim committees of the Legislative Assembly related to health care, in the manner provided by ORS 192.245, the statistics compiled under subsection (1) of this section.

TASK FORCE

SECTION 15. (1) The Task Force on Opioid and Opiate Abuse and Dependency is established.

(2) The task force consists of 29 members as follows:

(a) One member shall be the Governor or the Governor's designee.

(b) One member shall be the Director of the Oregon Health Authority or the director's designee.

(c) One member shall be the Attorney General or the Attorney General's designee.

(d) One member shall be the chairperson of the Pain Management Commission established under ORS 413.570.

(e) The President of the Senate shall appoint one nonvoting member from among members of the Senate.

(f) The Speaker of the House of Representatives shall appoint one nonvoting member from among the members of the House of Representatives.

(g) The Governor shall appoint:

(A) One physician who is a pain specialist;

(B) One physician who is an addiction prevention and treatment specialist;

(C) One physician who is a movement disorder specialist;

(D) One physician who provides care in an emergency room setting;

(E) One orthopedic surgeon;

(F) One pharmacist;

(G) One dentist;

(H) One physical therapist;

(I) One acupuncturist;

(J) One health care practitioner other than a physician who is an addiction prevention and treatment specialist;

(K) One person representing the Oregon Medical Association;

(L) One person representing the Oregon Nurses Association;

(M) One person representing an opioid or opiate abuse or dependency treatment provider;

(N) One person representing an organization that provides training in the administration of naloxone and that distributes naloxone;

(O) One person representing an opioid and opiate abuse and dependency prevention advocacy organization;

(P) One person representing coordinated care organizations;

(Q) One person representing private insurers that offer health benefit plans;

(R) One person who suffers from chronic pain;

(S) One person who is in recovery from opioid or opiate dependency;

(T) One person representing the American Civil Liberties Union;

(U) One county commissioner;

(V) One public health officer from a county with a population of 300,000 or more; and

(W) One public health officer from a county with a population of less than 300,000.

(3) The task force shall:

(a) Study potential safe prescribing practices;

(b) Study potential alternatives to prescribing opioids and opiates for pain treatment; and

(c) Study methods of improving opioid and opiate abuse and dependency treatment.

(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the voting members of the task force.

(6) The task force shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10) The task force shall submit a report in the manner provided by ORS 192.245, and may include recommendations for legislation, to an interim committee of the Legislative Assembly related to health no later than September 15, 2018.

(11) The Oregon Health Authority shall provide staff support to the task force.

(12) Members of the Legislative Assembly appointed to the task force are nonvoting members of the task force and may act in an advisory capacity only.

(13) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(14) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of the task force's duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the task force consider necessary to perform their duties.

MISCELLANEOUS

SECTION 16. Section 15 of this 2017 Act is repealed on December 31, 2018.

SECTION 17. (1) Sections 2, 12, 13 and 14 of this 2017 Act and the amendments to ORS 431A.865 by section 3 of this 2017 Act become operative on January 1, 2018.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the authority by sections 2, 12, 13 and 14 of this 2017 Act and the amendments to ORS 431A.865 by section 3 of this 2017 Act.

SECTION 18. The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

SECTION 19. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.