

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 991

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DATE	D-PG	OFFICIAL STATUS
02/15/2017	606	Introduction and first reading Referred to Health and Human Services Finance and Policy
02/22/2018	6170	Author stricken Schoen
03/01/2018	6248	Author added Bigham

1.1 A bill for an act

1.2 relating to health; providing certain agencies access to the Minnesota prescription

1.3 monitoring program to identify and investigate inappropriate prescribing or

1.4 dispensing of controlled substances; amending Minnesota Statutes 2016, section

1.5 152.126, subdivisions 5, 6.

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

1.7 Section 1. Minnesota Statutes 2016, section 152.126, subdivision 5, is amended to read:

1.8 Subd. 5. **Use of data by board.** (a) The board shall develop and maintain a database of

1.9 the data reported under subdivision 4. The board shall maintain data that could identify an

1.10 individual prescriber or dispenser in encrypted form. Except as otherwise allowed under

1.11 subdivision 6, the database may be used by permissible users identified under subdivision

1.12 6 for the identification of:

1.13 (1) individuals receiving prescriptions for controlled substances from prescribers who

1.14 subsequently obtain controlled substances from dispensers in quantities or with a frequency

1.15 inconsistent with generally recognized standards of use for those controlled substances,

1.16 including standards accepted by national and international pain management associations;

1.17 and

1.18 (2) individuals presenting forged or otherwise false or altered prescriptions for controlled

1.19 substances to dispensers.

1.20 (b) ~~No permissible user identified under subdivision 6 may access the database for the~~

1.21 ~~sole purpose of identifying prescribers of controlled substances for unusual or excessive~~

1.22 ~~prescribing patterns without a valid search warrant or court order.~~ The board and its designees

1.23 are authorized to access the database for the purpose of identifying prescribers or dispensers

2.1 engaged in patterns of unusual or excessive prescribing or dispensing of controlled
 2.2 substances, or other conduct affecting public health or safety.

2.3 ~~(c) No personnel of a state or federal occupational licensing board or agency may access~~
 2.4 ~~the database for the purpose of obtaining information to be used to initiate a disciplinary~~
 2.5 ~~action against a prescriber.~~

2.6 ~~(d)~~ Data reported under subdivision 4 shall be made available to permissible users for
 2.7 a 12-month period beginning the day the data was received and ending 12 months from the
 2.8 last day of the month in which the data was received, except that permissible users defined
 2.9 in subdivision 6, paragraph (b), clauses (6) and (7), may use all data collected under this
 2.10 section for the purposes of administering, operating, and maintaining the prescription
 2.11 monitoring program and conducting trend analyses and other studies necessary to evaluate
 2.12 the effectiveness of the program.

2.13 ~~(e)~~ (d) Data reported during the period January 1, 2015, through December 31, 2018,
 2.14 may be retained through December 31, 2019, in an identifiable manner. Effective January
 2.15 1, 2020, data older than 24 months must be destroyed. Data reported on or after January 1,
 2.16 2020, must be destroyed no later than 12 months from the date the data was received.

2.17 Sec. 2. Minnesota Statutes 2016, section 152.126, subdivision 6, is amended to read:

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

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

2.25 (1) a prescriber or an agent or employee of the prescriber to whom the prescriber has
 2.26 delegated the task of accessing the data, to the extent the information relates specifically to
 2.27 a current patient, to whom the prescriber is:

2.28 (i) prescribing or considering prescribing any controlled substance;

2.29 (ii) providing emergency medical treatment for which access to the data may be necessary;

2.30 (iii) providing care, and the prescriber has reason to believe, based on clinically valid
 2.31 indications, that the patient is potentially abusing a controlled substance; or

3.1 (iv) providing other medical treatment for which access to the data may be necessary
3.2 for a clinically valid purpose and the patient has consented to access to the submitted data,
3.3 and with the provision that the prescriber remains responsible for the use or misuse of data
3.4 accessed by a delegated agent or employee;

3.5 (2) a dispenser or an agent or employee of the dispenser to whom the dispenser has
3.6 delegated the task of accessing the data, to the extent the information relates specifically to
3.7 a current patient to whom that dispenser is dispensing or considering dispensing any
3.8 controlled substance and with the provision that the dispenser remains responsible for the
3.9 use or misuse of data accessed by a delegated agent or employee;

3.10 (3) a licensed pharmacist who is providing pharmaceutical care for which access to the
3.11 data may be necessary to the extent that the information relates specifically to a current
3.12 patient for whom the pharmacist is providing pharmaceutical care: (i) if the patient has
3.13 consented to access to the submitted data; or (ii) if the pharmacist is consulted by a prescriber
3.14 who is requesting data in accordance with clause (1);

3.15 (4) an individual who is the recipient of a controlled substance prescription for which
3.16 data was submitted under subdivision 4, or a guardian of the individual, parent or guardian
3.17 of a minor, or health care agent of the individual acting under a health care directive under
3.18 chapter 145C;

3.19 (5) personnel or designees of a health-related licensing board listed in section 214.01,
3.20 subdivision 2, or of the Emergency Medical Services Regulatory Board, assigned to conduct
3.21 a bona fide investigation of a complaint received by that board that alleges that a specific
3.22 licensee is impaired by use of a drug for which data is collected under subdivision 4, has
3.23 engaged in activity that would constitute a crime as defined in section 152.025, or has
3.24 engaged in the behavior specified in subdivision 5, paragraph (a);

3.25 (6) personnel of the board engaged in the collection, review, and analysis of controlled
3.26 substance prescription information as part of the assigned duties and responsibilities under
3.27 this section;

3.28 (7) authorized personnel of a vendor under contract with the state of Minnesota who are
3.29 engaged in the design, implementation, operation, and maintenance of the prescription
3.30 monitoring program as part of the assigned duties and responsibilities of their employment,
3.31 provided that access to data is limited to the minimum amount necessary to carry out such
3.32 duties and responsibilities, and subject to the requirement of de-identification and time limit
3.33 on retention of data specified in subdivision 5, paragraphs (d) and (e);

4.1 (8) federal, state, and local law enforcement authorities acting pursuant to a valid search
4.2 warrant;

4.3 (9) personnel of the Minnesota health care programs assigned to use the data collected
4.4 under this section to identify and manage recipients whose usage of controlled substances
4.5 may warrant restriction to a single primary care provider, a single outpatient pharmacy, and
4.6 a single hospital;

4.7 (10) personnel of the Department of Human Services assigned to access the data pursuant
4.8 to paragraph (i);

4.9 (11) personnel of the health professionals services program established under section
4.10 214.31, to the extent that the information relates specifically to an individual who is currently
4.11 enrolled in and being monitored by the program, and the individual consents to access to
4.12 that information. The health professionals services program personnel shall not provide this
4.13 data to a health-related licensing board or the Emergency Medical Services Regulatory
4.14 Board, except as permitted under section 214.33, subdivision 3.

4.15 For purposes of clause (4), access by an individual includes persons in the definition of
4.16 an individual under section 13.02; ~~and~~

4.17 (12) personnel or designees of a health-related licensing board listed in section 214.01,
4.18 subdivision 2, assigned to conduct a bona fide investigation of a complaint received by that
4.19 board that alleges that a specific licensee is inappropriately prescribing controlled substances
4.20 as defined in this section; and

4.21 (13) personnel or designees of the Department of Human Services for the purpose of
4.22 identifying potential inappropriate prescribing or dispensing of controlled substances,
4.23 fraudulent billing of government programs, or other conduct affecting public health or
4.24 safety.

4.25 (c) By July 1, 2017, every prescriber licensed by a health-related licensing board listed
4.26 in section 214.01, subdivision 2, practicing within this state who is authorized to prescribe
4.27 controlled substances for humans and who holds a current registration issued by the federal
4.28 Drug Enforcement Administration, and every pharmacist licensed by the board and practicing
4.29 within the state, shall register and maintain a user account with the prescription monitoring
4.30 program. Data submitted by a prescriber, pharmacist, or their delegate during the registration
4.31 application process, other than their name, license number, and license type, is classified
4.32 as private pursuant to section 13.02, subdivision 12.

5.1 (d) Only permissible users identified in paragraph (b), clauses (1), (2), (3), (6), (7), (9),
5.2 and (10), may directly access the data electronically. No other permissible users may directly
5.3 access the data electronically. If the data is directly accessed electronically, the permissible
5.4 user shall implement and maintain a comprehensive information security program that
5.5 contains administrative, technical, and physical safeguards that are appropriate to the user's
5.6 size and complexity, and the sensitivity of the personal information obtained. The permissible
5.7 user shall identify reasonably foreseeable internal and external risks to the security,
5.8 confidentiality, and integrity of personal information that could result in the unauthorized
5.9 disclosure, misuse, or other compromise of the information and assess the sufficiency of
5.10 any safeguards in place to control the risks.

5.11 (e) The board shall not release data submitted under subdivision 4 unless it is provided
5.12 with evidence, satisfactory to the board, that the person requesting the information is entitled
5.13 to receive the data.

5.14 (f) The board shall maintain a log of all persons who access the data for a period of at
5.15 least three years and shall ensure that any permissible user complies with paragraph (c)
5.16 prior to attaining direct access to the data.

5.17 (g) Section 13.05, subdivision 6, shall apply to any contract the board enters into pursuant
5.18 to subdivision 2. A vendor shall not use data collected under this section for any purpose
5.19 not specified in this section.

5.20 (h) The board may participate in an interstate prescription monitoring program data
5.21 exchange system provided that permissible users in other states have access to the data only
5.22 as allowed under this section, and that section 13.05, subdivision 6, applies to any contract
5.23 or memorandum of understanding that the board enters into under this paragraph.

5.24 (i) With available appropriations, the commissioner of human services shall establish
5.25 and implement a system through which the Department of Human Services shall routinely
5.26 access the data for the purpose of determining whether any client enrolled in an opioid
5.27 treatment program licensed according to chapter 245A has been prescribed or dispensed a
5.28 controlled substance in addition to that administered or dispensed by the opioid treatment
5.29 program. When the commissioner determines there have been multiple prescribers or multiple
5.30 prescriptions of controlled substances, the commissioner shall:

5.31 (1) inform the medical director of the opioid treatment program only that the
5.32 commissioner determined the existence of multiple prescribers or multiple prescriptions of
5.33 controlled substances; and

6.1 (2) direct the medical director of the opioid treatment program to access the data directly,
6.2 review the effect of the multiple prescribers or multiple prescriptions, and document the
6.3 review.

6.4 If determined necessary, the commissioner of human services shall seek a federal waiver
6.5 of, or exception to, any applicable provision of Code of Federal Regulations, title 42, section
6.6 2.34, paragraph (c), prior to implementing this paragraph.

6.7 (j) The board shall review the data submitted under subdivision 4 on at least a quarterly
6.8 basis and shall establish criteria, in consultation with the advisory task force, for referring
6.9 information about a patient to prescribers and dispensers who prescribed or dispensed the
6.10 prescriptions in question if the criteria are met.