Louisiana Board of Pharmacy

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May 8, 2014

Senator John A Alario Jr., President
Louisiana Senate
PO Box 94183
Baton Rouge, LA 70804

Via Email: APA.SenatePresident@legis.la.gov

Electronic Mail – Delivery Receipt Requested

Re: Report No. 2 of 3 for Regulatory Project 2014-1 ~ Prescription Monitoring Program Delegates

Dear Senator Alario:

As we indicated in our first report to you on March 10, 2014, the Board is currently amending its rules relative to the state prescription monitoring program. In compliance with Act 110 of the 2013 Legislature, these proposed rules will allow a prescriber or dispenser to appoint a delegate for the purpose of accessing and retrieving information from the prescription monitoring program database. Subsequent to our Notice of Intent published in the March 20, 2014 edition of the *Louisiana Register*, and in accordance with the Administrative Procedures Act, we conducted a public hearing at the Board office on April 29, 2014.

We received no comments or testimony concerning the proposed rule prior to or during the public hearing. During their meeting yesterday, the Board determined no revisions were necessary to the proposed rule as originally published. Further, the Board determined it appropriate to move forward with the proposed rule.

You should find the following documents appended to this letter:

- Notice of intent, as published in the *Louisiana Register*
- Full text of proposed rule

Subject to review by the Joint Legislative Oversight Committee on Health and Welfare, the Board proposes to publish the original proposed rule as a Final Rule in the June 20, 2014 edition of the *Louisiana Register*. If you have any questions about the enclosed information or our procedures, please contact me directly at mbroussard@pharmacy.la.gov or 225.925.6481.

For the Board:

Malcolm Broussard

Malcolm J. Broussard
Executive Director

cc: Chair, Senate Committee on Health and Welfare – APA.S-H&W@legis.la.gov
Speaker, House of Representatives – APA.HouseSpeaker@legis.la.gov
Chair, House Committee on Health and Welfare – APA.H-H&W@legis.la.gov
Editor, *Louisiana Register* – Catherine.Brindley@la.gov
Reference File

NOTICE OF INTENT

Department of Health and Hospitals
Board of Pharmacy

Prescription Monitoring Program Delegates
(LAC 46:LIII.Chapter 29)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), and pursuant to the provisions of Act 110 of the 2013 Legislature, the Louisiana Board of Pharmacy hereby gives notice of its intent to

amend several sections within Chapter 29, Prescription Monitoring Program, of its rules, to allow prescribers and dispensers to appoint delegates for the purpose of accessing and retrieving information from the prescription monitoring program database.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists

Chapter 29. Prescription Monitoring Program

Subchapter A. General Operations

§2901. Definitions

A. As used in this Chapter, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

* * *

Delegate—a person authorized by a prescriber or dispenser who is also an authorized user (as described in §2917 of this Chapter) to access and retrieve program data for the purpose of assisting the prescriber or dispenser, and for whose actions the authorizing prescriber or dispenser retains accountability.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1011.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1345 (July 2007), amended LR 36:755 (April 2010), effective September 1, 2010, amended LR 39:314 (February 2013), amended LR 40:

Subchapter C. Access to Prescription Monitoring Information

§2917. Authorized Direct Access Users of Prescription Monitoring Information

A. The following persons may access prescription monitoring information in the same or similar manner, and for the same or similar purposes, as those persons are authorized to access similar protected health information under federal and state law and regulation:

1. persons authorized to prescribe or dispense controlled substances or drugs of concern, and their delegates, for the purpose of providing medical or pharmaceutical care for their patients, or for verifying their prescription records;

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1011

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1347 (July 2007), amended LR 39:315 (February 2013), amended LR 40:

§2919. Registration Procedures for Authorized Direct Access Users

A. Authorized users of prescription monitoring information, and their delegates, shall comply with the following requirements to register with the board, in order to receive the appropriate credentials to access prescription monitoring information.

1. - 5. ...

6. Prescribers and dispensers approved for access shall be responsible for the enabling and/or disabling of access privileges for their delegates, as well as the supervision of their activities.

AUTHORITY NOTE: Promulgated by R.S. 40:1011.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1347 (July 2007), amended LR 40:

§2921. Methods of Access to Prescription Monitoring Information

A. Prescribers and dispensers as well as their delegates, once properly registered, may solicit prescription monitoring information from the program concerning their patients, or for verifying their prescription records. The program may require such users to certify the legitimacy of their inquiry prior to furnishing the requested information.

B - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1011.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1347 (July 2007), amended LR 39:315 (February 2013), LR 40:

§2923. Unlawful Use or Disclosure of Prescription Monitoring Information

A. If the program receives evidence of inappropriate or unlawful use or disclosure of prescription monitoring information by an authorized user or his delegate, the program shall refer that user to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1011.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1348 (July 2007), amended LR 40:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the Louisiana Register with the proposed agency Rule.

1. The Effect on the Stability of the Family. We anticipate no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. We anticipate no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. We anticipate no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. We anticipate no effect on family earnings and the family budget.

4. The Effect on the Behavior and Personal Responsibility of Children. We anticipate no effect on the behavior and personal responsibility of children.

5. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. We anticipate no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. We anticipate no impact on household income, assets, and financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. We anticipate no impact early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. We anticipate no positive impact on employment and workforce development.

4. The Effect on Taxes and Tax Credits. We anticipate no impact on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. We anticipate no impact on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses.

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed rule change would not change any reporting requirements for small businesses.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. There are no changes in the deadlines for compliance or reporting requirements for small businesses.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. There are no changes in the reporting requirements for small businesses.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. There are no design or operational standards in the proposed Rule.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. Since the proposed Rule allows flexibility for the prescriber and dispenser to appoint and dismiss their own delegates, there are no exemptions for small businesses in the proposed Rule.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Tuesday, April 29, 2014 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is noon that same day.

Malcolm J Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Prescription Monitoring Program Delegates

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Board has allocated $500 for printing costs of the proposed rule in FY 2013-2014, and the same amount for printing of the final rule in FY 2014-2015. The proposed rule will result in no costs or savings to local governmental units. The proposed rule codifies the allowance of delegates to access prescription monitoring information in certain circumstances as per Act 110 of the 2013 Regular Session of the Louisiana Legislature.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no impact on revenue collections of state or local governmental units from the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Prescribers and dispensers with authorized access to the prescription monitoring program database will be allowed to appoint delegates for the purpose of accessing and retrieving that information. The use of delegates could free up time for prescribers and dispensers for other tasks, including direct patient care, and further, could reduce the labor costs associated with such data retrieval tasks.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not have any effect on competition or employment.

Malcolm Broussard
Executive Director
1403#039

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Louisiana Administrative Code

Title 46 – Professional and Occupational Standards

Part LIII – Pharmacists

Chapter 29. Prescription Monitoring Program

Subchapter A. General Operations

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