R013-18
NAC Chapter 453
Prescription Monitoring Program Registration and Access
June 13, 2018

INFORMATIONAL STATEMENT

The informational statement required by NRS 233B.066 numerically conforms to the subsections of the statute as follows:

1. EXPLANATION OF THE NEED FOR THE ADOPTED REGULATION

The proposed regulation will require practitioners to register with the Board to access the Prescription Monitoring Program (PMP) database that tracks each prescription for certain controlled substances. The regulation allows a practitioner to designate members of his or her staff to act as delegates for the purposes of accessing the PMP database. This regulation is necessary to provide authorization for the Board to suspend or terminate access to the PMP database if the Board or the Division has probable cause to believe that the PMP database has been intentionally accessed by a person for a purpose not authorized by law.

2. A DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED, A SUMMARY OF PUBLIC RESPONSE, AND AN EXPLANATION HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

The Board solicited comment on the proposed regulation by (1) posting notice, with links to the full text of the proposed regulation, to the LCB Administrative Regulation Notices webpage, (2) posting a copy of the full text of the proposed regulation to the Board's website as part of the Board Hearing materials, (3) posting notice to the Nevada Public Notice website, operated by the Department of Administration, with a link back to a full text of the proposed regulation on the Board's website, and (4) posting notices and agendas in numerous public locations per NRS Chapter 233B.

The Board also solicited comment from Nevada dispensing practitioners, and from representatives of relevant industry associations that Board Staff deemed likely to have an interest in the proposed regulation. The Board further provided time for public comment at the workshop(s) concerning the proposed regulation.

Catherine O'Mara, Nevada State Medical Association, spoke in support of the revised version of R013-18 as presented. The law provides a clear direction to practitioners on how to access PMP information during interruption of internet access.

Liz MacMenamin, Retail Association of Nevada, spoke in support of the revised version of R013-18. Ms. MacMenamin commended the Board for their efforts with the PMP.

3. THE NUMBER OF PERSONS WHO: (A) ATTENDED EACH HEARING; (B) TESTIFIED AT EACH HEARING; AND (C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

The number of persons who attended the hearing was: 15
The number of persons who testified at the hearing was: 2
The number of agency submitted statements was: -0-

The name of persons who testified at the hearing:

Catherine O'Mara, Nevada State Medical Association
5355 Kietzke Lane, Suite 100 – Reno, NV 89511
(775) 825-6788 - www.nvdoctors.org

Liz MacMenamin, Retail Association of Nevada
410 S Minnesota St, Carson City, NV 89703
(775) 882-1700 - Lizm@rannv.org

The names of the agencies that submitted statements:

Not Applicable

4. A DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

The Board solicited comment on the proposed regulation by (1) posting notice, with links to the full text of the proposed regulation, to the LCB Administrative Regulation Notices webpage, (2) posting a copy of the full text of the proposed regulation to the Board's website as part of the Board Hearing materials, (3) posting notice to the Nevada Public Notice website, operated by the Department of Administration, with a link back to a full text of the proposed regulation on the Board's website, and (4) posting notices and agendas in numerous public locations per NRS Chapter 233B.

The Board also solicited comment from Nevada dispensing practitioners, and from representatives of relevant industry associations that Board Staff deemed likely to have an interest in the proposed regulation. Further, the Board provided time for public comment at the workshop(s) concerning the proposed regulation.

Catherine O'Mara, Nevada State Medical Association, spoke in support of the revised version of R013-18 as presented. The law provides a clear direction to practitioners on how to access PMP information during interruption of internet access.

Liz MacMenamin, Retail Association of Nevada, spoke in support of the revised version of R013-18. Ms. MacMenamin commended the Board for their efforts with the PMP.

Parties interested in obtaining a copy of the summary of the proposed regulation, or that wish to view the text of the proposed regulation, may access that information on the Board's website at bop.nv.gov, or by contacting the Board's office at (775) 850-1440.

5. IF THE REGULATION WAS ADOPTED WITHOUT CHANGING ANY PART OF THE PROPOSED REGULATION, A SUMMARY OF THE REASONS FOR ADOPTING THE REGULATION WITHOUT CHANGE.

The Board adopted LCB File R013-18 with the following revisions to ensure clarity and conformity with statutory authority and legislative intent:

Adopted with revisions:

Sec. 2.

*1. A practitioner or other person who is required to register with the Board pursuant to subsection 1 of NRS 453.226 to dispense controlled substances ~~[or NAC 639.742 to dispense controlled substances or dangerous drugs]~~ must also ~~[register]~~ **enroll** with the Board pursuant to this section ~~[to]~~ **for Internet** access **to** the database of the program established pursuant to NRS 453.162.*

*2. To ~~[register]~~ **enroll** pursuant to this section ~~[to]~~ **for Internet** access **to** the database, the practitioner or other person must apply to the Board on an application provided by the Board. For purposes of subsection 1 of NRS 453.226, the Board will deem such ~~[registration]~~ **enrollment** as proof that the practitioner or other person is authorized to access the database.*

****

Sec. 3.

*1. Except as otherwise provided in section 4 of this regulation, a practitioner other than a veterinarian may designate no more than two members of his or her staff to act as delegates for the purposes of accessing the database of the computerized program established pursuant to NRS 453.162 ~~[to obtain the information needed by a practitioner for the practitioner]~~ to obtain a patient utilization report pursuant to NRS 639.23507 **on behalf of the practitioner**.*

****

Sec. 5.

*1. The **Executive Secretary on behalf of the** Board ~~[or the Division]~~ may suspend or terminate, before a hearing, the Internet access of a practitioner or other person to the database of the*

program established pursuant to NRS 453.162 if the practitioner or other person ***accesses the database in violation of*** ~~*[violates]*~~ *any provision of NRS 453.162 to 453.165, inclusive, NRS 639.23507 or section* ~~*[s 52 to 58, inclusive,]*~~ ***57*** *of Assembly Bill No. 474, chapter 605, Statutes of Nevada 2017, at page 4430 (NRS 639.2391 to 639.23916, inclusive).*

****

Sec. 6.

~~*[**Sec. 6.** 1. If the Internet access of a practitioner or other person to the database of the program established pursuant to NRS 453.162 is suspended or terminated pursuant to section 5 of this regulation, the Board or Executive Secretary of the Board on behalf of the Board may, pursuant to NRS 453.241, also suspend, before a hearing, a registration of the practitioner or other person to dispense controlled substances issued pursuant to NRS 453.226 or a certificate of registration to dispense controlled substances or dangerous drugs issued pursuant to NAC 639.742 if the Board finds that there is an imminent danger to the public health or safety that warrants such action.*~~

~~*2. The suspension or termination of a registration pursuant to subsection 1 must continue in effect until the conclusion of the proceedings set forth in NRS 639.241 to 639.2576, inclusive, unless sooner withdrawn by the Board or dissolved by a court of competent jurisdiction.]*~~

Sec. 7.

~~*[**Sec. 7.** 1. A practitioner or other person whose Internet access to the database of the program established pursuant to NRS 453.162 is suspended or terminated pursuant to section 5 of this regulation may submit to the Board a request that the Board provide information which is obtained from the database of the program concerning a patient of the practitioner or other person if:*~~

~~*(a) Such information is necessary for the practitioner or other person to comply with the provisions of this chapter, chapter 639 of NAC or chapter 453 or 639 of NRS; and*~~

~~*(b) The practitioner or other person is registered to dispense controlled substances pursuant to NRS 453.226 or to dispense controlled substances or dangerous drugs pursuant to NAC 639.742.*~~

~~*2. The practitioner or other person must submit to the Board the request for information*~~

~~*described in subsection 1 by use of an electronic mail address that the Board will provide on its Internet website.*~~

~~*3. Upon receiving a request for information pursuant to subsections 1 and 2, the Board will provide the requested information to the practitioner or other person if the Board determines that:*~~

~~*(a) The person whose information is being requested is a patient of the practitioner or other person;*~~

~~*(b) The person whose information is being requested in not deceased; and*~~

~~*(c) The request for information complies with this chapter, chapter 639 of NAC and chapters 453 and 639 of NRS.]*~~

Sec. 8.

1. If Internet access to the database of the program established pursuant to NRS 453.162 is suspended or terminated pursuant to section 5 of this regulation ~~*[or NRS 453.165]*~~*, the Board will provide written notice to the* ~~*[law enforcement agency or employee, person or]*~~ *practitioner* ***or other person*** *whose Internet access to the database of the program is suspended or terminated:…*

****

Sec. 8.

2. In the event of a suspension or termination of Internet access to the database of the program established pursuant to section 5 of this regulation [~~*or NRS 453.165*~~]*, the Board will conduct a hearing at the next regularly scheduled meeting of the Board, but in any event, the hearing must be instituted and determined within 45 days after the date of the suspension or termination unless a continuance is requested by the* ~~*[law enforcement agency or employee, person or]*~~ *practitioner* ***or other person whose Internet access to the database of the program is suspended or terminated*** ~~*[or the enforcement agency or employee, person or practitioner hearing otherwise prevents the holding or conclusion of the hearing.*~~

~~*3. The determination of the Board is final, except that the propriety of such action is subject to review by a court of competent jurisdiction]*~~.

****

Sec. 9.

~~*[1. If a person wishes to obtain information concerning the person from the database of the program established pursuant to NRS 453.162, the person or his or her attorney must submit to the Board a request for information pursuant to paragraph (a) of subsection 8 of NRS 453.154 using a notarized authorization form which is provided on the Internet website of the Board.*~~

~~*2. Upon receiving the notarized authorization form, the Board will disclose the information obtained from the database]*~~ ***The Board will disclose information in response to a request made pursuant to NRS 453.164(7)(a)*** *only to the person about whom the information requested concerns or his or her attorney.*

****

Sec. 10.

1. A practitioner who wishes to dispense controlled substances or dangerous drugs must apply to the Board on an application provided by the Board for a certificate of registration to dispense controlled substances or dangerous drugs. ~~*[A practitioner must present proof that he or she is registered pursuant to section 2 of this regulation to access to the database of the program established pursuant to NRS 453.162 before the Board may issue a certificate of registration to dispense controlled substances or dangerous drugs.]*~~…

6. THE ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC. THESE MUST BE STATED SEPARATELY, AND IN EACH CASE MUST INCLUDE:

A) BOTH ADVERSE AND BENEFICIAL EFFECTS.

The Board anticipates that there will be no adverse or beneficial economic impact from this regulation on either the providers of pharmaceutical care that will be subject to the regulation nor on the public.

B) BOTH IMMEDIATE AND LONG-TERM EFFECTS.

The Board anticipates that there will be no immediate or long-term economic effect on either the providers of pharmaceutical care that will be subject to the regulation nor on the public, or that any such effects will be negligible.

7. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION.

There will be no additional or special costs incurred by the board for enforcement of this regulation.

8. A DESCRIPTION OF ANY REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES WHICH THE PROPOSED REGULATION OVERLAPS OR DUPLICATES AND A STATEMENT EXPLAINING WHY THE DUPLICATION OR OVERLAPPING IS NECESSARY. IF THE REGULATION OVERLAPS OR DUPLICATES A FEDERAL REGULATION, THE NAME OF THE REGULATING FEDERAL AGENCY.

The Board of Pharmacy is not aware of any similar regulations of other state or government agencies that the proposed regulation overlaps or duplicates.

9. IF THE REGULATION INCLUDES PROVISIONS WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISIONS.

The Board of Pharmacy is not aware of any similar regulations of the same activity in which the federal regulation is more stringent.

10. IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL ANNUAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.

This regulation does not provide a new or increase of fees.