

**PROPOSED REGULATION OF THE
STATE BOARD OF PHARMACY**

LCB File No. R008-21

July 13, 2021

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-5, NRS 453.162, 639.070, as amended by section 3 of Senate Bill No. 408, chapter 218, Statutes of Nevada 2021, at page 1016, and NRS 639.23916; § 6, NRS 453.162, 453.165 and 639.070, as amended by section 3 of Senate Bill No. 408, chapter 218, Statutes of Nevada 2021, at page 1016, and NRS 639.23916.

A REGULATION relating to pharmacy; prescribing requirements governing the integration of electronic health records with the records of patients in the database of the computerized program to track prescriptions for controlled substances; providing that certain persons and agencies have Internet access to that database; requiring a person to read the instructional manual for the database before he or she is granted access to the database; providing that the database may only be accessed electronically; prohibiting the reproduction, copying or transfer of data from the database; prescribing the procedures for an employee of a law enforcement agency to obtain access to the database; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the State Board of Pharmacy and the Investigation Division of the Department of Public Safety to cooperatively develop a computerized program to track each prescription for a controlled substance listed in schedule II, III, IV or V. Existing law requires the computerized program to include, to the extent that money is available, the ability to integrate the records of patients in the database of the computerized program with the electronic health records of practitioners. If that ability is included, existing law requires any person or entity that provides a system for the maintenance of electronic health records to a practitioner to ensure that the system includes, as a function of the system, the ability to integrate the records of patients in the database of the computerized program into the electronic health records of the practitioner. (NRS 453.162) **Section 2** of this regulation requires a practitioner who wishes to integrate his or her electronic health records with the records of patients in the database of the computerized program to submit a request to the Board. **Section 2** also: (1) requires a practitioner whose electronic health records are integrated with the records in the database of the computerized program to maintain certain records; and (2) prohibits certain persons designated to access the database of the computerized program from accessing that database through electronic health records. **Section 3** of this regulation provides that the Board will provide

Internet access to the database of the computerized program to: (1) certain persons authorized to access such a database under federal law; and (2) certain agencies of other states with which the Board and the Division have entered into an information-sharing agreement.

Existing law requires persons who are required to access the database of the computerized program to complete a course of training developed by the Board and the Division. (NRS 453.164) **Section 4** of this regulation requires such a person to read the instructional manual prescribed by the Board for using the database and provides that reading the manual satisfies the training requirement. **Section 5** of this regulation: (1) provides that the database may only be accessed electronically; and (2) prohibits the reproduction, copying or transfer of data from the database.

Existing law requires the Board to allow an employee of a law enforcement agency to access the database of the computerized program if the employer certifies that the employee has been approved for such access and has completed the required course of training. Such an employee of a law enforcement agency is authorized to access the database only to: (1) investigate a crime related to prescription drugs; or (2) upload certain information obtained during an investigation to the database. (NRS 453.165) **Section 6** of this regulation authorizes an employee of a law enforcement agency who meets the requirements for access to the database to: (1) enroll with the Board to have ongoing access; or (2) access the database without enrolling to obtain a patient utilization report or a summary of a practitioner's prescribing history for use in a particular investigation.

Section 1. Chapter 453 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *A practitioner who wishes to integrate his or her electronic health records with the records of patients in the database of the computerized program established pursuant to NRS 453.162 must submit a request to the Board. The Board will approve the request if the Board determines that the practitioner is able to comply with the requirements of subsection 2.*

2. A practitioner whose electronic health records are integrated with the records of patients in the database of the computerized program established pursuant to NRS 453.162 shall:

(a) Maintain the electronic health records in conformance with all applicable federal and state laws;

(b) Maintain a record of access to the database of the computerized program and the retrieval of patient utilization reports from that database; and

(c) Retain the records described in paragraph (b) as a health care record in accordance with NRS 629.051 to 629.069, inclusive, in a manner that is easily retrievable upon the request of the Board or a representative thereof.

3. A person designated as a delegate pursuant to NAC 453.070 or 453.074 or section 2 of LCB File No. R035-19 is not authorized to access the database of the computerized program established pursuant to NRS 453.162 using electronic health records.

4. As used in this section, “electronic health record” has the meaning ascribed to it in NRS 453.162.

Sec. 3. The Board will provide Internet access to the database of the computerized program established pursuant to NRS 453.162 for the purpose of obtaining patient utilization reports to persons who are required or authorized to have such access under the provisions of 38 U.S.C. § 1730B, 42 U.S.C. § 1396r-8(g), 42 U.S.C. § 1396w-3a or a written agreement entered into pursuant to subsection 2 of NRS 453.163.

Sec. 4. 1. Each person required or authorized to receive Internet access to the database of the computerized program pursuant to NRS 453.164, 453.1645 or 453.165 must read the instructional manual prescribed by the Board for using the database of the computerized program established pursuant to NRS 453.162 before the Board will provide the person with Internet access to the database.

2. Compliance with subsection 1 satisfies the requirement prescribed by subsection 5 of NRS 453.164 to complete a course of training developed by the Board and the Division.

Sec. 5. *A person granted Internet access to the database of the computerized program established pursuant to NRS 453.162:*

- 1. May only access data in the database electronically; and*
- 2. Shall not reproduce, copy or transfer the data in a hardcopy or electronic format.*

Sec. 6. NAC 453.065 is hereby amended to read as follows:

453.065 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 must also enroll with the Board pursuant to this section for Internet access to the database of the program established pursuant to NRS 453.162.

2. An employee of a law enforcement agency who intends to regularly access the database of the computerized program established pursuant to NRS 453.162 for the purposes described in NRS 453.165 may enroll with the Board pursuant to this section.

3. To enroll pursuant to this section for Internet access to the database, the practitioner or other person or employee of a law enforcement agency 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 enrollment as proof that the practitioner or other person is authorized to access the database. An application submitted by an employee of a law enforcement agency pursuant to this subsection must be accompanied by the certification required by subsection 2 of NRS 453.165.

~~3.1~~ *4. An employee of a law enforcement agency who is not enrolled pursuant to this section may obtain a patient utilization report pursuant to NRS 639.23507 or a summary of a practitioner's prescribing history from the database of the computerized program for use in an investigation if he or she submits the certification required by subsection 2 of NRS 453.165.*

5. Access to the database is a revocable privilege, and no holder of such access to the database of the *computerized* program acquires any vested right therein or thereunder.