

AMENDED IN ASSEMBLY JUNE 6, 2016

AMENDED IN ASSEMBLY APRIL 7, 2016

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 16, 2015

**SENATE BILL**

**No. 482**

---

---

**Introduced by Senator Lara**

February 26, 2015

---

---

An act to ~~add Section 11165.4 to~~ amend Section 11165.1 of, and to add Section 11165.4 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 482, as amended, Lara. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. Existing law requires dispensing pharmacies and clinics to report specified information for each prescription of a Schedule II, Schedule III, or Schedule IV controlled substance to the department.

~~This bill would require all prescribers, as defined, prescribing a Schedule II or Schedule III controlled substance, to consult a patient's electronic history in the CURES database before prescribing the controlled substance to the patient for the first time. The bill would also require the prescriber to consult the CURES database at least annually when the prescribed controlled substance remains part of the patient's~~

treatment. The bill would prohibit prescribing an additional Schedule II or Schedule III controlled substance to a patient with an existing prescription until the prescriber determines that there is a legitimate need for the controlled substance.

The bill would make the failure to consult a patient's electronic history in the CURES database a cause for disciplinary action by the prescriber's licensing board and would require the licensing boards to notify all prescribers authorized to prescribe controlled substances of these requirements. The bill would provide that a prescriber is not in violation of these requirements if a specified condition exists, including any time that the CURES database is suspended or not accessible, an inability to access the CURES database in a timely manner because of an emergency, when the controlled substance is prescribed to a patient receiving hospice care, or when the controlled substance is directly administered to the patient by the person prescribing the controlled substance. The bill would make its provisions operative upon the Department of Justice's certification that the CURES database is ready for statewide use.

*This bill would require a health care practitioner authorized to prescribe, order, administer, furnish, or dispense a controlled substance to consult the CURES database to review a patient's controlled substance history no earlier than 24 hours before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least annually thereafter if the substance remains part of the treatment of the patient. The bill would exempt a veterinarian from this requirement. The bill would also exempt a health care practitioner from this requirement under specified circumstances, including, among others, if prescribing, ordering, administering, furnishing, or dispensing a controlled substance to a patient receiving hospice care, to a patient admitted to a specified facility, or to a patient as part of a treatment for a surgical procedure in a specified facility if the quantity of the controlled substance does not exceed a nonrefillable 5-day supply of the controlled substance that is to be used in accordance with the directions for use. The bill would exempt a health care practitioner from this requirement if it is not reasonably possible for him or her to access the information in the CURES database in a timely manner, another health care practitioner or designee authorized to access the CURES database is not reasonably available, and the quantity of controlled substance prescribed, ordered, administered, furnished, or dispensed does not exceed a nonrefillable 5-day supply*

*of the controlled substance that is to be used in accordance with the directions for use and no refill of the controlled substance is allowed.*

*The bill would provide that a health care practitioner who knowingly fails to consult the CURES database is required to be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board. The bill would make the above-mentioned provisions operative 6 months after the Department of Justice certifies that the CURES database is ready for statewide use.*

*The bill would also exempt a health care practitioner, pharmacist, and any person acting on behalf of a health care practitioner or pharmacist, when acting with reasonable care and in good faith, from civil or administrative liability arising from any false, incomplete, or inaccurate information submitted, to or reported by, the CURES database or for any resulting failure of the CURES database to accurately or timely report that information.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     **SECTION 1.** *Section 11165.1 of the Health and Safety Code*  
2 *is amended to read:*

3     11165.1. (a) (1) (A) (i) A health care practitioner authorized  
4 to prescribe, order, administer, furnish, or dispense Schedule II,  
5 Schedule III, or Schedule IV controlled substances pursuant to  
6 Section 11150 shall, before July 1, 2016, or upon receipt of a  
7 federal Drug Enforcement Administration (DEA) registration,  
8 whichever occurs later, submit an application developed by the  
9 Department of Justice to obtain approval to access information  
10 online regarding the controlled substance history of a patient that  
11 is stored on the Internet and maintained within the Department of  
12 Justice, and, upon approval, the department shall release to that  
13 practitioner the electronic history of controlled substances  
14 dispensed to an individual under his or her care based on data  
15 contained in the CURES Prescription Drug Monitoring Program  
16 (PDMP).

17     (ii) A pharmacist shall, before July 1, 2016, or upon licensure,  
18 whichever occurs later, submit an application developed by the  
19 Department of Justice to obtain approval to access information  
20 online regarding the controlled substance history of a patient that

1 is stored on the Internet and maintained within the Department of  
2 Justice, and, upon approval, the department shall release to that  
3 pharmacist the electronic history of controlled substances dispensed  
4 to an individual under his or her care based on data contained in  
5 the CURES PDMP.

6 (B) An application may be denied, or a subscriber may be  
7 suspended, for reasons which include, but are not limited to, the  
8 following:

9 (i) Materially falsifying an application for a subscriber.

10 (ii) Failure to maintain effective controls for access to the patient  
11 activity report.

12 (iii) Suspended or revoked federal DEA registration.

13 (iv) Any subscriber who is arrested for a violation of law  
14 governing controlled substances or any other law for which the  
15 possession or use of a controlled substance is an element of the  
16 crime.

17 (v) Any subscriber accessing information for any other reason  
18 than caring for his or her patients.

19 (C) Any authorized subscriber shall notify the Department of  
20 Justice within 30 days of any changes to the subscriber account.

21 (2) A health care practitioner authorized to prescribe, order,  
22 administer, furnish, or dispense Schedule II, Schedule III, or  
23 Schedule IV controlled substances pursuant to Section 11150 or  
24 a pharmacist shall be deemed to have complied with paragraph  
25 (1) if the licensed health care practitioner or pharmacist has been  
26 approved to access the CURES database through the process  
27 developed pursuant to subdivision (a) of Section 209 of the  
28 Business and Professions Code.

29 (b) Any request for, or release of, a controlled substance history  
30 pursuant to this section shall be made in accordance with guidelines  
31 developed by the Department of Justice.

32 (c) In order to prevent the inappropriate, improper, or illegal  
33 use of Schedule II, Schedule III, or Schedule IV controlled  
34 substances, the Department of Justice may initiate the referral of  
35 the history of controlled substances dispensed to an individual  
36 based on data contained in CURES to licensed health care  
37 practitioners, pharmacists, or both, providing care or services to  
38 the individual.

39 (d) The history of controlled substances dispensed to an  
40 individual based on data contained in CURES that is received by

1 a practitioner or pharmacist from the Department of Justice  
2 pursuant to this section ~~shall be considered~~ *is* medical information  
3 subject to the provisions of the Confidentiality of Medical  
4 Information Act contained in Part 2.6 (commencing with Section  
5 56) of Division 1 of the Civil Code.

6 (e) Information concerning a patient’s controlled substance  
7 history provided to a prescriber or pharmacist pursuant to this  
8 section shall include prescriptions for controlled substances listed  
9 in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code  
10 of Federal Regulations.

11 (f) *A health care practitioner, pharmacist, and any person acting*  
12 *on behalf of a health care practitioner or pharmacist, when acting*  
13 *with reasonable care and in good faith, is not subject to civil or*  
14 *administrative liability arising from any false, incomplete, or*  
15 *inaccurate information submitted to, or reported by, the CURES*  
16 *database or for any resulting failure of the CURES database to*  
17 *accurately or timely report that information.*

18 SEC. 2. Section 11165.4 is added to the Health and Safety  
19 Code, to read:

20 11165.4. (a) (1) (A) *A health care practitioner authorized to*  
21 *prescribe, order, administer, furnish, or dispense a controlled*  
22 *substance shall consult the CURES database to review a patient’s*  
23 *controlled substance history before prescribing a Schedule II,*  
24 *Schedule III, or Schedule IV controlled substance to the patient*  
25 *for the first time and at least annually thereafter if the substance*  
26 *remains part of the treatment of the patient.*

27 (B) *For purposes of this paragraph, “first time” means the*  
28 *initial occurrence in which a health care practitioner, in his or*  
29 *her role as a health care practitioner, intends to prescribe, order,*  
30 *administer, furnish, or dispense a Schedule II, Schedule III, or*  
31 *Schedule IV controlled substance to a patient and has not*  
32 *previously prescribed a controlled substance to the patient.*

33 (2) *A health care practitioner shall obtain a patient’s controlled*  
34 *substance history from the CURES database no earlier than 24*  
35 *hours before he or she prescribes, orders, administers, furnishes,*  
36 *or dispenses a Schedule II, Schedule III, or Schedule IV controlled*  
37 *substance to the patient.*

38 (b) *The duty to consult the CURES database, as described in*  
39 *subdivision (a), does not apply to veterinarians.*

1 (c) *The duty to consult the CURES database, as described in*  
2 *subdivision (a), does not apply to a health care practitioner in any*  
3 *of the following circumstances:*

4 (1) *If a health care practitioner prescribes, orders, or furnishes*  
5 *a controlled substance to be administered or dispensed to a patient*  
6 *while the patient is admitted to any of the following facilities or*  
7 *during an emergency transfer between any of the following*  
8 *facilities:*

9 (A) *A licensed clinic, as described in Chapter 1 (commencing*  
10 *with Section 1200) of Division 2.*

11 (B) *An outpatient setting, as described in Chapter 1.3*  
12 *(commencing with Section 1248) of Division 2.*

13 (C) *A health facility, as described in Chapter 2 (commencing*  
14 *with Section 1250) of Division 2.*

15 (D) *A county medical facility, as described in Chapter 2.5*  
16 *(commencing with Section 1440) of Division 2.*

17 (2) *When a health care practitioner prescribes, orders,*  
18 *administers, furnishes, or dispenses a controlled substance in the*  
19 *emergency department of a general acute care hospital if the*  
20 *quantity of the controlled substance does not exceed a 10-day*  
21 *supply of the controlled substance to be used in accordance with*  
22 *the directions for use.*

23 (3) *If a health care practitioner prescribes, orders, administers,*  
24 *furnishes, or dispenses a controlled substance to a patient as part*  
25 *of the patient's treatment for a surgical procedure, if the quantity*  
26 *of the controlled substance does not exceed a nonrefillable five-day*  
27 *supply of the controlled substance to be used in accordance with*  
28 *the directions for use, in any of the following facilities:*

29 (A) *A licensed clinic, as described in Chapter 1 (commencing*  
30 *with Section 1200) of Division 2.*

31 (B) *An outpatient setting, as described in Chapter 1.3*  
32 *(commencing with Section 1248) of Division 2.*

33 (C) *A health facility, as described in Chapter 2 (commencing*  
34 *with Section 1250) of Division 2.*

35 (D) *A county medical facility, as described in Chapter 2.5*  
36 *(commencing with Section 1440) of Division 2.*

37 (E) *A place of practice, as defined in Section 1658 of the*  
38 *Business and Professions Code.*

1 (4) If a health care practitioner prescribes, orders, administers,  
2 furnishes, or dispenses a controlled substance to a patient currently  
3 receiving hospice care, as defined in Section 1339.40.

4 (5) (A) If all of the following circumstances are satisfied:

5 (i) It is not reasonably possible for a health care practitioner  
6 to access the information in the CURES database in a timely  
7 manner.

8 (ii) Another health care practitioner or designee authorized to  
9 access the CURES database is not reasonably available.

10 (iii) The quantity of controlled substance prescribed, ordered,  
11 administered, furnished, or dispensed does not exceed a  
12 nonrefillable five-day supply of the controlled substance to be used  
13 in accordance with the directions for use and no refill of the  
14 controlled substance is allowed.

15 (B) A health care practitioner who does not consult the CURES  
16 database under subparagraph (A) shall document the reason he  
17 or she did not consult the database in the patient's medical record.

18 (6) If the CURES database is not operational, as determined  
19 by the department, or when it cannot be accessed by a health care  
20 practitioner because of a temporary technological or electrical  
21 failure. A health care practitioner shall, without undue delay, seek  
22 to correct any cause of the temporary technological or electrical  
23 failure that is reasonably within his or her control.

24 (7) If the CURES database cannot be accessed because of  
25 technological limitations that are not reasonably within the control  
26 of a health care practitioner.

27 (8) If the CURES database cannot be accessed because of  
28 exceptional circumstances, as demonstrated by a health care  
29 practitioner.

30 (d) (1) A health care practitioner who knowingly fails to consult  
31 the CURES database, as described in subdivision (a), shall be  
32 referred to the appropriate state professional licensing board  
33 solely for administrative sanctions, as deemed appropriate by that  
34 board.

35 (2) This section does not create a private cause of action against  
36 a health care practitioner. This section does not limit a health care  
37 practitioner's liability for the negligent failure to diagnose or treat  
38 a patient.

39 (e) This section is not operative until six months after the  
40 Department of Justice certifies that the CURES database is ready

1 for statewide use. The department shall notify the Secretary of  
2 State and the office of the Legislative Counsel of the date of that  
3 certification.

4 (f) All applicable state and federal privacy laws govern the  
5 duties required by this section.

6 (g) The provisions of this section are severable. If any provision  
7 of this section or its application is held invalid, that invalidity shall  
8 not affect other provisions or applications that can be given effect  
9 without the invalid provision or application.

10 SECTION 1. Section 11165.4 is added to the Health and Safety  
11 Code, to read:

12 ~~11165.4. (a) A prescriber shall access and consult the CURES~~  
13 ~~database for the electronic history of controlled substances~~  
14 ~~dispensed to a patient under his or her care before prescribing a~~  
15 ~~Schedule II or Schedule III controlled substance for the first time~~  
16 ~~to that patient and at least annually when that prescribed controlled~~  
17 ~~substance remains part of his or her treatment. If the patient has~~  
18 ~~an existing prescription for a Schedule II or Schedule III controlled~~  
19 ~~substance, the prescriber shall not prescribe an additional controlled~~  
20 ~~substance until the prescriber determines that there is a legitimate~~  
21 ~~need for that controlled substance.~~

22 ~~(b) Failure to consult a patient's electronic history as required~~  
23 ~~by subdivision (a) is cause for disciplinary action by the~~  
24 ~~prescriber's licensing board. The licensing boards of all prescribers~~  
25 ~~authorized to write or issue prescriptions for controlled substances~~  
26 ~~shall notify these licensees of the requirements of this section.~~

27 ~~(c) A prescriber is not liable in a civil action solely for failing~~  
28 ~~to consult the CURES database as required pursuant to subdivision~~  
29 ~~(a).~~

30 ~~(d) The requirement in subdivision (a) does not apply, and a~~  
31 ~~prescriber is not in violation of this section, if any of the following~~  
32 ~~conditions are met:~~

33 ~~(1) The CURES database is suspended or inaccessible, the~~  
34 ~~Internet is not operational, the data in the CURES database is~~  
35 ~~inaccurate or incomplete, or it is not possible to query the CURES~~  
36 ~~database in a timely manner because of an emergency.~~

37 ~~(2) The controlled substance is prescribed to a patient receiving~~  
38 ~~hospice care.~~

- 1     ~~(3) The controlled substance is prescribed to a patient as a part~~  
2 ~~of a surgical procedure that has or will occur in a licensed health~~  
3 ~~care facility and the prescription is nonrefillable.~~  
4     ~~(4) The controlled substance is directly administered to the~~  
5 ~~patient by the prescriber or another person authorized to prescribe~~  
6 ~~a controlled substance.~~  
7     ~~(e) This section shall not become operative until the Department~~  
8 ~~of Justice certifies that the CURES database is ready for statewide~~  
9 ~~use. The department shall notify the Secretary of State and the~~  
10 ~~Office of Legislative Counsel of the date of that certification.~~  
11     ~~(f) For purposes of this section, “prescriber” means a health~~  
12 ~~care practitioner who is authorized to write or issue prescriptions~~  
13 ~~under Section 11150, excluding veterinarians.~~  
14     ~~(g) A violation of this section shall not be subject to the~~  
15 ~~provisions of Section 11374.~~  
16     ~~(h) All applicable state and federal privacy laws govern the~~  
17 ~~duties required by this section.~~  
18     ~~(i) The provisions of this section are severable. If any provision~~  
19 ~~of this section or its application is held invalid, that invalidity shall~~  
20 ~~not affect other provisions or applications that can be given effect~~  
21 ~~without the invalid provision or application.~~