

AMENDED IN ASSEMBLY JUNE 21, 2016

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**

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**Introduced by Senator Lara**

February 26, 2015

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An act 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 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~~ *once every 4 months* 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:

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

15 (ii) A pharmacist shall, before July 1, 2016, or upon licensure,  
16 whichever occurs later, submit an application developed by the  
17 Department of Justice to obtain approval to access information  
18 online regarding the controlled substance history of a patient that  
19 is stored on the Internet and maintained within the Department of  
20 Justice, and, upon approval, the department shall release to that  
21 pharmacist the electronic history of controlled substances dispensed  
22 to an individual under his or her care based on data contained in  
23 the CURES PDMP.

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

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

28 (ii) Failure to maintain effective controls for access to the patient  
29 activity report.

30 (iii) Suspended or revoked federal DEA registration.

31 (iv) Any subscriber who is arrested for a violation of law  
32 governing controlled substances or any other law for which the  
33 possession or use of a controlled substance is an element of the  
34 crime.

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

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

39 (2) A health care practitioner authorized to prescribe, order,  
40 administer, furnish, or dispense Schedule II, Schedule III, or

1 Schedule IV controlled substances pursuant to Section 11150 or  
2 a pharmacist shall be deemed to have complied with paragraph  
3 (1) if the licensed health care practitioner or pharmacist has been  
4 approved to access the CURES database through the process  
5 developed pursuant to subdivision (a) of Section 209 of the  
6 Business and Professions Code.

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

10 (c) In order to prevent the inappropriate, improper, or illegal  
11 use of Schedule II, Schedule III, or Schedule IV controlled  
12 substances, the Department of Justice may initiate the referral of  
13 the history of controlled substances dispensed to an individual  
14 based on data contained in CURES to licensed health care  
15 practitioners, pharmacists, or both, providing care or services to  
16 the individual.

17 (d) The history of controlled substances dispensed to an  
18 individual based on data contained in CURES that is received by  
19 a practitioner or pharmacist from the Department of Justice  
20 pursuant to this section is medical information subject to the  
21 provisions of the Confidentiality of Medical Information Act  
22 contained in Part 2.6 (commencing with Section 56) of Division  
23 1 of the Civil Code.

24 (e) Information concerning a patient's controlled substance  
25 history provided to a prescriber or pharmacist pursuant to this  
26 section shall include prescriptions for controlled substances listed  
27 in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code  
28 of Federal Regulations.

29 (f) A health care practitioner, pharmacist, and any person acting  
30 on behalf of a health care practitioner or pharmacist, when acting  
31 with reasonable care and in good faith, is not subject to civil or  
32 administrative liability arising from any false, incomplete, or  
33 inaccurate information submitted to, or reported by, the CURES  
34 database or for any resulting failure of the CURES database to  
35 accurately or timely report that information.

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

38 11165.4. (a) (1) (A) A health care practitioner authorized to  
39 prescribe, order, administer, furnish, or dispense a controlled  
40 substance shall consult the CURES database to review a patient's

1 controlled substance history before prescribing a Schedule II,  
2 Schedule III, or Schedule IV controlled substance to the patient  
3 for the first time and at least ~~annually~~ *once every four months*  
4 thereafter if the substance remains part of the treatment of the  
5 patient.

6 (B) For purposes of this paragraph, “first time” means the initial  
7 occurrence in which a health care practitioner, in his or her role  
8 as a health care practitioner, intends to prescribe, order, administer,  
9 furnish, or dispense a Schedule II, Schedule III, or Schedule IV  
10 controlled substance to a patient and has not previously prescribed  
11 a controlled substance to the patient.

12 (2) A health care practitioner shall obtain a patient’s controlled  
13 substance history from the CURES database no earlier than 24  
14 hours before he or she prescribes, orders, administers, furnishes,  
15 or dispenses a Schedule II, Schedule III, or Schedule IV controlled  
16 substance to the patient.

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

19 (c) The duty to consult the CURES database, as described in  
20 subdivision (a), does not apply to a health care practitioner in any  
21 of the following circumstances:

22 (1) If a health care practitioner prescribes, orders, or furnishes  
23 a controlled substance to be administered or dispensed to a patient  
24 while the patient is admitted to any of the following facilities or  
25 during an emergency transfer between any of the following  
26 facilities:

27 (A) A licensed clinic, as described in Chapter 1 (commencing  
28 with Section 1200) of Division 2.

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

31 (C) A health facility, as described in Chapter 2 (commencing  
32 with Section 1250) of Division 2.

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

35 (2) When a health care practitioner prescribes, orders,  
36 administers, furnishes, or dispenses a controlled substance in the  
37 emergency department of a general acute care hospital if the  
38 quantity of the controlled substance does not exceed a ~~10-day~~  
39 *seven-day* supply of the controlled substance to be used in  
40 accordance with the directions for use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (8) If the CURES database cannot be accessed because of  
5 exceptional circumstances, as demonstrated by a health care  
6 practitioner.

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

11 (2) This section does not create a private cause of action against  
12 a health care practitioner. This section does not limit a health care  
13 practitioner's liability for the negligent failure to diagnose or treat  
14 a patient.

15 (e) This section is not operative until six months after the  
16 Department of Justice certifies that the CURES database is ready  
17 for statewide use. The department shall notify the Secretary of  
18 State and the office of the Legislative Counsel of the date of that  
19 certification.

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

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