Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

The penalty provisions found in this compilation are those that appear in the respective state's PMP statutes and/or regulations. Please note that individual states may have additional relevant penalty provisions, such as those found in a pharmacy code or in various sections of a state controlled substance act, that penalize the improper use of a person's medical information. Those provisions, while potentially applicable, do not appear in this compilation. Also omitted from this compilation are confidentiality, access, and disclosure provisions that, while potentially applicable, are found in other codes or state statutes.

ALABAMA

"Controlled Substances Prescription Database"

Citation(s): ALA. CODE §§ 20-2-210 to -220 (2008)
ALA. ADMIN. CODE r. 420-7-2-.12 and -.13 (2009)

Substances Monitored: Class II , III, IV and V controlled substances

Access and/or Disclosure Provisions:

§ 20-2-214. Limited access to database permitted for certain persons or entities.

The following persons or entities shall be permitted access to the information in the controlled substances database, subject to the limitations indicated below:

(1) Authorized representatives of the certifying boards, provided, however, that access shall be limited to inquiries concerning the licensees of the certifying board.

(2) A licensed practitioner approved by the department who has authority to prescribe, dispense, or administer controlled substances, provided, however, that such access shall be limited to information concerning an assistant to physician with a Qualified Alabama Controlled Substances Registration Certificate over whom the practitioner exercises

physician supervision and a current or prospective patient of the practitioner. Practitioners shall have no requirement or obligation to access or check the information in the controlled substances database prior to prescribing, dispensing, or administering medications or as part of their professional practice.

(3) A licensed assistant to physician approved by the department who is authorized to prescribe, administer, or dispense pursuant to a Qualified Alabama Controlled Substances Registration Certificate; provided, however, that such access shall be limited to information concerning a current or prospective patient of the assistant to physician.

(4) A licensed pharmacist approved by the department, provided, however, that such access is limited to information related to the patient or prescribing practitioner designated on a controlled substance prescription that a pharmacist has been asked to fill. Pharmacists shall have no requirement or obligation to access or check the information in the controlled substances database prior to dispensing or administering medications or as part of their professional practices.

(5) State and local law enforcement authorities as authorized under Section 20-2-91, and federal law enforcement authorities authorized to access prescription information upon application to the department accompanied by an affidavit stating probable cause for the use of the requested information.

(6) Employees of the department and consultants engaged by the department for operational and review purposes.

420-7-2.13. Access to Database

(1) Licensing boards shall have access to the Prescription Drug Database concerning their licensees according to procedures developed by ADPH Bureau of Information Services, Computer Systems Center.

(2) Law enforcement agencies shall pre-register with the Prescription Drug Monitoring Program to receive an ID and password to access a request form. Law enforcement agencies will request a report from the Prescription Drug Monitoring Program on an individual or health care licensee and will certify that requested information is pursuant to an active investigation.

(3) Licensed practitioners as specified in § 20-2-211(6); physicians, dentists, podiatrists, optometrists, veterinarians or pharmacists approved to prescribe, dispense, or administer

controlled substances shall have access to the Prescription Drug Database concerning a current or prospective patient according to procedures developed by ADPH Bureau of Information Services, Computer Systems Center.

Access and/or Disclosure Violations/Penalties:

§ 20-2-216. Unauthorized disclosure of information; unauthorized access, alteration, or destruction of information.

Any person who intentionally makes an unauthorized disclosure of information contained in the controlled substances prescription database shall be guilty of a Class A misdemeanor. Any person or entity who intentionally obtains unauthorized access to or who alters or destroys information contained in the controlled substances prescription database shall be guilty of a Class C felony.

Confidentiality Provisions:

§ 20-2-215. Confidentiality of database.

(a) The controlled substances database and all information contained therein and any records maintained by the department or by any entity contracting with the department which is submitted to, maintained, or stored as a part of the controlled substances prescription database is hereby declared privileged and confidential, is not a public record, is not subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of licensing or regulatory boards of practitioners authorized to prescribe or dispense controlled substances.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

ALASKA

"Controlled Substance Prescription Database"

Citation(s): ALASKA STAT. § 17.30.200 (2008)

Substances Monitored: Schedule IA, IIA, IIIA, IVA and VA controlled substances under
state law, and Schedule I, II, III, IV, and V controlled substances under federal law.

Access and/or Disclosure Provisions:

Sec. 17.30.200. Controlled substance prescription database.

…

(d) The database and the information contained within the database are confidential, are not public records, and are not subject to public disclosure. The board shall undertake to ensure the security and confidentiality of the database and the information contained within the database. The board may allow access to the database only to the following persons, and in accordance with the limitations provided and regulations of the board:

(1) personnel of the board regarding inquiries concerning licensees or registrants of the board or personnel of another board or agency concerning a practitioner under a search warrant, subpoena, or order issued by an administrative law judge or a court;

(2) authorized board personnel or contractors as required for operational and review purposes;

(3) a licensed practitioner having authority to prescribe controlled substances, to the extent the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing a controlled substance;

(4) a licensed or registered pharmacist having authority to dispense controlled substances, to the extent the information relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance;

(5) federal, state, and local law enforcement authorities may receive printouts of information contained in the database under a search warrant, subpoena, or order issued by a court establishing probable cause for the access and use of the information; and

(6) an individual who is the recipient of a controlled substance prescription entered into the database may receive information contained in the database concerning the individual on providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made and on payment of a fee set by the board under AS 37.10.050 that does not exceed $10.

Access and/or Disclosure Violations/Penalties:

Sec. 17.30.200. Controlled substance prescription database.

…

(i) A person who has reason to believe that prescription information from the database has been illegally or improperly accessed shall notify an appropriate law enforcement agency.

(j) The board shall notify any person whose prescription information from the database is illegally or improperly accessed.

(k) In the regulations adopted under this section, the board shall provide

(1) that prescription information in the database shall be purged from the database after two years have elapsed from the date the prescription was dispensed;

(2) a method for an individual to challenge information in the database about the individual that the person believes is incorrect or was incorrectly entered by a dispenser.

(*l*) A person

(1) with authority to access the database under (d) of this section who knowingly

(A) accesses information in the database beyond the scope of the person's authority commits a class A misdemeanor;

(B) accesses information in the database and recklessly discloses that information to a person not entitled to access or to receive the information commits a class C felony;

(C) allows another person who is not authorized to access the database to access the database commits a class C felony;

(2) without authority to access the database under (d) of this section who knowingly accesses the database or knowingly receives information that the person is not authorized to receive under (d) of this section from another person commits a class C felony.

Confidentiality Provisions:

See §17.30.200(d) above

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

ARIZONA

"Controlled Substances Prescription Monitoring Program"

Citations: ARIZ. REV. STAT. ANN. § 36-2601 to -2611 (2008)
ARIZ. ADMIN. CODE §§ 24-23-501 to 505 (2009)

Substances Monitored: Schedule II, III and IV controlled substances

Access and/or Disclosure Provisions:

§ 36-2604. Use and release of confidential information

A. Except as otherwise provided in this section, prescription information submitted to the board pursuant to this article is confidential and is not subject to public inspection. The board shall establish procedures to ensure the privacy and confidentiality of patients and that patient information that is collected, recorded and transmitted pursuant to this article is not disclosed except as prescribed in this section.

B. The board or its designee shall review the prescription information collected pursuant to this article. If the board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the board or its designee shall notify the appropriate professional licensing board or law enforcement or criminal justice agency and provide the prescription information required for an investigation.

C. The board may release data collected by the program to the following:

1. A person who is authorized to prescribe or dispense a controlled substance to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient.

2. An individual who requests the individual's own prescription monitoring information pursuant to § 12-2293.

3. A professional licensing board established pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 or 29. Except as required pursuant to subsection B of this section, the board shall provide this information only if the requesting board states in writing that the information is necessary for an open investigation or complaint.

4. A local, state or federal law enforcement or criminal justice agency. Except as required pursuant to subsection B of this section, the board shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint.

5. The Arizona health care cost containment system administration regarding persons who are receiving services pursuant to chapter 29 of this title. Except as required pursuant to subsection B of this section, the board shall provide this information only if the administration states in writing that the information is necessary for an open investigation or complaint.

6. A person serving a lawful order of a court of competent jurisdiction.

D. The board may provide data to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data

A. Except as provided in A.R.S. § 36-2604(B) and (C) and this Section, prescription information submitted to the Board or its designee is confidential and is not subject to public inspection.

…

C. The Board or its designee is authorized to release data collected by the program to the following:

1. A person who is authorized to prescribe or dispense a controlled substance to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient;

2. An individual who requests the individual's own controlled substance prescription information under A.R.S. § 12-2293;

3. A professional licensing board established under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25, or 26. Except as required under subsection (B), the Board

or its designee shall provide this information only if the requesting board states in writing that the information is necessary for an open investigation or complaint;

4. A local, state, or federal law enforcement or criminal justice agency. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint;

5. The Arizona Health Care Cost Containment System Administration regarding individuals who are receiving services under A.R.S. Title 36, Chapter 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the Administration states in writing that the information is necessary for an open investigation or complaint;

6. A person serving a lawful order of a court of competent jurisdiction; and

7. The Board staff for purposes of administration and enforcement of A.R.S. Title 36, Chapter 28 and this Article.

D. The Board or its designee may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

R4-23-504. Computerized Central Database Tracking System Task Force

A. The Board shall appoint a task force to help it administer the computerized central database tracking system as specified in A.R.S. § 36-2603.

B. The Task Force shall meet at least once each year and at the call of the chairperson to establish the procedures and conditions relating to the release of prescription information specified in A.R.S. § 36-2604 and R4-23-503.

C. The Task Force shall determine:

1. The information to be screened;

2. The frequency and thresholds for screening; and

3. The parameters for using the information to notify medical practitioners, patients, and pharmacies to educate and provide for patient management and treatment options.

D. The Board shall review and approve the procedures and conditions established by the Task Force as needed but at least once every calendar year.

R4-23-505. Reports

A. Before releasing prescription monitoring program data, the Board or its designee shall receive a written request for controlled substance prescription information.

B. A person authorized to access CSPMP data under R4-23-503(C)(1) through (6) shall submit a written request that:

1. Specifies the information requested for the report;

2. For a medical practitioner, provides a statement that the report's purpose is to provide medical or pharmaceutical care to a patient or to evaluate a patient;

3. For an individual obtaining the individual's own controlled substance prescription information, provides a form of non-expired government-issued identification;

4. For a professional licensing board, states that the information is necessary for an open investigation or complaint;

5. For a local, state, or federal law enforcement or criminal justice agency, states that the information is necessary for an open investigation or complaint;

6. For the AHCCCS Administration, states that the information is necessary for an open investigation or complaint; and

7. For a person serving a lawful order of a court of competent jurisdiction, provides a copy of the court order.

C. The Board or its designee may provide reports through U.S. mail, other common carrier, facsimile, or secured electronic media or may allow reports to be picked up in-person at the Board office.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

§ 36-2610. Prohibited acts; violation; classification

A. A person who is subject to this article and who fails to report required information pursuant to § 36-2608 is guilty of a class 2 misdemeanor.

B. A person who is subject to this article and who knowingly fails to report required information to the board in violation of § 36-2608 is guilty of a class 1 misdemeanor.

C. A person who is subject to this article and who knowingly reports information to the board that the person knows to be false or fraudulent is guilty of a class 6 felony.

D. A person who is granted access to the information maintained by the board as required by this article and who knowingly discloses the information in a manner inconsistent with a legitimate professional or regulatory purpose, a legitimate law enforcement purpose, the terms of a court order or as otherwise expressly authorized by this article is guilty of a class 6 felony.

R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data

B. The Board or its designee shall review the prescription information collected under A.R.S. Title 36, Chapter 28 and R4-23-502. If the Board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the Board or its designee shall notify the appropriate professional licensing board or law enforcement or criminal justice agency and provide the prescription information required for an investigation.

Confidentiality Provisions:

See § 36-2604 above

See R4-23-503 above

R4-23-502. Requirements for Data Format and Transmission

…

C. A dispenser's electronic data transfer equipment including hardware, software, and

internet connections shall meet the privacy and security standards of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and A.R.S. § 12-2292, in addition to common internet industry standards for privacy and security. A dispenser shall ensure that each electronic transmission meets the following data protection requirements:

1. Data shall be at least 128-bit encryption in transmission and at rest; and

2. Data shall be transmitted via secure e-mail, telephone modem, diskette, CD-ROM, tape, secure File Transfer Protocol (FTP), Virtual Private Network (VPN), or other Board-approved media.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

CALIFORNIA

"Controlled Substance Utilization Review and Evaluation System (CURES)"

Citation(s): CAL. HEALTH & SAFETY CODE §§ 11165, 11165.1 (West 2008)
CAL. CIV. CODE § 56.36 (2009)
CAL. CODE REGS. tit. 16, § 1715.5 (2009)

Substances Monitored: Schedule II, III and IV* controlled substances (*Note: The reporting of Schedule II, III and IV controlled substances is contingent upon the availability of adequate funds).

Access and/or Disclosure Provisions:

§ 11165. Controlled Substance Utilization Review and Evaluation System (CURES); electronic monitoring of Schedule II and Schedule III controlled substances; funding; confidentiality; reporting requirements for dispensing pharmacies

…

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

§ 11165.1. Disclosure of Controlled Substance Utilization Review and Evaluation System data

(a)(1) A licensed health care practitioner eligible to prescribe Schedule II, Schedule III, or Schedule IV controlled substances or a pharmacist may make a written request for, and the Department of Justice may release to that practitioner or pharmacist, the history of

controlled substances dispensed to an individual under his or her care based on data contained in CURES.

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

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

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

Access and/or Disclosure Violations/Penalties:

§ 11165.1. Disclosure of Controlled Substance Utilization Review and Evaluation System data

…

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

§ 56.36. Misdemeanors; violations; remedies

(a) Any violation of the provisions of this part that results in economic loss or personal injury to a patient is punishable as a misdemeanor.

(b) In addition to any other remedies available at law, any individual may bring an action against any person or entity who has negligently released confidential information or records concerning him or her in violation of this part, for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover under this paragraph, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the patient.

(c)(1) In addition, any person or entity that negligently discloses medical information in violation of the provisions of this part shall also be liable, irrespective of the amount of damages suffered by the patient as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation.

(2)(A) Any person or entity, other than a licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable on a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation, or on a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars ($10,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(3)(A) Any person or entity, other than a licensed health care professional, who knowingly or willfully obtains or uses medical information in violation of this part for the purpose of financial gain shall be liable for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part for financial gain shall be liable on a first violation, for an administrative fine or civil penalty not to exceed five thousand dollars ($5,000) per violation, or on a second violation for an administrative

fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(4) Nothing in this subdivision shall be construed as authorizing an administrative fine or civil penalty under both paragraphs (2) and (3) for the same violation.

(5) Any person or entity who is not permitted to receive medical information pursuant to this part and who knowingly and willfully obtains, discloses, or uses medical information without written authorization from the patient shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation.

(d) In assessing the amount of an administrative fine or civil penalty pursuant to subdivision (c), the Office of Health Information Integrity, licensing agency, or certifying board or court shall consider any one or more of the relevant circumstances presented by any of the parties to the case including, but not limited to, the following:

(1) Whether the defendant has made a reasonable, good faith attempt to comply with this part.

(2) The nature and seriousness of the misconduct.

(3) The harm to the patient, enrollee, or subscriber.

(4) The number of violations.

(5) The persistence of the misconduct.

(6) The length of time over which the misconduct occurred.

(7) The willfulness of the defendant's misconduct.

(8) The defendant's assets, liabilities, and net worth.

(e)(1) The civil penalty pursuant to subdivision (c) shall be assessed and recovered in a

civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(A) The Attorney General.

(B) Any district attorney.

(C) Any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance.

(D) Any city attorney of a city.

(E) Any city attorney of a city and county having a population in excess of 750,000, with the consent of the district attorney.

(F) A city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county.

(G) The Director of the Office of Health Information Integrity may recommend that any person described in subparagraphs (A) to (F), inclusive, bring a civil action under this section.

(2) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in paragraph (3), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered.

(4) Nothing in this section shall be construed as authorizing both an administrative fine and civil penalty for the same violation.

(5) Imposition of a fine or penalty provided for in this section shall not preclude

imposition of any other sanctions or remedies authorized by law.

(6) Administrative fines or penalties issued pursuant to Section 1280.15 of the Health and Safety Code shall offset any other administrative fine or civil penalty imposed under this section for the same violation.

(f) For purposes of this section, "knowing" and "willful" shall have the same meanings as in Section 7 of the Penal Code.

(g) No person who discloses protected medical information in accordance with the provisions of this part shall be subject to the penalty provisions of this part.

(h) Paragraph (6) of subdivision (e) shall only become operative if Senate Bill 541 of the 2007-08 Regular Session is enacted and becomes effective on or before January 1, 2009.

Confidentiality Provisions:

§ 11165.1. Disclosure of Controlled Substance Utilization Review and Evaluation System data

…

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

COLORADO

"Electronic Prescription Drug Monitoring Program"

Citation(s): COLO. REV. STAT. ANN. §§ 12-22-701 to 710, 2-3-1203, 24-34-104 (West 2008)

Substances Monitored: Schedule II, III, IV and V controlled substances

Access and/or Disclosure Provisions:

§ 12-22-705. Program operation--access

…

(3) The program shall be available for query only to the following persons or groups of persons:

(a) Board staff responsible for administering the program;

(b) Any licensed practitioner with the statutory authority to prescribe controlled substances to the extent the query relates to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance;

(c) Practitioners engaged in a legitimate program to monitor a patient's controlled substance abuse;

(d) Licensed pharmacists with statutory authority to dispense controlled substances to the extent the information requested relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance;

(e) Law enforcement officials so long as the information released is specific to an individual and is part of a bona fide investigation and the request for information is accompanied by an official court order or subpoena; and

(f) The individual who is the recipient of a controlled substance prescription so long as the information released is specific to such individual.

(4) A licensed practitioner or licensed pharmacist who transmits data in compliance with the operation and maintenance of the program shall not be charged a fee for the transmission of such data.

(5) The state board of pharmacy may, pursuant to a written agreement that ensures compliance with this part 7, provide data to qualified personnel of a public or private entity for the purpose of bona fide research or education, so long as such information does not identify a recipient, prescriber, or dispenser of a prescription drug.

(6) The board shall provide a means of sharing information about individuals whose information is recorded in the program with out-of-state health care practitioners and law enforcement officials that meet the requirements of paragraph (b), (c), or (e) of subsection (3) of this section.

Access and/or Disclosure Violations/Penalties:

§ 12-22-707. Violations--penalties

A person who knowingly releases, obtains, or attempts to obtain information from the program in violation of this part 7 shall be punished by a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each violation. Fines paid shall be deposited in the prescription drug monitoring fund.

Confidentiality Provisions:

See § 12-22-705 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

CONNECTICUT

"Electronic Prescription Drug Monitoring Program"

Citation(s): CONN. GEN. STAT. ANN. §§ 21a-254, 254a (West 2008)
CONN. AGENCIES REGS. §§ 21a-254-2 to -7 (2008)

Substances Monitored: Schedules II through V

Access and/or Disclosure Provisions:

§ 21a-254-6. Management of Information.

The department may provide prescription information obtained from pharmacies to:

(a) Other regulatory, investigative or law enforcement agencies for disciplinary, civil, or criminal purposes;

(b) Practitioners, for the purpose of education in lieu of disciplinary, civil or criminal action;

(c) Practitioners and pharmacists, for the purposes of patient care, drug therapy management and monitoring of controlled substances obtained by the patient; and

(d) Public or private entities, for statistical, research, or educational purposes, provided that the privacy of patients and confidentiality of patient information is not compromised.

Access and/or Disclosure Violations/Penalties:

None found – please reference the note at the beginning of this compilation.

Confidentiality Provisions:

§ 21a-254-4. Reporting.

...

(f) A pharmacy shall transmit the information required pursuant to this section in such a manner as to insure the confidentiality of the information in compliance with all federal and state statutes and regulations, including the federal Health Insurance Portability and Accountability Act of 1996.

§ 21a-254-7. Storage of Information.

(a) The department shall ensure the privacy of patients and confidentiality of patient information transmitted or obtained pursuant to sections 21a-254-2 to 21a-254-6, inclusive, of the Regulations of Connecticut State Agencies, and shall ensure that the patient information collected, recorded, transmitted, and stored is maintained in accordance with applicable state and federal laws, rules and regulations.

(b) The department shall retain the prescription information collected pursuant to sections 21a-254-2 to 21a-254-6, inclusive, of the Regulations of Connecticut State Agencies, for a minimum of three years.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

FLORIDA

"Prescription Drug Monitoring Program"

Citation: S.B. 462, 111th Leg., Reg. Sess. (Fl. 2009), and S.B. 440, 111th Leg., Reg. Sess. (Fl. 2009)

Substances Monitored: Schedules II, III, and IV controlled substances

Access and/or Disclosure Provisions:

SB 462

Section 1

(2)(a) By December 1, 2010, the department shall design and establish a comprehensive electronic database system that has controlled substance prescriptions provided to it and that provides prescription information to a patient's health care practitioner and pharmacist who inform the department that they wish the patient advisory report provided to them. Otherwise, the patient advisory report will not be sent to the practitioner, pharmacy, or pharmacist. The system shall be designed to provide information regarding dispensed prescriptions of controlled substances and shall not infringe upon the legitimate prescribing or dispensing of a controlled substance by a prescriber or dispenser acting in good faith and in the course of professional practice. The system shall be consistent with standards of the American Society for Automation in Pharmacy (ASAP). The electronic system shall also comply with the Health Insurance Portability and Accountability Act (HIPAA) as it pertains to protected health information (PHI), electronic protected health information (EPHI), and all other relevant state and federal privacy and security laws and regulations. The department shall establish policies and procedures as appropriate regarding the reporting, accessing the database, evaluation, management, development, implementation, operation, storage, and security of information within the system. The reporting of prescribed controlled substances shall include a dispensing transaction with a dispenser pursuant to chapter 465 or through a dispensing transaction to an individual or address in this state with a pharmacy that is not located in this state but that is otherwise subject to the jurisdiction of this state as to that dispensing transaction. The reporting of patient advisory reports refers only to reports to patients, pharmacies, and practitioners. Separate reports that contain patient prescription history information and that are not patient advisory reports are provided to persons and

entities as authorized in paragraphs (7)(b) and (c) and s. 893.0551.
…

(7)(b) A pharmacy, prescriber, or dispenser shall have access to information in the prescription drug monitoring program's database which relates to a patient of that pharmacy, prescriber, or dispenser in a manner established by the department as needed for the purpose of reviewing the patient's controlled substance prescription history. Other access to the program's database shall be limited to the program's manager and to the designated program and support staff, who may act only at the direction of the program manager or, in the absence of the program manager, as authorized. Access by the program manager or such designated staff is for prescription drug program management only or for management of the program's database and its system in support of the requirements of this section and in furtherance of the prescription drug monitoring program. Confidential and exempt information in the database shall be released only as provided in paragraph (c) and s. 893.0551.

(c) The following entities shall not be allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information that is confidential and exempt under s. 893.0551. Prior to release, the request shall be verified as authentic and authorized with the requesting organization by the program manager, the program manager's program and support staff, or as determined in rules by the department as being authentic and as having been authorized by the requesting entity:

1. The department or its relevant health care regulatory boards responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances and who are involved in a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances.

2. The Attorney General for Medicaid fraud cases involving prescribed controlled substances.

3. A law enforcement agency during active investigations regarding potential criminal activity, fraud, or theft regarding prescribed controlled substances.

4. A patient or the legal guardian or designated health care surrogate of an incapacitated patient as described in s. 893.0551 who, for the purpose of verifying the accuracy of the

database information, submits a written and notarized request that includes the patient's full name, address, and date of birth, and includes the same information if the legal guardian or health care surrogate submits the request. The request shall be validated by the department to verify the identity of the patient and the legal guardian or health care surrogate, if the patient's legal guardian or health care surrogate is the requestor. Such verification is also required for any request to change a patient's prescription history or other information related to his or her information in the electronic database. Information in the database for the electronic prescription drug monitoring system is not discoverable or admissible in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the appropriate regulatory board.

(d) The following entities shall not be allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information that contains no identifying information of any patient, physician, health care practitioner, prescriber, or dispenser and that is not confidential and exempt:

1. Department staff for the purpose of calculating performance measures pursuant to subsection (8).

2. The Program Implementation and Oversight Task Force for its reporting to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the prescription drug monitoring program. This subparagraph expires July 1, 2012.

(e) All transmissions of data required by this section must comply with relevant state and federal privacy and security laws and regulations. However, any authorized agency or person under s. 893.0551 receiving such information as allowed by s. 893.0551 may maintain the information received for up to 24 months before purging it from his or her records or maintain it for longer than 24 months if the information is pertinent to ongoing health care or an active law enforcement investigation or prosecution.

SB 440

Section 1. Section 893.0551, Florida Statutes, is created to read:

893.0551 Public-records exemption for the prescription drug monitoring program.-

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

…

Section 1. (2) The following information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Name.

(b) Address.

(c) Telephone number.

(d) Insurance plan number.

(e) Government-issued identification number.

(f) Provider number.

(g) Drug Enforcement Administration number.

(h) Any other unique identifying information or number.

(3) The department shall disclose such confidential and exempt information to the following entities after using a verification process to ensure the legitimacy of that person's or entity's request for the information:

(a) The Attorney General and his or her designee when working on Medicaid fraud cases involving prescription drugs or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud regarding prescription drugs. The Attorney General or his or her designee may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. The Attorney General's Medicaid fraud investigators may not have direct access to the department's database.

(b) The department's relevant health care regulatory boards responsible for the licensure,

regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a specific controlled substances investigation for prescription drugs involving a designated person. The health care regulatory boards may request information from the department but may not have direct access to its database. The health care regulatory boards may provide such information to a law enforcement agency pursuant to ss. 456.066 and 456.073.

(c) A law enforcement agency that has initiated an active investigation involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances. The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. A law enforcement agency may request information from the department but may not have direct access to its database.

(d) A health care practitioner who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. 893.05 and 893.055.

(e) A pharmacist who certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with ss. 893.04 and 893.055.

(f) A patient or the legal guardian or designated health care surrogate for an incapacitated patient, if applicable, making a request as provided in s. 893.055(7)(c)4.

(g) The patient's pharmacy, prescriber, or dispenser who certifies that the information is necessary to provide medical treatment to his or her current patient in accordance with s. 893.055.

(4) Any agency or person who obtains such confidential and exempt information pursuant to this section must maintain the confidential and exempt status of that information.

Access and/or Disclosure Violations/Penalties:

SB 440

Section 1. (5) Any person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Confidentiality Provisions:

See SB 462 above

SB 440

See SB 440 above

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

HAWAII

"Electronic Prescription Accountability System"

Citation(s): HAW. REV. STAT. ANN. §§ 329-1, 329-101 to -104 (2008)
HAW. CODE R. §§ 23-200-2, -17 (Weil 2008)

Substances Monitored: The Department of Public Safety has determined that the State of Hawaii will currently monitor Schedule II, Schedule III and Schedule IV substances.

Access and/or Disclosure Provisions:

§ 329-104. Confidentiality of information; disclosure of information

(a) The information collected under this part shall not be available to the public or used for any commercial purpose. Ownership of all data collected shall reside with the State.

(b) Responsibility for limiting access to information in the system is vested in the administrator. Access to the information collected at the central repository pursuant to this part shall be confidential, and access to the information shall be limited to:

(1) Personnel of the designated state agency; and

(2) The Drug Enforcement Administration diversion group supervisor.

(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to:

(1) Law enforcement officers, investigative agents of federal, state, or county law enforcement agencies, prosecuting attorneys, or the attorney general; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal investigation or prosecution;

(2) Registrants authorized under chapters 448, 453, 460, and 463E who are registered to administer, prescribe, or dispense controlled substances; provided that the information disclosed relates only to the registrant's own patient;

(3) Pharmacists, employed by a pharmacy registered under section 329-32, who request prescription information about a customer relating to a violation or possible violation of this chapter; or

(4) Other state-authorized governmental prescription-monitoring programs.

Information disclosed to a registrant, pharmacist, or authorized government agency under this section shall be transmitted by a secure means determined by the designated agency.

(d) No person shall knowingly disclose or attempt to disclose, or use or attempt to use, information in the system in violation of this section. Any person who violates this section is guilty of a class C felony.

(e) The designated state agency shall purge or cause to be purged from the central repository system, no later than three years after the date a patient's prescription data are made available to the designated state agency, the identification number of the patient, unless the information is part of an active investigation.

Access and/or Disclosure Violations/Penalties:

§ 329-104. Confidentiality of information; disclosure of information

...

(d) No person shall knowingly disclose or attempt to disclose, or use or attempt to use, information in the system in violation of this section. Any person who violates this section is guilty of a class C felony.

Confidentiality Provisions:

§ 329-104. Confidentiality of information; disclosure of information

(a) The information collected under this part shall not be available to the public or used for any commercial purpose. Ownership of all data collected shall reside with the State.

IDAHO

"Prescription Tracking Program"

Citation(s): IDAHO CODE ANN. §§37-2726, 2730A (2008)
IDAHO ADMIN. CODE r. 27.01.01.469 (2008)

Substances Monitored: Schedule II, III, and IV controlled substances and other prescriptions required by Board of Pharmacy rule.

Access and/or Disclosure Provisions:

§ 37-2726. Filing prescriptions—Database

(1) All controlled substances prescriptions shall be filed with the board electronically in a format established by the board or by other method as required by board rule. The board may require the filing of other prescriptions by board rule. The board shall establish by rule the information to be submitted pursuant to the purposes of this section and the purposes set forth in section 37-2730A, Idaho Code.

(2) The board shall create, operate and maintain a controlled substances prescriptions database containing the information submitted pursuant to subsection (1) of this section, to be used for the purposes and subject to the terms, conditions and immunities described in section 37-2730A, Idaho Code. The database information must be made available only to the following:

(a) Authorized individuals employed by the boards responsible for conducting investigations related to the licensing and discipline of practitioners;

(b) Peace officers employed by federal, state and local law enforcement agencies engaged as a specified duty of their employment in enforcing law regulating controlled substances;

(c) Authorized individuals under the direction of the department of health and welfare for the purpose of monitoring and enforcing that department's responsibilities under the public health, medicare and medicaid laws;

(d) A licensed practitioner having authority to prescribe controlled substances, to the extent the information relates specifically to a current patient of the practitioner, to whom the practitioner is prescribing or considering prescribing any controlled substance;

(e) A licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance;

(f) An individual who is the recipient of a controlled substance prescription entered into the database or that individual's attorney, upon providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made or the attorney for that person;

(g) Upon the lawful order of a court of competent jurisdiction; and

(h) Prosecuting attorneys, deputy prosecuting attorneys and special prosecutors of a county or city and special assistant attorneys general from the office of the attorney general engaged in enforcing law regulating controlled substances.

(3) The board must maintain records on the information disclosed from the database, including:

(a) The identification of each individual who requests or receives information from the database and who that individual represents;

(b) The information provided to each such individual; and

(c) The date and time the information is requested or provided.

(4) The board shall promulgate rules to ensure that only authorized individuals have access to the database.

§ 37-2730A. Prescription tracking program

…

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board shall report this information to the individuals and persons set

forth in section 37-2726(2), Idaho Code. The board may provide the appropriate law enforcement agency, medicaid or medicare agency or licensing board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) Information, which does not identify individual patients, practitioners or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

(4) Unless there is shown malice or criminal intent or gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

(a) The furnishing of information under the conditions herein provided;

(b) The receiving and use of, or reliance on, such information;

(c) The fact that any such information was not furnished; or

(d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

(5) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

Access and/or Disclosure Violations/Penalties:

§ 37-2726. Filing prescriptions—Database

…

(5) Any person who knowingly misrepresents to the board that he is a person entitled under subsection (2) of this section to receive information from the controlled substances prescriptions database under the conditions therein provided, and who receives information from the controlled substances prescriptions database resulting from that misrepresentation shall be guilty of a misdemeanor, punishable by imprisonment in a

county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars ($2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(6) Any person in possession, whether lawfully or unlawfully, of information from the controlled substances prescriptions database which identifies an individual patient and who knowingly discloses such information to a person not authorized to receive or use such information under any state or federal law, rule or regulation; the lawful order of a court of competent jurisdiction; or written authorization of the individual patient shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars ($2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law. The provisions of this subsection shall not apply to disclosure of individual patient information by the patient himself. The provisions of this subsection shall not apply to disclosure of information by a prosecuting attorney, deputy prosecuting attorney or special prosecutor of a county or city or by a special assistant attorney general from the office of the attorney general in the course of a criminal proceeding, whether preconviction or postconviction.

Confidentiality Provisions:

See § 37-2730A above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

ILLINOIS

"Schedule II Controlled Substance Prescription Monitoring Program"
&
"Schedule III, IV, and V Controlled Substance Prescription Monitoring Program"

Citation(s): 720 ILL. COMP. STAT. ANN. 570/316 to 321 (West 2008)
ILL. ADMIN. CODE tit. 77, § 2080.10 to -.30, -.50, -.70, -.90, -.100, -.190 (2009)
26 Ill. Reg. 3975 (2002)

Substances Monitored: Schedule II controlled substances, and Schedule III, IV, and V controlled substances* (*NOTE: The reporting of schedule III, IV and V controlled substances is contingent upon full funding from authorized agency less incidental expenses).

Access and/or Disclosure Provisions:

570/317. Central repository for collection of information

(b) The central repository must do the following:
…

(2) Provide the Department with a database maintained by the central repository. The Department of Financial and Professional Regulation must provide the Department with electronic access to the license information of a prescriber or dispenser. The Department of Financial and Professional Regulation may charge a fee for this access not to exceed the actual cost of furnishing the information.

570/318. Confidentiality of information

§ 318. Confidentiality of information.

(a) Information received by the central repository under Section 316 and 321 is confidential.

(b) The Department must carry out a program to protect the confidentiality of the information described in subsection (a). The Department may disclose the information to another person only under subsection (c), (d), or (f) and may charge a fee not to exceed the actual cost of furnishing the information.

(c) The Department may disclose confidential information described in subsection (a) to any person who is engaged in receiving, processing, or storing the information.

(d) The Department may release confidential information described in subsection (a) to the following persons:

(1) A governing body that licenses practitioners and is engaged in an investigation, an adjudication, or a prosecution of a violation under any State or federal law that involves a controlled substance.

(2) An investigator for the Consumer Protection Division of the office of the Attorney General, a prosecuting attorney, the Attorney General, a deputy Attorney General, or an investigator from the office of the Attorney General, who is engaged in any of the following activities involving controlled substances:

(A) an investigation;

(B) an adjudication; or

(C) a prosecution of a violation under any State or federal law that involves a controlled substance.

(3) A law enforcement officer who is:

(A) authorized by the Department of State Police or the office of a county sheriff or State's Attorney or municipal police department of Illinois to receive information of the type requested for the purpose of investigations involving controlled substances; or

(B) approved by the Department to receive information of the type requested for the purpose of investigations involving controlled substances; and

(C) engaged in the investigation or prosecution of a violation under any State or federal law that involves a controlled substance.

(e) Before the Department releases confidential information under subsection (d), the applicant must demonstrate in writing to the Department that:

(1) the applicant has reason to believe that a violation under any State or federal law that involves a controlled substance has occurred; and

(2) the requested information is reasonably related to the investigation, adjudication, or prosecution of the violation described in subdivision (1).

(f) The Department may receive and release prescription record information to:

(1) a governing body that licenses practitioners;

(2) an investigator for the Consumer Protection Division of the office of the Attorney General, a prosecuting attorney, the Attorney General, a deputy Attorney General, or an investigator from the office of the Attorney General;

(3) any Illinois law enforcement officer who is:

(A) authorized to receive the type of information released; and

(B) approved by the Department to receive the type of information released; or

(4) prescription monitoring entities in other states per the provisions outlined in subsection (g) and (h) below; confidential prescription record information collected under Sections 316 and 321 that identifies vendors or practitioners, or both, who are prescribing or dispensing large quantities of Schedule II, III, IV, or V controlled substances outside the scope of their practice, pharmacy, or business, as determined by the Advisory Committee created by Section 320.

(g) The information described in subsection (f) may not be released until it has been reviewed by an employee of the Department who is licensed as a prescriber or a dispenser and until that employee has certified that further investigation is warranted. However, failure to comply with this subsection (g) does not invalidate the use of any evidence that is otherwise admissible in a proceeding described in subsection (h).

(h) An investigator or a law enforcement officer receiving confidential information under subsection (c), (d), or (f) may disclose the information to a law enforcement officer or an attorney for the office of the Attorney General for use as evidence in the following:
(1) A proceeding under any State or federal law that involves a controlled substance.

(2) A criminal proceeding or a proceeding in juvenile court that involves a controlled substance.

(i) The Department may compile statistical reports from the information described in subsection (a). The reports must not include information that identifies, by name, license or address, any practitioner, dispenser, ultimate user, or other person administering a controlled substance.

(j) Based upon federal, initial and maintenance funding, a prescriber and dispenser inquiry system shall be developed to assist the medical community in its goal of effective clinical practice and to prevent patients from diverting or abusing medications.

(1) An inquirer shall have read-only access to a stand-alone database which shall contain records for the previous 6 months.

(2) Dispensers may, upon positive and secure identification, make an inquiry on a patient or customer solely for a medical purpose as delineated within the federal HIPAA law.

(3) The Department shall provide a one-to-one secure link and encrypted software necessary to establish the link between an inquirer and the Department. Technical assistance shall also be provided.

(4) Written inquiries are acceptable but must include the fee and the requestor's Drug Enforcement Administration license number and submitted upon the requestor's business stationary.

(5) No data shall be stored in the database beyond 24 months.

(6) Tracking analysis shall be established and used per administrative rule.

(7) Nothing in this Act or Illinois law shall be construed to require a prescriber or dispenser to make use of this inquiry system.

(8) If there is an adverse outcome because of a prescriber or dispenser making an inquiry, which is initiated in good faith, the prescriber or dispenser shall be held harmless from any civil liability.

77 IL ADC 2080.190

Other than technical, error and administrative function reports needed to determine that the records are received and maintained in good order, any other reports concerning the information received from dispensers shall only be prepared at the direction of the Manager, Bureau of Pharmacy and Clinical Support Services, or successor administrator who meets the statutory requirements [720 ILCS 570/318(g)], in response to official inquiries from officers of the court. Sample trend analysis reports may be prepared extemporaneously by prescription monitoring program staff. The disposition of all extemporaneous reports shall be at the discretion of the licensed, professional administrator of the prescription monitoring program.

Access and/or Disclosure Violations/Penalties:

None found – Please reference the note at the beginning of this compilation

Confidentiality Provisions:

See 570/318, and 2080.190 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

INDIANA

"Indiana Scheduled Prescription Electronic Collection and Tracking Program (INSPECT)"

Citation(s): IND. CODE ANN. §§ 35-48-7-1, -3 to -7.5, -8.1, -10.1 to -13.1, -14 (West 2008)
858 IND. ADMIN. CODE 2-1-1 to -4 (2008)

Substances Monitored: Schedule II through V controlled substances

Access and/or Disclosure Provisions:

35-48-7-10.1 INSPECT program responsibilities

Sec. 10.1. (a) This section applies after June 30, 2007.

(b) The INSPECT program must do the following:

…

(2) Provide the advisory committee with continuing twenty-four (24) hour a day online access to the data base.

35-48-7-11.1 INSPECT program; confidentiality

…

(b) Information received by the INSPECT program under section 8.1 of this chapter is confidential.

(c) The advisory committee shall carry out a program to protect the confidentiality of the information described in subsection (b). The advisory committee may disclose the information to another person only under subsection (d), (e), or (h).

(d) The advisory committee may disclose confidential information described in subsection (b) to any person who is authorized to engage in receiving, processing, or storing the information.

(e) Except as provided in subsections (f) and (g), the advisory committee may release confidential information described in subsection (b) to the following persons:

(1) A member of the board, the advisory committee, or another governing body that licenses practitioners and is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.

(2) An investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general, who is engaged in:

(A) an investigation;

(B) an adjudication; or

(C) a prosecution;

of a violation under any state or federal law that involves a controlled substance.

(3) A law enforcement officer who is an employee of:

(A) a local, state, or federal law enforcement agency; or

(B) an entity that regulates controlled substances or enforces controlled substances rules or laws in another state;

that is certified to receive information from the INSPECT program.

(4) A practitioner or practitioner's agent certified to receive information from the INSPECT program.

(5) A controlled substance monitoring program in another state with which Indiana has established an interoperability agreement.

(f) Information provided to an individual under:

(1) subsection (e)(3) is limited to information:

(A) concerning an individual or proceeding involving the unlawful diversion or misuse of a schedule II, III, IV, or V controlled substance; and

(B) that will assist in an investigation or proceeding; and

(2) subsection (e)(4) may be released only for the purpose of:

(A) providing medical or pharmaceutical treatment; or

(B) evaluating the need for providing medical or pharmaceutical treatment to a patient.

(g) Before the advisory committee releases confidential information under subsection (e), the applicant must be approved by the INSPECT program in a manner prescribed by the advisory committee.

(h) The advisory committee may release to:

(1) a member of the board, the advisory committee, or another governing body that licenses practitioners;

(2) an investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general; or

(3) a law enforcement officer who is:

(A) authorized by the state police department to receive the type of information released; and

(B) approved by the advisory committee to receive the type of information released;

confidential information generated from computer records that identifies practitioners who are prescribing or dispensing large quantities of a controlled substance.

(i) The information described in subsection (h) may not be released until it has been reviewed by:

(1) a member of the advisory committee who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data; or

(2) the advisory committee's designee; and until that member or the designee has certified that further investigation is warranted. However, failure to comply with this subsection does not invalidate the use of any evidence that is otherwise admissible in a proceeding described in subsection (j).

(j) An investigator or a law enforcement officer receiving confidential information under subsection (d), (e), or (h) may disclose the information to a law enforcement officer or an attorney for the office of the attorney general for use as evidence in the following:

(1) A proceeding under IC 16-42-20.

(2) A proceeding under any state or federal law that involves a controlled substance.

(3) A criminal proceeding or a proceeding in juvenile court that involves a controlled substance.

(k) The advisory committee may compile statistical reports from the information described in subsection (b). The reports must not include information that identifies any practitioner, ultimate user, or other person administering a controlled substance. Statistical reports compiled under this subsection are public records.

Access and/or Disclosure Violations/Penalties:

35-48-7-14 Violations of chapter; misdemeanor offense

Sec. 14. A person who knowingly or intentionally violates this chapter commits a Class A misdemeanor.

Confidentiality Provisions:

See § 35-48-7-11.1 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

IOWA

"Drug Prescribing and Dispensing – Information Program"

Citation(s): IOWA CODE ANN. §§ 124.551 to-.558 (West 2008)
IOWA ADMIN. CODE r. 657-37.1 to 37.9 (2009)

Sections 124.441 to -.558 are repealed June 30, 2011

Substances Monitored: Schedule II controlled substances and those substances in schedules III and IV that the advisory council and board determine can be addictive or fatal if not taken under the proper care and direction of a prescribing practitioner.

Access and/or Disclosure Provisions:

§ 124.553. Information access

1. The board may provide information from the program to the following:

a. (1) A pharmacist or prescribing practitioner who requests the information and certifies in a form specified by the board that it is for the purpose of providing medical or pharmaceutical care to a patient of the pharmacist or prescribing practitioner. Neither a pharmacist nor a prescribing practitioner may delegate program information access to another individual.

(2) Notwithstanding subparagraph (1), a prescribing practitioner may delegate program information access to another licensed health care professional only in emergency situations where the patient would be placed in greater jeopardy if the prescribing practitioner was required to access the information personally.

b. An individual who requests the individual's own program information in accordance with the procedure established in rules of the board and advisory council adopted under section 124.554.

c. Pursuant to an order, subpoena, or other means of legal compulsion for access to or release of program information that is issued based upon a determination of probable

cause in the course of a specific investigation of a specific individual.

2. The board shall maintain a record of each person that requests information from the program. Pursuant to rules adopted by the board and advisory council under section 124.554, the board may use the records to document and report statistical information.

3. Information contained in the program and any information obtained from it, and information contained in the records of requests for information from the program, is privileged and strictly confidential information. Such information is a confidential public record pursuant to section 22.7, and is not subject to discovery, subpoena, or other means of legal compulsion for release except as provided in this division. Information from the program shall not be released, shared with an agency or institution, or made public except as provided in this division.

4. Information collected for the program shall be retained in the program for four years from the date of dispensing. The information shall then be destroyed.

5. A pharmacist or other dispenser making a report to the program reasonably and in good faith pursuant to this division is immune from any liability, civil, criminal, or administrative, which might otherwise be incurred or imposed as a result of the report.

6. Nothing in this section shall require a pharmacist or prescribing practitioner to obtain information about a patient from the program. A pharmacist or prescribing practitioner does not have a duty and shall not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or prescribing practitioner did or did not seek or obtain or use information from the program. A pharmacist or prescribing practitioner acting reasonably and in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving or using information from the program.

7. The board shall not charge a fee to a pharmacy, pharmacist, or prescribing practitioner for the establishment, maintenance, or administration of the program, including costs for forms required to submit information to or access information from the program, except that the board may charge a fee to an individual who requests the individual's own program information. A fee charged pursuant to this subsection shall not exceed the actual cost of providing the requested information and shall be considered a repayment receipt as defined in section 8.2.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

657-37.4(124) Access to database information.

Prescription information submitted to the board for inclusion in the PMP database shall be privileged and strictly confidential and not subject to public or open records laws. All information contained in the PMP database, including records of requests for PMP information, shall be privileged and strictly confidential and not subject to public or open records laws. The board, council, and PMP administrator shall maintain procedures to ensure the privacy and confidentiality of patients, prescribers, dispensers, practitioners, and patient information collected, recorded, transmitted, and maintained in the PMP database and to ensure that program information is not disclosed to persons except as provided in this rule.

37.4(1) *Prescribers and pharmacists.* A health care practitioner authorized to prescribe or dispense controlled substances may obtain PMP information regarding the practitioner's patient, or a patient seeking treatment from the practitioner, for the purpose of providing patient health care.

a. Prior to being granted access to PMP information, a practitioner shall submit a request for registration and program access. A practitioner with Internet access may register via a secure Web site established by the board for that purpose. A practitioner without Internet access shall submit a written registration request on a form provided by the PMP administrator. The PMP administrator shall take reasonable steps to verify the identity of a practitioner and to verify a practitioner's credentials prior to providing a practitioner with a secure login and initial password. Except in an emergency when the patient would be placed in greater jeopardy by restricting PMP information access to the practitioner, a registered practitioner shall not share the practitioner's secure login and password information and shall not delegate PMP information access to another health care practitioner or to the practitioner's agent.

b. A practitioner with Internet access may submit a request for PMP information via a secure Web site established by the board for that purpose. The requested information shall be provided to the requesting practitioner in a format established by the board and shall be delivered via the secure Web site.

c. A practitioner without Internet access may submit to the PMP administrator a written request for PMP information via mail or facsimile transmission. The written request shall be in a format established by the board and shall be signed by the requesting practitioner. Prior to processing a written request for PMP information, the PMP administrator shall take reasonable steps to verify the request, which may include but not be limited to a

telephone call to the practitioner at a telephone number known to be the number for the practitioner's practice.

d. A practitioner who requests and receives PMP information consistent with the requirements and intent of these rules may provide that information to another practitioner who is involved in the care of the patient who is the subject of the information. Information from the PMP database remains privileged and strictly confidential. Such disclosures among practitioners shall be consistent with these rules and federal and state laws regarding the confidentiality of patient information. The information shall be used for medical or pharmaceutical care purposes.

37.4(2) *Regulatory agencies and boards.* Professional licensing boards and regulatory agencies that supervise or regulate a health care practitioner or that provide payment for health care services shall be able to access information from the PMP database only pursuant to an order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause.

a. A director of a licensing board with jurisdiction over a practitioner, or the director's designee, who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

b. A director of a regulatory agency with jurisdiction over a practitioner or with jurisdiction over a person receiving health care services pursuant to one or more programs provided by the agency, or the director's designee, who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

37.4(3) *Law enforcement agencies.* Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of any state or federal law relating to controlled substances shall be able to access information from the PMP database by order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of

probable cause. A law enforcement officer shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the requesting officer or the officer's superior. The request shall be accompanied by an order, subpoena, or warrant issued by a court or legal authority that requires a determination of probable cause and shall be processed by the PMP administrator. A report identifying PMP information relating to the specific individual identified by the order, subpoena, or warrant may be delivered to the law enforcement officer via mail or alternate secure delivery.

37.4(4) *Patients.* A patient or the patient's agent may request and receive PMP information regarding prescriptions reported to have been dispensed to the patient.

a. A patient may submit a signed, written request for records of the patient's prescriptions dispensed during a specified period of time. The request shall identify the patient by name, including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request to the PMP administrator or authorized staff member at the offices of the board located at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The patient will be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PMP.

b. A patient who is unable to personally deliver the request to the board offices may submit a request via mail or commercial delivery service. The request shall comply with all provisions of paragraph *"a"* above, and the signature of the requesting patient shall be witnessed and the patient's identity shall be attested to by a currently registered notary public. In addition to the notary's signature and assurance of the patient's identity, the notary shall certify a copy of the patient's government-issued photo identification and that certified copy shall be submitted with the written request. The request shall be submitted to the Iowa Board of Pharmacy at the address identified in paragraph *"a."*

c. In the case of a patient whose health care decisions have been legally transferred to the patient's agent, the patient's agent may submit a request on behalf of the patient pursuant to the appropriate procedure in paragraph *"a"* or *"b."* In addition to the patient's information, the patient's agent shall be identified by name, current address, and telephone number. In lieu of the patient's signature and identification, the patient's agent shall sign the request and the government-issued photo identification shall identify the patient's agent. The patient's agent shall include a certified copy of the legal document

that transferred control over decisions regarding the patient's health care to the patient's agent.

37.4(5) *Court orders and subpoenas.* The PMP administrator shall provide PMP information in response to court orders and county attorney or other subpoenas issued by a court upon a determination of probable cause.

37.4(6) *Statistical data.* The PMP administrator, following review and approval by the patients rights committee, may provide summary, statistical, or aggregate data to public or private entities for statistical, research, or educational purposes. Prior to the release of any such data, the PMP administrator shall remove any information that could be used to identify an individual patient, prescriber, dispenser, practitioner, or other person who is the subject of the PMP information or data.

37.4(7) *PMP administrator access.* Other than technical, error, and administrative function reports needed by PMP support staff to determine that records are received and maintained in good order, any other reports concerning the information received from dispensers shall only be prepared at the direction of the board, the council, or the PMP administrator. The board and the council may compile statistical reports from PMP information for use in determining the advisability of continuing the PMP and for use in preparing required reports to the governor and the legislature. The reports shall not include information that would identify any patient, prescriber, dispenser, practitioner, or other person who is the subject of the PMP information or data.

Access and/or Disclosure Violations/Penalties:

§ 124.558. Prohibited acts--penalties

1. Failure to comply with requirements. A pharmacist, pharmacy, or prescribing practitioner who knowingly fails to comply with the confidentiality requirements of this division or who delegates program information access to another individual is subject to disciplinary action by the appropriate professional licensing board. A pharmacist or pharmacy that knowingly fails to comply with other requirements of this division is subject to disciplinary action by the board. Each licensing board may adopt rules in accordance with chapter 17A to implement the provisions of this section.

2. Unlawful access, disclosure, or use of information. A person who intentionally or knowingly accesses, uses, or discloses program information in violation of this division, unless otherwise authorized by law, is guilty of a class "D" felony. This section shall not

preclude a pharmacist or prescribing practitioner who requests and receives information from the program consistent with the requirements of this chapter from otherwise lawfully providing that information to any other person for medical or pharmaceutical care purposes.

657-37.9(124) Prohibited acts.

The PMP administrator shall report to a dispenser's or a practitioner's professional licensing board any known violation of the confidentiality provisions or the reporting requirements of the law and these rules for which the dispenser or practitioner is subject to disciplinary action.

37.9(1) *Confidentiality.* A pharmacy or a practitioner who knowingly fails to comply with the confidentiality provisions of the law or these rules or who delegates PMP information access to another individual, except in an emergency situation as provided in paragraph 37.4(1)*"a,"* is subject to disciplinary action by the appropriate professional licensing board. The PMP administrator or a member of the program staff who knowingly fails to comply with the confidentiality provisions of the law or these rules is subject to disciplinary action by the board.

Confidentiality Provisions:

§ 124.553. Information access

…

3. Information contained in the program and any information obtained from it, and information contained in the records of requests for information from the program, is privileged and strictly confidential information. Such information is a confidential public record pursuant to section 22.7, and is not subject to discovery, subpoena, or other means of legal compulsion for release except as provided in this division. Information from the program shall not be released, shared with an agency or institution, or made public except as provided in this division.

4. Information collected for the program shall be retained in the program for four years from the date of dispensing. The information shall then be destroyed.

See 657-37.4(124) above

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

KANSAS

"Prescription Monitoring Program"

Citation(s): KAN. STAT. ANN. § 65-1681 to -1695 (2008)

Substances Monitored: Schedule II through IV controlled substances and drugs of concern* (*NOTE: "drug of concern" means any drug that demonstrates a potential for abuse and is designated as a drug of concern in rules and regulations promulgated by the State Board of Pharmacy.).

Access and/or Disclosure Provisions:

§ 65-1685. Database information privileged and confidential; persons authorized to receive data.

(a) The prescription monitoring program database, all information contained therein and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be privileged and confidential, shall not be subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of entities charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern, shall not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, except as provided in subsections (c) and (d).

(b) The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted and maintained is not disclosed to persons except as provided in subsections (c) and (d).

(c) The board is hereby authorized to provide data in the prescription monitoring program to the following persons:

(1) Persons authorized to prescribe or dispense scheduled substances and drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established by the board;

(3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern;

(4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern subject to the requirements in K.S.A. 22-2502, and amendments thereto;

(5) designated representatives from the Kansas health policy authority regarding authorized medicaid program recipients;

(6) persons authorized by a grand jury subpoena, inquisition subpoena or court order in a criminal action;

(7) personnel of the prescription monitoring program advisory committee for the purpose of operation of the program; and

(8) personnel of the board for purposes of administration and enforcement of this act or the uniform controlled substances act, K.S.A 65-4101 et seq., and amendments thereto.

(d) The board is hereby authorized to provide data in the prescription monitoring program to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual practitioners, dispensers, patients or persons who received prescriptions from dispensers.

Access and/or Disclosure Violations/Penalties:

§ 65-1693 – Penalties.

(a) A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this act or knowingly submits incorrect prescription monitoring information shall be guilty of a severity level 10, nonperson felony.

(b) A person authorized to have prescription monitoring information pursuant to this act who knowingly discloses such information in violation of this act shall be guilty of a severity level 10, nonperson felony.

(c) A person authorized to have prescription monitoring information pursuant to this act who knowingly uses such information in a manner or for a purpose in violation of this act shall be guilty of a severity level 10, nonperson felony.

(d) It shall not be a violation of this act for a practitioner or dispenser to disclose or use information obtained pursuant to this act when such information is disclosed or used solely in the course of such practitioner's or dispenser's care of the patient who is the subject of the information.

Confidentiality Provisions:

See New Sec. 5 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

KENTUCKY

"Electronic System for Monitoring Controlled Substances"

Citation(s): KY. REV. STAT. ANN. § 218A. 202 (West 2008) (portions held unconstitutional)
KY. REV. STAT. ANN. § 315.121 (West 2008)
902 KY. ADMIN. REGS. 55:110 (2009)

Substances Monitored: Schedule II, III, IV and V controlled substances

Access and/or Disclosure Provisions:

§ 218A.202 Electronic system for monitoring controlled substances; penalty for illegal use of system; pilot project; continuing education programs

…

(6) The Cabinet for Health and Family Services shall only disclose data to persons and entities authorized to receive that data under this section. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The Cabinet for Health and Family Services shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) A Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A state-operated Medicaid program;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records;

(e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;

(f) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing practices;

2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or

3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area;

(g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced registered nurse practitioner who is:

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing practices;

2. Associated in a partnership or other business entity with an advanced registered nurse practitioner who is already under investigation by the Board of Nursing for improper prescribing practices;

3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or

4. In a designated geographic area for which a report on a physician or another advanced registered nurse practitioner in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or

(h) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.

(7) The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.

(8) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:

(a) A peace officer specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with other peace officers specified in subsection (6)(b) of this section authorized to receive data or a report if the peace officers specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and

(b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(b) of this section; and

(c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

(9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

Access and/or Disclosure Violations/Penalties:

§ 218A.202 Electronic system for monitoring controlled substances; penalty for illegal use of system; pilot project; continuing education programs

…

(12) Intentional disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony for the first offense and a Class C felony for each subsequent offense.

§ 315.121 Grounds for acting against licensee; notification to board of conviction required; petition for reinstatement; expungement

(1) The board may refuse to issue or renew a license, permit, or certificate to, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensee, permit holder, or certificate holder for the following reasons:

(a) Unprofessional or unethical conduct;

…

(h) Being found by the board to be in violation of any provision of this chapter, KRS Chapter 217, KRS Chapter 218A, or the administrative regulations promulgated pursuant to these chapters;

…

(2) Unprofessional or unethical conduct includes but is not limited to the following acts of a pharmacist, pharmacist intern, or pharmacy technician:

…

(b) Divulging or revealing to unauthorized persons patient information or the nature of professional services rendered without the patient's express consent or without order or direction of a court. In addition to members, inspectors, or agents of the board, the following are considered authorized persons:

1. The patient, patient's agent, or another pharmacist acting on behalf of the patient;

2. Certified or licensed health-care personnel who are responsible for care of the patient;

3. Designated agents of the Cabinet for Health and Family Services for the purposes of enforcing the provisions of KRS Chapter 218A;

4. Any federal, state, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person; or

5. An agency of government charged with the responsibility of providing medical care for the patient, upon written request by an authorized representative of the agency requesting such information;

…

The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this subsection. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; assist in the practice of pharmacy; adversely affect the public health, safety, or welfare; or result in economic or physical harm to a person, or create a significant threat of such harm.

Confidentiality Provisions:

§ 218A.202 Electronic system for monitoring controlled substances; penalty for illegal use of system; pilot project; continuing education programs

…

(10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

LOUISIANA

"Prescription Monitoring Program Act"

Citation(s): LA. REV. STAT. ANN. §§ 40:975, 40:1001 TO -1014 (2008)
LA. ADMIN. CODE tit. 46, §§ 2917 to 2931 (2009)

Substances Monitored: Controlled substances and drugs of concern

Access and/or Disclosure Provisions:

§ 40:1007. Access to prescription monitoring information

A. Except as provided in Subsections C, D, E, F, and G of this Section, prescription monitoring information submitted to the board shall be protected health information, not subject to public or open records law, including but not limited to R.S. 44:1 et seq., and not subject to disclosure. Prescription monitoring information shall not be available for civil subpoena nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Notwithstanding this provision, law enforcement and professional licensing, certification, or regulatory agencies may utilize prescription monitoring information in the course of any investigation and subsequent criminal and administrative proceedings, but only in accordance with federal and state law and the requirements of this Part.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons or entities except as in Subsections C, D, E, F, and G of this Section.

C. The board shall review the prescription monitoring information. If there is reasonable suspicion to believe a breach of professional or occupational standards may have occurred, the board shall notify the appropriate professional licensing agency with

jurisdiction over prescribers or dispensers and shall provide prescription monitoring information required for an investigation.

D. The board shall provide prescription monitoring information to public or private entities, whether located in or outside of the state, for public research, policy, or educational purposes, but only after removing information that identifies or could reasonably be used to identify individual patients or persons who received prescriptions from prescribers.

E. The following persons, after successful completion of the educational courses identified in R.S. 40:1008, may access prescription monitoring information at no cost and 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, for the purpose of providing medical or pharmaceutical care for their patients.

(2) Designated representatives from the professional licensing, certification, or regulatory agencies charged with administrative oversight of those professionals engaged in the prescribing or dispensing of controlled substances or other drugs of concern.

(3) Designated representatives from the Louisiana Medicaid program regarding Medicaid program recipients.

(4) Designated representatives of the board and any vendor or contractor establishing or maintaining the prescription monitoring program.

F. The board may provide a report containing prescription monitoring information upon application of local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances or other drugs of concern in compliance with and as limited by the relevant requirements of any of the following:

(1) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer.

(2) A grand jury subpoena.

(3) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided by law enforcement to the board, and further, provided all of the following:

(a) The information sought is relevant and material to a legitimate law enforcement inquiry.

(b) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.
(c) De-identified information, or limited information that does not identify or could not reasonably lead to the identification of an individual patient, could not reasonably be used.

G. The board may provide prescription monitoring information to an individual who requests his personal prescription monitoring information in accordance with procedures established by board regulation.

H. The board and the advisory council shall be immune from civil liability arising from inaccuracy of any of the information submitted to the board pursuant to this Part.

§ 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, for the purpose of providing medical or pharmaceutical care for their patients;

2. designated representatives from the professional licensing, certification, or regulatory agencies charged with administrative oversight of those professionals engaged in the prescribing or dispensing of controlled substances or other drugs of concern;

3. designated representatives from the Louisiana Medicaid program regarding Medicaid program recipients;

4. designated representatives of the board or any vendor or contractor establishing or

maintaining the prescription monitoring program.

§ 2919.Registration Procedures for Authorized Direct Access Users

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

1. The applicant shall successfully complete the program's orientation course, and attach evidence of same to his application to the program.

2. The applicant shall file an application with the program, using the form supplied by the program for that purpose.

3. The board shall verify the practitioner applicant is in possession of a valid license to prescribe or dispense controlled substances, or in the case of an agency applicant, the board shall verify agency representation.

4. Upon verification of all requirements, the board shall issue the appropriate credential necessary to access prescription monitoring information.

5. Upon receipt of information that an authorized user no longer possesses authority to prescribe or dispense controlled substances, the program shall terminate the user's credentials to access prescription monitoring information. If or when the user's authority to prescribe or dispense controlled substances is reinstated, the program may reinstate the user's credentials to access prescription monitoring information.

§ 2921.Methods of Access to Prescription Monitoring Information

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

B. Designated representatives from agencies charged with administrative oversight of prescribers and dispensers of controlled substances may solicit prescription monitoring information from the program concerning specific investigations of prescribers or dispensers. The program may require such users to certify the legitimacy of their inquiry prior to furnishing the requested information.

C. Designated representatives of the Louisiana Medicaid program, once properly registered, may solicit prescription monitoring information from the program concerning specific recipients. The program may require such users to certify the legitimacy of their inquiry prior to furnishing the requested information.

D. Designated representatives of the board, or any vendor or contractor establishing or maintaining the program, once properly registered, may solicit prescription monitoring information from the program for the purpose of establishing or maintaining the program's database.

E. Upon receipt of one of the following methods of application by local, state, or federal law enforcement or prosecutorial officials, the program may provide prescription monitoring information:

1. a court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

2. a grand jury subpoena; or

3. an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided by law enforcement to the board, and further, provided all of the following:

a. the information sought is relevant and material to a legitimate law enforcement inquiry;

b. the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought;

c. de-identified information, or limited information that does not identify or could not reasonably lead to the identification of an individual patient, could not reasonably be used.

F. Individuals may solicit their own prescription monitoring information from the program. To prevent inappropriate access to such information, the requestor shall personally appear at the program office and produce positive photo identification at the time of their request. The program shall furnish a single copy of the report responding to such request at no charge to the individual.

G. Program personnel, once properly registered, may solicit prescription monitoring information from the program's database for the purpose of responding to legitimate inquiries from authorized users or other individuals.

§ 2925.Release of Prescription Monitoring Information to Other Entities

A. The program shall provide prescription monitoring information to public or private entities, whether located in or outside of the state, for public research, policy, or educational purposes, but only after removing information that identifies or could reasonably be used to identify individual patients or persons who received prescriptions from prescribers.

Access and/or Disclosure Violations/Penalties:

§ 40:975. Denial, revocation, suspension, or termination of license

…

G. (1) A license pursuant to R.S. 40:974 to manufacture, distribute, or dispense a controlled dangerous substance shall be terminated by the Board of Pharmacy if the licensee has failed to timely renew the license and submit the applicable fee, including the fee for the prescription monitoring program authorized pursuant to R.S. 40:1013, and thirty days have elapsed since the date of expiration.

(2) Any appeal from the provisions of this Subsection shall be governed by the Administrative Procedure Act.

(3) The Board of Pharmacy shall promulgate rules, regulations, and standards to implement the provisions of this Subsection. The rules, regulations, and standards shall be promulgated in accordance with the Administrative Procedure Act.

§ 40:1009. Unlawful acts and penalties

A. A dispenser who fails to submit prescription monitoring information to the board as required by this Part shall be referred to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency.

B. A person or entity authorized to possess prescription monitoring information pursuant to this Part who knowingly discloses such information in violation of this Part shall be referred to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency and may, upon criminal conviction, be imprisoned, with or without hard labor, for not more than five years, and in addition, may be fined not more than five thousand dollars.

C. A person or entity authorized to possess prescription monitoring information pursuant to this Part who uses such information in a manner or for a purpose in violation of this Part shall be referred to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency and may, upon criminal conviction, be imprisoned, with or without hard labor, for not more than five years, and in addition, may be fined not more than five thousand dollars.

§ 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, the program shall refer that user to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency.

Confidentiality Provisions:

§ 40:1007. Access to prescription monitoring information

A. Except as provided in Subsections C, D, E, F, and G of this Section, prescription monitoring information submitted to the board shall be protected health information, not subject to public or open records law, including but not limited to R.S. 44:1 et seq., and not subject to disclosure. Prescription monitoring information shall not be available for civil subpoena nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Notwithstanding this provision, law enforcement and professional licensing, certification, or regulatory agencies may utilize prescription monitoring information in the course of any investigation and subsequent criminal and administrative proceedings, but only in accordance with federal and state law and the requirements of this Part.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons or entities except as in Subsections C, D, E, F, and G of this Section.

C. The board shall review the prescription monitoring information. If there is reasonable suspicion to believe a breach of professional or occupational standards may have occurred, the board shall notify the appropriate professional licensing agency with jurisdiction over prescribers or dispensers and shall provide prescription monitoring information required for an investigation.

D. The board shall provide prescription monitoring information to public or private entities, whether located in or outside of the state, for public research, policy, or educational purposes, but only after removing information that identifies or could reasonably be used to identify individual patients or persons who received prescriptions from prescribers.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

MAINE

"Controlled Substances Prescription Monitoring Program"

Citation(s): ME. REV. STAT. ANN. tit. 22 §§ 7245 to 7252 (2008)
14-118-11 ME. CODE R. §§ 1 to 9 (2008)

Substances Monitored: Schedule II, III, and IV controlled substances

Access and/or Disclosure Provisions:

§ 7250. Access to prescription monitoring information and confidentiality

…

3. Permissible disclosure of information. The office may provide prescription monitoring information for public research, policy or education purposes as long as all information reasonably likely to reveal the patient or other person who is the subject of the information has been removed.

4. Access to information. The following persons may access prescription monitoring information:

A. A prescriber, insofar as the information relates to a patient under the prescriber's care;

B. A dispenser, insofar as the information relates to a customer of the dispenser seeking to have a prescription filled;

C. The executive director, or a board investigator as designated by each board, of the state boards of licensure of podiatric medicine, dentistry, pharmacy, medicine, osteopathy, veterinary medicine, nursing or other boards representing health care disciplines whose licensees are prescribers, as required for an investigation, with reasonable cause;

D. A patient to whom a prescription is written, insofar as the information relates to that patient;

E. Office personnel or personnel of any vendor or contractor, as necessary for establishing and maintaining the program's electronic system; and

*F. The Office of Chief Medical Examiner for the purpose of conducting an investigation or inquiry into the cause, manner and circumstances of death in a medical examiner case as described in section 3025. Prescription monitoring information in the possession or under the control of the Office of Chief Medical Examiner is confidential and, notwithstanding section 3022, may not be disseminated. Information that is not prescription monitoring information and is separately acquired following access to prescription monitoring information pursuant to this paragraph remains subject to protection or dissemination in accordance with section 3022.

*F. The office that administers the MaineCare program pursuant to chapter 855 for the purposes of managing the care of its members, monitoring the purchase of controlled substances by its members and avoiding duplicate dispensing of controlled substances.

5. Purge of information. The office shall purge from the program all information that is more than 6 years old.

***** In the 2009 Maine session, both paragraphs were titled "F". The technical correction will either be made through the Reviser's Report or through a technical change bill in the next session.

Access and/or Disclosure Violations/Penalties:

§ 7251. Unlawful acts and penalties

…

2. Unlawful disclosure or use of information. A person who intentionally or knowingly uses or discloses prescription monitoring information in violation of this chapter, unless otherwise authorized by law, is guilty of a Class C crime.

14-118-11-7. Sec. 7. Access to Information

1. By patients.

A. Information Available. A patient, or a patients' authorized representative, may obtain a report listing all prescription monitoring information that pertains to the patient.

B. Procedure for obtaining information. A patient or a patient's authorized representative seeking access to the information described above must submit a written request for information in person at the office of the Monitor, or at any other place specified by the Monitor or the Office. The written request shall be in a format established by the Office or the Monitor and shall contain at least, but not limited to, the following elements:

1) the patient's name and the full name of the patient's authorized representative, if applicable;

2) the patient's address, and the complete physical address of the patient's authorized representative, if applicable;

3) the patient's telephone number, if any, and the telephone number of the authorized representative, if applicable; and

4) the time period for which information is being requested.

C. Identification required. The patient or the patient's authorized representative must produce valid photographic identification prior to obtaining access to the information described above. The patient or the patient's authorized representative must allow photocopying of the identification.

D. Proof of patient authorization required. Prior to obtaining access to the information described above, authorized representatives must produce either an official attested copy of the judicial order granting them authority to gain access to the health care records of the patient; or in the case of parents of a minor child, a certified copy of the Birth Certificate of the minor child or other official documents establishing legal guardianship; or in the case of persons holding power of attorney, the original document establishing the power of attorney. The patient's authorized representative must allow photocopying of the documents described above. The Office or the Monitor may verify the patient authorization by any reasonable means prior to providing the information to the authorized representative.

2. By dispensers.

A. Information Available. A dispenser may obtain any prescription monitoring information insofar as the information relates to a customer of the dispenser seeking to have a prescription filled. The information shall be provided in a format established by

the Office, which may include, but is not limited to, delivery by electronic means, facsimile transmission, or telephonic communication. The information shall be provided within 24 hours of the dispenser's request.

B. Procedure for Obtaining Information. A dispenser who seeks access to the information described above must submit a written request via mail or facsimile transmission, to a location specified by the Monitor or the Office; or in the alternative may submit a request electronically in a manner and format established by the Office, using credentials issued by the Office, Monitor, or the Office's designee. If the credentials issued by the Office are lost, missing, or the security of the credentials is compromised, the dispenser shall cause the Office to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one customer may be submitted in a single request. The written request shall be in a format established by the Office or the Monitor and shall contain at least, but not limited to, the following elements for each customer:

1) The name and date of birth of the customer;

2) The customer's address and telephone number, if known to the dispenser;

3) The time period for which information is being requested;

4) The name of the dispenser;

5) The name and address of the dispenser's pharmacy, if applicable;

6) The dispenser identification number; and

7) The signature of the dispenser.

C. Dispenser verification required. The Office or the Monitor shall take reasonable steps to verify each request, such as, but not limited to, making a telephone call to the dispenser or to an agent of the dispenser at a telephone number known to belong to the dispenser's place of business.

3. By prescribers.

A. Information available. A prescriber or health care practitioner duly authorized by a prescriber may obtain any prescription monitoring information insofar as the information relates to a patient under the prescriber's care. The information shall be provided in a

format established by the Office, which may include, but is not limited to delivery by electronic means, facsimile transmission, or telephonic communication. The information shall be provided within 24 hours of the prescriber's request.

B. Procedure for Obtaining Information. A prescriber or health care practitioners duly authorized by prescribers who seeks access to the information described above must submit a written request via mail or facsimile transmission, to a location specified by the Monitor or the Office; or in the alternative may submit a request electronically in a manner and format established by the Office, using credentials issued by the Office, Monitor, or the Office's designee. If the credentials issued by the Office are lost, missing, or the security of the credentials is compromised, the prescriber shall cause the Office to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request. The written request shall be in a format established by the Office or the Monitor and shall contain at least, but not limited to, the following elements for each patient:

1) The name and date of birth of the patient;

2) The patient's address and telephone number, if known to the prescriber;

3) The time period for which information is being requested;

4) The name of the prescriber;

5) The name and address of the prescriber's medical practice;

6) The prescriber identification number; and

7) The signature of the prescriber.

8) Prescriber verification required. The Office or the Monitor shall take reasonable steps to verify each request, such as, but not limited to, making a telephone call to the prescriber and health care practitioners duly authorized by prescribers, or to an agent of the prescriber at a telephone number known to belong to the prescriber's place of business.

4. By executive director, or board investigator of a licensing board

A. Information Available. An executive director or board investigator of a licensing board with jurisdiction over a dispenser or prescriber may obtain any prescription monitoring information as required for an investigation, with reasonable cause. The information shall be provided in a format established by the Office, which may include, but is not limited to delivery by electronic means, facsimile transmission, or telephonic communication.

B. Procedure for Obtaining Information. An executive director, or board investigator, of a licensing board with jurisdiction over a dispenser or prescriber who seeks access to prescription monitoring information described above must submit a written request via mail or facsimile transmission, to a location specified by the Monitor or the Office. The written request shall contain a statement of facts from which the Office may make a determination of reasonable cause for the request.

5. By personnel of any vendor or contractor engaged by the Office.

A. Information Available. Personnel of any vendor or contractor engaged by the Office may obtain any prescription monitoring information insofar as the information is necessary for establishing and maintaining the program's electronic system.

B. Purge of Information. The Office, the monitor, and program vendors or contractors engaged by the Office, shall purge all prescription monitoring information more than six years old.

Confidentiality Provisions:

§ 7250. Access to prescription monitoring information and confidentiality

1. Confidentiality. Except as provided in this section, prescription monitoring information submitted to the office is confidential and is not a public record as defined in Title 1, section 402, subsection 3.

. . .

14-118-11-8. Sec. 8. Confidentiality

1. Pursuant to 22 MRSA § 7250(1), prescription monitoring information is confidential, breach of which may result in criminal prosecution and/or administrative sanctions.

2. The Office shall periodically conduct an audit review of the monitor for compliance with the terms of the contract regarding confidentiality of information concerning the prescription drug, prescriber, pharmacy, patient and dispenser.

3. The Monitor shall fully cooperate with the Office in any audit review conducted pursuant to Subsection 2.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

MASSACHUSETTS

"Electronic Data Transmission System"

Citation(s): MASS. GEN. LAWS. ANN. ch. 94C, §§ 1 to -48 (West 2008)
105 MASS. CODE REGS. 700.006 (2009)
247 MASS. CODE REGS. 5.04 (2009)

Substances Monitored: Schedule II controlled substances

Access and/or Disclosure Provisions:

§ 700.006(J)(4): Privacy and Confidentiality.

(J) Prescription Monitoring Program.

. . .

(4) Privacy and Confidentiality.

(a) Except where otherwise provided by law or judicial order, the information collected pursuant to 105 CMR 700.006(J) shall not be disseminated by the Department to anyone other than:

1. a duly authorized representative of the board or agency responsible for registration, regulation or discipline of practitioners authorized to prescribe or dispense Schedule II controlled substances acting in accordance with official duties;

2. a law enforcement agency when acting in accordance with its official duties in conducting a bona fide criminal investigation or prosecution of criminal violations. Requests for inspection of these records shall first be directed to the Office of the Attorney General of Massachusetts, or the Massachusetts State Police Diversion Investigation Unit, or the United States Drug Enforcement Administration, for notification and approval prior to action by the Department;

3. the Executive Office of Health and Human Services for the purpose of identifying suspected fraud or abuse of the MassHealth program;

4. a practitioner, including a pharmacy, in accordance with 105 CMR 700.006(J)(4)(d); or

5. an individual who is the data subject who has access to this data pursuant to a statute or regulation of the Commonwealth.

…

Access and/or Violations/Penalties:

None found – please reference the note at the beginning of this compilation.

Confidentiality Provisions:

§ 700.006(J)(4): Privacy and Confidentiality.

(J) Prescription Monitoring Program.

. . .

(4) Privacy and Confidentiality.

(a) Except where otherwise provided by law or judicial order, the information collected pursuant to 105 CMR 700.006(J) shall not be disseminated by the Department to anyone other than:

1. a duly authorized representative of the board or agency responsible for registration, regulation or discipline of practitioners authorized to prescribe or dispense Schedule II controlled substances acting in accordance with official duties;

2. a law enforcement agency when acting in accordance with its official duties in conducting a bona fide criminal investigation or prosecution of criminal violations. Requests for inspection of these records shall first be directed to the Office of the Attorney General of Massachusetts, or the Massachusetts State Police Diversion Investigation Unit, or the United States Drug Enforcement Administration, for notification and approval prior to action by the Department;

3. the Executive Office of Health and Human Services for the purpose of identifying suspected fraud or abuse of the MassHealth program;

4. a practitioner, including a pharmacy, in accordance with 105 CMR 700.006(J)(4)(d); or

5. an individual who is the data subject who has access to this data pursuant to a statute or regulation of the Commonwealth.

(b) All requests for information pursuant to 105 CMR 700.006(J)(4)(a)1., 2. and 3. shall be in writing. All such information generated shall be reviewed and approved by the Commissioner or his or her designee and the Medical Review Group prior to release by the Department.

(c) In the event that the Department, through computer analysis and review of the records generated by the prescription monitoring program, finds patterns of prescribing or dispensing that raise questions regarding the activity of a patient, practitioner or pharmacy, the Department shall provide such information to the appropriate Medical Review Group for review and possible referral, as provided for in 105 CMR 700.006(J)(4)(a)1., 2. and 3.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

MICHIGAN

"Electronic Prescription Monitoring System"

Citation(s): MICH. COMP. LAWS. ANN. § 333.7112 to -.7113, -.7333a (West 2008)

Substances Monitored: Schedule II through V controlled substances

Access and/or Disclosure Provisions:

§ 333.7333a. Electronic prescription monitoring system; reporting requirements; data disclosure; forgery-resistant prescription form

…

(2) Notwithstanding any practitioner-patient privilege, the director of the department may provide data obtained under this section to all of the following:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances.

(b) An employee or agent of the department.

(c) A state, federal, or municipal employee or agent whose duty is to enforce the laws of this state or the United States relating to drugs.

(d) A state-operated medicaid program.

(e) A state, federal, or municipal employee who is the holder of a search warrant or subpoena properly issued for the records.

(f) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(g) An individual with whom the department has contracted under subsection (9).

(3) Except as otherwise provided in this part, information submitted under this section shall be used only for bona fide drug-related criminal investigatory or evidentiary purposes or for the investigatory or evidentiary purposes in connection with the functions of a disciplinary subcommittee or 1 or more of the licensing or registration boards created in article 15.

(4) A person who receives data or any report under subsection (2) containing any patient identifiers of the system from the department shall not provide it to any other person or entity except by order of a court of competent jurisdiction.

Access and/or Disclosure Violations/Penalties:

None found – please reference the note at the beginning of this compilation

Confidentiality Provisions:

§ 333.7333a. Electronic prescription monitoring system; reporting requirements; data disclosure; forgery-resistant prescription form

…

(3) Except as otherwise provided in this part, information submitted under this section shall be used only for bona fide drug-related criminal investigatory or evidentiary purposes or for the investigatory or evidentiary purposes in connection with the functions of a disciplinary subcommittee or 1 or more of the licensing or registration boards created in article 15.

(4) A person who receives data or any report under subsection (2) containing any patient identifiers of the system from the department shall not provide it to any other person or entity except by order of a court of competent jurisdiction.

…

(11) The data and any report containing any patient identifiers obtained therefrom is not a public record, and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

MINNESOTA

"Controlled Substances Prescription Electronic Reporting System"

Citation(s): MINN. STAT. ANN. § 152.126 (West 2008)

Substances Monitored: Schedule II and III controlled substances

Access and/or Disclosure Provisions:

§ 152.126. Schedule II and III controlled substances prescription electronic reporting system

Subd. 6. Access to reporting system data. (a) Except as indicated in this subdivision, the data submitted to the board under subdivision 4 is private data on individuals as defined in section 13.02, subdivision 12, and not subject to public disclosure.

(b) Except as specified in subdivision 5, the following persons shall be considered permissible users and may access the data submitted under subdivision 4 in the same or similar manner, and for the same or similar purposes, as those persons who are authorized to access similar private data on individuals under federal and state law:

(1) a prescriber, to the extent the information relates specifically to a current patient, to whom the prescriber is prescribing or considering prescribing any controlled substance;

(2) a dispenser, to the extent the information relates specifically to a current patient to whom that dispenser is dispensing or considering dispensing any controlled substance;

(3) an individual who is the recipient of a controlled substance prescription for which data was submitted under subdivision 4, or a guardian of the individual, parent or guardian of a minor, or health care agent of the individual acting under a health care directive under chapter 145C;

(4) personnel of the board specifically assigned to conduct a bona fide investigation of a specific licensee;

(5) personnel of the board engaged in the collection of controlled substance prescription information as part of the assigned duties and responsibilities under this section;

(6) authorized personnel of a vendor under contract with the board who are engaged in the design, implementation, operation, and maintenance of the electronic reporting system as part of the assigned duties and responsibilities of their employment, provided that access to data is limited to the minimum amount necessary to carry out such duties and responsibilities;

(7) federal, state, and local law enforcement authorities acting pursuant to a valid search warrant; and

(8) personnel of the medical assistance program assigned to use the data collected under this section to identify recipients whose usage of controlled substances may warrant restriction to a single primary care physician, a single outpatient pharmacy, or a single hospital.

For purposes of clause (3), access by an individual includes persons in the definition of an individual under section 13.02.

(c) Any permissible user identified in paragraph (b), who directly accesses the data electronically, shall implement and maintain a comprehensive information security program that contains administrative, technical, and physical safeguards that are appropriate to the user's size and complexity, and the sensitivity of the personal information obtained. The permissible user shall identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, or other compromise of the information and assess the sufficiency of any safeguards in place to control the risks.

(d) The board shall not release data submitted under this section unless it is provided with evidence, satisfactory to the board, that the person requesting the information is entitled to receive the data.

(e) The board shall not release the name of a prescriber without the written consent of the prescriber or a valid search warrant or court order. The board shall provide a mechanism for a prescriber to submit to the board a signed consent authorizing the release of the prescriber's name when data containing the prescriber's name is requested.

(f) The board shall maintain a log of all persons who access the data and shall ensure that any permissible user complies with paragraph (c) prior to attaining direct access to the data.

(g) Section 13.05, subdivision 6, shall apply to any contract the board enters into pursuant to subdivision 2. A vendor shall not use data collected under this section for any purpose not specified in this section.

Access and/or Disclosure Violations/Penalties:

§ 152.126. Schedule II and III controlled substances prescription electronic reporting system

Subd. 7. Disciplinary action. (a) A dispenser who knowingly fails to submit data to the board as required under this section is subject to disciplinary action by the appropriate health-related licensing board.

(b) A prescriber or dispenser authorized to access the data who knowingly discloses the data in violation of state or federal laws relating to the privacy of health care data shall be subject to disciplinary action by the appropriate health-related licensing board, and appropriate civil penalties.

Confidentiality Provisions:

§ 152.126. Schedule II and III controlled substances prescription electronic reporting system

Subd. 6. Access to reporting system data. (a) Except as indicated in this subdivision, the data submitted to the board under subdivision 4 is private data on individuals as defined in section 13.02, subdivision 12, and not subject to public disclosure.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

MISSISSIPPI

Citation(s): MISS. CODE ANN. § 41-29-101 et. seq. (West 2008)
MISS. CODE ANN. § 73-21-127 (West 2008) authorizes the establishment of an electronic prescription drug monitoring program. Statutes and regulations relative to the program are forthcoming and will be added to this compilation as the information becomes available.
MISS. CODE ANN. § 73-21-97 (West 2008)
MISS. CODE ANN. § 73-21-103 (West 2008)

Substances Monitored: Schedule II, III, IV and V controlled substances

Access and/or Disclosure Provisions:

§ 73-21-127. Computer program to track prescriptions for controlled substances and report illegal activity

…

(d) The program shall provide information regarding the potential inappropriate use of controlled substances to practitioners, pharmacists-in-charge and appropriate state agencies in order to prevent the inappropriate or illegal use of such controlled substances. This program would be proactive in safeguarding public health and safety, support the legitimate use of controlled substances, to facilitate and encourage the identification, intervention with and treatment of individuals addicted to controlled substances and specified noncontrolled drugs, to identify and prevent drug diversion, to provide assistance to those state and federal law enforcement and regulatory agencies investigating cases of drug diversion or other misuse, and to inform the public and health care professionals of the use and abuse trends related to controlled substance and specified noncontrolled drugs.

Access and/or Disclosure Violations/Penalties:

§ 73-21-97. License denial, suspension, or revocation

(1) The board may refuse to issue or renew, or may suspend, reprimand, revoke or restrict

the license, registration or permit of any person upon one or more of the following grounds:

…

(m) Willful failure to submit drug monitoring information or willful submission of incorrect dispensing information as required by the Prescription Monitoring Program under Section 73-21-127.

§ 73-21-103. Disciplinary penalties imposed by board

(1) Upon the finding of the existence of grounds for action against any permitted facility or discipline of any person holding a license, registration or permit, seeking a license, registration or permit, or seeking to renew a license or permit under the provisions of this chapter, the board may impose one or more of the following penalties:

…

(v) The board may impose a monetary penalty for any dispenser, pharmacist or practitioner licensed to dispense controlled substance and specified noncontrolled substance drugs, who knowingly fails to submit drug monitoring information or knowingly submits incorrect dispensing information of not more than Ten Thousand Dollars ($10,000.00) per violation. Any penalty collected under this paragraph (v) shall be deposited into the special fund of the State Pharmacy Board to support the operations of the Prescription Monitoring Program;

(vi) The board may impose a monetary penalty for a person authorized to obtain prescription information and who knowingly discloses this information for misuse or purposely alters the reporting information of not more that Fifty Thousand Dollars ($50,000.00) per violation. Any penalty collected under this paragraph (vi) shall be deposited into the special fund of the State Board of Pharmacy and used to support the operations of the Prescription Monitoring Program.

Confidentiality Provisions:

§ 73-21-127. Computer program to track prescriptions for controlled substances and report illegal activity

…

(e) Access to collected data shall be confidential and not subject to the provisions of the federal Freedom of Information Act or the Mississippi Open Records Act. The State Board of Pharmacy shall be authorized to provide collected information to pharmacists or practitioners that are properly registered with the State Board of Pharmacy and are authorized to prescribe or dispense controlled substances for the purpose of providing medical and pharmaceutical care for their patients, local, state and federal law enforcement officials engaged in the administration, investigation or enforcement of the laws governing illicit drug use, regulatory and licensing boards in this state, Division of Medicaid regarding Medicaid and Medicare Program Recipients, judicial authorities under grand jury subpoena or court order, an individual who requests their own prescription monitoring information and prescription monitoring programs in other states through mutual agreement adhering to State Board of Pharmacy policies. The State Board of Pharmacy may also provide generic statistical data for research or educational purposes.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

NEVADA

Citation(s): NEV. REV. STAT. ANN. §§ 453.1545, 639.23507 (West 2008)
NEV. ADMIN. CODE§ 639.926 (2008)

Substances Monitored: Schedule II, III and IV controlled substances

Access and/or Disclosure Provisions:

§ 453.1545. Board and Division required to develop computerized program to track prescriptions for controlled substances; Board required to provide certain practitioners Internet access to database of program; reporting of illegal activity; confidentiality of information obtained from program; gifts, grants and donations

1. The Board and the Division shall cooperatively develop a computerized program to track each prescription for a controlled substance listed in schedule II, III or IV that is filled by a pharmacy that is registered with the Board or that is dispensed by a practitioner who is registered with the Board. The program must:

(a) Be designed to provide information regarding:

(1) The inappropriate use by a patient of controlled substances listed in schedules II, III and IV to pharmacies, practitioners and appropriate state agencies to prevent the improper or illegal use of those controlled substances; and

(2) Statistical data relating to the use of those controlled substances that is not specific to a particular patient.

(b) Be administered by the Board, the Division, the Health Division of the Department and various practitioners, representatives of professional associations for practitioners, representatives of occupational licensing boards and prosecuting attorneys selected by the Board and the Division.

(c) Not infringe on the legal use of a controlled substance for the management of severe or intractable pain.

(d) Include the contact information of each person who elects to access the database of the program pursuant to subsection 2, including, without limitation:

(1) The name of the person;

(2) The physical address of the person;

(3) The telephone number of the person; and

(4) If the person maintains an electronic mail address, the electronic mail address of the person.

2. The Board shall provide Internet access to the database of the program established pursuant to subsection 1 to each practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III or IV who:

(a) Elects to access the database of the program; and

(b) Completes the course of instruction described in subsection 6.

3. The Board and the Division must have access to the program established pursuant to subsection 1 to identify any suspected fraudulent or illegal activity related to the dispensing of controlled substances.

4. The Board or the Division shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide the law enforcement agency or occupational licensing board with the relevant information obtained from the program for further investigation.

5. Information obtained from the program relating to a practitioner or a patient is confidential and, except as otherwise provided by this section and NRS 239.0115, must not be disclosed to any person. That information must be disclosed:

(a) Upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney; or

(b) Upon the lawful order of a court of competent jurisdiction.

6. The Board and the Division shall cooperatively develop a course of training for persons who elect to access the database of the program pursuant to subsection 2 and require each such person to complete the course of training before he is provided with Internet access to the database pursuant to subsection 2.

7. The Board and the Division may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

Access and/or Disclosure Violations/Penalties:

None found – please reference the note at the beginning of this compilation

Confidentiality Provisions:

See § 453.1545 above.

NEW JERSEY

"Prescription Monitoring Program"

Citation(s): N.J. STAT. ANN. § 45:1-45 to 1-52 (West 2008) – Effective August 1, 2010

Substances Monitored: Controlled dangerous substances

Access and/or Disclosure Provisions:

§ 45:1-46. Access to prescription information

…

d. The division may provide prescription monitoring information to the following persons:

(1) a practitioner authorized to prescribe, dispense or administer controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient of the practitioner. Nothing in sections 25 through 30 of P.L.2007, c. 244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing or administering medications beyond that which may be required as part of the practitioner's professional practice;

(2) a pharmacist authorized to dispense controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient. Nothing in sections 25 through 30 of P.L.2007, c. 244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice;

(3) a designated representative of the State Board of Medical Examiners, New Jersey State Board of Dentistry, New Jersey Board of Nursing, New Jersey State Board of Optometrists, New Jersey State Board of Pharmacy, State Board of Veterinary Medical Examiners, or any other board in this State or another state that regulates the practice of persons who are authorized to prescribe or dispense controlled dangerous substances, as

applicable, who certifies that he is engaged in a bona fide specific investigation of a designated practitioner whose professional practice was or is regulated by that board;

(4) a State, federal or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient;

(5) a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) authorized personnel of the division or vendor or contractor responsible for establishing and maintaining the program; and

(8) the controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement.

e. A person listed in subsection d. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify, by means of entering an on-line statement in a form and manner prescribed by regulation of the director, the reasons for seeking to obtain that information.

Access and/or Disclosure Violations/Penalties:

§ 45:1-49. Penalties

a. A pharmacy permit holder, or a person designated by a pharmacy permit holder to be responsible for submitting data required by section 25 of P.L.2007, c. 244 (C.45:1-45), who knowingly fails to submit data as required, shall be subject to disciplinary action pursuant to section 8 of P. L.1978, c. 73 (C.45:1-21) and may be subject to a civil penalty in an amount not to exceed $1,000 for repeated failure to comply with sections 25 through 30 of P.L.2007, c. 244 (C.45:1-45 through C.45:1-50).

b. (1) A pharmacy permit holder, pharmacist or practitioner, or any other person or entity who knowingly discloses or uses prescription monitoring information in violation of the provisions of sections 25 through 30 of P.L.2007, C.45:1-45 through C.45:1-50 et seq.) shall be subject to a civil penalty in an amount not to exceed $10,000.

(2) A pharmacy permit holder, pharmacist, or practitioner who knowingly discloses or uses prescription monitoring information in violation of the provisions of sections 25 through 30 of P.L.2007, c. 244 (C.45:1-45 et seq.), shall also be subject to disciplinary action pursuant to section 8 of P.L.1978, c. 73 (C.45:1-21).

c. A penalty imposed under this section shall be collected by the director pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.).

Confidentiality Provisions:

§ 45:1-46. Access to prescription information

a. The division shall maintain procedures to ensure privacy and confidentiality of patients and that patient information collected, recorded, transmitted and maintained is not disclosed, except as permitted in this section, including, but not limited to, the use of a password-protected system for maintaining this information and permitting access thereto as authorized under sections 25 through 30 of P.L.2007, c. 244 (C.45:1-45 through C.45:1-50), and a requirement that a person as listed in subsection d. of this section provide on-line affirmation of the person's intent to comply with the provisions of sections 25 through 30 of P.L.2007, c. 244 (C.45:1-45 through C.45:1-50) as a condition of accessing the information.

b. The prescription monitoring information submitted to the division shall be confidential and not be subject to public disclosure under P.L.1963, c. 73 (C.47:1A-1 et seq.), or P.L.2001, c. 404 (C.47:1A-5 et al.).

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

NEW MEXICO

"Controlled Substance Prescription Monitoring Program"

Citation(s): N.M. STAT. ANN. § 30-31-16 (West 2008)
N.M. CODE R. §§ 16.19.29.1 to -.13 (2008)

Substances Monitored: Schedule II, III and IV controlled substances

Access and/or Disclosure Provisions:

§ 16.19.29.9 Access to Prescription Information.

…

E. The board shall be authorized to provide data in the prescription monitoring program to the following persons:

(1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who request's their own prescription monitoring information in accordance with procedures established under 61-11-2.D NMSA, 1978 and Subsection G of 16.19.6.23 NMAC.

(3) New Mexico medical board, New Mexico board of nursing, New Mexico board of veterinary medicine, New Mexico board of dental health care, board of examiners in optometry, osteopathic examiners board, acupuncture & oriental medicine board, and podiatry board for their licensees;

(4) professional licensing authorities of other states if their licensees practice in the state or prescriptions provided by their licensees are dispensed in the state;

(5) local, state and federal law enforcement or prosecutorial officials engaged in an ongoing investigation of an individual in the enforcement of the laws governing licit drugs;

(6) human services department regarding medicaid program recipients;

(7) metropolitan, district, state or federal court(s) under grand jury subpoena or criminal court order;

(8) personnel of the board for purposes of administration and enforcement of this regulation, or 16.19.20 NMAC.

F. The board shall provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and persons who have received prescriptions from dispensers. [16.19.29.9 NMAC - N, 07-15-04]

Access and/or Disclosure Violations/Penalties:

§ 16.19.29.12 Penalties.

A. A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this regulation or knowingly submits incorrect prescription information shall be subject to disciplinary proceedings as defined in 61-11-20 NMSA.

B. A person authorized to have prescription monitoring information pursuant to this regulation who knowingly discloses such information in violation of this regulation shall be subject to criminal proceedings as described in 26-1-16.D and 26-1-26 NMSA.

C. A person authorized to have prescription monitoring information pursuant to this regulation who uses such information in a manner or for a purpose in violation of this regulation shall be subject to criminal proceedings as described in 26-1-16.D and 26-1-26 NMSA.

Confidentiality Provisions:

§ 16.19.29.9 Access to Prescription Information

A. Prescription information submitted to the board shall be confidential and not subject to public or open records laws, except as provided in Subsections C, D and E of 16.19.29.9 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in Subsection C, D, and E of this 16.19.29.9 NMAC.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

NEW YORK

Citation(s): N.Y. PUB. HEALTH LAW §§ 12-b, 3331, 3332, 3333, 3338, 3343, 3370, 3371, 3385, 3396 (McKinney 2008)
N.Y. COMP. CODES R. & REGS. tit. 10, §§ 80.67 to -.69, -.71 to -.73, -.108, -.123 (2009)

Substances Monitored: Schedule II, II, IV and V controlled substances.

Access and/or Disclosure Provisions:

§ 3371. Confidentiality of certain records, reports, and information

1. No person, who has knowledge by virtue of his office of the identity of a particular patient or research subject, a manufacturing process, a trade secret or a formula shall disclose such knowledge, or any report or record thereof, except:

(a) to another person employed by the department, for purposes of executing provisions of this article; or

(b) pursuant to judicial subpoena or court order in a criminal investigation or proceeding; or

(c) to an agency, department of government, or official board authorized to regulate, license or otherwise supervise a person who is authorized by this article to deal in controlled substances, or in the course of any investigation or proceeding by or before such agency, department or board.

(d) to a central registry established pursuant to this article.

(e) to a practitioner to inform him or her that a person under his or her treatment with a controlled substance also may be under treatment with a controlled substance by another practitioner.

2. In the course of any proceeding where such information is disclosed, except when necessary to effectuate the rights of a party to the proceeding, the court or presiding

officer shall take such action as is necessary to insure that such information, or record or report of such information is not made public.

§ 80.108. Practitioner patient reporting

It shall be the duty of every attending practitioner and every consulting practitioner to report promptly to the commissioner the name and address and such other data as may be required by the commissioner with respect to any person under treatment if he finds that such person is an addict or a habitual user of any narcotic drug. Such report shall be kept confidential and may be utilized only for statistical, epidemiological, or research purposes, except that those reports which originate in the course of a criminal proceeding other than section 210 of the Mental Hygiene Law shall be subject only to the confidentiality requirements of section 3371 of the Public Health Law.

§ 80.123. Access to records

The department and its representatives shall have access at all times to all orders, prescriptions or records required to be kept under article 33 of the Public Health Law and this Part.

Access and/or Disclosure Violations/Penalties:

§ 3396. Violations; penalties

1. In any civil, criminal or administrative action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negate or disprove any exception, excuse, proviso or exemption contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the person claiming its benefit.

2. Violation of any provision of this article for which a penalty is specifically provided herein shall be punishable as provided herein. Violation of any provision of this article for which no penalty is provided herein shall be punishable as provided in section twelve-b of article one of this chapter or in the penal law.

3. No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal controlled substances act, of the same act or omission which, it is alleged, constitutes a violation of this article.

4. Upon the conviction of any person for violating any provision of this article, a copy of the judgment and sentence, and of the opinion of the court or judge, if any opinion be filed, shall be sent by the clerk of the court, or by the judge, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession, or to carry on his business.

5. Upon the imposition of any penalty, warning, reprimand or other sanction against any person for violating any provision of this article, a copy of the order, finding or opinion, if any is made or rendered, shall be sent by the person authorized by law to make such determination, to the board or officer by whom the respondent is licensed or registered to practice a profession or to carry on a business.

§ 12-b. Willful violation of health laws

1. A person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor; except, however, that where such order or regulation applies to a tenant with respect to his own dwelling unit or to an owner occupied one or two family dwelling, such person is guilty of an offense for the first violation punishable by a fine not to exceed fifty dollars and for a second or subsequent violation is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars or by imprisonment not to exceed six months or by both such fine and imprisonment.

2. [Eff. until April 1, 2011, pursuant to L.2008, c. 58, § 32. See, also, subd. 2 below.] A person who willfully violates any provision of this chapter, or any regulation lawfully made or established by any public officer or board under authority of this chapter, the punishment for violating which is not otherwise prescribed by this chapter or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding ten thousand dollars or by both. Effective on and after April first, two thousand eight the comptroller is hereby authorized and directed to deposit amounts collected in excess of two thousand dollars per violation to the patient safety center account to be used for purposes of the patient safety center created by title two of article twenty-nine-D of this chapter.

2. [Eff. April 1, 2011. See, also, subd. 2 above.] A person who willfully violates any provision of this chapter, or any regulation lawfully made or established by any public officer or board under authority of this chapter, the punishment for violating which is not otherwise prescribed by this chapter or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Confidentiality Provisions:

See §§ 3371, 80.108 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

NORTH CAROLINA

"Controlled Substances Reporting System Act"

Citation(s): N.C. GEN STAT. §§ 90-113.70 to -113.76 (West 2008)
10A N.C. ADMIN. CODE 26E.0610 to -.0603 (2008)

Substances Monitored: Schedule II, III, IV and V controlled substances

Access and/or Disclosure Provisions:

§ 90-113.74. Confidentiality

…

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

(1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients.

(2) An individual who requests the individual's own controlled substances reporting system information.

(3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.

(4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.

(5) To a court pursuant to a lawful court order in a criminal action.

(6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.

(7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the findings should be reported to the SBI for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall purge from the controlled substances reporting system database all information more than six years old.

Access and/or Disclosure Violations/Penalties:

§ 90-113.75. Civil penalties; other remedies; immunity from liability

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this section or a rule adopted pursuant to this section shall be assessed a civil penalty not to exceed five thousand dollars ($5,000) per violation. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this section may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the individual.

(c) A health care provider licensed, or an entity permitted under this Chapter that, in good faith, makes a report or transmits data required by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of making the report or transmitting the data.

Confidentiality Provisions:

§ 90-113.74. Confidentiality

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

NORTH DAKOTA

"Prescription Drug Monitoring Program"

Citation(s): N.D. CENT. CODE §§ 19-03.5-01 to -10 (2008)
N.D. ADMIN. CODE 61-12-01-01 to -03 (2008)

Substances Monitored: Schedule II, III, IV and V controlled substances and nonscheduled substances containing tramadol or carisoprodol.

Access and/or Disclosure Provisions:

§ 19-03.5-03. Access to prescription information

1. Information submitted to the central repository is confidential and may not be disclosed except as provided in this section.

2. The board shall maintain procedures to ensure that the privacy, confidentiality, and security of patient information collected, recorded, transmitted, and maintained is not disclosed except as provided in this section.

3. Unless disclosure is prohibited by law, the board may provide data in the central repository to:

a. A prescriber for the purpose of providing medical care to a patient, a dispenser for the purpose of filling a prescription or providing pharmaceutical care for a patient, a prescriber or dispenser inquiring about the prescriber's or dispenser's own prescribing activity, or a prescriber or dispenser in order to further the purposes of the program;

b. An individual who requests the prescription information of the individual or the individual's minor child;

c. State boards and regulatory agencies that are responsible for the licensing of individuals authorized to prescribe or dispense controlled substances if the board or regulatory agency is seeking information from the central repository that is relevant to an investigation of an individual who holds a license issued by that board or regulatory agency;

d. Local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances who seek information for the purpose of an investigation or prosecution of the drug-related activity or probation compliance of an individual;

e. The department of human services for purposes regarding the utilization of controlled substances by a medicaid recipient;

f. Workforce safety and insurance for purposes regarding the utilization of controlled substances by a claimant;

g. Judicial authorities under grand jury subpoena or court order or equivalent judicial process for investigation of criminal violations of controlled substances laws;

h. Public or private entities for statistical, research, or educational purposes after the information is de-identified with respect to any prescriber, dispenser, or patient who received a prescription for a controlled substance; or

i. A peer review committee which means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review as defined in chapter 23-34.

4. The board shall maintain a record of each person who requests information from the central repository. The board may use the records to document and report statistics and outcomes. The board may provide records of the requests for information to:

a. A board or regulatory agency responsible for the licensing of individuals authorized to prescribe or dispense controlled substances that is engaged in an investigation of the individual who submitted the request for information from the central repository; and

b. Local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances for the purpose of an active investigation of an individual who requested information from the central repository.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

§ 19-03.5-10. Reporting unlawful acts and penalties

1. The board may report to a dispenser's licensing board any dispenser who knowingly fails to submit prescription drug monitoring information to the board as required by this chapter or who knowingly submits incorrect prescription information to the board.

2. A person, including a vendor, who uses or discloses prescription drug monitoring information in violation of this chapter is subject to the penalty provided in section 12.1-13-01.

Confidentiality Provisions:

§ 19-03.5-03. Access to prescription information

1. Information submitted to the central repository is confidential and may not be disclosed except as provided in this section.

2. The board shall maintain procedures to ensure that the privacy, confidentiality, and security of patient information collected, recorded, transmitted, and maintained is not disclosed except as provided in this section.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

OHIO

"Drug Database"

Citation(s): OHIO REV. CODE ANN. §§ 4729.75 to -.84, -.99 (West 2008)
OHIO ADMIN. CODE §§ 4729-37-02 to -10 (2009)

Substances Monitored: Schedule II, III, IV and V controlled substances, and dangerous drug products containing carisoprodol and tramadol.

Access and/or Disclosure Provisions:

§ 4729.79 Disclosure of database information; disclosure of requests for database information

(A) If the state board of pharmacy establishes and maintains a drug database pursuant to section 4729.75 of the Revised Code, the board may provide information from the database in accordance with the following:

(1) On receipt of a request from a designated representative of a government entity responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe drugs, the board may provide to the representative information from the database relating to the professional who is the subject of an active investigation being conducted by the government entity.

(2) On receipt of a request from a federal officer, or a state or local officer of this or any other state, whose duties include enforcing laws relating to drugs, the board may provide to the officer information from the database relating to the person who is the subject of an active investigation being conducted by the officer's employing government entity.

(3) Pursuant to a subpoena issued by a grand jury, the board may provide to the grand jury information from the database relating to the person who is the subject of an investigation being conducted by the grand jury.

(4) On receipt of a request from a pharmacist or prescriber, the board may provide to the requestor information from the database relating to a current patient of the requestor, if the requestor certifies in a form specified by the board that it is for the purpose of

providing medical or pharmaceutical treatment to the patient who is the subject of the request.

(5) On receipt of a request from an individual seeking the individual's own database information in accordance with the procedure established in rules adopted under section 4729.83 of the Revised Code, the board may provide to the individual the individual's own database information.

(B) The state board of pharmacy shall maintain a record of each individual or entity that requests information from the database pursuant to this section. In accordance with rules adopted under section 4729.83 of the Revised Code, the board may use the records to document and report statistics and law enforcement outcomes.

The board may provide records of an individual's requests for database information to the following:

(1) A designated representative of a government entity that is responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe drugs who is involved in an active investigation being conducted by the government entity of the individual who submitted the requests for database information;

(2) A federal officer, or a state or local officer of this or any other state, whose duties include enforcing laws relating to drugs and who is involved in an active investigation being conducted by the officer's employing government entity of the individual who submitted the requests for database information.

(C) Information contained in the database and any information obtained from it is not a public record. Information contained in the records of requests for information from the database is not a public record. Information that does not identify a person may be released in summary, statistical, or aggregate form.

(D) Nothing in this section requires a pharmacist or prescriber to obtain information about a patient from the database. A pharmacist or prescriber shall not be held liable in damages to any person in any civil action for injury, death, or loss to person or property on the basis that the pharmacist or prescriber did or did not seek or obtain information from the database.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

§ 4729.79 Disclosure of database information; disclosure of requests for database information

…

(D) Nothing in this section requires a pharmacist or prescriber to obtain information about a patient from the database. A pharmacist or prescriber shall not be held liable in damages to any person in any civil action for injury, death, or loss to person or property on the basis that the pharmacist or prescriber did or did not seek or obtain information from the database.

§ 4729.80 Review of database information; investigation

If the state board of pharmacy establishes and maintains a drug database pursuant to section 4729.75 of the Revised Code, the board shall review the information in the drug database. If the board determines from the review that a violation of law may have occurred, it shall notify the appropriate law enforcement agency or a government entity responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe drugs and supply information required by the agency or entity for an investigation of the violation of law that may have occurred.

Confidentiality Provisions:

§ 4729.79 Disclosure of database information; disclosure of requests for database information

…

(B) The state board of pharmacy shall maintain a record of each individual or entity that requests information from the database pursuant to this section. In accordance with rules adopted under section 4729.83 of the Revised Code, the board may use the records to document and report statistics and law enforcement outcomes.

The board may provide records of an individual's requests for database information to the following:

(1) A designated representative of a government entity that is responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe drugs who is involved in an active investigation being conducted by the government entity of the individual who submitted the requests for database information;

(2) A federal officer, or a state or local officer of this or any other state, whose duties include enforcing laws relating to drugs and who is involved in an active investigation being conducted by the officer's employing government entity of the individual who submitted the requests for database information.

(C) Information contained in the database and any information obtained from it is not a public record. Information contained in the records of requests for information from the database is not a public record. Information that does not identify a person may be released in summary, statistical, or aggregate form.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

OKLAHOMA

"Anti-Drug Diversion Act"

Citation(s): OKLA. STAT. tit. 63, §§ 2-309 to -309H (West 2008)

Substances Monitored: Schedule II, III, IV and V controlled substances except Schedule V substances that contain any detectable quantity of pseudoephedrine, it salts or optical isomers, or salts of optical isomers.

Access and/or Disclosure Provisions:

§ 63-2-309D. Central repository information--Confidentiality--Access-- Disclosure--Penalties—Liability

A. The information collected at the central repository pursuant to the Anti-Drug Diversion Act shall be confidential and shall not be open to the public. Access to the information shall be limited to:

1. Peace officers certified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes who are employed as investigative agents of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

2. The United States Drug Enforcement Administration Diversion Group Supervisor;

3. The executive director or chief investigator, as designated by each board, of the following state boards:

a. Board of Podiatric Medical Examiners,

b. Board of Dentistry,

c. Board of Pharmacy,

d. State Board of Medical Licensure and Supervision,

e. State Board of Osteopathic Examiners, and

f. State Board of Veterinary Medical Examiners;

provided, however, that the executive director or chief investigator of each of these boards shall be limited to access to information relevant to licensees of the employing board of such executive director or chief investigator; and

4. A multicounty grand jury properly convened pursuant to the Multicounty Grand Jury Act, Sections 350 through 363 of Title 22 of the Oklahoma Statutes.

B. This section shall not prevent the disclosure, at the discretion of the Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, of investigative information to peace officers and investigative agents of federal, state, county or municipal law enforcement agencies, district attorneys and the Attorney General in furtherance of criminal investigations or prosecutions within their respective jurisdictions, and to registrants in furtherance of efforts to guard against the diversion of controlled dangerous substances.

C. Any unauthorized disclosure of any information collected at the central repository provided by the Anti-Drug Diversion Act shall be a misdemeanor. Violation of the provisions of this section shall be deemed willful neglect of duty and shall be grounds for removal from office.

D. Notwithstanding the provisions of subsection B, registrants shall have no requirement or obligation to access or check the information in the central repository prior to dispensing or administering medications or as part of their professional practices. Registrants shall not be liable to any person for any claim of damages as a result of accessing or failing to access the information in the central repository and no lawsuit may be predicated thereon. Nothing herein shall be construed to relieve a registrant from any duty to monitor and report the sales of certain products pursuant to subsection E of Section 2- 309C of this title.

§ 63-2-309E. Central repository information--Control of access

All access to information in the central repository shall be controlled by and made through the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

§ 63-2-309D. Central repository information--Confidentiality--Access-- Disclosure--Penalties—Liability

. . .

C. Any unauthorized disclosure of any information collected at the central repository provided by the Anti-Drug Diversion Act shall be a misdemeanor. Violation of the provisions of this section shall be deemed willful neglect of duty and shall be grounds for removal from office.

Confidentiality Provisions:

See § 63-2-309D above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

OREGON

"Electronic Prescription Monitoring Program"

Citation: S.B. 355, 75th Leg., Reg. Sess. (Or. 2009)

Substances Monitored: Schedule II, III, and IV controlled substances

Access and/or Disclosure Provisions:

SECTION 2.

…

(B) The system must operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a week.

…

(2) In consultation with the commission, the department shall adopt rules for the operation of the electronic prescription monitoring program established under subsection (1) of this section, including but not limited to standards for:

…

(d) Complying with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and regulations adopted under it, including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations adopted under those laws, including 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.518 to 192.529;
…

SECTION 4.

(2)(a) If a disclosure of prescription monitoring information complies with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104- 191) and regulations adopted under it, including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations adopted under those laws, including

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.518 to 192.529, the Department of Human Services shall disclose the information:

(A) To a practitioner or pharmacist who certifies that the requested information is for the purpose of evaluating the need for or providing medical or pharmaceutical treatment for a patient to whom the practitioner or pharmacist anticipates providing, is providing or has provided care.

(B) To designated representatives of the department or any vendor or contractor with whom the department has contracted to establish or maintain the electronic system of the prescription monitoring program.

(C) Pursuant to a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency engaged in an authorized drug-related investigation involving a person to whom the requested information pertains.

(D) To a health professional regulatory board that certifies in writing that the requested information is necessary for an investigation related to licensure, renewal or disciplinary action involving the applicant, licensee or registrant to whom the requested information pertains.

(E) To a prescription monitoring program of another state if the confidentiality, security and privacy standards of the requesting state are determined by the department to be equivalent to those of the department.

(b) The department may disclose information from the prescription monitoring program that does not identify a patient, practitioner or drug outlet:

(A) For educational, research or public health purposes; and

(B) To officials of the department who are conducting special epidemiologic morbidity and mortality studies in accordance with ORS 432.060 and rules adopted under ORS 431.110.

(c) The department shall disclose information relating to a patient maintained in the electronic system operated pursuant to the prescription monitoring program established under section 2 of this 2009 Act to that patient at no cost to the patient within 10 business days after the department receives a request from the patient for the information.

…

(e) The information in the prescription monitoring program may not be used for any commercial purpose.

(f) In accordance with ORS 192.518 to 192.529 and federal privacy regulations, any person authorized to prescribe or dispense a prescription drug and who is entitled to access a patient's prescription monitoring information may discuss or release the information to other health care providers involved with the patient's care, in order to provide safe and appropriate care coordination.

(3)(a) The department shall maintain records of the information disclosed through the prescription monitoring program including, but not limited to:

(A) The identity of each person who requests or receives information from the program and the organization, if any, the person represents;

(B) The information released to each person or organization; and

(C) The date and time the information was requested and the date and time the information was provided.

(b) Records maintained as required by this subsection may be reviewed by the Prescription Monitoring Program Advisory Commission.

Access and/or Disclosure Violations/Penalties:

SECTION 4.

(5) The department shall notify the Attorney General and each affected individual of an improper disclosure of information from the prescription monitoring program.

(6)(a) If the department or a person or entity required to report or authorized to receive or release controlled substance prescription information under this section violates section 3, 4 or 5 of this 2009 Act, a person injured by the violation may bring a civil action against the department, person or entity and may recover damages in the amount of $1,000 or actual damages, whichever is greater.

(b) Notwithstanding paragraph (a) of this subsection, the department and a person or entity required to report or authorized to receive or release controlled substance prescription information under this section are immune from civil liability for violations of section 3, 4 or 5 of this 2009 Act unless the department, person or entity acts with malice, criminal intent, gross negligence, recklessness or willful intent.

SECTION 6.

(1) In addition to any other penalty provided by law, the Attorney General may impose a civil penalty not to exceed $10,000 for each violation of section 3, 4 or 5 of this 2009 Act. Each improper release of information from the prescription monitoring program in violation of section 4 of this 2009 Act is a separate violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) The Department of Justice may adopt rules as required to carry out the provisions of this section.

(4) Penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund.

SECTION 7.

The Department of Human Services shall report a practitioner or pharmacist authorized to obtain controlled substance prescription information from the prescription monitoring system established under section 2 of this 2009 Act who discloses or uses information obtained from the system in violation of section 4 of this 2009 Act to the health professional regulatory board responsible for the practitioner or pharmacist.

Confidentiality Provisions

SECTION 4.

(1)(a) Except as provided under subsection (2) of this section, prescription monitoring information submitted under section 3 of this 2009 Act to the prescription monitoring program established in section 2 of this 2009 Act:

(A) Is protected health information under ORS 192.518 to 192.529.

(B) Is not subject to disclosure pursuant to ORS 192.410 to 192.505.

(b) Except as provided under subsection (2)(a)(D) of this section, prescription monitoring information submitted under section 3 of this 2009 Act to the prescription monitoring program may not be used to evaluate a practitioner's professional practice.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

PENNSYLVANIA

Citation(s): 18 PA. CONS. STAT. ANN. § 9102 (West 2008)
28 PA. CODE § 25.131 (2009)

Substances Monitored: Schedule II controlled substances

Access and/or Disclosure Provisions:

According to the PA Office of the Attorney General, access to the prescription data would be limited to:

§ 9102. Definitions.

"Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.

§ 25.131. Every dispensing practitioner.

Every pharmacy shall, at the end of each month, on forms issued for this purpose by the Office of the Attorney General of the Commonwealth, provide the Office of the Attorney General of the Commonwealth with the name of each person to whom a drug or preparation, which is classified by the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. § 3801 and the act as a controlled substance in Schedule II, was sold, dispensed, distributed or given away, except when used in anesthetic procedures, together with such other information as may be required, under the act.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

None found: Please reference the note at the beginning of the compilation

Confidentiality Provisions:

None found

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

RHODE ISLAND

Citation(s): R.I. GEN. LAWS § 21-28-3.18 (2008)
14-060-020 R.I. CODE R. § 1 to 4 (Weil 2008)

Substances Monitored: Schedule II and III controlled substances

Access and/or Disclosure Provisions:

14 060 020 (3.3). Rules and Regulations Governing Electronic Data Transfer of Controlled Substances in Schedules II and III

3.3 The Department shall:

3.3.1 be authorized to provide data in the electronic prescription system to other regulatory, investigative or law enforcement agencies for disciplinary, civil, or criminal purposes, and for the purposes of educating practitioners in lieu of disciplinary, civil or criminal action.

3.3.2 be authorized to provide data to appropriate public or private entities for statistical, research, or educational purposes provided that the privacy and confidentiality of patients and patient information is not compromised.

3.3.3 in using the information for investigative or prosecutorial purposes, consider the nature of the prescriber's or dispenser's practice and the condition(s) for which the patient is being treated.

3.3.4 ensure the privacy and confidentiality of patients and shall ensure that patient information collected, recorded, transmitted, and stored in the prescription system is maintained in accordance with applicable state and federal laws, rules and regulations.

3.3.5 ensure that the EDT program does not infringe on the legal use of any schedule II or III controlled substance.

Access and/or Disclosure Violations/Penalties:

None found – please reference the note at the beginning of this compilation

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Confidentiality Provisions:

See 14 060 020 (3.3) above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

SOUTH CAROLINA

"South Carolina Prescription Monitoring Act"

Citation(s): S.C. CODE ANN. **§§** 44-53-1610 to -1680 (2008)

Substances Monitored: Schedule II, III and IV controlled substances

Access and/or Disclosure Provisions:

§ 44-53-1650. Confidentiality; persons to whom data may be released.

(A) Prescription information submitted to drug control is confidential and not subject to public disclosure under the Freedom of Information Act or any other provision of law, except as provided in subsections (C) and (D).

(B) Drug control shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in subsections (C) and (D).

(C) If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, drug control shall notify the appropriate law enforcement or professional licensure, certification, or regulatory agency or entity and shall provide prescription information required for an investigation.

(D) Drug control may provide data in the prescription monitoring program to the following persons:

(1) a practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide patient;

(2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established pursuant to state law;

(3) a designated representative of the South Carolina Department of Labor, Licensing and Regulation responsible for the licensure, regulation, or discipline of practitioners,

pharmacists, or other persons authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(4) a local, state, or federal law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of the laws governing licit drugs and who is involved in a bona fide specific drug related investigation involving a designated person;

(5) the South Carolina Department of Health and Human Services regarding Medicaid program recipients;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) personnel of drug control for purposes of administration and enforcement of this article;

(8) qualified personnel for the purpose of bona fide research or education; however, data elements that would reasonably identify a specific recipient, prescriber or dispenser must be deleted or redacted from such information prior to disclosure. Further, release of the information only may be made pursuant to a written agreement between qualified personnel and the department in order to ensure compliance with this Subsection.

Access and/or Disclosure Violations/Penalties:

§ 44-53-1680. Violations and penalties.

(A) A dispenser who knowingly fails to submit prescription monitoring information to drug control as required by this article, or who knowingly submits incorrect prescription information, is guilty of a misdemeanor, and upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

(B) A person or persons authorized to have prescription monitoring information pursuant to this article who knowingly discloses this information in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(C) A person or persons authorized to have prescription monitoring information pursuant to this article who uses this information in a manner or for a purpose in violation of this

article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(D) Nothing in this chapter requires a pharmacist or practitioner to obtain information about a patient from the prescription monitoring program. A pharmacist or practitioner does not have a duty and must not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or practitioner did or did not seek or obtain information from the prescription monitoring program. A pharmacist or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.

Confidentiality Provisions:

§ 44-53-1650. Confidentiality; persons to whom data may be released.

(A) Prescription information submitted to drug control is confidential and not subject to public disclosure under the Freedom of Information Act or any other provision of law, except as provided in subsections (C) and (D).

(B) Drug control shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in subsections (C) and (D).

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

TENNESSEE

"Controlled Substances Monitoring Act of 2002"

Citation(s): TENN. CODE ANN. §§ 53-10-301 to -309 (West 2008)
TENN. COMP. R. & REGS. 1140-11-.01 to -.04 (2009)

Substances Monitored: Schedule II, III and IV controlled substances, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse.

Access and/or Disclosure Provisions:

§ 53-10-306. Confidentiality; disclosure; penalties

(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to title 10, chapter 7, regarding public records, and not subject to subpoena from any court and shall be made available only as provided for in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part, except that the information shall be subject to production pursuant to an order of a circuit or criminal court in a criminal investigation or pending prosecution subject to subsection (b):

(1) Personnel of the committee specifically assigned to conduct analysis or research;

(2) Authorized committee, board, or department of health personnel engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;

(3) A licensed health care practitioner having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current patient of the practitioner, to whom the practitioner has prescribed or dispensed or is prescribing or dispensing or considering prescribing or dispensing any controlled substance;

(4) A licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist has dispensed, is dispensing or considering dispensing any controlled substance; or

(5) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare:

(A) The office of inspector general;

(B) The medicaid fraud control unit;

(C) The Tennessee bureau of investigation; and

(D) The bureau of TennCare's chief medical officer, associate chief medical directors, director of quality oversight, and associate director of pharmacy.

(b) The district attorney general may apply for an order of a circuit or criminal court directed to the committee to disclose specific information to the district attorney general for purposes of a criminal investigation or pending prosecution. The application for the order shall be accompanied by an affidavit reciting the specific information sought relative to a specific individual and the nature of the offense under investigation. The affidavit shall be by the district attorney general or other law enforcement officer, but only the district attorney general shall have the authority to request the order. The judge may issue an order if the affidavit recites probable cause to believe that a violation of the criminal law has occurred and that the information in the database will be of material assistance in the investigation or prosecution. A copy of the application, affidavit and order shall be retained by the judge issuing the order. A return shall be made promptly to the judge executing the order as to the information acquired by that order. The application, affidavit, order and information may remain under seal and may only be disclosed by the judge issuing the order or by the judge having jurisdiction over the prosecution. A violation of this subsection (b) shall result in the suppression of the information or collateral use of such information in any civil or criminal proceeding. Information obtained through this court order shall remain confidential except to the extent it is used in court for prosecution purposes. Unauthorized use or disclosure of this information shall be subject to the penalties set forth in this section.

(c) Any information disseminated pursuant to subdivisions (a)(1)-(5) shall be released to the individual or entity requesting the information by the database manager or by password protected internet access.

(d) Any licensed practitioner or pharmacist receiving patient-specific information

pursuant to subdivision (a)(1), (a)(2), (a)(3) or (a)(4) shall not disclose the information to any person other than:

(1) The patient to whom the information relates and then only for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment; and

(2) Other dispensers identified by the information and then only for the purposes of verifying the accuracy of the information.

(e) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(f) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.

1140-11-.02. ACCESS TO DATABASE.

(1) The following persons shall have access to the controlled substance database with regard to a patient:

(a) the prescriber who is currently issuing the patient a controlled substance or controlled substances or who anticipates issuing the patient a controlled substance or controlled substances;

(b) the dispenser who is currently dispensing a controlled substance or controlled substances to the patient or who anticipates issuing the patient a controlled substance or controlled substances;

(c) a person who has the patient's written permission to have access to the patient's records in the database;

(d) the manager of any investigations or prosecution unit of a health-related board, committee or other governing body that licenses practitioners who has access to the database with the committee's permission pursuant to Tenn. Code Ann. §53-10-308, may release the database information that that such manager receives to the state of Tennessee health-related boards, health-related committees, the department, the

department of health and representatives of health-related professional recovery programs; or

(e) a district attorney who obtains an order from circuit or criminal court ordering the release of the information contained in the database, in compliance with Tenn. Code Ann. §53-10-306.

(2) The persons listed in paragraph (1) of this rule shall have access to the information contained in the database by submitting a request for information in writing or by electronic means to the Committee on a form developed by the Committee and in compliance with the procedures developed by the Committee. The Committee shall not disseminate any information from the database without the submission of this written request, unless the dissemination of the information is directed by Court Order.

§ 53-10-308. Release of confidential information

(a) Notwithstanding any other provision of this part to the contrary, the committee may release confidential information from the database regarding practitioners, patients, or both, to a manager of any investigations or prosecution unit of a board, committee, or other governing body that licenses practitioners and is engaged in any investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.

(b) Before the committee releases confidential information under this section, the applicant must petition the committee for the confidential information, particularly describe the information required, and demonstrate to the committee that the applicant has reason to believe that a violation under any state or federal law that involves a controlled substance has occurred and that the requested information is reasonably related to the investigation, adjudication, or prosecution of the violation.

(c) No information may be released under this section until it has been reviewed by the committee, including a member of the committee who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data, and until the committee, including that member, has certified that further investigation or prosecution is warranted and that release of the information is necessary to that continued investigation or prosecution.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

§ 53-10-306. Confidentiality; disclosure; penalties

…

(e) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(f) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.

Confidentiality Provisions:

See §§ 53-10-306, 53-10-308 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

TEXAS

"Official Prescription Program"

Citation(s): TEX. HEALTH & SAFETY CODE ANN. §§ 481.074 to -.0761, -.127, -.128 (Vernon 2007)
37 TEX. ADMIN. CODE §§ 13.71 to -.86 (2009)

Substances Monitored: Schedule II-V controlled substances

Access and/or Disclosure Provisions:

§ 481.076. Official Prescription Information

(a) The director may not permit any person to have access to information submitted to the director under Section 481.074(q) or 481.075 except:

(1) an investigator for the Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Texas State Board of Pharmacy;

(2) an authorized officer or member of the department engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state; or

(3) if the director finds that proper need has been shown to the director:

(A) a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(B) a pharmacist or practitioner who is a physician, dentist, veterinarian, podiatrist, or advanced practice nurse or physician assistant described by Section 481.002(39)(D) and is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner; or

(C) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity.

(b) This section does not prohibit the director from creating, using, or disclosing statistical data about information received by the director under this section if the director removes any information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information.

(c) The director by rule shall design and implement a system for submission of information to the director by electronic or other means and for retrieval of information submitted to the director under this section and Sections 481.074 and 481.075. The director shall use automated information security techniques and devices to preclude improper access to the information. The director shall submit the system design to the Texas State Board of Pharmacy and the Texas Medical Board for review and approval or comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it is unreasonable to do so.

(d) Information submitted to the director under this section may be used only for:

(1) the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(2) investigatory or evidentiary purposes in connection with the functions of an agency listed in Subsection (a)(1); or

(3) dissemination by the director to the public in the form of a statistical tabulation or report if all information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information has been removed.

(e) The director shall remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the director not later than the end of the 12th calendar month after the month in which the identity is entered into the system. However, the director may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

(f) If the director permits access to information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the director shall notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless the director determines that notification is reasonably likely to interfere with an administrative or criminal investigation or

prosecution.

(g) If the director permits access to information under Subsection (a)(3)(A) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the director shall notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h) If the director withholds notification to an agency under Subsection (f), the director shall notify the agency of the disclosure of the information and the reason for withholding notification when the director determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

(i) Information submitted to the director under Section 481.075 is confidential and remains confidential regardless of whether the director permits access to the information under this section.

(j) Repealed by Acts 1999, 76th Leg., ch. 145, § 5(3), eff. Sept. 1, 1999.

§ 13.84. Release of Non-statistical Information

(a) To whom. The director may release Texas Prescription Program information obtained under the Act, § 481.075 only to an individual listed in the Act, § 481.076(a).

(b) Purpose. An individual described by subsection (a) of this section may only request information for a purpose listed in the Act, § 481.076.

(c) Written request. The director may require an individual seeking information under this section to submit a written request to the director before the director releases to the individual the information contained on or derived from the prescription.

(d) Proper need and Return of Information report. The director will require a person requesting information under the Act, § 481.076(a)(3), to show a proper need for the information. The showing of proper need is ongoing. The director will require the person to periodically submit to the director a Return of Information report documenting use of the information and the status of the investigation or prosecution.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

§ 481.127. Offense: Unauthorized Disclosure of Information

(a) A person commits an offense if the person knowingly gives, permits, or obtains unauthorized access to information submitted to the director under Section 481.075.

(b) An offense under this section is a state jail felony.

Confidentiality Provisions:

See § 481.076 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

UTAH

"Controlled Substance Database"

Citation(s): UTAH CODE ANN. §§ 58-37-7.5, -7.7, -7.8 (West 2008)
UTAH ADMIN. CODE r. 156-37-609, -610 (2009)

Substances Monitored: Schedule II, III, IV, and V controlled substances

Access and/or Disclosure Provisions:

§ 58-37-7.5. Controlled substance database--Pharmacy reporting requirements--Access--Penalties

…

(5) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:

(a) prescribing practices and patterns of prescribing and dispensing controlled substances;

(b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;

(c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance; and

(d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a pharmacy.

…

(8) The manager of the database shall make information in the database available only to the following persons, in accordance with the requirements of this section and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substances laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) employees of the Department of Health whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, provided that the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies;

(d) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i)(A) relates specifically to a current or prospective patient of the practitioner ; and

(B) is sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner; or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii)(A) relates specifically to a former patient of the practitioner; and

(B) is sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (8)(e); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(e) in accordance with Subsection (17), an employee of a practitioner described in Subsection (8)(d), for a purpose described in Subsection (8)(d)(i) or (ii), if:

(i) the employee is designated by the practitioner as a person authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection (6)(b) with respect to the employee;

(f) a licensed pharmacist having authority to dispense controlled substances to the extent the information is sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

(g) federal, state, and local law enforcement authorities, and state and local prosecutors, engaged as a specified duty of their employment in enforcing laws:

(i) regulating controlled substances; or

(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

(h) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (8)(h)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (8)(h)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (8)(h)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (8)(h), from the

database; and

(i) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the database manager that the individual requesting the information is in fact the person about whom the data entry was made.

…

(17)(a) A practitioner described in Subsection (8)(d) may designate up to three employees to access information from the database under Subsection (8)(e).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish background check procedures to determine whether an employee designated under Subsection (8)(e)(i) should be granted access to the database.

(c) The division shall grant an employee designated under Subsection (8)(e)(i) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (8)(e)(i), to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (17)(c).

(18)(a) A person who is granted access to the database based on the fact that the person is a licensed practitioner or a mental health therapist shall be denied access to the database when the person is no longer licensed.

(b) A person who is granted access to the database based on the fact that the person is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

(19) A person who is a relative of a deceased individual is not entitled to access information from the database relating to the deceased individual based on the fact or claim that the person is:

(a) related to the deceased individual; or

(b) subrogated to the rights of the deceased individual.

R156-37-610. Controlled Substance Database--Limitations on Access to Database Information--Standards and Procedures for Identifying Individuals Requesting Information.

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsections 58-37-7.5(5)(c), (6)(b), (7)(b), and (8)(d) and (e), the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37-7.5(5).

(4) Any individual may request information in the database relating to that individual's receipt of controlled substances. An individuals may not request or receive an accounting of persons or entities that have requested or received information about the individual. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name, home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements set forth in paragraph (4)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(5) Before data is released upon oral request, a written request may be required and received.

(6) Database information may be disseminated either orally, by facsimile or by U.S. mail.

(7) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator must:

(a) show the research is an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted including a research protocol for the project and a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access only permitted by the scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access only allowed by the scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

Access and/or Disclosure Violations/Penalties

§ 58-37-7.5. Controlled substance database--Advisory committee--Pharmacy reporting requirements--Access—Penalties

…

(9) Any person who knowingly and intentionally releases any information in the database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

(10)(a) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a third degree felony.

(b) Any person who obtains or attempts to obtain information from the database for a purpose other than a purpose authorized by this section or by rule is guilty of a third degree felony.

(11)(a) Except as provided in Subsection (11)(d),a person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person or entity any information obtained from the database for any purpose other than those specified in Subsection (8). Each separate violation of this Subsection (11) is a third degree felony and is also subject to a civil penalty not to exceed $5,000.

(b) The procedure for determining a civil violation of this Subsection (11) shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(c) Civil penalties assessed under this Subsection (11) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

(d) Nothing in this Subsection (11) prohibits a person who obtains information from the database under Subsection (8)(d) or (e) from:

(i) including the information in the person's medical chart or file for access by a person authorized to review the medical chart or file; or

(ii) providing the information to a person in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

Confidentiality Provisions:

§ 58-37-7.5. Controlled substance database--Advisory committee--Pharmacy reporting requirements--Access—Penalties

…

(16)(a) Except as provided in Subsection (16)(b), data provided to, maintained in, or accessed from the database that may be identified to, or with, a particular person is not subject to discovery, subpoena, or similar compulsory process in any civil, judicial,

administrative, or legislative proceeding, nor shall any individual or organization with lawful access to the data be compelled to testify with regard to the data.

(b) The restrictions in Subsection (16)(a) do not apply to:

(i) a criminal proceeding; or

(ii) a civil, judicial, or administrative action brought to enforce the provisions of this section, Section 58-37-7.7, or Section 58-37-7.8.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

VERMONT

"Vermont Prescription Monitoring System (VPMS)"

Citation(s): VT. STAT. ANN. tit. 18 §§ 4281 to 4287 (2008)
13-140-069 VT. CODE R. §§ 1.1 to 5.2 (2009)

Substances Monitored: Schedule II, III and IV controlled substances

Access and/or Disclosure Provisions:

§ 4284. Protection and disclosure of information

…

(b) The department shall be authorized to provide data to only the following persons:

(1) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.

(2) A health care provider or dispenser who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(3) A designated representative of a board responsible for the licensure, regulation, or discipline of health care providers or dispensers pursuant to a bona fide specific investigation.

(4) A patient for whom a prescription is written, insofar as the information relates to that patient.

(5) The relevant occupational licensing or certification authority if the commissioner reasonably suspects fraudulent or illegal activity by a health care provider. The licensing or certification authority may report the data that are the evidence for the suspected fraudulent or illegal activity to a trained law enforcement officer.

(6) The commissioner of public safety, personally, if the commissioner of health personally makes the disclosure, has consulted with at least one of the patient's health care providers, and believes that the disclosure is necessary to avert a serious and imminent threat to a person or the public.

(7) Personnel or contractors, as necessary for establishing and maintaining the VPMS.

(c) A person who receives data or a report from VPMS or from the department shall not share that data or report with any other person or entity not eligible to receive that data pursuant to subsection (b) of this section. Nothing shall restrict the right of a patient to share his or her own data.

(d) The commissioner shall offer health care providers and dispensers training in the proper use of information they may receive from VPMS. Training may be provided in collaboration with professional associations representing health care providers and dispensers.

(e) A trained law enforcement officer who may receive information pursuant to this section shall not have access to VPMS except for information provided to the officer by the licensing or certification authority.

(f) The department is authorized to use information from VPMS for research and public health promotion purposes provided that data are aggregated or otherwise de-identified.

13 140 069. Prescription Monitoring System

PART III. ACCESS TO VPMS DATA

Information from the VPMS database may be disclosed only as provided in this section. Disclosures authorized by this rule shall be limited to the minimum information necessary for the purposes of 18 V.S.A. Chapter 84A.

The prescriber's DEA number shall not be disclosed to a patient or to another prescriber and shall be disclosed only to the prescriber him or herself or the prescriber's professional licensure board or the Commissioner of Public Safety consistent with the requirement that disclosures shall be limited to the minimum information necessary for the purposes of 18 V.S.A. Chapter 84A.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Section 3.1 Patient.

A patient for whom a prescription for a controlled substance is written may request information from the VPMS database relating to himself or herself. The request shall be submitted to the Department in writing on a form approved by the Department and shall include:

1. The patient's name;

2. The patient's date of birth;

3. The time period for which the information is requested;

4. The patient's telephone number, mail and street address; and

5. The patient's original signature.

The original signed form shall be delivered by mail or in person to the Department, Division of Alcohol and Drug Abuse Programs office. To receive the requested information, the patient shall appear personally and produce a valid government issued photographic proof of identity at the Department, Division of Alcohol and Drug Abuse Programs office, or at one of the Department's District Offices.

The patient may choose to share, or choose not to share, the information received from the VPMS database pursuant to this section without restriction.

Section 3.2 Health Care Provider or Dispenser Registration.

1. A health care provider or dispenser shall register with the Department to be eligible to request information relating to a bona fide current patient from the VPMS database. The registration application shall be in a format approved by the Department. The Department will issue a VPMS registration number to an eligible applicant who demonstrates he or she holds a current Vermont license issued by the applicable board of licensure.

2. A health care provider or dispenser with a current Vermont license registered with the Department may request information from the VPMS database relating to a bona fide current patient. The request shall be submitted in a format approved by the Department and shall include:

1. The patient's full name;

2. The patient's date of birth;

3. The patient's complete address;

4. Time period for which information is requested;

5. The requester's name;

6. The requester's VPMS registration number;

7. A statement certifying that the request is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;

8. A statement certifying that the requester currently holds a Vermont license issued by the applicable board of licensure; and

9. The requester's telephone number, mail and street address.

A registered health care provider or dispenser may access the VPMS database through the secure web portal to request and receive the information electronically, or may submit a written request to the Department and receive the information by secure mail or fax.

Section 3.3 Professional Licensure Boards.

A representative of a professional board that is responsible for the licensure, regulation or discipline of health care providers or dispensers, may request information from the VPMS database relating to a licensee pursuant to a bona fide specific investigation of that licensee. The request shall be submitted in writing and in a format approved by the Department, and shall include:

1. The name of the licensee;

2. The licensee's DEA number, if applicable;

3. The timeframe under investigation;

4. The requester's name;

5. The requester's telephone number, mail and street address;

6. A statement certifying that the request is pursuant to a bona fide specific investigation of the licensee; and

7. A statement certifying that the requester is duly designated by the board of licensure to make the request.

The original, signed form shall be delivered by secure mail, fax, or in person to the Department, Division of Alcohol and Drug Abuse Programs office. The Department will transmit the information by secure mail or fax.

Section 3.4 Disclosures from the VPMS Database.

Disclosures from the VPMS database pursuant to the provisions in this rule 3.4 will be in accordance with a protocol approved by the Commissioner to identify when disclosures should be made pursuant to this subsection. The protocol will be developed, and periodically reviewed and updated, in consultation with the Advisory Committee and with health care providers designated by the Commissioner with particular expertise in relevant clinical specialties including the use of controlled substances for the treatment of acute and chronic pain, palliative care, end-of-life care and the treatment for and prevention of abuse of controlled substances and will be consistent with current standards of care and practice in those clinical specialties. Disclosures from the VPMS database pursuant to subsections 1, 2 or 3 below shall occur only in accordance with the protocol and as otherwise permitted by this rule.

1. The Department may provide data to a patient and/or that person's health care provider when the VPMS database reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.

2. When the Commissioner of Health reasonably suspects that there is fraudulent or illegal activity by a health care provider or dispenser, the Department may provide data on such an instance to the appropriate licensing or certification authority. That authority may report the data that are evidence of suspected fraudulent or illegal activity to a trained law enforcement officer. The trained law enforcement officer shall not have access to the VPMS data except for information provided to the officer by the licensing or certification authority.

3. The Commissioner of Health may personally disclose data from the VPMS database to the Commissioner of Public Safety personally when the Commissioner of Health has consulted with at least one of the patient's health care providers and believes such disclosure is necessary to avert a serious and imminent threat to a person or the public.

Section 3.5 Department of Health Use of Data.

1. The Department may use the data contained in the VPMS database for health promotion purposes including the publication of aggregate, de-identified data about the extent of reportable prescription drug use in Vermont or the change in the consumption of certain controlled substances.

2. The Department may use aggregated, de-identified data in the VPMS database to evaluate the effectiveness of its drug prevention and treatment programs, and the benefits received from educational programs directed at providers and pharmacists on the use and abuse of controlled substances.

PART IV. TRAINING

Section 4.1 Designation of Training Programs.

The Department, in consultation with the Advisory Committee and one or more individuals with medical expertise relating to prescribing controlled substances and treatment of drug addiction and dependence, will periodically designate one or more training programs for law enforcement officers relating to responsible and proper use of VPMS data. The Department will maintain a list of current trained law enforcement officers qualified to receive a report from a professional licensure board as authorized by 18 V.S.A. § 4284(b)(5).

Access and/or Disclosure Violations/Penalties:

§ 4284. Protection and disclosure of information

…

(g) Knowing disclosure of transmitted data to a person not authorized by subsection (b) of this section, or obtaining information under this section not relating to a bona fide

specific investigation, shall be punishable by imprisonment for not more than one year or a fine of not more than $1,000.00, or both, in addition to any penalties under federal law.

Vt. Code R. 13 140 069

Section 5.2 Civil and Criminal Enforcement.

Any person who knowingly discloses confidential information not authorized by 18 V.S.A. § 4284(b), or obtains information under that section not relating to a bona fide specific investigation, shall be subject to imprisonment for not more than one year or a fine of not more than $1,000, or both, in addition to any penalties under state or federal law, as provided in 18 V.S.A. § 4284.

Confidentiality Provisions:

§ 4284. Protection and disclosure of information

(a) The data collected pursuant to this chapter shall be confidential, except as provided in this chapter, and shall not be subject to public records law. The department shall maintain procedures to protect patient privacy, ensure the confidentiality of patient information collected, recorded, transmitted, and maintained, and ensure that information is not disclosed to any person except as provided in this section.

Vt. Code R. 13 140 069

Section 1.6 Confidentiality.

All data submitted to the VPMS database pursuant to this rule are confidential, not subject to disclosure pursuant to public records law, and shall only be disclosed as provided in 18 V.S.A. § 4284 or this rule.

> A person who receives information from the VPMS database shall only use that information as permitted by law and shall share that information only with other persons eligible by law to receive it. There is no restriction on the right of a patient to share his or her own data received from the VPMS database.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

VIRGINIA

"Prescription Monitoring Program"

Citation(s): VA. CODE ANN. §§ 54.1-2505, -2519 to -2525, 2.2-3705.5 (West 2008)
18 VA. ADMIN. CODE §§ 76-20-10 to -60 (2008)

Substances Monitored: Schedule II, III and IV controlled substances

Access and/or Disclosure Provisions:

§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director

A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 15 of § 2.2-3705.5. Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.

B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director shall disclose the following:

1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent designated by the superintendent of the Department of State Police to conduct drug diversion investigations pursuant to § 54.1-3405.

2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health regulatory board; information relevant to a disciplinary proceeding before a health regulatory board or in any subsequent trial or appeal of an action or board order to designated employees of the Department of Health Professions; or to designated persons operating the Health Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title.

3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.

4. Information relevant to a specific investigation of a specific dispenser or specific prescriber to an agent of the United States Drug Enforcement Administration with authority to conduct drug diversion investigations.

C. In accordance with the Department's regulations and applicable federal law and regulations, the Director may, in his discretion, disclose:

1. Information in the possession of the program concerning a recipient who is over the age of 18 to that recipient.

2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of establishing the treatment history of the specific recipient when such recipient is either under care and treatment by the prescriber or the prescriber is initiating treatment of such recipient. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the prescriber from the Prescription Monitoring Program.

3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in determining the validity of a prescription in accordance with § 54.1-3303 when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the dispenser from the Prescription Monitoring Program.

4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession when such regulatory authority licenses such dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory authority.

5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services to the

Medicaid Fraud Control Unit of the Office of the Attorney General or to designated employees of the Department of Medical Assistance Services, as appropriate.

6. Information relevant to determination of the cause of death of a specific recipient to the designated employees of the Office of the Chief Medical Examiner.

7. Information for the purpose of bona fide research or education to qualified personnel; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted or redacted from such information prior to disclosure. Further, release of the information shall only be made pursuant to a written agreement between such qualified personnel and the Director in order to ensure compliance with this subdivision.

D. The Director may enter into agreements for mutual exchange of information among prescription monitoring programs in other jurisdictions, which shall only use the information for purposes allowed by this chapter.

E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the divulging of confidential records relating to investigative information.

F. Confidential information that has been received, maintained or developed by any board or disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services. However, this subsection shall not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

§ 54.1-2523.1. Criteria for indicators of misuse; Director's authority to disclose information; intervention

The Director shall develop, in consultation with an advisory panel, criteria for indicators of misuse and a method for analysis of data collected by the Prescription Monitoring Program using the criteria for indicators of misuse. Upon the development of such criteria and data analysis, the Director may, in addition to the discretionary disclosure of information pursuant to § 54.1- 2523, disclose information using the criteria that indicates potential misuse by recipients of covered substances to their specific prescribers for the purpose of intervention to prevent such misuse.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

18 VAC 76-20-50. Criteria for mandatory disclosure of information by the director.

A. In order to request disclosure of information contained in the program, an individual shall be registered with the director as an authorized agent entitled to receive reports under § 54.1-2523 B of the Code of Virginia.

1. Such request for registration shall contain an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

B. An authorized agent shall only request disclosure of information related to a specific investigation, or in the case of a request from the Health Practitioners' Intervention Program (HPIP), disclosure of information related to a specific applicant for or participant in HPIP. Requests shall be made in a format designated by the department and shall contain a case identifier number, a specified time period to be covered in the report, and the specific recipient, prescriber or dispenser for which the report is to be made.

C. The request from an authorized agent shall include an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

18 VAC 76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in a format designated by the department.

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the address on the license or delivered to the recipient at the department.

2. The prescriber for the purpose of establishing a treatment history for a patient or prospective patient, provided the request is accompanied by the prescriber's registration number with the United States Drug Enforcement Administration (DEA) and attestation that the prescriber is in compliance with patient notice requirements of 18 VAC 76-20-70. The prescriber may delegate the submission of a request for information, provided the delegation is in compliance with § 54.1-2523.2 of the Code of Virginia. The health care professionals to whom the prescriber has authorized access to information shall be registered with the program. Requests for information made by a delegated health care professional shall be made in his own name, using his own unique identifiers assigned by the program.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

5. A dispenser for the purpose of establishing a prescription history for a specific person to assist in determining the validity of a prescription, provided the request is accompanied by the dispenser's license number issued by the relevant licensing authority and an attestation that the dispenser is in compliance with patient notice requirements of 18 VAC 76-20-70.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient and/or dispenser.

D. Except as provided in subdivision B 1 of this section, the request form shall include an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

E. In order to request disclosure of information contained in the program, a designated employee of the Department of Medical Assistance Services or of the Office of the Chief Medical Examiner shall register with the director as an authorized agent entitled to receive reports under § 54.1-2523 C of the Code of Virginia.

1. Such request for registration shall include an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

Access and/or Disclosure Violations/Penalties:

§ 54.1-2525. Unlawful disclosure of information; disciplinary action authorized; penalties

A. It shall be unlawful for any person having access to the confidential information in the possession of the Program or any data or reports produced by the program to disclose such confidential information except as provided in this chapter. Any person having access to the confidential information in the possession of the program or any data or reports produced by the program who discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

B. It shall be unlawful for any person who lawfully receives confidential information from the Prescription Monitoring Program to redisclose or use such confidential information in any way other than the authorized purpose for which the request was made. Any person who lawfully receives information from the Prescription Monitoring Program and discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

C. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall also be grounds for disciplinary action by the relevant health regulatory board.

Confidentiality Provisions:

§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director

A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring program pursuant to this chapter and any

material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 15 of § 2.2-3705.5. Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

WASHINGTON

"Prescription Monitoring Program"
&
"Triplicate Prescription Form Program"

Citation(s): WASH. REV. CODE ANN. §§ 70.225.010 to -.900 (West 2008)
WASH. ADMIN. CODE §§ 246-800-101 to -150 (2008)

Substances Monitored: Schedule II through V controlled substances and any additional drugs identified by the board of pharmacy as demonstrating a potential for abuse. The Disciplinary Authority determines what drugs are monitored under the Triplicate Prescription Form Program.

Access and/or Disclosure Provisions:

70.225.040. Confidentiality of prescription information--Procedures-- Immunity when acting in good faith

…

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity;

(d) Appropriate local, state, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation involving a designated person;

(e) Authorized practitioners of the department of social and health services regarding medicaid program recipients;

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order; and

(i) Personnel of the department for purposes of administration and enforcement of this chapter or chapter 69.50 RCW.

(4) The department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients, dispensers, prescribers, and persons who received prescriptions from dispensers.

246-800-130. Distribution and retention of the triplicate prescription forms.

The triplicate prescriptions utilized pursuant to this program shall be retained as follows:

(1) The original prescription shall be provided to the patient unless the drug is dispensed or administered to the patient by the practitioner, or if an emergency prescription is issued. In instances where the drug is dispensed or administered, the provisions of WAC 246-800-140 shall apply. In the case of an emergency prescription, the provisions of WAC 246-800-150 shall apply;

(2) One copy shall be transmitted to the department. These copies shall be transmitted to the department monthly unless otherwise directed by the disciplinary authority;

(3) One copy shall be retained by the health care practitioner and shall be available for inspection by an authorized representative of the department.

(4) Any official triplicate prescription forms improperly completed, damaged or otherwise not utilized shall be accounted for by the practitioner. An explanation and accounting for the forms not properly utilized, along with any improperly completed or damaged triplicate prescriptions forms shall be returned to the department along with the other copies to be submitted pursuant to this rule.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Disclosure Violations/Penalties:

70.225.060. Violations--Penalties--Disclosure exemption for health care providers

(1) A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter or knowingly submits incorrect prescription information is subject to disciplinary action under chapter 18.130 RCW.

(2) A person authorized to have prescription monitoring information under this chapter who knowingly discloses such information in violation of this chapter is subject to civil penalty.

(3) A person authorized to have prescription monitoring information under this chapter who uses such information in a manner or for a purpose in violation of this chapter is subject to civil penalty.

(4) In accordance with chapter 70.02 RCW and federal health care information privacy requirements, any physician or pharmacist authorized to access a patient's prescription monitoring may discuss or release that information to other health care providers involved with the patient in order to provide safe and appropriate care coordination.

Confidentiality Provisions:

70.225.040. Confidentiality of prescription information--Procedures-- Immunity when acting in good faith

(1) Prescription information submitted to the department shall be confidential, in compliance with chapter 70.02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3) and (4) of this section.

(2) The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3) and (4) of this section.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

WEST VIRGINIA

"West Virginia Controlled Substances Monitoring Act"

Citation(s): W. VA. CODE §§ 60A-9-1 to -7 (West 2008)
W. VA. CODE R. §§ 15-8-1 to -7 (2008)

Substances Monitored: Schedule II, III, and IV controlled substances

Access and/or Disclosure Provisions:

§ 60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting

The information required by this article to be kept by the State Board of Pharmacy is confidential and is open to inspection only by inspectors and agents of the State Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as a member of a drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services and the Workers' Compensation Commission, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable court order or regulatory agency administrative subpoena: *Provided,* That all information released by the State Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient. The Board shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the Board of Pharmacy as required under and in accordance with the provisions of this article.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

§ 15-8-6. Central Repository; Designation; Powers and Duties.

6.1. The central repository shall create a database for the information required to be transmitted by this rule.

6.2. The central repository shall provide the Board with continuous 24-hour a day, on-line access to the database maintained by the central repository.

6.3. The central repository shall secure the information collected by the central repository and the database maintained by the central repository against access by unauthorized persons.

6.4. If the relationship between the Board and the central repository is terminated by statute, the central repository shall provide to the Board within a reasonable time, all collected information and the database maintained by the central repository.

6.5. The Board may accept a designated grant, public and private financial assistance, and licensure fees to provide funding for the central repository.

§ 15-8-7. Confidentiality.

7.1. The Board shall carry out a program to protect the confidentiality of the information received by the central repository.

7.2. The Board may disclose confidential information received by the central repository to any person who is engaged in receiving, processing, or storing the information.

7.3. The Board may release confidential information received by the central repository to the following persons:

(a) A duly authorized agent of a board in this state or another state that licenses practitioners authorized to prescribe controlled substances and is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance;

(b) members of the West Virginia state police expressly authorized by the superintendent of the West Virginia state police to have access to the information;

(c) A person with an enforceable court order or regulatory agency administrative subpoena;

(d) authorized agents of the federal drug enforcement agency;

(e) inspectors and agents of the board; and

(f) prescribing practitioners and pharmacists.

7.4. All information released by the board must be related to a specific patient or a specific individual or entity under investigation by any of the persons set forth in subsection 7.3 of this section except that practitioners who prescribe controlled substances may request specific data related to their drug enforcement administration controlled substance registration number or for the purpose of providing treatment to a patient.

7.5. All access to the data collected by the central repository shall be limited to regular business hours of the Board office unless an individual authorized to receive the information proves that an immediate danger to the public exists and immediate access is necessary to prevent further harm.

Access and/or Disclosure Violations/Penalties:

§ 60A-9-7. Criminal penalties

(a) Any person who is required to submit information to the state board of pharmacy pursuant to the provisions of this article who fails to do so as directed by the board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

(b) Any person who is required to submit information to the state board of pharmacy pursuant to the provisions of this article who knowingly and willfully refuses to submit the information required by this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than six months or fined not more than one thousand dollars, or both.

(c) Any person who is required by the provisions of this article to submit information to the state board of pharmacy who knowingly submits thereto information known to that person to be false or fraudulent shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than five thousand dollars, or both.

(d) Any person granted access to the information required by the provisions of this article to be maintained by the state board of pharmacy, who shall willfully disclose the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

Confidentiality Provisions:

See §§ 60A-9-5, 15-8-7 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

WYOMING

"Controlled Substances Prescription Tracking Program"

Citation(s): WYO. STAT. ANN. § 35-7-1060 (2008)
WY. Bd. Of Pharmacy, Rules and Regs., ch. 8, §§ 1-7 (2008)

Substances Monitored: Schedule II, III, and IV controlled substances, and non-controlled prescription drugs containing tramadol and carisprodol.

Access and/or Disclosure Provisions:

§ 35-7-1060. Controlled substances prescription tracking program

…

(c) The tracking program shall not be used to infringe on the legal use of a controlled substance. Information obtained through the controlled substance prescription tracking program is confidential and may not be released and is not admissible in any judicial or administrative proceeding, except as follows:

(i) The board may release information to practitioners and pharmacists when the release of the information may be of assistance in preventing or avoiding inappropriate use of controlled substances;

(ii) The board shall report any information that it reasonably suspects may relate to fraudulent or illegal activity to the appropriate law enforcement agency and the relevant occupational licensing board;

(iii) The board may release information to the patient to whom the information pertains or his agent or, if the patient is a minor, to his parents or guardian;

(iv) The board may release information that does not identify individual patients, practitioners, pharmacists or pharmacies, for educational, research or public information purposes; and

(v) Subject to the rules of evidence, information obtained from the program is admissible in a criminal proceeding or an administrative proceeding involving professional licensing.

Rules and Regs., ch. 8, §§ 3, 4, 6.

Section 3. Solicited Patient Profiles.

a. Occupational licensing boards may request licensee profiles from the board provided the following are met:

i. All requests must be on a form provided by the board and include the name and license number of the licensee;

ii. The purpose of the request, the date range requested, and the specific reasons for this request;

iii. The signature of the authorized agent and mailing address for the occupational licensing board;

iv. The request shall be mailed or faxed to the board's office; and

v. No licensee profile will be generated by the board until the request is received, and no licensee profile will be sent to an occupational licensing board unless those requirements identified in W.S. §35-7-1060 (c)(ii) have been met. All profiles generated by the board will be mailed to the occupational licensing board, and marked "confidential, to be opened by addressee only".

b. Pharmacists and practitioners are under no obligation to, but may request patient profiles from the board provided the following conditions are met:

i. All requests must be submitted on a form provided by the board and must be mailed or faxed to the board's office;

ii. All requests must be signed by the pharmacist or practitioner requesting the information and include the business name/address of the pharmacist or practitioner;

iii. All requests shall include the patient's name, date of birth, purpose of the request, and the date range for the profile;

iv. A statement indicating a pharmacist/patient or practitioner/patient relationship exists; and

v. All profiles generated by the board shall be faxed or mailed to the pharmacist or practitioner at their business address, and if mailed marked "confidential, to be opened by addressee only".

c. Patients, their authorized agent, or in the case of a minor, the minor's parent or guardian may request a copy of the patient's profile from the board's office provided the following are met:

i. All requests shall be made in person at the board's office. The patient requesting the profile or an authorized agent of the patient or parent's or guardians of minors requesting a profile must have proof of identification acceptable to the board;

ii. Any person making a request for a profile shall complete a form provided by the board. Any profile generated by the board will be available at the board's office, the same day of the request.

Section 4. Unsolicited Patient Profiles

The board may generate patient profiles based on information showing use of controlled substances, which is in excess of established parameters. Profiles generated will be mailed to each pharmacy and practitioner where the patient was seen. A letter of explanation will accompany each profile.

Section 6. Statistical Profiles

The board may generate statistical profiles upon request, provided no patient/practitioner/pharmacy specific information is included. The board shall charge a fee of $25.00 per profile generated for any government agency and $500.00 per profile for all others.

Access and/or Disclosure Violations/Penalties:

None found – please reference the note at the beginning of this compilation

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Confidentiality Provisions:

See § 35-7-1060 above