Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

ALABAMA

"Controlled Substances Prescription Database"

Citation(s): ALA. CODE §§ 20-2-210 to -220 (2006)

Schedules Monitored: Class II through 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 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 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.

(4) 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.

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

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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.

(b) Nothing in this section shall apply to records created or maintained in the regular course of business of a pharmacy, medical, dental, optometric, or veterinary practitioner, or other entity covered by this article and all information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because such information contained in those records was reported to the controlled substances prescription database in accordance with the provisions of this article.

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 2007)
CAL. CIV. CODE § 56.36 (West 2007)
CAL. CODE REGS. tit. 16, § 1715.5 (2007)

Schedules Monitored: Schedule II and Schedule III* controlled substances (*Note: The reporting of Schedule III controlled substances is contingent upon the availability of funds from the Department of Justice).

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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 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.

(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.

(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.

Confidentiality Provisions:

See § 11165 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

COLORADO

"Electronic Prescription Drug Monitoring Program"

Citation(s): COLO. REV. STAT. ANN. §§ 12-22-701 to 710 (West 2007)
COLO. REV. STAT. ANN. §§ 2-3-1203 (West 2007)
COLO. REV. STAT. ANN. §§ 24-34-104 (West 2007)

Schedules Monitored: Schedule II through 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

Citation(s): CONN. GEN. STAT. ANN. §§ 21a-254 (West 2007) 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.

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 (Michie 2006)
HAW. ADMIN. RULES §§ 23-200-2, -17 (2007)

Schedules 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.……

(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, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

IDAHO

"Prescription Tracking Program"

Citation(s): IDAHO CODE § 37-2726 (Michie 2007)
IDAHO CODE § 37-2730A (Michie 2007)
IDAHO ADMIN. CODE 27.01.01.469 (2007)

Schedules Monitored: Schedule II through IV controlled substances

Access and/or Disclosure Provisions:

§ 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:

This information was not contained within the purview of the statutes and regulations cited within this document.

Confidentiality Provisions:

§ 37-2730A Prescription tracking program.

See § 37-2730A above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

ILLINOIS

"Schedule II Controlled Substance Prescription Monitoring Program"

Citation(s): 720 ILL. COMP. STAT. ANN. 570/316 to -320 (West 2007)
ILL. ADMIN. CODE tit. 77, § 2080.10 to -.30, -..50, -.70, -..90, -.100, -.190 (2007)
26 Ill. Reg. 3975 (2002)

Schedules Monitored: Schedule II controlled substances

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 continuing 24 hour a day on-line access to the database maintained by the central repository. The Department of Professional Regulation must provide the Department with electronic access to the license information of a prescriber or dispenser. The Department of Professional Regulation may charge a fee for this access not to exceed the actual cost of furnishing the information.

570/318. Confidentiality of information

(a) Information received by the central repository under Section 316 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 to receive information of the type requested for the purpose of investigations involving controlled substances;
(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 to the Department that:

(1) the applicant has reason to believe that a violation under any State or federal law that involves a Schedule II 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 release 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; or
(3) a law enforcement officer who is:
(A) authorized by the Department of State Police to receive the type of information released; and
(B) approved by the Department 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 Schedule II controlled substance 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 Schedule II controlled substance.
(2) A criminal proceeding or a proceeding in juvenile court that involves a Schedule II controlled substance.

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

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:

This information was not contained within the purview of the statutes and regulations cited within this document.

Confidentiality Provisions:

See 570/318 above.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

INDIANA

"Central Repository for Controlled Substance Data" / "Electronic Prescription Monitoring Program"

Citation(s): IND. CODE ANN. §§ 35-48-7-1 to -14 (West 2007)
IND. ADMIN. CODE tit. 858, r. 2-1-1 to -4 (2007)

Schedules Monitored: Schedule II controlled substances per statutory provisions
Schedule II through V controlled substances per the administrative code provisions

Access and/or Disclosure Provisions:

§ 35-48-7-11 Confidentiality

Sec. 11. (a) Information received by the central repository under section 8 of this chapter is confidential.

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

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

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

(1) A member of the board, the 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:

(A) authorized by the state police department to receive information of the type requested;
(B) approved by the advisory committee to receive information of the type requested; 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 advisory committee releases confidential information under subsection (d), the applicant must demonstrate to the advisory committee 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 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.

(g) The information described in subsection (f) may not be released until it has been reviewed by a member of the advisory committee who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data and until that member 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 (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 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.

(i) The advisory committee may compile statistical reports from the information described in subsection (a). 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 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 through 124.558 (2007)

Schedules 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 prescriber.

Access and/or Disclosure Provisions:

§ 35-48-7-14 124.553. Information access

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

a. (1) A pharmacist or prescriber 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 prescriber. Neither a pharmacist nor a prescriber may delegate program information access to another individual.

(2) Notwithstanding subparagraph (1), a prescriber 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 prescriber 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 not a public record pursuant to chapter 22, 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 prescriber to obtain information about a patient from the program. A pharmacist or prescriber 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 prescriber did or did not seek or obtain or use information from the program. A pharmacist or prescriber 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 prescriber 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

Access and/or Disclosure Violations/Penalties:

§ 124.558. Prohibited acts—penalties

1. Failure to comply with requirements. A pharmacist, pharmacy, or prescriber 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 prescriber 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.

Confidentiality Provisions:

§ 35-48-7-14 124.553. 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 not a public record pursuant to chapter 22, 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.

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 (Banks-Baldwin 2007)
KY. REV. STAT. ANN. § 315.121 (Banks-Baldwin 2007)
902 KY. ADMIN. REGS. 55:110 (2007)

Schedules Monitored: Schedules II through 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; or

(g) 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 that 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 paragraph (a) of subsection (6) of this section, or with a law enforcement officer designated in paragraph (b) of subsection (6) 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 or pharmacist intern:

(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; 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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

LOUISIANA

"Prescription Monitoring Program Act"

Citation(s): LA. REV. STAT. ANN. § 40:975 (West 2006)
LA. REV. STAT. ANN. §§ 40:1001 through 40:1014 (West 2006)

Schedules Monitored: The Advisory Council established by § 40:1005 will determine which substances should be monitored.

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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.

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

§ 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.

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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.

…

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"

Citation(s): ME. REV. STAT. ANN. tit. 22 §§ 7245 to -52 (West 2006)
CODE ME. R. 14-118 ch. 11 §§ 1 to 9 (2007)

Schedules Monitored: Schedules II through IV controlled substances

Access and/or Disclosure Provisions:

§ 7250. Access to prescription monitoring information and confidentiality

. . .

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; and

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

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or DisclosureViolations/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.

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.

. . .

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

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

MASSACHUSETTS

"Electronic Data Transmission System"

Relevant Citation(s): MASS. GEN. LAWS. ANN. ch. 94C, §§ t to -48 (West 2007)
MASS. REGS. CODE tit. 105, § 700.006 (2007)
MASS. REGS. CODE tit. 247, § 5.04 (2007)

Schedules 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 700.000 shall not be disseminated 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 their 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 to 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. an individual who is the data subject that has access to this data pursuant to a statute or regulation of the Commonwealth.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Access and/or Violations/Penalties:

This information was not contained within the purview of the statutes and regulations cited within this document.

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 700.000 shall not be disseminated 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 their 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 to 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. an individual who is the data subject that has access to this data pursuant to a statute or regulation of the Commonwealth.

(b) All requests for information collected pursuant to 105 CMR 700.006(4)(a)2. must be in writing. All such information generated shall be reviewed and approved by the Commissioner and the Medical Review Group prior to release by the Department.

In the event that the Department, through computer analysis and review of the records generated by the prescription monitoring program, finds patterns of prescribing which raise questions regarding the behavior of patients, pharmacists or practitioners, the Department shall provide such information to the appropriate Medical Review Group for further review or referral, as provided for in 105 CMR 700.006(J)(4)(a)1. and 2.

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 (West 2007)
MICH. COMP. LAWS. ANN. § 333.7333a (West 2007)

Schedules Monitored: Schedules 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:

This information was not contained within the purview of the statutes and regulations cited within this document.

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

MISSISSIPPI

Citation(s): MISS. CODE ANN. § 73-21-127 (2006) 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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

NEVADA

Citation(s): NEV. Rev. Stat. § 453.1545 (2005)
NEV. ADMIN. CODE ch. 639, § 926 (2007)

Schedules Monitored: Schedule II through IV controlled substances

Access and/or Disclosure Provisions:

§ 453.1545. Board and division required to develop computerized program to track prescriptions for controlled substances; 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.

2. 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.

3. 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.

4. Information obtained from the program relating to a practitioner or a patient is confidential and, except as otherwise provided by this section, 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.

Access and/or Disclosure Violations/Penalties:

This information was not contained within the purview of the statutes and regulations cited within this document.

Confidentiality Provisions:

See § 453.1545 above.

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 (2007)
N.M. ADMIN. CODE tit. 16, §§ 19.29.1 to 19.29.13 (2007)

Schedules Monitored: Schedule II through 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.

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 6.19.29.9 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 (2007)
N.Y. COMP. CODES R. & REGS. tit. 10, §§ 80.67 to -.69, -.71 to -.73, -.108, -.123 (2006)

Schedules Monitored: Schedule II and certain other substances that are specifically named in N.Y. COMP. CODES R. & REGS. tit. 10, § 80.67 (2005).

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

§ 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, [FN1] 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. Wilful violation of health laws

1. A person who wilfully 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. A person who wilfully 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.

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 (2007)

Schedules Monitored: Schedules II through 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.

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

Citation(s): N.D. CENT. CODE §§ 19-03.5-01 through -10 (2005) – *Please note that these sections have not yet been added into the state's code.*

Schedules Monitored: Schedules I through 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 prescribed 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 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.

§ 12.1-13-01 Disclosure of confidential information provided to government..

A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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 4729.84 (West 2007)
OHIO ADMIN. CODE §§ 4729-37-02 to 4729-37-10 (2007)

Schedules Monitored: Schedule II through Schedule V controlled substances

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.

…

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 2-309H (2007)

Schedules Monitored: Schedule II through 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.

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.

§ 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 and/or Disclosure Violations/Penalties:

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

. . .

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

PENNSYLVANIA

Citation(s): 18 PA. CONS. STAT. ANN. § 9102 (West 2006)
28 PA. CODE § 25.131 (2007)

Schedules 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.*Please contact the PA Office of the Attorney General for further information.

§ 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:

This information was not contained within the purview of the statutes and regulations cited within this document.

Confidentiality Provisions:

This information was not contained within the purview of the statutes and regulations cited within this document.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

RHODE ISLAND

Citation(s): R.I. GEN. LAWS § 21-28-3.18 (2006)
R.I. CODE R. 14 060 020 (2007)

Schedules 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:

This information was not contained within the purview of the statutes and regulations cited within this document.

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 through 44-53-1680 (Law. Co-op. 2006)

Schedules Monitored: Schedules 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).

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.

…

(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, 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 (2006)

Schedules 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:

§ 53-10-304. Controlled substance database; administration; purpose; data reporting

. . .

(c) The purpose of the database is to assist in research, statistical analysis and the education of health care practitioners concerning patients who, by virtue of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse, by collecting and maintaining data as described in this part regarding all controlled substances in Schedules II, III and IV dispensed in this state, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse.

§ 53-10-305. Dispenser information; electronic transmission

. . .

(c) The board of pharmacy shall maintain the database in an electronic file or by other means established by the committee in such a manner as not to infringe on the legal use of controlled substances, and in such a manner as to facilitate use of the database for identification of:

(1) Prescribing practices and patterns of prescribing and dispensing controlled substances; and

(2) Individuals, facilities or entities receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a pharmacy in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance, or by means of forged or otherwise false or altered prescriptions.

§ 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 the provisions of 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 the provisions of subsection (b):

(1) Personnel of the committee specifically assigned to conduct analysis or research;

(2) Authorized committee, board, or departments of health and commerce and insurance 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 actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare of the following entities:

(A) The office of inspector general;
(B) The Medicaid fraud control unit; and
(C) The Tennessee bureau of investigation.

(b) The district attorney may apply for an order of a circuit or criminal court directed to the committee to disclose specific information to the district attorney 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 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)(3) or (4) shall be sent under the auspices of the committee, but shall be sent on the letterhead and under the authority of the licensing board that regulates the licensee who is the recipient and signed by the member of the committee representing that licensing board.

(d) Any licensed practitioner or pharmacist receiving information pursuant to subdivisions (a)(1) or (2) 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.

§ 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 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

Citation(s): TEX. HEALTH & SAFETY CODE ANN. §§ 481.075 to -.0761, -.127, -.128 (2007)
37 TEX. ADMIN. CODE §§ 13.71 to -.86 (West 2007)

Schedules Monitored: Schedule II 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 481.075 except:

(1) an investigator for the Texas State Board of Medical Examiners, 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, or podiatrist and is inquiring about the recent Schedule II 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 Section 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 State Board of Medical Examiners 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.

§ 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 may 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 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 (2006)
UTAH ADMIN. CODE R. 156-37-609 to -610 (2007)

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

Access and/or Disclosure Provisions:

§ 58-37-7.5. Controlled substance database--Advisory committee--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, and in accordance with the limitations stated 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:
(i) the information relates specifically to a current patient of the practitioner, to whom the practitioner is prescribing or considering prescribing any controlled substance;
(ii) the information 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 controlled substances; or
(iii) the information relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;
(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) federal, state, and local law enforcement authorities engaged as a specified duty of their employment in enforcing laws:
(i) regulating controlled substances; ~~and~~ or
(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; and
(g) 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.

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 Subsection 58-37-7.5(7)(b), persons may request information from the database either orally or in writing.

(4) The manager of the database may release information upon oral request only if the identity of the person is verified. Identity of a practitioner may be made by use of a DEA number or other verifiable, confidential numbers provided by the division or other government agencies to practitioners.

(5) Any individual may request information in the database relating to that individual's receipt of controlled substances. 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 (5)(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;

(6) Before data is released upon oral request, a written request may be required and received.

(7) Database information may be disseminated either orally, by facsimile or by U.S. mail.

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) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a third degree felony.

(11)(a) 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).

Confidentiality Provisions:

This information was not contained within the purview of the statutes and regulations cited within this document.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

VERMONT

"Vermont Prescription Monitoring System"

Citation(s): VT. STAT. ANN. tit. 18 §§ 4281 to 4287 (2006)

Schedules 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.

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.

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

VIRGINIA

"Prescription Monitoring Program"

Citation(s): VA. CODE ANN. §§ 54.1-2519 to -2525, -2505, 2.2-3705.5 (Michie 2006)
18 VA. ADMIN. CODE §§ 76-20-10 to -60 (West 2007)

Schedules 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

. . .

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' Intervention 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, and the prescriber has obtained written consent to such disclosure from the recipient.

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. Dispensers shall provide notice to patients, in a manner specified by the Director in regulation, that such information may be requested by them 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. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the divulging of confidential records relating to investigative information.

E. 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.

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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 of having obtained written consent for such disclosure from the recipient. Such written consent shall be maintained as part of the patient record.

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 in Virginia and an attestation that the dispenser is in compliance with patient notice requirements of 18 VAC 76-20- 70. If the dispensing occurs in a pharmacy located outside Virginia, the request shall include the registration number issued by the Virginia Board of Pharmacy for a nonresident pharmacy.

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

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

"Triplicate Prescription Form Program"

Citation(s): WASH. REV. CODE ANN. § 69.50.311 (West 2007)
WASH. ADMIN. CODE §§ 246-800-101 to -150 (2007)

Schedules Monitored: As Determined by the Disciplinary Authority

Access and/or Disclosure Provisions:

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 and/or Disclosure Violations/Penalties:

This information was not contained within the purview of the statutes and regulations cited within this document.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Confidentiality Provisions:

This information was not contained within the purview of the statutes and regulations cited within this document.

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 (2007)
W. VA. CODE ST. R. §§ 15-8-1 to -7 (2005)

Schedules 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 (Michie 2007)
WY Bd. of Pharmacy, Rules and Regs., ch. 8, §§ 1-6. (2005)

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

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.

Access, Disclosure and Confidentiality Provisions of State Prescription Monitoring Programs

Rules and Regs., ch. 8, §§ 3, 4, 6.

Section 3. Solicited Patient Profiles

a. Occupational licensing boards may request practitioner 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 practitioner;
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 practitioner profile will be generated by the board until the request is received, and no practitioner 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 from 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 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:

This information was not contained within the purview of the statutes and regulations cited within this document.

Confidentiality Provisions:

This information was not contained within the purview of the statutes and regulations cited within this document.