

PRESCRIPTION DRUG MONITORING PROGRAMS: A BRIEF OVERVIEW
NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS (NAMSDL)
AUGUST 17, 2010

- **TOOL:** Prescription Drug Monitoring Programs are a major tool being used by states to address prescription drug abuse, addiction and diversion. Such programs are commonly referred to as PMPs.
- **DESCRIPTION:** A PMP is a statewide electronic database which collects designated data on substances dispensed in the state. The PMP is housed by a specified statewide regulatory, administrative or law enforcement agency. The housing agency distributes data from the database to individuals who are authorized under state law to receive the information for purposes of their profession.
- **GOALS/OBJECTIVES:** A PMP may serve multiple purposes. These include: (1) to support access to legitimate medical use of controlled substances, (2) to help identify and deter or prevent drug abuse and diversion, (3) to facilitate and encourage the identification, intervention with and treatment of persons addicted to prescription drugs, (4) to help inform public health initiatives through outlining of use and abuse trends and (5) to help educate individuals about PMPs and the use, abuse and diversion of and addiction to prescription drugs.
- **STATES WITH PMP LAWS:** There are currently **43 states with laws** that authorize the establishment and operation of a PMP: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.
- **OPERATIONAL:** Of those 43 states, **34 are currently operational.** For purposes of this document, “operational” means thirty-four states are collecting data and distributing data to one or more authorized users of the data. For fiscal reasons, Washington state officials have temporarily suspended the operations of the state’s PMP.

States with operational PMPS: Alabama, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wyoming.

- **HOUSING ENTITIES:** State PMPs are housed in (1) a health or human services department, single state authority on drugs and alcohol or board of pharmacy, (2) a law enforcement agency, (3) a professional licensing agency or (4) a consumer protection agency.

Of the 43 state PMP laws, approximately 77% authorize a state health or human services department, a single state authority on drugs and alcohol or a board of pharmacy to establish and develop a prescription monitoring system. A state health or human services department often delegates the operational responsibility for the PMP to an underlying pharmacy board or unit or a single state authority on drugs and alcohol.

Two noted exceptions to the themes above are New York and Nevada. The Bureau of Narcotic Enforcement within the state Department of Health operates the state PMP. Nevada’s law mandated that the Board of Pharmacy and the Investigation Division of the Department of Public Safety cooperatively establish the state’s PMP. The Board of Pharmacy bears significant responsibility for administration of the system.

Breakdown of Housing Entities

- 33 – **Health Departments, Single State Authority or Boards of Pharmacy:**
Alabama, Alaska, Arizona, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming
- 6 - **Law Enforcement Agencies:**
California, Hawaii, New Jersey, Oklahoma, Pennsylvania, Texas
- 1 - **Board of Pharmacy and Investigation Division of the Department of Public Safety:**
Nevada
- 2- **Professional Licensing:**
Delaware, Utah
- 1- **Consumer Protection:**
Connecticut

- **SUBSTANCES MONITORED:** State PMPs monitor designated schedules of controlled substances. The specific schedules allowed to be monitored are identified in state law and regulation. Additionally, some state PMPs are

authorized to monitor noncontrolled or nonscheduled substances or drugs of concern.

One state is allowed to monitor only **Schedule II substances**: Pennsylvania.

Two states are permitted to monitor only **Schedule II and III** substances: Rhode Island and Wisconsin.

Forty states are permitted to monitor **Schedule II, III and IV** substances: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming.

PLEASE NOTE: Iowa's PMP monitors Schedule III and IV substances that the advisory council and the Board of Pharmacy determine can be addictive or fatal if not taken under the proper care or direction of a prescribing practitioner.

Twenty-three states also have the authority to monitor **Schedule V** substances: Alabama, Alaska, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Utah, Washington.

PLEASE NOTE: Oklahoma's PMP statute excludes from monitoring those Schedule V substances containing any detectable quantity of pseudoephedrine.

Tennessee's law authorizes the monitoring of Schedule V substances which have been identified by the controlled substances database advisory committee as demonstrating a potential for abuse.

Twelve states are allowed to monitor **noncontrolled or nonscheduled substances**. Delaware, Kansas and Louisiana PMPs may monitor drugs of concern. PMPs in Washington state and Wisconsin can monitor additional drugs identified by the Board of Pharmacy as demonstrating a potential for abuse. Massachusetts's PMP can monitor additional drugs determined by the Department of Public Health to carry a bona fide potential for abuse.

Mississippi's PMP may monitor specified noncontrolled substances authorized by the Board of Pharmacy. Idaho's Board of Pharmacy may by rule require the submission of data on prescriptions in addition to those for controlled substances. New Jersey's PMP may include prescriptions for a drug that is not a controlled dangerous substance if the Director of the Division of Consumer Affairs adopts such a regulation.

North Dakota and Wyoming officials have permission to monitor noncontrolled or nonscheduled substances or drugs containing tramadol and carisoprodol. Ohio's PMP has authority to monitor dangerous drugs the Board of Pharmacy includes in the database which currently are those drugs containing tramadol and carisoprodol.

- **AUTHORIZED REQUESTERS AND USERS OF DATA:** The categories of individuals often identified as authorized requesters and users of PMP data include:
 1. Licensed physicians/practitioners with authority to prescribe substances
 2. Pharmacists with authority to dispense substances
 3. Designated federal, state and local law enforcement
 4. Representatives of professional or occupational licensing, certification or regulatory boards, commission or agencies
 5. Individuals whose receipt of prescriptions has been included in the PMP database

States sometime add categories of authorized users of PMP data as is appropriate for that jurisdiction. For example, states using an outside vendor to collect data will allow appropriate personnel of that vendor to access the PMP data. Other states allow officials working on Medicaid program or fraud issues to use PMP information.

Another example is a state that uses an advisory group to work with the statewide entity housing and operating the PMP. That state will permit advisory committee members to access the information. There are **eighteen** states that legislatively mandate the use of an **advisory committee or council, task force or working group** in the implementation and operation of a monitoring system. These jurisdictions are: Alabama, Arizona, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, North Dakota, Oregon, South Dakota, Tennessee, Vermont and Virginia. Of these 18 states, seven (7) have advisory bodies comprised solely of health professionals: Alabama, Illinois, Iowa, Massachusetts, Minnesota, Oregon and Tennessee.

Some states mandate that a PMP consult with other agencies or professionals without the formalized structure of a committee or council. For example, in Oklahoma, the PMP officials must seek the counsel of several health boards and the veterinary medical association in developing criteria for exception reports (data indicating dispensation outside expected norms for a particular specialty or field of health care, for a particular location, or for a recipient).

Another example is Nevada. The state's PMP must be administered by the Board of Pharmacy (Board), Investigation Division of the Department of Public Safety (Division), the Health Division of the Department of Health and Human Services,

various practitioners, representatives of professional associations for practitioners, representatives of occupational licensing boards and prosecuting attorneys selected by the Board and Division.

- **FAILURE TO ACCESS OR REQUIREMENTS TO ACCESS DATA**

Licensed prescribers are often encouraged to receive PMP data to assist in the treatment of their patients. However, **nineteen** states' PMP laws explicitly say that practitioners have no duty to access the information: Alabama, Alaska, Arizona, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, West Virginia, Wisconsin and Wyoming.

All but Iowa and Indiana statutes include dispensers within their immunity provisions.

Nevada and Delaware, in contrast, mandate that in certain circumstances a practitioner must review PMP data to assess whether a prescription is medically necessary.

Specifically, Nev. Rev. Stat. §639.23507 states that:

“A practitioner shall, before he writes a prescription for a controlled substance listed in schedule II, III or IV for a patient, obtain a patient utilization report regarding the patient for the preceding 12 months from the computerized program established by the Board and the Investigation Division of the Department of Public Safety pursuant to NRS 453.1545 if the practitioner has a reasonable belief that the patient may be seeking the controlled substance, in whole or in part, for any reason other than the treatment of an existing medical condition and:

1. The patient is a new patient of the practitioner; or
2. The patient has not received any prescription for a controlled substance from the practitioner in the preceding 12 months.”

Delaware S.B. 235(d) passed in 2010 states that:

“A prescriber, or other person(s) authorized by the prescriber, shall obtain, before writing a prescription for a controlled substance listed in schedule II, III, IV or V for a patient, a patient utilization report regarding the patient for the preceding 12 months from the computerized program established by the Office of Controlled Substances when the prescriber has a reasonable belief that the patient may be seeking the controlled substance, in whole or in part, for any reason other than the treatment of an existing medical condition. The prescriber shall review the patient utilization report to assess whether the prescription for the controlled

substance is necessary.” (S.B. 235, 145th General Assembly, Reg. Sess. (De. 2010)

Even though Utah’s prescribers are not required to access the PMP information, the state in 2010 mandated that they must register to use the database. Additionally, they must take a tutorial and pass a test relating to the PMP database and the prescribing of a controlled substance. Veterinarians are exempt from the requirements.

- **CONFIDENTIALITY & PRIVACY PROTECTIONS**

State PMP laws often incorporate specific language designed to protect confidentiality and privacy rights related to PMP data. Common statutory safeguards include:

1. Exempting PMP data from public records or open records laws. Concomitantly, the law may state that the PMP information is confidential or protected health information.
2. Carefully specifying who is allowed to access the PMP, under what circumstances the information may be accessed or what criteria must be met for access, and for what purposes the lawfully accessed data may be used.
3. Explicitly requiring that the statewide agency operating the PMP comply with all relevant state and federal privacy and confidentiality laws. Additionally, some states also require that the agency develop procedures and policies which protect the confidentiality of the information.
4. Penalizing the unlawful access and/or the unlawful disclosure of PMP information.

States sometimes institute a data purging requirement. Fifteen (15) state PMP laws require removal of information from the database no later than a designated number of years after the collection of the data. These states are: AK, FL, HI, IL, IA, KS, KY, ME, NM, NY, NC, OR, OH, TX and VT. The range of years specified in PMP authorizing laws varies significantly:

1 year	Texas, Minnesota
2 years	Alaska, Florida, Illinois, Ohio
3 years	Hawaii, Oregon
4 years	Iowa
5 years	Kansas, New York
6 years	Maine, North Carolina, Vermont

In Kentucky, the PMP administering agency, the Cabinet for Health and Family Services, determines the number of years after which data must be removed. Even if a PMP law is silent on the issue, a purging requirement in another statute may be deemed applicable.

Florida, Kansas and Ohio allow retention of PMP information in certain circumstances. Florida's law permits prescription monitoring information to be maintained if it is pertinent to an ongoing health care or an active law enforcement investigation or prosecution. Similarly, Kansas and Ohio allow retention of specific information if a law enforcement agency or an entity charged with licensure, certification or administrative oversight of prescribers has submitted a written request in accordance with procedures adopted by the PMP agencies in those states. Kansas also allows such a request to be submitted by an entity with administrative oversight of dispensers.

State PMP officials implement their statutory obligations regarding privacy and confidentiality by developing precise procedures for the submission of information requests and the corresponding program response. The procedures may vary in accordance with the particular parameters applicable to a category of authorized users.