

# NAMSDL



**National Alliance for Model State Drug Laws**

## **STATES THAT PROVIDE PMP DATABASE INFORMATION TO MEDICARE, MEDICAID OR STATE HEALTH INSURANCE PROGRAMS**

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## Arizona

Arizona Revised Statutes Annotated (2012)

Title 36. Public Health and Safety

Chapter 28. Controlled Substances Prescription Monitoring Program

Article 1. General Provisions

§ 36-2604. Use and release of confidential information

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

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

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

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

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

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

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

**5. The Arizona health care cost containment system administration regarding persons who are receiving services pursuant to chapter 29 of this title. Except as required pursuant to subsection B of this section, the board shall provide this information only if the**

**administration states in writing that the information is necessary for an open investigation or complaint.**

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

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

## **Delaware**

West's Delaware Code Annotated (2012)  
Title 16. Health and Safety  
Part IV. Food and Drugs  
Chapter 47. Uniform Controlled Substances Act  
Subchapter VII. Miscellaneous

### § 4798. The Delaware Prescription Monitoring Program

<Text of section effective upon the availability of appropriations, or of other adequate funding to implement and maintain the Prescription Monitoring Program. See Historical and Statutory Notes below.>

(a) It is the intent of the General Assembly that the Delaware Prescription Monitoring Act established pursuant to this section serves as a means to promote public health and welfare and to detect the illegal use of controlled substances. The Delaware Prescription Monitoring Act shall have the dual purpose of reducing misuse and diversion of controlled substances in the State while promoting improved professional practice and patient care.

(b) Definitions.-

(1) “Administer” or “administration” means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) “Controlled substance” means any substance or drug defined, enumerated or included in this chapter and Title 21, Code of Federal Regulations.

(3) “Dispense” or “dispensing” means the interpretation, evaluation, and implementation of a prescription drug or, including the preparation and delivery of a drug to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(4) “Dispenser” means a person authorized by this State to dispense or distribute to the ultimate user any controlled substance or drug monitored by the program, but shall not include any of the following: a licensed health care facility pharmacy that dispenses or distributes any controlled substance or drug monitored by the program for the purposes of inpatient care, emergency department care for the immediate use of a controlled substance or when dispensing up to a 72-hour supply of a controlled substance or a drug of concern monitored by the program at the time of discharge from such a facility.

(5) “Distribute” or “distribution” means the delivery of a drug other than by administering or dispensing.

(6) “Drug” means any of the following:

- a. Any substance recognized as a drug in the official compendium, or supplement thereto, designated by the Office of Controlled Substances for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans.
- b. Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or pain in humans.
- c. Any substance other than food intended to affect the structure or any function of the body of humans.

(7) “Drugs of concern” means drugs other than controlled substances as defined by rule which demonstrate a potential for abuse or diversion.

(8) “Patient” means the person who is the ultimate user of a controlled substance or drug monitored by the program for whom a prescription is issued and for whom a controlled substance or drug is dispensed.

(9) “Prescriber” means a licensed health care professional with the authority to write and issue prescriptions, except it shall not include:

- a. A prescriber or other authorized person who administers such controlled substance or drug upon the lawful order of a prescriber.
- b. A prescriber or other authorized person who, in providing emergency patient care in a healthcare facility, causes the administration of a controlled substance for immediate relief of symptoms arising from an acute condition.
- c. A prescriber or other authorized person who prescribes up to a 72-hour supply of a controlled substance for on call services or emergency care.
- d. A veterinarian who prescribes for the purpose of providing veterinary services.

(10) “Prescription monitoring information” means data submitted to and maintained by the prescription monitoring program established under this section.

(11) “Prescription Monitoring Program” or “PMP” means the electronic program established by this section.

(c) The Office of Controlled Substances shall establish and maintain a PMP program to monitor the prescribing and dispensing of all Schedule II, III, IV and V controlled substances by prescribers in this State, and to research the prescribing and dispensing of drugs of concern. The

PMP shall not interfere with the legal use of a controlled substance or drug of concern. The PMP shall be:

(1) Used to provide information to prescribers, dispensers, and patients to help avoid the illegal use of controlled substances;

(2) Used to assist law enforcement to investigate illegal activity related to the prescribing, dispensing and consumption of controlled substances or drugs of concern; and

(3) Designed to minimize inconvenience to patients and prescribing medical practitioners while effectuating the collection and storage of prescription monitoring information.

(d) A dispenser shall submit the required information regarding each prescription dispensed for a controlled substance, in accordance with the transmission methods and frequency established by regulation issued by the Office of Controlled Substances. When needed for bona fide research purposes and in accordance with applicable regulation, the Office of Controlled Substances may require a dispenser to submit the required information regarding each prescription dispensed for a drug of concern, but in no event should dispensers be required to submit such information any more frequently than that required for controlled substances. The following information shall be submitted for each prescription:

(1) Pharmacy name;

(2) Dispenser DEA registration number;

(3) Date drug was dispensed;

(4) Prescription number;

(5) Whether prescription is new or a refill;

(6) NDC code for drug dispensed;

(7) Quantity dispensed;

(8) Approximate number of days supplied;

(9) Patient name and date of birth;

(10) Patient address;

(11) Prescriber DEA registration number and name;

(12) Date prescription issued by prescriber.

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(e) A prescriber, or other person 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.

(f) The Office of Controlled Substances may issue a waiver to a prescriber who is unable to access prescription information by electronic means. A prescriber who is unable to access prescription information by electronic means shall obtain a waiver from the OCS on annual basis until such time they can access the prescription information by electronic means.

(g) Unless a court of competent jurisdiction makes a finding of gross negligence, malice or criminal intent, the Office of Controlled Substances, any other state agency, any prescriber or dispenser, or any person or entity in proper possession of information pursuant to this statute is not subject to civil liability, administrative action or other legal or equitable relief for any of the following acts or omissions:

(1) Furnishing information pursuant to this section.

(2) Receiving, using or relying on, or not using or relying on, information received pursuant to this section.

(3) Information that was not furnished to the Office of Controlled Substances.

(4) Information that was factually incorrect or that was released by the Office of Controlled Substance to the wrong person or entity.

(h) Prescription information submitted to the PMP is protected health information, not subject to public or open records law, and not subject to disclosure, except as otherwise provided in this section.

(i) The Office of Controlled Substances 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 this section.

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

**(2) The Office of Controlled Substances may provide data in the prescription monitoring program in the form of a report to the following persons:**

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a. A prescriber, or other person authorized by the prescriber, or a dispenser, or other person authorized by the dispenser, who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide patient;

b. An individual who requests the individual's own prescription monitoring information in accordance with procedures established pursuant to regulations;

c. A designated representative of any Board or Commission pursuant to § 8735(a) of Title 29 responsible for the licensure, regulation, or discipline of prescribers, dispensers 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;

d. A local, state, or federal law-enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of the laws governing controlled substances and who is involved in a bona fide specific drug-related investigation in which a report of suspected criminal activity involving controlled substances by an identified suspect has been made, and provided that such information be relevant and material to such investigation, limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and include identifying information only if nonidentifying information could not be used;

**e. The Delaware Department of Health and Social Services regarding Medicaid program recipients;**

f. A properly convened grand jury pursuant to a subpoena properly issued for the records;

g. Personnel of the Division of Professional Regulation for purposes of administration and enforcement of this section;

h. 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; and further provided that, release of the information may be made only pursuant to a written agreement between qualified personnel and the Office of Controlled Substances in order to ensure compliance with this subsection.

(j) The Division of Professional Regulation may contract with another agency of this State or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. A contractor shall comply with the provisions regarding confidentiality of prescription information under this section is subject to the penalties specified in this section for any unlawful acts.

(k) The Office of Controlled Substances may promulgate regulations setting forth the procedures and methods for implementing this section.



(l) The Office of Controlled Substances shall design and implement an evaluation component to identify cost-benefits of the Prescription Monitoring Program, including its effect on diversion and abuse of controlled substances and drugs of concern, and other information relevant to policy, research and education involving controlled substances and drugs of concern monitored by the Prescription Monitoring Program.

(1) The Office of Controlled Substances shall report to the General Assembly the information obtained pursuant to this subsection on an annual basis.

(2) To the extent such information is made available to the Office of Controlled Substances, the report may include information and data, including surveys, polls, or other data from multi-disciplinary experts and stakeholders, relating to the negative or positive impact of the prescription monitoring program on appropriate prescribing practices of controlled substances and drugs of concern.

(m) A dispenser who fails to submit prescription monitoring information to the Office of Controlled Substances PMP as required by this section, or who knowingly submits incorrect prescription information, shall be subject to disciplinary sanction pursuant to Chapter 25 of Title 24.

(n) A person or persons authorized to have prescription monitoring information pursuant to this section who knowingly discloses this information in violation of this section is guilty of a class G felony and, upon conviction, shall be fined not more than \$5,000 nor imprisoned more than 2 years, or both.

(o) A person authorized to have prescription monitoring information pursuant to this section who intentionally uses this information in the furtherance of other crimes is guilty of a class E felony and, upon conviction, shall be fined not more than \$10,000 nor imprisoned more than 5 years, or both.

(p) A person or persons not authorized to have prescription monitoring information pursuant to this section who obtain such information fraudulently is guilty of a class E felony and, upon conviction, shall be fined not more than \$10,000 nor imprisoned more than 5 years, or both.

## **Florida**

West's Florida Statutes Annotated (2012)  
Title XLVI. Crimes (Chapters 775-899)  
Chapter 893. Drug Abuse Prevention and Control

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

(1) For purposes of this section, the term:

- (a) “Active investigation” has the same meaning as provided in s. 893.055.
- (b) “Dispenser” has the same meaning as provided in s. 893.055.
- (c) “Health care practitioner” or “practitioner” has the same meaning as provided in s. 893.055.
- (d) “Health care regulatory board” has the same meaning as provided in s. 893.055.
- (e) “Law enforcement agency” has the same meaning as provided in s. 893.055.
- (f) “Pharmacist” means any person licensed under chapter 465 to practice the profession of pharmacy.
- (g) “Pharmacy” has the same meaning as provided in s. 893.055.
- (h) “Prescriber” has the same meaning as provided in s. 893.055.

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

- (a) Name.
- (b) Address.
- (c) Telephone number.
- (d) Insurance plan number.
- (e) Government-issued identification number.
- (f) Provider number.

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(g) Drug Enforcement Administration number.

(h) Any other unique identifying information or number.

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

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

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

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

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

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

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

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

(4) The department shall disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. 893.055(7)(f). The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of s. 893.13(7)(a) 8., s. 893.13(8)(a), or s. 893.13(8)(b).

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

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

(7) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

## Idaho

West's Idaho Code Annotated (2012)  
Title 37. Food, Drugs, and Oil  
Chapter 27. Uniform Controlled Substances  
Article III

### § 37-2726. Filing prescriptions--Database

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Any person who knowingly misrepresents to the board that he is a person entitled under subsection (2) of this section to receive information from the controlled substances prescriptions database under the conditions therein provided, and who receives information from the controlled substances prescriptions database resulting from that misrepresentation shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

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

(7) All costs associated with recording and submitting data as required in this section are assumed by the dispensing practitioner recording and submitting the data.

(8) The definitions set forth in section 37-2701, Idaho Code, shall apply to this section.

## Indiana

West's Annotated Indiana Code (2011)  
Title 35. Criminal Law and Procedure  
Article 48. Controlled Substances  
Chapter 7. Central Repository for Controlled Substances Data

§ 35-48-7-11.1 INSPECT program; confidentiality

Sec. 11.1. (a) Information received by the INSPECT program under section 8.1 of this chapter is confidential.

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

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

**(d) Except as provided in subsections (e) and (f), the board may release confidential information described in subsection (a) to the following persons:**

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

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

(A) an investigation;

(B) an adjudication; or

(C) a prosecution;

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

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

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

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

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that is certified to receive information from the INSPECT program.

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

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

(6) The state toxicologist.

**(7) A certified representative of the Medicaid retrospective and prospective drug utilization review program.**

(8) A substance abuse assistance program for a licensed health care provider who:

(A) has prescriptive authority under IC 25; and

(B) is participating in the assistance program.

(e) Information provided to an individual under:

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

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

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

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

(A) providing medical or pharmaceutical treatment; or

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

(f) Before the board releases confidential information under subsection (d), the applicant must be approved by the INSPECT program in a manner prescribed by the board.

(g) The board may release to:

(1) a member of the board 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 board 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.

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

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

(2) the board's designee;

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

(i) An investigator or a law enforcement officer receiving confidential information under subsection (c), (d), or (g) 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.

(j) The board 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.

(k) This section may not be construed to require a practitioner to obtain information about a patient from the data base.

(l) A practitioner is immune from civil liability for an injury, death, or loss to a person solely due to a practitioner seeking or not seeking information from the INSPECT program. The civil immunity described in this subsection does not extend to a practitioner if the practitioner receives information directly from the INSPECT program and then negligently misuses this information.

This subsection does not apply to an act or omission that is a result of gross negligence or intentional misconduct.

(m) The board may review the records of the INSPECT program. If the board determines that a violation of the law may have occurred, the board shall notify the appropriate law enforcement agency or the relevant government body responsible for the licensure, regulation, or discipline of practitioners authorized by law to prescribe controlled substances.

(n) A practitioner who in good faith discloses information based on a report from the INSPECT program to a law enforcement agency is immune from criminal or civil liability. A practitioner that discloses information to a law enforcement agency under this subsection is presumed to have acted in good faith.

## Kansas

West's Kansas Statutes Annotated (2011)

Chapter 65. Public Health

Article 16. Regulation of Pharmacists

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

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

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

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

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

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

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

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

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

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

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

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

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

Kansas Administrative Regulations (2011)  
Agency 68. Board of Pharmacy  
Article 21. Prescription Monitoring Program

68-21-5 Access to information.

All requests for, uses of, and disclosures of prescription monitoring information by authorized persons shall meet the requirements of K.S.A. 65-1685, and amendments thereto, and this article.

(a) By patients or patient's personal representative.

(1) Any patient or that patient's personal representative may obtain a report listing all program information that pertains to the patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto.

(2) Each patient or the patient's personal representative seeking access to the information described in paragraph (a)(1) shall submit a written request for information in person to the board. The written request shall be in a format established by the board and shall include the following elements:

(A) The patient's name and, if applicable, the full name of the patient's personal representative;

(B) the patient's residential address and, if applicable, the complete residential address of the patient's personal representative;

(C) the patient's telephone number, if any, and, if applicable, the telephone number of the personal representative; and

(D) the time period for which information is being requested.

(3) The patient or the patient's personal representative shall produce two forms of valid photographic identification before obtaining access to the patient's information obtained by the program. The patient or the patient's personal representative shall allow photocopying of the identification.

(4) Before access to the patient's information obtained by the program is given, one of the following shall be produced if the requester is not the patient:

(A) For a personal representative, an official attested copy of the judicial order granting authority to gain access to the health care records of the patient;

(B) for a parent of a minor child, a certified copy of the birth certificate of the minor child or other official documents establishing legal guardianship; or

(C) for a person holding power of attorney, the original document establishing the power of attorney.

(5) The patient's personal representative shall allow the photocopying of the documents described in this subsection.

(6) The patient authorization may be verified by the board by any reasonable means before providing the information to the personal representative.

(b) By dispensers.

(1) Any dispenser may obtain any program information relating to a patient of the dispenser for the purpose of providing pharmaceutical care to that patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile transmission, or telephone.

(2) Each dispenser who seeks access to the information described in paragraph (b)(1) shall submit a written request to the board by mail, hand delivery, or electronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the dispenser shall cause the board to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request.

Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

(A) The patient's name and birth date;

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(B) if known to the dispenser, the patient's address and telephone number;

(C) the time period for which information is being requested;

(D) the dispenser's name;

(E) if applicable, the name and address of the dispenser's pharmacy;

(F) the dispenser identification number; and

(G) the dispenser's signature.

(3) The authentication and identity of the dispenser shall be verified by the board before allowing access to any prescription monitoring information.

(c) By prescribers.

(1) Any prescriber or health care practitioner authorized by a prescriber may obtain any program information relating to a patient under the prescriber's care, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each prescriber or health care practitioner authorized by a prescriber who seeks access to program information shall submit a written request to the board by mail, hand delivery, or electronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the prescriber shall cause the board to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request.

Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

(A) The patient's name and birth date;

(B) if known to the prescriber, the patient's address and telephone number;

(C) the time period for which information is being requested;

(D) the prescriber's name;

(E) the name and address of the prescriber's medical practice;

(F) the prescriber identification number; and

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(G) the prescriber's signature.

(3) The authentication and identity of the dispenser shall be verified before allowing access to any program information.

(d) By director or board investigator of a health professional licensing, certification, or regulatory agency or entity.

(1) Any director or board investigator of a health professional licensing, certification, or regulatory agency or entity may obtain any program information needed in carrying out that individual's business, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each director or board investigator of a licensing board with jurisdiction over a dispenser or prescriber who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to a location specified by the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request.

(e) By local, state, and federal law enforcement or prosecutorial officials.

(1) Any local, state, or federal law enforcement officer or prosecutorial official may obtain any program information as required for an ongoing case, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each local, state, or federal law enforcement officer or prosecutorial official who seeks access to program information shall register with the board. Once registration is approved, the requester may submit a written request by mail, facsimile, or electronic means to the board. All requests for, uses of, and disclosures of prescription monitoring information by authorized persons under this subsection shall meet the requirements of K.S.A. 65-1685 (c)(4), and amendments thereto.

**(f) By the Kansas health policy authority for purposes of the Kansas medicaid and state children's health insurance program (SCHIP).**

**(1) An authorized representative of the Kansas health policy authority may obtain any program information regarding medicaid or SCHIP program recipients, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board.**



**(2) Each authorized representative of the Kansas health policy authority seeking program information regarding medicaid or SCHIP program recipients who seeks access to program information shall submit a request to the board.**

(g) By any other state's prescription monitoring program.

(1) Any authorized representative from any other state's prescription monitoring program may obtain any program information for requests from within that state that do not violate the authentication and security provisions of the prescription monitoring program act, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Any authorized representative from another state's prescription monitoring program seeking access to program information shall first establish a data-sharing agreement with the board in which the states agree to share prescription monitoring information with one another. The agreement shall specify what information will be made available and to whom, how requests will be made, how quickly requests will be processed, and in which format the information will be provided.

(h) By public or private entities for statistical, research, or educational purposes.

(1) Any public or private entity may obtain program information, in accordance with this regulation and K.S.A. 65-1685(d) and amendments thereto. The information shall be provided in a format established by the board.

(2) Each public or private entity who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request.

## **Kentucky**

Baldwin's Kentucky Revised Statutes (2012)

Title XVIII. Public Health

Chapter 218A. Controlled Substances

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

- (1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy.
- (2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.
- (3) Every dispenser within the Commonwealth or any other dispenser who has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy shall report to the Cabinet for Health and Family Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:
  - (a) A drug administered directly to a patient; or
  - (b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.
- (4) Data for each controlled substance that is dispensed shall include but not be limited to the following:
  - (a) Patient identifier;
  - (b) Drug dispensed;
  - (c) Date of dispensing;
  - (d) Quantity dispensed;
  - (e) Prescriber; and
  - (f) Dispenser.

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(5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.

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

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

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

**(c) A state-operated Medicaid program;**

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

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

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

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

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

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

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

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing practices;
2. Associated in a partnership or other business entity with an advanced practice registered nurse who is already under investigation by the Board of Nursing for improper prescribing practices;
3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
4. In a designated geographic area for which a report on a physician or another advanced practice registered nurse in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or

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

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

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

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

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

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

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

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

(11) Intentional failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(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.

(13) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:

(a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and

(b) Study the use of an interactive system that includes a relational data base with query capability.

(14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.

(15) The Cabinet for Health and Family Services may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.

(16) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a

continuing education program about the purposes and uses of the electronic system for monitoring established in this section.

(b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.

(c) The cabinet shall work with the Justice and Public Safety Cabinet for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this section.

## Louisiana

West's Louisiana Statutes Annotated (2012)  
Louisiana Revised Statutes  
Title 40. Public Health and Safety  
Chapter 4. Food and Drugs  
Part X-A. Prescription Monitoring Program

### § 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 be reasonably used to identify prescribers, dispensers, and individual patients or persons who received prescriptions from prescribers.

**E. The following persons, after successful completion of the educational courses identified in R.S. 40:1008, may access prescription monitoring information at no cost and in the same or similar manner, and for the same or similar purposes, as those persons are authorized to access similar protected health information under federal and state law and regulation:**

(1) Persons authorized to prescribe or dispense controlled substances or drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients, or for verifying their prescribing records.

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(2) Designated representatives from the professional licensing, certification, or regulatory agencies of this state or another state 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, out-of-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.



Louisiana Administrative Code (2011)  
Title 46. Professional and Occupational Standards  
Part LIII. Pharmacists  
Chapter 29. Prescription Monitoring Program  
Subchapter C. Access to Prescription Monitoring Information

§ 2921. Methods of Access to Prescription Monitoring Information

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

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

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

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

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

1. a court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
2. a grand jury subpoena; or
3. an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided by law enforcement to the board, and further, provided all of the following:
  - a. the information sought is relevant and material to a legitimate law enforcement inquiry;
  - b. the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought;

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

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

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

Louisiana Administrative Code (2011)  
Title 46. Professional and Occupational Standards  
Part LIII. Pharmacists  
Chapter 29. Prescription Monitoring Program  
Subchapter C. Access to Prescription Monitoring Information

§ 2917. Authorized Direct Access Users of Prescription Monitoring Information

**A. The following persons may access prescription monitoring information in the same or similar manner, and for the same or similar purposes, as those persons are authorized to access similar protected health information under federal and state law and regulation:**

1. persons authorized to prescribe or dispense controlled substances or drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients;
2. designated representatives from the professional licensing, certification, or regulatory agencies charged with administrative oversight of those professionals engaged in the prescribing or dispensing of controlled substances or other drugs of concern;
- 3. designated representatives from the Louisiana Medicaid program regarding Medicaid program recipients;**
4. designated representatives of the board or any vendor or contractor establishing or maintaining the prescription monitoring program.

## Maine

Maine Revised Statutes Annotated (2012)

Title 22. Health and Welfare

Subtitle 4. Human Services

Part 3. Drug Abuse

Chapter 1603. Controlled Substances Prescription Monitoring

§ 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.

2. Review of information. If the prescription monitoring information surpasses thresholds as established by the office, the office shall notify the prescriber, the dispenser and, if the office determines it to be necessary, the professional licensing entity and provide all relevant prescription monitoring information to those persons and entities through an established letter of notification.

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

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

- A. A prescriber, insofar as the information relates to a patient under the prescriber's care;
- B. A dispenser, insofar as the information relates to a customer of the dispenser seeking to have a prescription filled;
- C. The executive director, or a board investigator as designated by each board, of the state boards of licensure of podiatric medicine, dentistry, pharmacy, medicine, osteopathy, veterinary medicine, nursing or other boards representing health care disciplines whose licensees are prescribers, as required for an investigation, with reasonable cause;
- D. A patient to whom a prescription is written, insofar as the information relates to that patient;
- E. Office personnel or personnel of any vendor or contractor, as necessary for establishing and maintaining the program's electronic system;

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

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

H. Another state pursuant to subsection 4-A.

4-A. Information sharing with other states. The office may provide prescription monitoring information to and receive prescription monitoring information from another state that has prescription monitoring information provisions consistent with this chapter and has entered into a prescription monitoring information sharing agreement with the office. The office may enter into a prescription monitoring information sharing agreement with another state to establish the terms and conditions of prescription monitoring information sharing and interoperability of information systems and to carry out the purposes of this subsection. For purpose of this subsection, “another state” means any state other than Maine and any territory or possession of the United States, but does not include a foreign country.

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

Code of Maine Rules (2011)

14. Department of Behavioral and Developmental Services

118. Office of Substance Abuse

Chapter 11. Rules Governing The Controlled Substances Prescription Monitoring Program

Sec. 7. Access to Prescription Monitoring Information

1. By patients

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

B. A patient or a patient's authorized representative seeking access to prescription monitoring information described above must submit a written request for information in person at the office of the Monitor, or at any other place specified by the Monitor or the Office. The written request

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shall be in a format established by the Office or the Monitor and shall contain at least, but not limited to, the following elements:

- 1) the patient's name and the full name of the patient's authorized representative, if applicable;
- 2) the patient's date of birth;
- 3) the patient's address, and the complete physical address of the patient's authorized representative, if applicable;
- 4) the patient's telephone number, if any, and the telephone number of the authorized representative, if applicable; and
- 5) the time period for which information is being requested.

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

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

## 2. By dispensers

A. A dispenser, or a licensed pharmacy technician authorized by a supervising pharmacist, may obtain any prescription monitoring information insofar as the information relates to a customer of the dispenser seeking to have a prescription filled. The information shall be provided in a format established by the Office, which may include, but is not limited to, delivery by electronic means, facsimile transmission, or telephonic communication.

B. A dispenser who seeks access to the information described above must register as a data requester in a manner specified by the Monitor or the Office. The Office or Monitor shall issue credentials to authorized dispensers. Dispensers may use these credentials to access the online database and submit requests. If the credentials issued by the Office are lost, missing, or the security of the credentials is compromised, the dispenser shall cause the Office or Monitor to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one customer may be submitted in a single request. Requests shall be in a format established

by the Office or the Monitor and shall contain at least, but not limited to, the following elements for each customer:

- 1) The name and date of birth of the customer; and
- 2) The time period for which information is being requested.

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

### 3. By prescribers

A. A prescriber, or any staff member duly authorized by a prescriber and the Office, may obtain any prescription monitoring information insofar as the information relates to a patient under the prescriber's care. The information shall be provided in a format established by the Office, which may include, but is not limited to delivery by electronic means, facsimile transmission, or telephonic communication.

B. A prescriber, or any staff member duly authorized by a prescriber and the Office, who seeks access to the information described above must register as a data requester in a manner specified by the Monitor or the Office. The Office or Monitor shall issue credentials to authorized prescribers or their designees. Data requesters may use these credentials to access the online database and submit requests. If the credentials issued by the Office are lost, missing, or the security of the credentials is compromised, the data requester shall cause the Office or Monitor to be notified by telephone and in writing as soon as reasonably possible. Requests shall be in a format established by the Office or the Monitor and shall contain at least, but not limited to, the following elements for each patient:

- 1) The name and date of birth of the patient; and
- 2) The time period for which information is being requested.

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

### 4. By executive director, board investigator, or person authorized to discharge equivalent functions of a licensing board.

A. An executive director, board investigator, or person authorized to discharge equivalent functions of a licensing board with jurisdiction over a dispenser or prescriber may obtain any prescription monitoring information as required for an investigation, with reasonable cause. The

information shall be provided in a format established by the Office, which may include, but is not limited to delivery by electronic means, facsimile transmission, or telephonic communication.

B. An executive director, board investigator, or person authorized to discharge equivalent functions of a licensing board with jurisdiction over a dispenser or prescriber who seeks access to prescription monitoring information described above must submit a request via mail, facsimile, or secure electronic transmission, to a location specified by the Monitor or the Office. The request shall contain identifying information regarding the licensee or patient and the time period for which the information is being requested. The data requester shall certify that each request is related to an investigation involving misuse of a Schedule II, III, or IV drug and provide a case number or other assurance that the request is related to the board representative's official duties.

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

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

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

**6. By the units within the Department of Health and Human Services that administer the MaineCare program.**

**A. Subject to the requirements of 22 M.R.S.A. §7250(4)(F), the authorized representative of those units of the Department of Health and Human Services which oversee, administer, or otherwise supervise MaineCare programs which determine eligibility for and use of prescription drugs, and the appropriate utilization of prescription drugs, for the purposes of managing the care of MaineCare members, monitoring the purchase of controlled substances by MaineCare members, and avoiding duplicate dispensing of controlled substances to MaineCare members.**

**B. The person or persons authorized pursuant to Section 7(6)(A) must submit a request via mail, facsimile, or secure electronic transmission, to a location specified by the Monitor or the Office. The request shall contain surname, first name, and date of birth of the member and the time period for which the information is being requested. An intervention approach shall be undertaken with MaineCare members who are determined to be accessing controlled substances in a quantity or with a frequency beyond the norm for persons with similar medical conditions or diagnoses and the intervention approach shall not include terminating the member from MaineCare services.**

7. By the Office of the Chief Medical Examiner

A. The Chief Medical Examiner or a designee may obtain any prescription monitoring information as required for an investigation or inquiry into the cause, manner and circumstances of death in a medical examiner case. The information shall be provided in a format established by the Office of Substance Abuse, which may include, but is not limited to delivery by electronic means, facsimile transmission, or telephonic communication.

B. The Chief Medical Examiner or a designee must submit a request via mail, facsimile, or secure electronic transmission, to a location specified by the Monitor or the Office. The request shall contain the surname, first name, and date of birth of the decedent and the time period for which the information is being requested.



## **Maryland**

West's Annotated Code of Maryland (2012)  
Health--General  
Title 21. Food, Drugs, and Cosmetics  
Subtitle 2A. Prescription Drug Monitoring Program

### § 21-2A-06. Confidentiality of prescription monitoring data

Data not subject to discovery or subpoena

(a) Prescription monitoring data:

- (1) Are confidential and privileged, and not subject to discovery, subpoena, or other means of legal compulsion in civil litigation;
- (2) Are not public records; and
- (3) Except as provided in subsections (b) and (d) of this section or as otherwise provided by law, may not be disclosed to any person.

### **Allowable disclosure of prescription monitoring data**

**(b) The Program shall disclose prescription monitoring data, in accordance with regulations adopted by the Secretary, to:**

- (1) A prescriber, or a licensed health care practitioner authorized by the prescriber, in connection with the medical care of a patient;
- (2) A dispenser, or a licensed health care practitioner authorized by the dispenser, in connection with the dispensing of a monitored prescription drug;
- (3) A federal law enforcement agency or a State or local law enforcement agency, on issuance of a subpoena, for the purpose of furthering an existing bona fide individual investigation;
- (4) A licensing entity, on issuance of an administrative subpoena voted on by a quorum of the board of the licensing entity, for the purposes of furthering an existing bona fide individual investigation;
- (5) A rehabilitation program under a health occupations board, on issuance of an administrative subpoena;
- (6) A patient with respect to prescription monitoring data about the patient;

(7) Subject to subsection (g) of this section, the authorized administrator of another state's prescription drug monitoring program;

**(8) The following units of the Department, on approval of the Secretary, for the purpose of furthering an existing bona fide individual investigation:**

(i) The Office of the Chief Medical Examiner;

**(ii) The Maryland Medical Assistance Program;**

(iii) The Office of the Inspector General; and

(iv) The Office of Health Care Quality; or

(9) The technical advisory committee established under § 21-2A-07 of this subtitle for the purposes set forth in subsection (c) of this section.

Review of requests for information

(c) Before the Program discloses information under subsection (b)(3), (4), (5), (7), or (8) of this section, the technical advisory committee to the Program shall:

(1) Review the requests for information;

(2) Provide clinical guidance and interpretation of the information requested to the Secretary to assist in the Secretary's decision on how to respond to a judicial subpoena, administrative subpoena, or other request; and

(3) Provide clinical guidance and interpretation of the information requested to the authorized recipient of the information.

Persons who receive prescription monitoring data prohibited from disclosure

(d) Except as provided by regulations adopted by the Secretary, a person who receives prescription monitoring data from the Program may not disclose the data.

Disclosure of data for research, analysis, public reporting, and education

(e)(1) In addition to the disclosures required under subsection (b) of this section, the Program may disclose prescription monitoring data for research, analysis, public reporting, and education:

(i) After redaction of all information that could identify a patient, prescriber, dispenser, or any other individual; and

(ii) In accordance with regulations adopted by the Secretary.

(2) The Secretary may require submission of an abstract explaining the scope and purpose of the research, analysis, public reporting, or education before disclosing prescription monitoring data under this subsection.

#### Injunctive relief

(f) The Office of the Attorney General may seek appropriate injunctive or other relief to maintain the confidentiality of prescription monitoring data as required under this section.

#### Prescription monitoring data shared with other states

(g) The Program may provide prescription monitoring data to another state's prescription drug monitoring program only if the other state's prescription drug monitoring program agrees to use the prescription monitoring data in a manner consistent with the provisions of this subtitle.

#### Request and receipt of prescription monitoring data from other states

(h) The Program may:

(1) Request and receive prescription monitoring data from another state's prescription drug monitoring program and use the prescription monitoring data in a manner consistent with the provisions of this subtitle; and

(2) Develop the capability to transmit prescription monitoring data to and receive prescription monitoring data from other prescription drug monitoring programs employing the standards of interoperability.

#### Written agreements with other states

(i) The Program may enter into written agreements with other states' prescription drug monitoring programs for the purpose of establishing the terms and conditions for sharing prescription monitoring data under this section.

#### Clinical practice standards

(j) Prescription monitoring data may not be used as the basis for imposing clinical practice standards.

## Massachusetts

Massachusetts General Laws Annotated (2012)  
Part I. Administration of the Government (Ch. 1-182)  
Title XV. Regulation of Trade (Ch. 93-110H)  
Chapter 94C. Controlled Substances Act

§ 24A. Electronic monitoring of the prescribing and dispensing of controlled substances and certain additional drugs

(a)(1) The department shall establish and maintain an electronic system to monitor the prescribing and dispensing of all schedule II to V, inclusive, controlled substances and certain additional drugs by all professionals licensed to prescribe or dispense such substances. For the purposes of this section, “additional drugs” shall mean substances determined by the department to carry a bona fide potential for abuse.

(2) The department shall enter into reciprocal agreements with other states that have compatible prescription drug monitoring programs to share prescription drug monitoring information among the states.

(b) The requirements of this section shall not apply to the dispensing of controlled substances to inpatients in a hospital.

(c) For the purposes of monitoring the prescribing and dispensing of all schedule II to V, inclusive, controlled substances and additional drugs, as authorized in subsection (a), the department shall promulgate regulations including, but not limited to, (1) a requirement that each pharmacy that delivers a schedule II to V, inclusive, controlled substance or a substance classified as an additional drug by the department to the ultimate user shall submit to the department, by electronic means, information regarding each prescription dispensed for a drug included under subsection (a); and (2) a requirement that each pharmacy collects and reports, for each prescription dispensed for a drug under subsection (a), a customer identification number and other information associated with the customer identification number, as specified by the department. Each pharmacy shall submit the information in accordance with transmission methods and frequency requirements promulgated by the department; provided, however, that the information shall be submitted at least once every 7 days. The department may issue a waiver to a pharmacy that is unable to submit prescription information by electronic means. The waiver shall permit the pharmacy to submit prescription information by other means promulgated by the department; provided, however, that all information required in this section is submitted in this alternative format.

(d) Prescription information submitted to the department under this section shall be confidential and exempt from disclosure under clause Twenty-sixth of section 7 of chapter 4 and chapter 66. The department shall maintain procedures to ensure that the privacy and confidentiality of

patients and patient information collected, recorded, transmitted and maintained is not disclosed to persons except as provided for in this chapter.

(e) The department shall review the prescription and dispensing monitoring information. If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the department shall notify the appropriate law enforcement or professional licensing, certification or regulatory agency or entity and provide prescription information required for an investigation.

**(f) The department shall, upon request, provide data from the prescription monitoring program to the following:--**

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

(2) individuals who request their own prescription monitoring information in accordance with procedures established under chapter 66A;

(3) persons authorized to act on behalf of state boards and regulatory agencies that supervise or regulate a profession that may prescribe controlled substances; provided, however, that the data request is in connection with a bona fide specific controlled substance or additional drug-related investigation;

(4) local, state and federal law enforcement or prosecutorial officials working with the executive office of public safety engaged in the administration, investigation or enforcement of the laws governing prescription drugs; provided, however, that the data request is in connection with a bona fide specific controlled substance or additional drug-related investigation;

**(5) personnel of the executive office of health and human services regarding Medicaid program recipients; provided, however that the data request is in connection with a bona fide specific controlled substance or additional drug-related investigation; or**

(6) personnel of the United States attorney, office of the attorney general or a district attorney; provided, however, that the data request is in connection with a bona fide specific controlled substance or additional drug related investigation.

(g) The department may, at its initiative, provide data from the prescription monitoring program to practitioners in accordance with section 24.

(h) The department may provide de-identified, aggregate information to a public or private entity for statistical research or educational purposes.

(i) The department may contract with another agency or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. A contractor shall be

bound to comply with the provisions regarding confidentiality of prescription information in this section.

(j) The department shall promulgate rules and regulations setting forth the procedures and methods for implementing this section.

(k) The department shall submit an annual report on the effectiveness of the prescription monitoring program with the clerks of the house and senate, the chairs of the joint committee on public health, the chairs of the joint committee on health care financing and the chairs of the joint committee on public safety and homeland security.

Code of Massachusetts Regulations (2012)  
Title 105: Department of Public Health  
Chapter 700.000: Implementation of M.g.l. C. 94C

700.012: Prescription Monitoring Program

(A) Pharmacy Reporting Requirements.

(1) The reporting requirement of 105 CMR 700.012 shall apply to every pharmacy in a health facility registered with the Commissioner that dispenses a controlled substance pursuant to a prescription in Schedules II through V, or any other controlled substance specified by order of the Commissioner, and to any pharmacy in another state, commonwealth, district or territory that delivers such a controlled substance to a person in Massachusetts. Such a pharmacy shall, in accordance with standards established by the Department, transmit to the Department or its agent the following information for each such prescription:

- (a) pharmacy identifier;
- (b) prescription number;
- (c) customer identifier, as defined in 105 CMR 700.001;
- (d) relationship of customer to patient;
- (e) patient name;
- (f) patient address;
- (g) patient date of birth;
- (h) patient gender;

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- (i) source of payment for prescription;
- (j) date prescription written by prescriber;
- (k) date the controlled substance is dispensed;
- (l) identifier of controlled substance dispensed;
- (m) metric quantity of controlled substance dispensed;
- (n) estimated days supply of controlled substance dispensed;
- (o) refill information; and
- (p) prescriber's Drug Enforcement Administration registration number.

(2) 105 CMR 700.012 shall not apply to medication orders in hospitals.

(3) A pharmacy that dispenses a controlled substance subject to the requirements in 105 CMR 700.012 must report the customer identifier required by 105 CMR 701.004. A pharmacy may dispense a controlled substance without a customer identifier, provided it meets the requirements of 105 CMR 701.004(B) and provides to the Department those informational fields required by the Department.

(4) The Commissioner may waive or modify the requirement in 105 CMR 700.012(A)(1)(c) and/or (d), for a pharmacy to report a customer identifier and/or the relationship of the customer to the patient, for prescription refills, prescription deliveries and/or other activities/situations specified by the Commissioner.

(5) The information required by 105 CMR 700.012 shall be transmitted to the Department or its agent in accordance with any procedures established by the Department no less frequently than weekly and no later than ten days after dispensing, or as otherwise specified in guidelines of the Department, by use of:

(a) encrypted electronic device or transmission method in a format approved by the Department;  
or

(b) a form approved by the Department.

(B) Prescription Monitoring Program Advisory Council.

(1) The Commissioner of the Department of Public Health shall establish a Prescription Monitoring Program Advisory Council to advise the Department on the implementation of 105 CMR 700.012. The membership of this Advisory Council shall include representatives of the

Department of Public Health; Executive Office of Public Safety; disciplinary authorities, including the Boards of Registration in Medicine, Pharmacy, Dentistry, Podiatry, Veterinary Medicine, Nursing and Physician Assistants; representatives of associations or societies representing professions authorized to issue or dispense prescriptions, patient interests, and privacy interests; and a person with expertise in the design or operation of a secure automated data system.

(2) The Prescription Monitoring Program Advisory Council shall assist the Department and Boards of Registration, as appropriate, in designing education programs for the appropriate prescribing of controlled substances.

**(C) Prescription Monitoring Program Medical Review Group.**

(1) The Commissioner shall establish the Prescription Monitoring Program Medical Review Group to advise the Department on accepted medical practice standards related to the disclosure of information pursuant to subsection 105 CMR 700.012(D)(4)(b). The Medical Review Group shall advise the Department in the evaluation of prescription information and clinical aspects of the implementation of 105 CMR 700.012.

(2) Members of the Medical Review Group shall be licensed health care practitioners and pharmacists and, to the extent feasible, at least one member shall be licensed in the same discipline as the practitioner whose records are under review. Licensed practitioners and pharmacists shall be appointed by the Commissioner in consultation with the appropriate Boards of Registration and statewide professional societies in the discipline under which records will be reviewed. Practitioners serving on the Medical Review Group must have a valid Controlled Substances Registration for Schedules II through V pursuant to M.G.L. c. 94C, § 7.

**(D) Privacy, Confidentiality and Disclosure.**

**(1) Except where otherwise provided by law or judicial order, the information collected pursuant to 105 CMR 700.012 shall not be disseminated by the Department to anyone other than:**

(a) a licensed and registered practitioner or licensed pharmacy, or a duly authorized representative of the practitioner or pharmacy;

(b) a licensed health care professional, other than a practitioner, registered to prescribe or dispense controlled substances pursuant to 105 CMR 700.000 or a duly authorized representative of such licensed health care professional;

(c) a duly authorized representative of the board or agency responsible for registration, regulation or discipline of practitioners or other health care professionals authorized to prescribe or dispense controlled substances, acting in accordance with official duties in conducting a bona fide investigation;

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(d) a duly authorized representative of a law enforcement agency acting in accordance with official duties in conducting a bona fide criminal investigation or prosecution of criminal violations. Requests for inspection of these records shall first be directed to the Office of the Attorney General of Massachusetts, or the Massachusetts State Police Diversion Investigative Unit, or the United States Drug Enforcement Administration for notification and approval prior to submission to the Department;

**(e) a duly authorized representative of the Executive Office of Health and Human Services, acting in accordance with official duties, for the purpose of identifying suspected fraud or abuse of the MassHealth program;**

(f) a duly authorized representative of a health department or other agency in another state, commonwealth, district, territory or country that maintains prescription information in a data system with privacy, security and other disclosure protections consistent with those established in the Commonwealth, in accordance with a written agreement or interstate compact establishing the terms and conditions for exchange of data;

(g) an individual who is the data subject, or the individual's parent or legal guardian, to the extent permitted by statute or regulation of the Commonwealth.

(2) All requests for information collected pursuant to 105 CMR 700.012 shall be in writing or in accordance with procedures established by the Department to ensure compliance with the requirements of 105 CMR 700.012(D)(1) and (E).

(3) The Commissioner or a designee may disclose data collected pursuant to 105 CMR 700.012 to an authorized practitioner, including a pharmacy or other health care professional registered to dispense controlled substances in any or all of the Schedules II through V pursuant to 105 CMR 700.000, or a duly authorized representative, as follows.

(a) The authorized practitioner, pharmacy or other health care professional registered to dispense controlled substances pursuant to 105 CMR 700.000 has dispensed or is evaluating the dispensing of such a controlled substance to a patient or research subject.

1. The Commissioner or a designee may initiate disclosure of such data upon a determination that the patient or research subject is receiving a controlled substance from more than one source and in quantities which he determines to be harmful to the health of the patient or research subject or that disclosure is otherwise necessary to prevent the unlawful diversion of a controlled substance.

2. The Commissioner or a designee may disclose such data in response to an inquiry by an authorized practitioner, pharmacy or other health care professional registered to dispense controlled substances pursuant to 105 CMR 700.000 for the purpose of preventing the dispensing of controlled substances to the same individual from multiple sources or the unlawful diversion of controlled substances.

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(b) Such disclosure shall be for the purpose of assisting the practitioner, pharmacy or other registered health care professional in assessing the possibility of abuse or diversion, but shall not require or direct the practitioner, pharmacy or health care professional to take action that he or she believes to be contrary to the patient's or research subject's best interests.

(4) (a) The Commissioner or a designee may disclose data collected pursuant to 105 CMR 700.012 to the parties enumerated in 105 CMR 700.012(D)(1)(c) through (f) in response to an inquiry or at the initiation of the Commissioner or designee.

(b) Disclosure at the initiation of the Commissioner or designee shall be in conformance with any protocols established by the Department, in consultation with the Medical Review Group, concerning a patient, customer, practitioner or pharmacy potentially engaged in diversion or inappropriate dispensing. In providing such consultation concerning Department initiated disclosure, the Medical Review Group shall review the content and application of the protocols, make recommendations to the Department for effective use of such protocols and as needed review specific instances of Department initiated disclosure. In undertaking such review, the Medical Review Group shall be provided upon request with such pertinent information as needed.

#### (E) Security Protections.

(1) Any disclosure or transmission of personally identifying information collected pursuant to 105 CMR 700.012 shall be in accordance with Department requirements for such disclosure and transmission, including requirements for technical non-repudiation, confidentiality, and authentication, as those terms are defined in 105 CMR 721.000. Such protections shall include the establishment of an audit trail for each request and transmission.

(2) A person authorized to receive information pursuant to 105 CMR 700.012(E)(2) shall promptly notify the Department of any potential violation of confidentiality or use of the data in a manner contrary to these regulations or applicable professional standards.

(3) A practitioner's, or pharmacy's Controlled Substance Registration may be suspended or terminated in accordance with 105 CMR 700.004(L)(1) for the following:

(a) a request for data pursuant to 105 CMR 700.012(D)(1)(a) or (b) or use or disclosure of data that involves a willful failure to comply with the standards in 105 CMR 700.012 for request, transmission or disclosure of data;

(b) a failure to reasonably protect data in accordance with the requirements of 105 CMR 700.012 or other applicable state or federal law; or

(c) an attempt to obtain data through fraud or deceit.

## Michigan

Michigan Compiled Laws Annotated (2012)  
Chapter 333. Health  
Public Health Code  
Article 7. Controlled Substances  
Part 73. Manufacture, Distribution, and Dispensing

### § 333.7333a. Dispensing of controlled substances; electronic monitoring system

Sec. 7333a. (1) The department shall establish, by rule, an electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances dispensed in this state by veterinarians, and by pharmacists and dispensing prescribers licensed under part 177 or dispensed to an address in this state by a pharmacy licensed in this state. The rules shall provide an appropriate electronic format for the reporting of data including, but not limited to, patient identifiers, the name of the controlled substance dispensed, date of dispensing, quantity dispensed, prescriber, and dispenser. The department shall require a veterinarian, pharmacist, or dispensing prescriber to utilize the electronic data transmittal process developed by the department or the department's contractor. A veterinarian, pharmacist, or dispensing prescriber shall not be required to pay a new fee dedicated to the operation of the electronic monitoring system and shall not incur any additional costs solely related to the transmission of data to the department. The rules promulgated under this subsection shall exempt both of the following circumstances from the reporting requirements:

- (a) The administration of a controlled substance directly to a patient.
- (b) The dispensing from a health facility or agency licensed under article 17 of a controlled substance by a dispensing prescriber in a quantity adequate to treat a patient for not more than 48 hours.

#### **(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.**

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(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 (8).

(h) A practitioner or other person who is authorized to prescribe controlled substances for the purpose of determining if prescriptions written by that practitioner or other person have been dispensed.

(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.

(5) Except as otherwise provided in this subsection, reporting under subsection (1) is mandatory for a veterinarian, pharmacist, and dispensing prescriber. However, the department may issue a written waiver of the electronic reporting requirement to a veterinarian, pharmacist, or dispensing prescriber who establishes grounds that he or she is unable to use the electronic monitoring system. The department shall require the applicant for the waiver to report the required information in a manner approved by the department.

(6) In addition to the information required to be reported annually under section 7112(3), the controlled substances advisory commission shall include in the report information on the implementation and effectiveness of the electronic monitoring system.

(7) The department, in consultation with the controlled substances advisory commission, the Michigan board of pharmacy, the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, the Michigan state police, and appropriate medical professional associations, shall examine the need for and may promulgate rules for the production of a prescription form on paper that minimizes the potential for forgery. The rules shall not include any requirement that sequential numbers, bar codes, or symbols be affixed, printed, or written on a prescription form or that the prescription form be a state produced prescription form. In examining the need for rules for the production of a prescription form on paper that minimizes the potential for forgery, the department shall consider and identify the following:

- (a) Cost, benefits, and barriers.
  - (b) Overall cost-benefit analysis.
  - (c) Compatibility with the electronic monitoring system required under this section.
- (8) The department may enter into 1 or more contractual agreements for the administration of this section.
- (9) The department, all law enforcement officers, 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 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.
- (11) As used in this section, "department" means the department of community health.

## **Minnesota**

Minnesota Statutes Annotated (2012)  
Health (Ch. 144-159)  
Chapter 152. Drugs; Controlled Substances  
Prescriptions

### § 152.126. Controlled substances prescription electronic reporting system

Subdivision 1. Definitions. For purposes of this section, the terms defined in this subdivision have the meanings given.

- (a) “Board” means the Minnesota State Board of Pharmacy established under chapter 151.
- (b) “Controlled substances” means those substances listed in section 152.02, subdivisions 3 to 5, and those substances defined by the board pursuant to section 152.02, subdivisions 7, 8, and 12.
- (c) “Dispense” or “dispensing” has the meaning given in section 151.01, subdivision 30. Dispensing does not include the direct administering of a controlled substance to a patient by a licensed health care professional.
- (d) “Dispenser” means a person authorized by law to dispense a controlled substance, pursuant to a valid prescription. For the purposes of this section, a dispenser does not include a licensed hospital pharmacy that distributes controlled substances for inpatient hospital care or a veterinarian who is dispensing prescriptions under section 156.18.
- (e) “Prescriber” means a licensed health care professional who is authorized to prescribe a controlled substance under section 152.12, subdivision 1.
- (f) “Prescription” has the meaning given in section 151.01, subdivision 16.

Subd. 1a. Treatment of intractable pain. This section is not intended to limit or interfere with the legitimate prescribing of controlled substances for pain. No prescriber shall be subject to disciplinary action by a health-related licensing board for prescribing a controlled substance according to the provisions of section 152.125.

Subd. 2. Prescription electronic reporting system. (a) The board shall establish by January 1, 2010, an electronic system for reporting the information required under subdivision 4 for all controlled substances dispensed within the state.

(b) The board may contract with a vendor for the purpose of obtaining technical assistance in the design, implementation, operation, and maintenance of the electronic reporting system.

Subd. 3. Prescription Electronic Reporting Advisory Committee. (a) The board shall convene an advisory committee. The committee must include at least one representative of:

- (1) the Department of Health;
- (2) the Department of Human Services;
- (3) each health-related licensing board that licenses prescribers;
- (4) a professional medical association, which may include an association of pain management and chemical dependency specialists;
- (5) a professional pharmacy association;
- (6) a professional nursing association;
- (7) a professional dental association;
- (8) a consumer privacy or security advocate; and
- (9) a consumer or patient rights organization.

(b) The advisory committee shall advise the board on the development and operation of the electronic reporting system, including, but not limited to:

- (1) technical standards for electronic prescription drug reporting;
- (2) proper analysis and interpretation of prescription monitoring data; and
- (3) an evaluation process for the program.

Subd. 4. Reporting requirements; notice. (a) Each dispenser must submit the following data to the board or its designated vendor, subject to the notice required under paragraph (d):

- (1) name of the prescriber;
- (2) national provider identifier of the prescriber;
- (3) name of the dispenser;
- (4) national provider identifier of the dispenser;
- (5) prescription number;

- (6) name of the patient for whom the prescription was written;
- (7) address of the patient for whom the prescription was written;
- (8) date of birth of the patient for whom the prescription was written;
- (9) date the prescription was written;
- (10) date the prescription was filled;
- (11) name and strength of the controlled substance;
- (12) quantity of controlled substance prescribed;
- (13) quantity of controlled substance dispensed; and
- (14) number of days supply.

(b) The dispenser must submit the required information by a procedure and in a format established by the board. The board may allow dispensers to omit data listed in this subdivision or may require the submission of data not listed in this subdivision provided the omission or submission is necessary for the purpose of complying with the electronic reporting or data transmission standards of the American Society for Automation in Pharmacy, the National Council on Prescription Drug Programs, or other relevant national standard-setting body.

(c) A dispenser is not required to submit this data for those controlled substance prescriptions dispensed for:

- (1) individuals residing in licensed skilled nursing or intermediate care facilities;
- (2) individuals receiving assisted living services under chapter 144G or through a medical assistance home and community-based waiver;
- (3) individuals receiving medication intravenously;
- (4) individuals receiving hospice and other palliative or end-of-life care; and
- (5) individuals receiving services from a home care provider regulated under chapter 144A.

(d) A dispenser must not submit data under this subdivision unless a conspicuous notice of the reporting requirements of this section is given to the patient for whom the prescription was written.



Subd. 5. Use of data by board. (a) The board shall develop and maintain a database of the data reported under subdivision 4. The board shall maintain data that could identify an individual prescriber or dispenser in encrypted form. The database may be used by permissible users identified under subdivision 6 for the identification of:

(1) individuals receiving prescriptions for controlled substances from prescribers who subsequently obtain controlled substances from dispensers in quantities or with a frequency inconsistent with generally recognized standards of use for those controlled substances, including standards accepted by national and international pain management associations; and

(2) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to dispensers.

(b) No permissible user identified under subdivision 6 may access the database for the sole purpose of identifying prescribers of controlled substances for unusual or excessive prescribing patterns without a valid search warrant or court order.

(c) No personnel of a state or federal occupational licensing board or agency may access the database for the purpose of obtaining information to be used to initiate or substantiate a disciplinary action against a prescriber.

(d) Data reported under subdivision 4 shall be retained by the board in the database for a 12-month period, and shall be removed from the database no later than 12 months from the last day of the month during which the data was received.

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

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

(1) a prescriber or an agent or employee of the prescriber to whom the prescriber has delegated the task of accessing the data, to the extent the information relates specifically to a current patient, to whom the prescriber is prescribing or considering prescribing any controlled substance and with the provision that the prescriber remains responsible for the use or misuse of data accessed by a delegated agent or employee;

(2) a dispenser or an agent or employee of the dispenser to whom the dispenser has delegated the task of accessing the data, to the extent the information relates specifically to a current patient to whom that dispenser is dispensing or considering dispensing any controlled substance and with

the provision that the dispenser remains responsible for the use or misuse of data accessed by a delegated agent or employee;

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

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

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

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

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

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

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

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

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

(e) The board shall not release the name of a prescriber without the written consent of the prescriber or a valid search warrant or court order. The board shall provide a mechanism for a

prescriber to submit to the board a signed consent authorizing the release of the prescriber's name when data containing the prescriber's name is requested.

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

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

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

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

Subd. 8. Evaluation and reporting. (a) The board shall evaluate the prescription electronic reporting system to determine if the system is negatively impacting appropriate prescribing practices of controlled substances. The board may contract with a vendor to design and conduct the evaluation.

(b) The board shall submit the evaluation of the system to the legislature by July 15, 2011.

Subd. 9. Immunity from liability; no requirement to obtain information. (a) A pharmacist, prescriber, or other dispenser making a report to the program in good faith under this section is immune from any civil, criminal, or administrative liability, which might otherwise be incurred or imposed as a result of the report, or on the basis that the pharmacist or prescriber did or did not seek or obtain or use information from the program.

(b) Nothing in this section shall require a pharmacist, prescriber, or other dispenser to obtain information about a patient from the program, and the pharmacist, prescriber, or other dispenser, if acting in good faith, is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program.

Subd. 10. Funding. (a) The board may seek grants and private funds from nonprofit charitable foundations, the federal government, and other sources to fund the enhancement and ongoing operations of the prescription electronic reporting system established under this section. Any funds received shall be appropriated to the board for this purpose. The board may not expend funds to enhance the program in a way that conflicts with this section without seeking approval from the legislature.

(b) The administrative services unit for the health-related licensing boards shall apportion between the Board of Medical Practice, the Board of Nursing, the Board of Dentistry, the Board of Podiatric Medicine, the Board of Optometry, and the Board of Pharmacy an amount to be paid through fees by each respective board. The amount apportioned to each board shall equal each board's share of the annual appropriation to the Board of Pharmacy from the state government special revenue fund for operating the prescription electronic reporting system under this section. Each board's apportioned share shall be based on the number of prescribers or dispensers that each board identified in this paragraph licenses as a percentage of the total number of prescribers and dispensers licensed collectively by these boards. Each respective board may adjust the fees that the boards are required to collect to compensate for the amount apportioned to each board by the administrative services unit.

## Mississippi

West's Annotated Mississippi Code (2011)

Title 73. Professions and Vocations

Chapter 21. Pharmacists

Mississippi Pharmacy Practice Act

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

The Board of Pharmacy shall develop and implement a computerized program to track prescriptions for controlled substances and to report suspected abuse and misuse of controlled substances in compliance with the federal regulations promulgated under authority of the National All Schedules Prescription Electronic Reporting Act of 2005 and in compliance with the federal HIPAA law, under the following conditions:

(a) Reporting of dispensing information shall be mandatory and required by the State Board of Pharmacy for any entity dispensing controlled substances in or into the State of Mississippi.

(b) The prescriptions tracked shall be prescriptions for controlled substances listed in Drug Enforcement Agency Schedule II, III, IV or V and specified noncontrolled substances authorized by the State Board of Pharmacy that are dispensed to residents in the State of Mississippi by licensed pharmacies, nonresident pharmacies, institutions, dispensing practitioners and the dispenser of veterinary controlled substance drugs, regardless of dispenser location.

(c) The Board of Pharmacy shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide them with the relevant information obtained for further investigation.

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

**(e)(i) Access to collected data shall be confidential and not subject to the provisions of the federal Freedom of Information Act or the Mississippi Open Records Act. Upon request, the State Board of Pharmacy shall provide collected information to:** pharmacists or practitioners who are properly registered with the State Board of Pharmacy and are authorized to

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prescribe or dispense controlled substances for the purpose of providing medical and pharmaceutical care for their patients; local, state and federal law enforcement officials engaged in the administration, investigation or enforcement of the laws governing illicit drug use; regulatory and licensing boards in this state; **Division of Medicaid regarding Medicaid and Medicare Program recipients**; judicial authorities under grand jury subpoena or court order; an individual who requests the individual's own prescription monitoring information; and prescription monitoring programs in other states through mutual agreement adhering to State Board of Pharmacy policies.

(ii) The Director of the Mississippi Bureau of Narcotics, or his designee, shall have access to the prescription monitoring program (PMP) database for the purpose of investigating the potential illegal acquisition, distribution, dispensing, prescribing or administering of the controlled and noncontrolled substances monitored by the program, subject to all legal restrictions on further dissemination of the information obtained.

(iii) The State Board of Pharmacy may also provide generic, nonidentifying statistical data for research or educational purposes.

(f) A dispenser pharmacist or practitioner licensed to dispense controlled substances and specified noncontrolled substance drugs who knowingly fails to submit drug monitoring information or knowingly submits incorrect dispensing information shall be subject to actions against the pharmacist's or practitioner's license, registrations or permit and/or an administrative penalty as provided in Sections 73-21-97 and 73-21-103.

(g) "Practitioner," as used in this section, shall include any person licensed, registered or otherwise permitted to distribute, dispense, prescribe or administer a controlled substance, as defined under Section 41-29-105(y).

(h) In addition to any funds appropriated by the Legislature, the State Board of Pharmacy may apply for any available grants and accept any gifts, grants or donations to assist in future development or in maintaining the program.

(i) This section shall stand repealed on July 1, 2014.

## Montana

West's Montana Code Annotated (2012)  
Title 37. Professions and Occupations  
Chapter 7. Pharmacy  
Part 15. Prescription Drug Registry

§ 37-7-1506. Providing prescription drug registry information

**(1) Registry information is health care information as defined in 50-16-504 and is confidential. Except as provided in 37-7-1504, the board is authorized to provide data from the registry, upon request, only to the following:**

(a) a person authorized to prescribe or dispense prescription drugs if the person certifies that the information is needed to provide medical or pharmaceutical treatment to a patient who is the subject of the request and who is under the person's care or has been referred to the person for care;

(b) a prescriber who requests information relating to the prescriber's own prescribing information if the prescriber certifies that the requested information is for a purpose in accordance with board rule;

(c) an individual requesting the individual's registry information if the individual provides evidence satisfactory to the board that the individual requesting the information is the person about whom the data entry was made;

(d) a designated representative of a government agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense drugs, in order to conduct investigations related to a health care professional who is the subject of an active investigation for drug misuse or diversion;

(e) a county coroner or a peace officer employed by a federal, state, tribal, or local law enforcement agency if the county coroner or peace officer has obtained an investigative subpoena;

**(f) an authorized individual under the direction of the department of public health and human services for the purpose of reviewing and enforcing that department's responsibilities under the public health, medicare, or medicaid laws; or**

(g) a prescription drug registry in another state if the data is subject to limitations and restrictions similar to those provided in 37-7-1502 through 37-7-1513.

(2) The board shall maintain a record of each individual or entity that requests information from the registry and whether the request was granted pursuant to this section.

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(3) The board may release information in summary, statistical, or aggregate form for educational, research, or public information purposes. The information may not identify a person or entity.

(4) Information collected by or obtained from the registry may not be used:

(a) for commercial purposes; or

(b) as evidence in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense prescription drugs.

(5) Information obtained from the registry in accordance with the requirements of this section may be used in the course of a criminal investigation and subsequent criminal proceedings.

(6) The board shall adopt rules to ensure that only authorized individuals have access to the registry and only to appropriate information from the registry. The rules must be consistent with:

(a) the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.;

(b) administrative rules adopted in connection with that act;

(c) Article II, section 10, of the Montana constitution; and

(d) the privacy provisions of Title 50, chapter 16.

(7) The procedures established by the board under this section may not impede patient access to prescription drugs for legitimate medical purposes.



## Nevada

West's Nevada Revised Statutes Annotated (2011)  
Title 40. Public Health and Safety  
Chapter 453. Controlled Substances  
Uniform Controlled Substances Act  
General Provisions

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

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

**(a) Be designed to provide information regarding:**

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

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

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

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

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

(1) The name of the person;

(2) The physical address of the person;

(3) The telephone number of the person; and

- (4) If the person maintains an electronic mail address, the electronic mail address of the person.
2. The Board shall provide Internet access to the database of the program established pursuant to subsection 1 to each practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III or IV who:
- (a) Elects to access the database of the program; and
  - (b) Completes the course of instruction described in subsection 6.
3. The Board and the Division must have access to the program established pursuant to subsection 1 to identify any suspected fraudulent or illegal activity related to the dispensing of controlled substances.
4. The Board or the Division shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide the law enforcement agency or occupational licensing board with the relevant information obtained from the program for further investigation.
5. Information obtained from the program relating to a practitioner or a patient is confidential and, except as otherwise provided by this section and NRS 239.0115, must not be disclosed to any person. That information must be disclosed:
- (a) Upon the request of a person about whom the information requested concerns or upon the request on behalf of that person by his or her attorney; or
  - (b) Upon the lawful order of a court of competent jurisdiction.
6. The Board and the Division shall cooperatively develop a course of training for persons who elect to access the database of the program pursuant to subsection 2 and require each such person to complete the course of training before the person is provided with Internet access to the database pursuant to subsection 2.
7. The Board and the Division may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

## New Jersey

New Jersey Statutes Annotated (2012)

Title 45. Professions and Occupations

Subtitle 1. Professions and Occupations Regulated by State Boards of Registration and Examination

Chapter 1. General Provisions

Article 4. Health Care Professional Responsibility and Reporting Act

§ 45:1-46. Access to prescription information

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

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

c. The division shall review the prescription monitoring information provided by a pharmacy permit holder pursuant to sections 25 through 30 of P. L.2007, c. 244 (C.45:1-45 through C.45:1-50). If the division determines that a violation of law or regulations, or a breach of the applicable standards of practice, may have occurred, the division shall notify the appropriate law enforcement agency or professional licensing board, and provide the prescription monitoring information required for an investigation.

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

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

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

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dispensing medications beyond that which may be required as part of the pharmacist's professional practice;

(3) a designated representative of the State Board of Medical Examiners, New Jersey State Board of Dentistry, New Jersey Board of Nursing, New Jersey State Board of Optometrists, New Jersey State Board of Pharmacy, State Board of Veterinary Medical Examiners, or any other board in this State or another state that regulates the practice of persons who are authorized to prescribe or dispense controlled dangerous substances, as applicable, who certifies that he is engaged in a bona fide specific investigation of a designated practitioner whose professional practice was or is regulated by that board;

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

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

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

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

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

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

f. The division shall offer an on-line tutorial for those persons listed in subsection d. of this section, which shall, at a minimum, include: how to access prescription monitoring information; the rights and responsibilities of persons who are the subject of or access this information and the other provisions of sections 25 through 30 of P.L.2007, c. 244 (C.45:1-45 through C.45:1-50) and the regulations adopted pursuant thereto, regarding the permitted uses of that information and penalties for violations thereof; and a summary of the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164 and a hypertext link to the federal Department of Health and Human Services website for further information about the specific provisions of the privacy rule.

g. The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research or educational purposes.

## **New Mexico**

Code of New Mexico Rules (2011)

Title 16. Occupational and Professional Licensing

Chapter 19. Pharmacists

Part 29. Controlled Substance Prescription Monitoring Program

### 16.19.29. CONTROLLED SUBSTANCE PRESCRIPTION MONITORING PROGRAM

16.19.29.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy.

[16.19.29.1 NMAC - N, 07-15-04]

16.19.29.2 SCOPE: All persons or entities that dispense controlled substances pursuant to prescriptions from practitioners.

[16.19.29.2 NMAC - N, 07-15-04]

16.19.29.3 STATUTORY AUTHORITY: Section 30-31-16 of the Controlled Substance Act. 30-31-1 through 30-31-42 NMSA 1978, authorizes the board of pharmacy to promulgate regulations and charge reasonable fees regarding controlled substances. 30-31-16 authorizes the board to collect information regarding controlled substances.

[16.19.29.3 NMAC - N, 07-15-04]

16.19.29.4 DURATION: Permanent.

[16.19.29.4 NMAC - N, 07-15-04]

16.19.29.5 EFFECTIVE DATE: 07-15-04, unless a later date is cited at the end of a section.

[16.19.29.5 NMAC - N, 07-15-04]

16.19.29.6 OBJECTIVE: The objective of Part 29 of Chapter 19 is to promote the public health and welfare by detecting and preventing substance abuse and encouraging appropriate treatment of pain and other conditions for which controlled substances are prescribed. The purpose of the system is to improve access to controlled substances for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient's pharmaceutical history related to controlled substances. The program's objectives will include education of the public and health care professionals regarding the nature and extent of the problem of drug abuse, appropriate prescribing and use of controlled substances, and the medical treatment options for abusers of controlled substances and pain management.

[16.19.29.6 NMAC - N, 07-15-04]

16.19.29.7 DEFINITIONS:

- A. "Controlled substance" has the meaning given such term in 30-31-2 NMSA.
- B. "Board of pharmacy" means the state agency responsible for the functions listed in 16.19.29.8 NMAC.
- C. "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued and for whom a drug is dispensed.
- D. "Dispenser" means the person who delivers a schedule II - V controlled substance as defined in Subsection E to the ultimate user, but does not include the following:
- (1) a licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;
  - (2) a practitioner, or other authorized person who administers such a substance; or
  - (3) a wholesale distributor of a schedule II - V controlled substance;
  - (4) clinics, urgent care or emergency departments dispensing no more than 12 dosage units to an individual patient within a 72 hour period.
- E. "Schedule II, III, IV and V controlled substance" means substances that are listed in schedules II, III, IV, and V of the schedules provided under 30-31-5 to 30-31-10 of NMSA or the federal controlled substances regulation (21 U.S.C. 812).
- F. "Report" means a compilation of data concerning a patient, a dispenser, a practitioner, or a controlled substance.

[16.19.29.7 NMAC - N, 07-15-04; A, 06-11-11]

16.19.29.8 REQUIREMENTS FOR THE PRESCRIPTION MONITORING PROGRAM:

- A. The board shall monitor the dispensing of all schedule II, III, IV and V controlled substances by all pharmacies licensed to dispense such substances to patients in this state.
- B. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this section. Information to be reported shall conform to the standards developed by the American society for automation in pharmacy (ASAP) and published in the "ASAP telecommunications format for controlled substances", 2009 4.1 edition. Information submitted for each prescription shall include:

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- (1) dispenser DEA number;
- (2) date prescription filled;
- (3) prescription number;
- (4) whether the prescription is new or a refill;
- (5) NDC code for drug dispensed;
- (6) quantity dispensed;
- (7) patient name;
- (8) patient address;
- (9) patient date of birth;
- (10) prescriber DEA number;
- (11) date prescription issued by prescriber;
- (12) and payment classification.

C. Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board; but shall report at least every seven days. A record of each controlled substance prescription dispensed must be transmitted to the boards' agent by computer modem.

[16.19.29.8 NMAC - N, 07-15-04; A, 06-11-11]

#### 16.19.29.9 ACCESS TO PRESCRIPTION INFORMATION:

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

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

C. After receiving a complaint, the board inspectors shall review the relevant prescription information. If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the board shall notify the appropriate law enforcement or

professional licensing, certification or regulatory agency or entity, and provide prescription information required for an investigation.

D. The board will establish written protocols for reviewing the prescription data reported. These protocols will be reviewed and approved by the board as needed but at least once every calendar year. These protocols will define information to be screened, frequency and thresholds for screening and the parameters for using the data. Data will be used to notify providers, patients and pharmacies to educate, provide for patient management and treatment options.

**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 or;
- (9) the controlled substance monitoring program of another state or group of states with whom the state has established an interoperability agreement;
- (10) a parent to have access to the prescription records about his or her minor child, as his or her minor child's personal representative when such access is not inconsistent with state or other laws.



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

[16.19.29.9 NMAC - N, 07-15-04; A, 06-11-11]

16.19.29.10 REPORTS: A written request will be filed with the board prior to release of a report.

A. Persons listed in Paragraphs (1) through (10) of Subsection E of 16.19.29.9 NMAC must submit a written request listing the information for the report.

B. Reports will be prepared and delivered to the requesting person via U.S. mail, facsimile, or other electronic means.

C. Reports may be provided by secured electronic means after verification of electronic request.

D. The program will produce reports for the board that evaluate the effectiveness of the program and assist in identifying diversion of controlled substances. The program will produce statistical reports to evaluate the dispensing of controlled substances and utilization of the program. These reports will be able to provide data on:

- (1) number of solicited reports from prescribers for a specified time period;
- (2) number of solicited reports from a specified prescriber for a specified time period;
- (3) number of solicited reports from pharmacies for a specified time period;
- (4) number of solicited reports from a specified pharmacy for a specific time period;
- (5) number of solicited reports from other unauthorized individuals for a specified time period;
- (6) number of individuals receiving a prescription for a specified schedule for a specified time period;
- (7) threshold report of number of individuals receiving a prescription for a specified schedule from 6 or more prescribers or 6 or more pharmacies within a specified time period;
- (8) number of solid dosage units for a specified schedule for pain relievers, tranquilizers, stimulants and sedatives for a specified time period;
- (9) list of individual prescriptions for a specified zip-code or state code;
- (10) number of prescriptions for a specified zip-code;

(11) number of dosage units for a specified drug and specified zip-code.

E. The board shall receive a quarterly program outcomes report from staff or contractors. A statistical analysis of the data that does not include protected information should be reported on the web site or in the newsletter.

[16.19.29.10 NMAC - N, 07-15-04; A, 06-11-11]

16.19.29.11 **AUTHORITY TO CONTRACT:** The board is authorized to contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contract shall be bound to comply with the provisions regarding confidentiality of prescription information in 16.19.29.9 NMAC of this regulation and shall be subject to the penalties specified in 16.19.29.12 NMAC of this regulation for unlawful regulations.

[16.19.29.11 NMAC - N, 07-15-04]

16.19.29.12 **REGISTRATION FOR ACCESS TO PRESCRIPTION INFORMATION:**

A. Practitioners with individual drug enforcement administration (DEA) issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the practitioner. One subaccount per practitioner account is authorized for an agent of the practitioner. The agent designated by the practitioner will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the agent.

B. Pharmacies with DEA issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued. Pharmacies will designate one individual who will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the individual. Pharmacies will not be permitted to obtain a subaccount.

C. All registrations will be renewed every three years by completing and submitting a new application.

[16.19.29.12 NMAC - N, 07-15-04; 16.19.29.12 NMAC - N, 06-11-11]

16.19.29.13 **INFORMATION EXCHANGE WITH OTHER PRESCRIPTION MONITORING PROGRAMS:**

A. The New Mexico board of pharmacy may provide prescription monitoring information to other states' prescription monitoring programs and such information may be used by those programs consistent with the provisions of the rule.

B. The New Mexico board of pharmacy may request and receive prescription monitoring information from other states' prescription monitoring programs and may use such information under provisions of this rule.

C. The New Mexico board of pharmacy may develop the capability to transmit information to and receive information from other prescription monitoring programs employing the standards of interoperability.

D. The New Mexico board of pharmacy is authorized to enter into written agreements with other states' prescription monitoring programs or other entities hosting compatible information sharing technologies for the purpose of describing the terms and conditions for sharing of prescription information under this section.

[16.19.29.13 NMAC - N, 07-15-04; 16.19.29.13 NMAC - N, 06-11-11]

#### 16.19.29.14 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.

[16.19.29.14 NMAC - Rn, 16.19.29.12 NMAC, 06-11-11]

16.19.29.15 SEVERABILITY: If any provisions of this regulation or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the regulation which can be given effect without the invalid provisions or applications, and to this end the provisions of this regulation are severable.

## **New York**

Mckinney's Consolidated Laws of New York Annotated (2012)

Public Health Law

Chapter 45. Of the Consolidated Laws

Article 33. Controlled Substances

Title VI. Records and Reports

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

**1. No person, who has knowledge by virtue of his or her 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;

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

**(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;<sup>1</sup>**

(d) to a central registry established pursuant to this article; and

(e) to a practitioner to inform him or her that a patient 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.

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<sup>1</sup> This has been interpreted to include the New York State Office of the Medicaid Inspector General.

© 2012 Research is current as of March 8, 2012. In order to ensure that the information contained herein is as current as possible, research is conducted using both nationwide legal database software and individual state legislative websites. Please contact Heather Gray at (703) 836-6100, ext. 114 or hgray@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS. 215 Lincoln Ave. Suite 201, Santa Fe, NM 87501.

## North Carolina

West's North Carolina General Statutes (2011)

Chapter 90. Medicine and Allied Occupations

Article 5E. North Carolina Controlled Substances Reporting System Act

### § 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.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

**(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.

(8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

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

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

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

(g) Nothing in this Article shall prohibit a person authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes from disclosing or disseminating data regarding a particular patient obtained under subsection (c) of this section to another person (i) authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes and (ii) authorized to receive the same data from the Department under subsection (c) of this section.

(h) Nothing in this Article shall prevent persons licensed or approved to practice medicine or perform medical acts, tasks, and functions pursuant to Article 1 of Chapter 90 of the General Statutes from retaining data received pursuant to subsection (c) of this section in a patient's confidential health care record.

## **North Dakota**

West's North Dakota Century Code (2011)  
Title 19. Foods, Drugs, Oils, and Compounds  
Chapter 19-03.5. Prescription Drug Monitoring Program

### § 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;

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; or

j. A licensed addiction counselor for the purpose of providing services for a licensed treatment program in this state.

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

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

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



## Ohio

Baldwin's Ohio Revised Code (2012)  
Title XLVII. Occupations--Professions  
Chapter 4729. Pharmacists; Dangerous Drugs  
Miscellaneous Provisions

§ 4729.80 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 is authorized or required to 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 health care professionals with authority to prescribe, administer, or dispense 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 shall provide to the officer information from the database relating to the person who is the subject of an active investigation of a drug abuse offense, as defined in section 2925.01 of the Revised Code, being conducted by the officer's employing government entity.
- (3) Pursuant to a subpoena issued by a grand jury, the board shall 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) Pursuant to a subpoena, search warrant, or court order in connection with the investigation or prosecution of a possible or alleged criminal offense, the board shall provide information from the database as necessary to comply with the subpoena, search warrant, or court order.
- (5) On receipt of a request from a prescriber or the prescriber's agent registered with the board, the board may provide to the prescriber information from the database relating to a current patient of the prescriber, if the prescriber certifies in a form specified by the board that it is for the purpose of providing medical treatment to the patient who is the subject of the request.
- (6) On receipt of a request from a pharmacist, the board may provide to the pharmacist information from the database relating to a current patient of the pharmacist, if the pharmacist certifies in a form specified by the board that it is for the purpose of the pharmacist's practice of pharmacy involving the patient who is the subject of the request.

(7) 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 4729.84 of the Revised Code, the board may provide to the individual the individual's own database information.

**(8) On receipt of a request from the medical director of a managed care organization that has entered into a data security agreement with the board required by section 5111.1710 of the Revised Code, the board may provide to the medical director information from the database relating to a medicaid recipient enrolled in the managed care organization.**

(9) On receipt of a request from the director of job and family services, the board may provide to the director information from the database relating to a recipient of a program administered by the department of job and family services.

(10) On receipt of a request from the administrator of workers' compensation, the board may provide to the administrator information from the database relating to a claimant under Chapter 4121., 4123., 4127., or 4131. of the Revised Code.

(11) On receipt of a request from a requestor described in division (A)(1), (2), (5), or (6) of this section who is from or participating with another state's prescription monitoring program, the board may provide to the requestor information from the database, but only if there is a written agreement under which the information is to be used and disseminated according to the laws of this state.

(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 4729.84 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 health care professionals with authority to prescribe, administer, or dispense 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) 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.

Baldwin's Ohio Administrative Code (2012)  
4729 Pharmacy Board  
Chapter 4729-37. Dangerous Drug Database

4729-37-08 Procedures for obtaining drug database information

**Persons that are permitted pursuant to divisions (A)(1) to (A)(5) of section 4729.79 of the Revised Code to obtain information from the drug database must comply with the following procedures:**

**(A) A designated representative of a government entity, a prescriber, or a pharmacist must:**

**(1) Complete a request form giving such information as required by the board of pharmacy;**

**(2) Submit the completed form to the board of pharmacy in person, by mail, or by other board approved means.**

**(B) A federal, state, or local officer must:**

(1) Complete a request form giving such information as required by the board of pharmacy that will include an active case number assigned by the investigating agency or department and an approval by a supervisor of that agency or department;

(2) Submit the completed form to the board of pharmacy in person, by mail, or by other board approved means.

**(C) An individual seeking the individual's own database information must:**

(1) Complete a notarized request form giving such information as required by the board of pharmacy;

(2) Submit the completed form in person or by mail;

(3) Receive the information in person at the board of pharmacy office during normal business hours and show proof of identity with a current government issued form of identification that contains a picture such as a current state issued identification card, a current state issued drivers license, or a valid passport;

(4) Pay the cost of printing the document as determined by the board of pharmacy's current per page rate.

## **South Carolina**

Code of Laws of South Carolina 1976 Annotated (2012)

Title 44. Health

Chapter 53. Poisons, Drugs and Other Controlled Substances

Article 15. Prescription Monitoring Program

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

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

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

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

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

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

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

(3) a designated representative of the South Carolina Department of Labor, Licensing and Regulation responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

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

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

- (6) a properly convened grand jury pursuant to a subpoena properly issued for the records;
- (7) personnel of drug control for purposes of administration and enforcement of this article;
- (8) qualified personnel for the purpose of bona fide research or education; however, data elements that would reasonably identify a specific recipient, prescriber or dispenser must be deleted or redacted from such information prior to disclosure. Further, release of the information only may be made pursuant to a written agreement between qualified personnel and the department in order to ensure compliance with this Subsection.

## **South Dakota**

South Dakota Codified Laws (2012)  
Title 34. Public Health and Safety  
Chapter 34-20E. Prescription Drug Monitoring Program

§ 34-20E-7. Disclosure of data in central repository to certain persons and entities

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

- (1) Any 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;
- (2) Any individual who requests the prescription information of the individual or the individual's minor child;
- (3) Any state board or regulatory agency that is 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;
- (4) Any 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;
- (5) The Department of Social Services for purposes regarding the utilization of controlled substances by a medicaid recipient;**
- (6) Any insurer for purposes regarding the utilization of controlled substances by a claimant;
- (7) Any judicial authority under grand jury subpoena or court order or equivalent judicial process for investigation of criminal violations of controlled substances laws;
- (8) Any public or private entity 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
- (9) Any 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.

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## Tennessee

West's Tennessee Code Annotated (2012)  
Title 53. Food, Drugs and Cosmetics  
Chapter 10. Legend Drugs  
Part 3. Controlled Substance Monitoring Act of 2002

§ 53-10-306. Confidentiality; disclosure; penalties

**(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to title 10, chapter 7, regarding public records, and not subject to subpoena from any court and shall be made available only as provided for in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part:**

- (1) Personnel of the committee specifically assigned to conduct analysis or research;
- (2) Authorized committee, board, or department of health personnel engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;
- (3) A licensed health care practitioner having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current or bona fide prospective 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;

**(5) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare:**

**(A) The office of inspector general;**

**(B) The medicaid fraud control unit; and**

**(C) The bureau of TennCare's chief medical officer, associate chief medical directors, director of quality oversight, and associate director of pharmacy; or**

(6) Law enforcement personnel; provided, that such personnel are engaged in the official investigation and enforcement of state or federal laws involving controlled substances; and that



any law enforcement personnel receiving information from the database pursuant to this section shall comply with the requirements of this subsection (a):

(A)(i) Any law enforcement agency or judicial district drug task force that wants one (1) or more of its officers or agents to have the authorization to request information from the database shall first pre-approve each such officer. Pre-approval shall be by the applicant's supervisor, who shall be either the chief of police, county sheriff or the judicial district drug task force director. The list of pre-approved applicants shall be sent to the district attorney general in the judicial district in which the agency or task force has jurisdiction.

(ii) By December 1 of each year, each district attorney general shall send to the board of pharmacy a list of applicants authorized to request information from the database from that general's judicial district for the next calendar year.

(B)(i) If the Tennessee bureau of investigation (TBI) wants one (1) or more of its agents to have the authorization to request information from the database each such agent shall first be pre-approved by the agent's immediate supervisor and division head. Approved applicants shall be sent to the board by the director.

(ii) By December 1 of each year, the TBI director shall send to the board of pharmacy a list of applicants authorized to request information from the database from the bureau for the next calendar year.

(C) An application submitted by a law enforcement agency, a judicial drug task force or the TBI shall include, but not be limited to the:

(i) Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number, and the business email address of each applicant officer or agent, the appropriate district attorney general and, if a TBI agent, the TBI director and their business email addresses; and

(ii) Signatures of the applicant, the applicants approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or the approving division head and the TBI director.

(D) It shall be a duty of the board, as part of its duties to maintain the database pursuant to § 53-10-305(c), to receive and verify the lists of authorized applications sent to it by the district attorneys general and the director of the TBI pursuant to this subsection (a).

(b) When requesting information from the database, the board shall require law enforcement personnel to provide a case number as part of the process for requesting information from the database. The case number entered shall correspond with an official investigation involving controlled substances and information requested should directly relate to the investigation.

(c) The board of pharmacy shall by rule, establish a fee for providing information to a law enforcement agency, judicial district drug task force or TBI pursuant to this section. In determining the fee and type of fee to be charged, the board shall consider options such as an annual fee or a per use, incremental cost basis fee.

(d)(1) Law enforcement personnel and judicial district drug task force agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(6)(C) to the appropriate district attorney by November 20 of each year. Such resubmitted applications shall be sent by the appropriate district attorney general to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the appropriate district attorney shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(2) TBI agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(6)(C) to the TBI director by November 20 of each year. Such resubmitted applications shall be sent by the TBI director to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the TBI director shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(e)(1) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information and may only be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.

(2) Any information obtained from the data base that is sent to a law enforcement official or a judicial district drug task force agent shall also be sent to the district attorney general of the judicial district in which such officer or agent has jurisdiction. Likewise, any database information sent to a TBI agent shall also be sent to the TBI director.

(f) To ensure the privacy and confidentiality of patient records, information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwithstanding the use of the information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.

(g) Any information disseminated pursuant to subdivisions (a)(1)-(5) shall be released to the individual or entity requesting the information by the database manager or by password protected internet access.

(h) Any licensed practitioner or pharmacist receiving patient-specific information pursuant to subdivision (a)(1), (a)(2), (a)(3) or (a)(4) shall not disclose the information to any person other than:

(1) The patient to whom the information relates and then only for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment;

(2) Other dispensers identified by the information and then only for the purposes of verifying the accuracy of the information; and

(3) Any law enforcement agency or judicial district drug task force to whom reporting of controlled substances being obtained in a manner prohibited by § 53-11-402(a)(6) is required by § 53-11-309.

(i) If a law enforcement officer, judicial district drug task force agent or TBI agent has probable cause to believe, based upon information received from a database request, that a prescriber or pharmacist may be acting or may have acted in violation of the law, the officer or agent shall consult with the board of pharmacy inspector's office if a pharmacist and the health related boards' investigations unit if a prescriber.

(j)(1) At least every six (6) months, the board shall send a list to each district attorney general containing all requests made for database information during the previous six (6) months. The list shall include the name of the requesting officer or agent, the officer or agent's agency, the date of the request, and the nature of the request, including the case number, for each officer or agent making a request in such district attorney's judicial district. Likewise, a list shall be sent to the director of the TBI for all TBI agents making requests during the previous six (6) months.

(2) Each district attorney general and the TBI director shall use the list to perform an audit to determine if the database information requests made during the preceding six (6) month period correspond to specific cases under investigation in the applicable judicial district or by the bureau and if the information requested is relevant and pertinent to an investigation.

(3) Each district attorney general and the TBI director shall verify all database information requests contained on the list received and send it back to the board within sixty (60) days of receipt. If a database information request does not correspond to an investigation in the applicable jurisdiction or if the information requested was not relevant or pertinent to the information requested, the district attorney general or director shall so note on the verified list and shall investigate the discrepancy and make a report back to the board within a reasonable period of time.

(4) The results of the audit conducted pursuant to subdivision (j)(2) shall be discoverable by a prescriber or pharmacist charged with violating any state or federal law involving controlled substances or under a notice of charges proffered by a licensing board for a violation of any law involving controlled substances, but only the results pertaining to that prescriber or pharmacist is

discoverable. However, if there is an active criminal investigation involving a prescriber or the prescriber is under investigation by the health related boards' investigation unit, the results of the audit conducted pursuant to subdivision (j)(2) shall not be discoverable by the prescriber during either such period.

(k)(1) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(2) 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.

(3) Intentional unauthorized use or disclosure of database information by law enforcement personnel, judicial district drug task force members or TBI agents shall be punishable as a Class A misdemeanor.

(4) Any law enforcement personnel, judicial district drug task force member or TBI agent charged with a violation of this section shall have such person's authorization to request information from the database suspended pending final disposition of any criminal prosecution. Any law enforcement personnel, judicial district drug task force member or TBI agent found guilty of a violation of this subsection (i) shall have such person's authorization to request information from the database permanently revoked.

(l)(1) The following personnel of the department of mental health actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities shall have access to the database for controlled substances prescription information for specific patients:

(A) The chief pharmacist;

(B) The state opioid treatment authority (SOTA) or SOTA designee; and

(C) The medical director.

(2) Aggregate controlled substances prescribing information from the database may be provided upon request by the following personnel of the department of mental health, who are actively engaged in analysis of controlled substances prescription information as provided in this subsection (l), and may be shared with other personnel of the department of mental health as needed to fulfill assigned duties and responsibilities:

(A) The chief pharmacist;

(B) The SOTA; or

(C) The medical director.

## Utah

West's Utah Code Annotated (2011)  
Title 58. Occupations and Professions  
Chapter 37F. Controlled Substance Database Act  
Part 3. Access

§ 58-37f-301. Access to database

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

**(2) The division shall make information in the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:**

(a) personnel of the division specifically assigned to conduct investigations related to controlled substance 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) in accordance with a written agreement entered into with the department, employees of the Department of Health:

(i) 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; or

(ii) when the information is requested by the Department of Health in relation to a person or provider whom the Department of Health suspects may be improperly obtaining or providing a controlled substance;

(d) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i)(A) relates specifically to a current or prospective patient of the practitioner; and

(B) is sought by the practitioner for the purpose of:

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(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner; or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii)(A) relates specifically to a former patient of the practitioner; and

(B) is sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(e); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(e) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(3)(b) with respect to the employee;

(f) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

**(g) federal, state, and local law enforcement authorities, and state and local prosecutors, engaged as a specified duty of their employment in enforcing laws:**

(i) regulating controlled substances; or

**(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;**

**(h) employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity under Section 26-18-2.3;**

(i) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)(i)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)(i)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)(i)(i)(A) is associated with a practitioner who:



(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)(i), from the database;

(j) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made;

**(k) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63J, Chapter 4a, Part 2, Office Duties and Powers; and**

(l) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

(i) a member of the medical panel described in Section 34A-2-601; or

(ii) a physician offering a second opinion regarding treatment.

(3)(a) A practitioner described in Subsection (2)(d) may designate up to three employees to access information from the database under Subsection (2)(e).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish background check procedures to determine whether an employee designated under Subsection (2)(e)(i) should be granted access to the database.

(c) The division shall grant an employee designated under Subsection (2)(e)(i) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(4)(a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

## Virginia

West's Annotated Code of Virginia (2012)

Title 54.1. Professions and Occupations

Subtitle III. Professions and Occupations Regulated by Boards Within the Department of Health Professions

Chapter 25.2. Prescription Monitoring Program

§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director

A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 15 of § 2.2-3705.5. Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.

B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director shall disclose the following:

1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent designated by the superintendent of the Department of State Police to conduct drug diversion investigations pursuant to § 54.1-3405.
2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health regulatory board; information relevant to a disciplinary proceeding before a health regulatory board or in any subsequent trial or appeal of an action or board order to designated employees of the Department of Health Professions; or to designated persons operating the Health Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title.
3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.
4. Information relevant to a specific investigation of a specific dispenser or specific prescriber to an agent of the United States Drug Enforcement Administration with authority to conduct drug diversion investigations.

**C. In accordance with the Department's regulations and applicable federal law and regulations, the Director may, in his discretion, disclose:**

1. Information in the possession of the program concerning a recipient who is over the age of 18 to that recipient.
2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of establishing the treatment history of the specific recipient when such recipient is either under care and treatment by the prescriber or the prescriber is initiating treatment of such recipient. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the prescriber from the Prescription Monitoring Program.
3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in determining the validity of a prescription in accordance with § 54.1-3303 when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the dispenser from the Prescription Monitoring Program.
4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession when such regulatory authority licenses such dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory authority.
- 5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the Attorney General or to designated employees of the Department of Medical Assistance Services, as appropriate.**
6. Information relevant to determination of the cause of death of a specific recipient to the designated employees of the Office of the Chief Medical Examiner.
7. Information for the purpose of bona fide research or education to qualified personnel; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted or redacted from such information prior to disclosure. Further, release of the information shall only be made pursuant to a written agreement between such qualified personnel and the Director in order to ensure compliance with this subdivision.

D. The Director may enter into agreements for mutual exchange of information among prescription monitoring programs in other jurisdictions, which shall only use the information for purposes allowed by this chapter.

E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the divulging of confidential records relating to investigative information.

F. Confidential information that has been received, maintained or developed by any board or disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services. However, this subsection shall not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

Virginia Administrative Code (2012)

Title 18. Professional and Occupational Licensing

Vac Agency No. 76. Department of Health Professions

Chapter 20. Regulations Governing the Prescription Monitoring Program

18 VAC 76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in a format designated by the department.

**B. The director may disclose information to:**

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the address on the license or delivered to the recipient at the department.

2. The prescriber for the purpose of establishing a treatment history for a patient or prospective patient, provided the request is accompanied by the prescriber's registration number with the United States Drug Enforcement Administration (DEA) and attestation that the prescriber is in compliance with patient notice requirements of 18 VAC 76-20-70. The prescriber may delegate the submission of a request for information, provided the delegation is in compliance with § 54.1-2523.2 of the Code of Virginia. The health care professionals to whom the prescriber has authorized access to information shall be registered with the program. Requests for information made by a delegated health care professional shall be made in his own name, using his own unique identifiers assigned by the program.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an

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allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

**4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.**

5. A dispenser for the purpose of establishing a prescription history for a specific person to assist in determining the validity of a prescription, provided the request is accompanied by the dispenser's license number issued by the relevant licensing authority and an attestation that the dispenser is in compliance with patient notice requirements of 18 VAC 76-20-70.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient and/or dispenser.

D. Except as provided in subdivision B 1 of this section, the request form shall include an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

E. In order to request disclosure of information contained in the program, a designated employee of the Department of Medical Assistance Services or of the Office of the Chief Medical Examiner shall register with the director as an authorized agent entitled to receive reports under § 54.1-2523 C of the Code of Virginia.

1. Such request for registration shall include an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

## Washington

West's Revised Code of Washington (2012)  
Title 70. Public Health and Safety  
Chapter 70.225. Prescription Monitoring Program

§ 70.225.040. Confidentiality of prescription information--Procedures--Immunity when acting in good faith

(1) Prescription information submitted to the department shall be confidential, in compliance with chapter 70.02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3) and (4) of this section.

(2) The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3) and (4) of this section.

**(3) The department may provide data in the prescription monitoring program to the following persons:**

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

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity;

(d) Appropriate local, state, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation involving a designated person;

**(e) Authorized practitioners of the department of social and health services and the health care authority regarding medicaid program recipients;**

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order; and

(i) Personnel of the department for purposes of administration and enforcement of this chapter or chapter 69.50 RCW.

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

(5) A dispenser or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program.



## West Virginia

West's Annotated Code of West Virginia (2012)  
Chapter 60A. Uniform Controlled Substances Act  
Article 9. Controlled Substances Monitoring

§ 60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting

**(a) 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 the Office of the Chief Medical Examiner for use in post-mortem examinations, 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;

(b) All practitioners, as that term is defined in section one hundred-one, article two of this chapter who prescribe or dispense schedule II, III or IV controlled substances shall, on or before July 1, 2011 have online or other form of electronic access to the West Virginia Controlled Substances Monitoring Program database;

(c) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program database pursuant to this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database;

(d) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or

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declining to prescribe or dispense a schedule II, III or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense; and

(e) The Board of Pharmacy is hereby authorized to promulgate an emergency rule under chapter twenty-nine-A to effectuate the amendments to this section enacted during the 2010 Regular Session of the Legislature.

(f) Nothing in the article shall be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program database.