



STATES' RESPONSES TO MAIL ORDER PHARMACIES DELIVERING OR DISPENSING PRESCRIPTION DRUGS INTO THEIR STATES

Review of Information Collected – January 4, 2005

Method of Information Collection

Staff of the National Alliance for Model State Drug Laws (NAMSDL) has contacted officials from the 20 operating state Prescription Drug Monitoring Programs (PDMPs). For purposes of this document, “operating” is defined as a PDMP which is capable of receiving requests for information and providing information, if appropriate, in response to that request. To date, preliminary information has been gathered from each of the 20 PDMPs (CA, HI, ID, IL, IN, KY, MA, ME, MI, NV, NY, OK, PA, RI, TX, UT, VA, WA, WV, WY). NAMSDL staff interviewed representatives from these states by phone and e-mail (see attached list of officials).

Overview

Officials from 13 of the 20 states responding to date indicated that out-of-state mail order pharmacies delivering or dispensing drugs into their states are required to report data to their states' PDMPs (HI, ID, IL, IN, KY, ME, MI, NY, OK, RI, UT, WV, WY). The reporting requirement is based on the license or registration which the mail order pharmacies must obtain to conduct business or dispense in their states.

Officials from two states, Virginia and Washington state, indicated that they do not yet require such reporting by out-of-state pharmacies because of the limited scope of their current PDMPs. However, both Virginia and Washington state officials anticipated that upon expansion or enhancement of their PDMPs, they would require submission of data by out-of-state mail order pharmacies dispensing or delivering prescription drugs into their states.

The law in four states, CA, MA, PA, and TX, does not authorize state officials to require these out-of-state mail order pharmacies to report data to the state's PDMP.

Officials with the NV Board of Pharmacy have the authority to require such reporting, but have discontinued the collection of information from mail order pharmacies located outside of Nevada. These officials have determined that such collection is currently unnecessary because the state's prescription diversion and abuse problem is primarily associated with pharmacies within Nevada.

State Specific Information

California

Mail order pharmacies located out-of-state which ship, mail, or deliver controlled substances, dangerous drugs or dangerous devices into California are defined as nonresident pharmacies under California Business & Professions (B & P) Code Section 4112. Section 4112 requires such pharmacies to register with the California Board of Pharmacy, and to comply with all lawful directions and requests for information from the Board. Additionally, nonresident pharmacies must maintain records of all controlled substances, dangerous drugs and dangerous devices dispensed to patients in California so that the records are readily retrievable and distinguishable from the records of other drugs dispensed.

Additionally, California B & P Code 4037 defines pharmacy as an area, place, or premise licensed by the Board of Pharmacy in which the profession of pharmacy is practiced and where prescriptions are compounded. To date this law has not been clearly interpreted to include out-of-state mail order pharmacies within its purview. Consequently, these pharmacies are not required to comply with California Health & Safety Code Section 11165(d) which requires dispensing pharmacies to submit information regarding prescriptions for Scheduled II controlled substances to the California Department of Justice.

California officials conclude that state law does not specifically require nonresident pharmacies to report to the Controlled Substances Utilization Review and Evaluation System (CURES) (California's PDMP). However, the California Board of Pharmacy encourages these pharmacies to report to the system, and many nonresident pharmacies voluntarily provide information to CURES.

Hawaii

Hawaii law requires any pharmacy, including out-of-state, mail order or internet, to obtain a State of Hawaii Controlled Substance Registration prior to delivering controlled substances in Hawaii. Chapter 329-101(f) of Hawaii Revised Statutes requires all specified prescriptions that an out-of-state pharmacy processes to conform to Hawaii's reporting and registration requirements, and any additional rules.

Idaho

All pharmacies, including out-of-state mail order pharmacies, must register with the Board of Pharmacy. Pursuant to their Idaho registration, these pharmacies must report to the state PDMP information involving all prescriptions dispensed in Idaho for Schedule II, III and IV controlled substances.

Illinois

Mail order pharmacies delivering prescriptions in Illinois must be licensed by the Illinois Department of Professional Regulations. Pursuant to their Illinois license, these mail order pharmacies are required to report data to the state's PDMP.

Indiana

Mail order pharmacies delivering prescriptions in Indiana must be licensed as a non-resident pharmacy by the Indiana Board of Pharmacy. Pursuant to their license, mail order pharmacies are required to report data to the state PDMP if Schedule II controlled substances are dispensed by mail to an Indiana address.

Kentucky

Kentucky law requires the establishment of an electronic monitoring system for Schedules II-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 licensed by the Kentucky Board of Pharmacy. Any pharmacy filling prescriptions for persons residing in Kentucky, pursuant to the state Pharmacy Practice Act, must obtain a license from the Commonwealth. Pursuant to their Kentucky license, mail order pharmacies dispensing within the state must report data to Kentucky's PDMP.

Maine

All out-of-state mail order pharmacies must be licensed by the state of Maine. As a licensed pharmacy, mail order pharmacies are required to report data to the PDMP. Maine does allow for waivers on a situational basis, either allowing a pharmacy more time to upgrade their software or allowing for more permanent waivers for special circumstances that make reporting data to the PDMP difficult. For example, one pharmacy has a waiver because they do not dispense any scheduled controlled substances at this time.

Massachusetts

Massachusetts does not license or register out-of-state pharmacies, pharmacy departments or Wholesale Distributors. Out-of-state pharmacies can ship into Massachusetts provided the dispensing pharmacy or Wholesale Distributor is licensed in the state where the pharmacy is located. Under the current legislation, the Massachusetts PDMP cannot require out-of-state pharmacies to report data to the program.

Michigan

According to Rule 333.17748, all pharmacies that do business in Michigan must be licensed by the state, including out-of-state mail order pharmacies that dispense in Michigan. According to Rule 338.3162b, mail order pharmacies must report data to Michigan's PDMP.

Nevada

Nevada law authorizes the Board of Pharmacy to collect data from out-of-state mail order pharmacies delivering prescription drugs into Nevada. However, the Board of Pharmacy discontinued the collection of data after several years of such collection. Initially, most Nevada residents that were using a mail order pharmacy did so at the behest of their third party payer, who in most instances monitors utilization. The Board found scant duplication and no doctor

shopping through legitimate mail order pharmacies. They believed the thrust of their collection would be then better served concentrating on Nevada providers.

If the Board of Pharmacy begins to identify cases of abuse involving out-of-state mail order pharmacies, it may again initiate the out-of-state data reporting.

New York

New York law requires any out-of-state pharmacy dispensing in New York to be licensed by the state. As a New York state licensed pharmacy, an out-of-state pharmacy must comply with all New York laws and regulations including submitting data to PDMP.

Oklahoma

All pharmacies that do business in Oklahoma must register with or be certified by the state, including out-of-state mail order pharmacies that dispense in Oklahoma. As certified pharmacies, mail order pharmacies must report data to the PDMP. An issue of concern in Oklahoma is whether or not all out-of-state pharmacies comply with the requirements to report data to the PDMP. Although by law they are required to report data, officials from the Oklahoma Bureau of Narcotics and Dangerous Drugs indicate that detection of violations and enforcement of this requirement are problematic. Often, noncompliant out-of-state mail order pharmacies are detected by agents investigating specific cases.

Pennsylvania

An out-of-state mail order pharmacy delivering prescription drugs to a location in Pennsylvania is not required to be licensed under the Pharmacy Act (Act) of Pennsylvania, and therefore is not required to report data to the Commonwealth's PDMP.

Under this Act a pharmacy is defined as "every place properly issued a permit by the Board of Pharmacy where drugs...are stored, dispensed or compounded..." "Dispense" is defined under the Act to mean the "preparation of a prescription drug...in a suitable container appropriately labeled for subsequent use..." Under Pennsylvania law, a pharmacy dispenses in the location where the drug is prepared and labeled for proper use which would be the physical location of the pharmacy and not the patient. An out-of-state mail order pharmacy is therefore outside of the jurisdiction of Pennsylvania since the drug is dispensed from the state where the drugs are prepared for subsequent use.

Rhode Island

Rhode Island requires out-of-state mail order pharmacies delivering into the state to be licensed in RI and therefore submit information to PMP. Should a mail order pharmacy be housed in RI (there are currently no such businesses based in RI), it would also be required to report the designated schedules of controlled substances dispensed and delivered within the state and to other states.

Texas

Texas does not require a mail order pharmacy located out-of-state which dispenses to a person in Texas to report data to the state's PDMP. However, most out-of-state mail order pharmacies delivering prescription drugs in Texas do report to the PDMP because of a good working relationship between the companies and the officials operating the Texas PDMP.

Utah

Utah law requires any out-of-state pharmacy that ships a prescription drug to a resident within Utah to be licensed by the state. Pursuant to its Utah license, an out-of-state mail order pharmacy must submit information to the Controlled Substance Database Program (Utah's PDMP), pursuant to Utah Code 58-37-7.5(2)(c).

Virginia

In 2002, a PDMP pilot program was established in the State Health Planning Region III in Southwest Virginia which requires collection of Schedule II controlled substances prescription information. Because the program is not state-wide, PDMP does not receive data from mail order pharmacies at this point. If Virginia does implement a state-wide program, Ralph Orr, Virginia Board of Pharmacy, anticipates that mail order pharmacies located out-of-state which dispense in Virginia will have to be licensed by the Board of Pharmacy as "nonresident pharmacies."

Washington

Washington currently only monitors prescribers who have already been identified as prescribing inappropriately. State officials were recently awarded a planning grant from the Bureau of Justice Assistance to develop a full PDMP with electronic reporting by pharmacies. State officials intend to structure the program so that all mail order pharmacies, in-state and out-of-state, which dispense in Washington state will be required to report data to the enhanced Washington PDMP.

West Virginia

West Virginia law requires any pharmacy, in-state or out-of-state, that dispenses Schedule II-IV controlled substances to a West Virginia resident to be registered and report data to the state's PDMP.

Wyoming

Mail order pharmacies delivering prescriptions in Wyoming must be licensed by the Wyoming Board of Pharmacy. Pursuant to their license, mail order pharmacies are required to report data to the state PDMP if Schedule II - IV controlled substances are dispensed by mail to a Wyoming address. Mail order pharmacies housed in Wyoming who dispense and deliver to other states are also required to report data to Wyoming's PDMP.

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