

**ASSEMBLY, No. 1725**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Provides Medicaid and certain insurers access to Prescription Monitoring Program.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the Prescription Monitoring Program and  
2 amending P.L.2007, c.244.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 26 of P.L.2007, c.244 (C.45:1-46) is amended to  
8 read as follows:

9 26. Access to prescription information.

10 a. The division shall maintain procedures to ensure privacy and  
11 confidentiality of patients and that patient information collected,  
12 recorded, transmitted, and maintained is not disclosed, except as  
13 permitted in this section, including, but not limited to, the use of a  
14 password-protected system for maintaining this information and  
15 permitting access thereto as authorized under sections 25 through  
16 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), and a  
17 requirement that a person as listed in subsection h. or i. of this  
18 section provide affirmation of the person's intent to comply with the  
19 provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45  
20 through C.45:1-50) as a condition of accessing the information.

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

25 c. The division shall review the prescription monitoring  
26 information provided by a pharmacy permit holder pursuant to  
27 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
28 C.45:1-50). The review shall include, but not be limited to:

29 (1) a review to identify whether any person is obtaining a  
30 prescription in a manner that may be indicative of misuse, abuse, or  
31 diversion of a controlled dangerous substance. The director shall  
32 establish guidelines regarding the terms "misuse," "abuse," and  
33 "diversion" for the purposes of this review. When an evaluation of  
34 the information indicates that a person may be obtaining a  
35 prescription for the same or a similar controlled dangerous  
36 substance from multiple practitioners or pharmacists during the  
37 same time period, the division may provide prescription monitoring  
38 information about the person to practitioners and pharmacists; and

39 (2) a review to identify whether a violation of law or regulation  
40 or a breach of the applicable standards of practice by any person  
41 may have occurred, including, but not limited to, diversion of a  
42 controlled dangerous substance. If the division determines that  
43 such a violation or breach may have occurred, the division shall  
44 notify the appropriate law enforcement agency or professional

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 licensing board, and provide the prescription monitoring  
2 information required for an investigation.
- 3 d. (Deleted by amendment, P.L.2015, c.74)
- 4 e. (Deleted by amendment, P.L.2015, c.74)
- 5 f. (Deleted by amendment, P.L.2015, c.74)
- 6 g. (Deleted by amendment, P.L.2015, c.74)
- 7 h. (1) The division shall register a practitioner to access  
8 prescription monitoring information upon issuance or renewal of the  
9 practitioner's CDS registration.
- 10 (2) The division shall provide to a pharmacist who is employed  
11 by a current pharmacy permit holder online access to prescription  
12 monitoring information for the purpose of providing health care to a  
13 current patient or verifying information with respect to a patient or  
14 a prescriber.
- 15 (3) The division shall provide to a practitioner who has a current  
16 CDS registration online access to prescription monitoring  
17 information for the purpose of providing health care to a current  
18 patient or verifying information with respect to a patient or a  
19 prescriber. The division shall also grant online access to  
20 prescription monitoring information to as many licensed health care  
21 professionals as are authorized by a practitioner to access that  
22 information and for whom the practitioner is responsible for the use  
23 or misuse of that information, subject to a limit on the number of  
24 such health care professionals as deemed appropriate by the  
25 division for that particular type and size of professional practice, in  
26 order to minimize the burden to practitioners to the extent  
27 practicable while protecting the confidentiality of the prescription  
28 monitoring information obtained. The director shall establish, by  
29 regulation, the terms and conditions under which a practitioner may  
30 delegate that authorization, including procedures for authorization  
31 and termination of authorization, provisions for maintaining  
32 confidentiality, and such other matters as the division may deem  
33 appropriate.
- 34 (4) The division shall provide online access to prescription  
35 monitoring information to as many medical or dental residents as  
36 are authorized by a faculty member of a medical or dental teaching  
37 facility to access that information and for whom the practitioner is  
38 responsible for the use or misuse of that information. The director  
39 shall establish, by regulation, the terms and conditions under which  
40 a faculty member of a medical or dental teaching facility may  
41 delegate that authorization, including procedures for authorization  
42 and termination of authorization, provisions for maintaining  
43 confidentiality, provisions regarding the duration of a medical or  
44 dental resident's authorization to access prescription monitoring  
45 information, and such other matters as the division may deem  
46 appropriate.
- 47 (5) The division shall provide online access to prescription  
48 monitoring information to as many certified medical assistants as

1 are authorized by a practitioner to access that information and for  
2 whom the practitioner is responsible for the use or misuse of that  
3 information. The director shall establish, by regulation, the terms  
4 and conditions under which a practitioner may delegate that  
5 authorization, including procedures for authorization and  
6 termination of authorization, provisions for maintaining  
7 confidentiality, provisions regarding the duration of a certified  
8 medical assistant's authorization to access prescription monitoring  
9 information, and such other matters as the division may deem  
10 appropriate.

11 (6) The division shall provide online access to prescription  
12 monitoring information to as many registered dental assistants as  
13 are authorized by a licensed dentist to access that information and  
14 for whom the licensed dentist is responsible for the use or misuse of  
15 that information. The director shall establish, by regulation, the  
16 terms and conditions under which a licensed dentist may delegate  
17 that authorization, including procedures for authorization and  
18 termination of authorization, provisions for maintaining  
19 confidentiality, provisions regarding the duration of a registered  
20 dental assistant's authorization to access prescription monitoring  
21 information, and such other matters as the division may deem  
22 appropriate.

23 (7) The division shall provide online access to prescription  
24 monitoring information to a designated representative of a carrier,  
25 as defined in section 2 of P.L.1997, c.192 (C.26:2S-2), that provides  
26 coverage for prescription drugs and any third-party administrator or  
27 pharmacy benefit manager that administers a pharmacy benefit, and  
28 to the Director of the Division of Medical Assistance and Health  
29 Services and the Commissioner of Human Services, or their  
30 designees, for the purpose of identifying whether a recipient of  
31 benefits under the Medicaid program, established pursuant to  
32 P.L.1968, c.413 (C.30:4D-1 et seq.) or the NJ FamilyCare program,  
33 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), or any  
34 other person, as applicable, is obtaining a prescription in a manner  
35 that may be indicative of misuse, abuse, or diversion of a controlled  
36 dangerous substance, as provided for in paragraph (1) of subsection  
37 c. of this section, or of a violation of law or regulation or a breach  
38 of an applicable standard of practice, as provided for in paragraph  
39 (2) of subsection c. of this section.

40 (8) A person listed in this subsection, as a condition of  
41 accessing prescription monitoring information pursuant thereto,  
42 shall certify that the request is for the purpose of providing health  
43 care to a current patient or verifying information with respect to a  
44 patient or practitioner. Such certification shall be furnished through  
45 means of an online statement or alternate means authorized by the  
46 director, in a form and manner prescribed by rule or regulation  
47 adopted by the director.

- 1 i. The division may provide online access to prescription  
2 monitoring information, or may provide access to prescription  
3 monitoring information through any other means deemed  
4 appropriate by the director, to the following persons:
  - 5 (1) authorized personnel of the division or a vendor or  
6 contractor responsible for maintaining the Prescription Monitoring  
7 Program;
  - 8 (2) authorized personnel of the division responsible for  
9 administration of the provisions of P.L.1970, c.226 (C.24:21-1 et  
10 seq.);
  - 11 (3) the State Medical Examiner, a county medical examiner, a  
12 deputy or assistant county medical examiner, or a qualified  
13 designated assistant thereof, who certifies that the request is for the  
14 purpose of investigating a death pursuant to P.L.1967, c.234  
15 (C.52:17B-78 et seq.);
  - 16 (4) a controlled dangerous substance monitoring program in  
17 another state with which the division has established an  
18 interoperability agreement, or which participates with the division  
19 in a system that facilitates the secure sharing of information  
20 between states;
  - 21 (5) a designated representative of the State Board of Medical  
22 Examiners, New Jersey State Board of Dentistry, State Board of  
23 Nursing, New Jersey State Board of Optometrists, State Board of  
24 Pharmacy, State Board of Veterinary Medical Examiners, or any  
25 other board in this State or another state that regulates the practice  
26 of persons who are authorized to prescribe or dispense controlled  
27 dangerous substances, as applicable, who certifies that the  
28 representative is engaged in a bona fide specific investigation of a  
29 designated practitioner or pharmacist whose professional practice  
30 was or is regulated by that board;
  - 31 (6) a State, federal, or municipal law enforcement officer who is  
32 acting pursuant to a court order and certifies that the officer is  
33 engaged in a bona fide specific investigation of a designated  
34 practitioner, pharmacist, or patient. A law enforcement agency that  
35 obtains prescription monitoring information shall comply with  
36 security protocols established by the director by regulation;
  - 37 (7) a designated representative of a state Medicaid or other  
38 program who certifies that the representative is engaged in a bona  
39 fide investigation of a designated practitioner, pharmacist, or  
40 patient;
  - 41 (8) a properly convened grand jury pursuant to a subpoena  
42 properly issued for the records; and
  - 43 (9) a licensed mental health practitioner providing treatment for  
44 substance abuse to patients at a residential or outpatient substance  
45 abuse treatment center licensed by the Division of Mental Health  
46 and Addiction Services in the Department of Human Services, who  
47 certifies that the request is for the purpose of providing health care  
48 to a current patient or verifying information with respect to a patient

1 or practitioner, and who furnishes the division with the written  
2 consent of the patient for the mental health practitioner to obtain  
3 prescription monitoring information about the patient. The director  
4 shall establish, by regulation, the terms and conditions under which  
5 a mental health practitioner may request and receive prescription  
6 monitoring information. Nothing in sections 25 through 30 of  
7 P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed  
8 to require or obligate a mental health practitioner to access or check  
9 the prescription monitoring information in the course of treatment  
10 beyond that which may be required as part of the mental health  
11 practitioner's professional practice.

12 j. A person listed in subsection i. of this section, as a condition  
13 of obtaining prescription monitoring information pursuant thereto,  
14 shall certify the reasons for seeking to obtain that information.  
15 Such certification shall be furnished through means of an online  
16 statement or alternate means authorized by the director, in a form  
17 and manner prescribed by rule or regulation adopted by the director.

18 k. The division shall offer an online tutorial for those persons  
19 listed in subsections h. and i. of this section, which shall, at a  
20 minimum, include: how to access prescription monitoring  
21 information; the rights of persons who are the subject of this  
22 information; the responsibilities of persons who access this  
23 information; a summary of the other provisions of sections 25  
24 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and  
25 the regulations adopted pursuant thereto, regarding the permitted  
26 uses of that information and penalties for violations thereof; and a  
27 summary of the requirements of the federal health privacy rule set  
28 forth at 45 CFR Parts 160 and 164 and a hypertext link to the  
29 federal Department of Health and Human Services website for  
30 further information about the specific provisions of the privacy rule.

31 l. The division may request and receive prescription  
32 monitoring information from prescription monitoring programs in  
33 other states and may use that information for the purposes of  
34 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
35 C.45:1-50). When sharing data with programs in another state, the  
36 division shall not be required to obtain a memorandum of  
37 understanding unless required by the other state.

38 m. The director may provide nonidentifying prescription drug  
39 monitoring information to public or private entities for statistical,  
40 research, or educational purposes, in accordance with the provisions  
41 of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
42 C.45:1-50).

43 n. Nothing shall be construed to prohibit the division from  
44 obtaining unsolicited automated reports from the program or  
45 disseminating such reports to pharmacists, practitioners, mental  
46 health care practitioners, and other licensed health care  
47 professionals.

1       o. (1) A current patient of a practitioner may request from that  
2 practitioner that patient's own prescription monitoring information  
3 that has been submitted to the division pursuant to sections 25  
4 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). A  
5 parent or legal guardian of a child who is a current patient of a  
6 practitioner may request from that practitioner the child's  
7 prescription monitoring information that has been submitted to the  
8 division pursuant to sections 25 through 30 of P.L.2007, c.244  
9 (C.45:1-45 through C.45:1-50).

10       (2) Upon receipt of a request pursuant to paragraph (1) of this  
11 subsection, a practitioner or health care professional authorized by  
12 that practitioner may provide the current patient or parent or legal  
13 guardian, as the case may be, with access to or a copy of the  
14 prescription monitoring information pertaining to that patient or  
15 child.

16       (3) The division shall establish a process by which a patient, or  
17 the parent or legal guardian of a child who is a patient, may request  
18 a pharmacy permit holder that submitted prescription monitoring  
19 information concerning a prescription for controlled dangerous  
20 substances for that patient or child to the division pursuant to  
21 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
22 C.45:1-50) to correct information that the person believes to have  
23 been inaccurately entered into that patient's or child's prescription  
24 profile. Upon confirmation of the inaccuracy of any such entry into  
25 a patient's or child's prescription profile, the pharmacy permit  
26 holder shall be authorized to correct any such inaccuracies by  
27 submitting corrected information to the division pursuant to  
28 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
29 C.45:1-50). The process shall provide for review by the Board of  
30 Pharmacy of any disputed request for correction, which  
31 determination shall be appealable to the director.

32       p. The division shall take steps to ensure that appropriate  
33 channels of communication exist to enable any licensed health care  
34 professional, licensed pharmacist, mental health practitioner,  
35 pharmacy permit holder, or other practitioner who has online access  
36 to the Prescription Monitoring Program pursuant to this section to  
37 seek or provide information to the division related to the provisions  
38 of this section.

39       (cf: P.L.2015, c.74, s.4)

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41       2. This act shall take effect on the first day of the fourth month  
42 next following the date of enactment.

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#### STATEMENT

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47       This bill concerns the State's Prescription Monitoring Program  
48 and requires the Division of Consumer Affairs in the Department of

1 Law and Public Safety to provide online access to the program's  
2 prescription monitoring information to a designated representative  
3 of a carrier, as defined in section 2 of P.L.1997, c.192 (C.26:2S-2),  
4 that provides coverage for prescription drugs and any third-party  
5 administrator or pharmacy benefit manager that administers a  
6 pharmacy benefit, and to the Director of the Division of Medical  
7 Assistance and Health Services and the Commissioner of Human  
8 Services, or their designees, for the purpose of identifying whether  
9 a recipient of benefits under the Medicaid program, NJ FamilyCare  
10 program, or any other person, as applicable, is obtaining a  
11 prescription in a manner that may be indicative of misuse, abuse, or  
12 diversion of a controlled dangerous substance or a violation of law  
13 or regulation or a breach of standards of practice.

14 The bill is based on a recommendation that was included in a  
15 report by the Office of the State Auditor in the Office of Legislative  
16 Services, issued September 13, 2016, to share prescription  
17 monitoring data with the State Medicaid program and certain  
18 insurers.