

# ASSEMBLY, No. 264

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# STATE OF NEW JERSEY

## 219th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman JOHN ARMATO**

**District 2 (Atlantic)**

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**District 2 (Atlantic)**

**SYNOPSIS**

Permits patients to indicate that they should not be prescribed opiates and certain other controlled substances in prescription monitoring program information.

**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) A person listed in this subsection, as a condition of  
24 accessing prescription monitoring information pursuant thereto,  
25 shall certify that the request is for the purpose of providing health  
26 care to a current patient or verifying information with respect to a  
27 patient or practitioner. Such certification shall be furnished through  
28 means of an online statement or alternate means authorized by the  
29 director, in a form and manner prescribed by rule or regulation  
30 adopted by the director.

31 i. The division may provide online access to prescription  
32 monitoring information, or may provide access to prescription  
33 monitoring information through any other means deemed  
34 appropriate by the director, to the following persons:

35 (1) authorized personnel of the division or a vendor or  
36 contractor responsible for maintaining the Prescription Monitoring  
37 Program;

38 (2) authorized personnel of the division responsible for  
39 administration of the provisions of P.L.1970, c.226 (C.24:21-1 et  
40 seq.);

41 (3) the State Medical Examiner, a county medical examiner, a  
42 deputy or assistant county medical examiner, or a qualified  
43 designated assistant thereof, who certifies that the request is for the  
44 purpose of investigating a death pursuant to P.L.1967, c.234  
45 (C.52:17B-78 et seq.);

46 (4) a controlled dangerous substance monitoring program in  
47 another state with which the division has established an  
48 interoperability agreement, or which participates with the division

1 in a system that facilitates the secure sharing of information  
2 between states;

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

13 (6) a State, federal, or municipal law enforcement officer who is  
14 acting pursuant to a court order and certifies that the officer is  
15 engaged in a bona fide specific investigation of a designated  
16 practitioner, pharmacist, or patient. A law enforcement agency that  
17 obtains prescription monitoring information shall comply with  
18 security protocols established by the director by regulation;

19 (7) a designated representative of a state Medicaid or other  
20 program who certifies that the representative is engaged in a bona  
21 fide investigation of a designated practitioner, pharmacist, or  
22 patient;

23 (8) a properly convened grand jury pursuant to a subpoena  
24 properly issued for the records; and

25 (9) a licensed mental health practitioner providing treatment for  
26 substance abuse to patients at a residential or outpatient substance  
27 abuse treatment center licensed by the Division of Mental Health  
28 and Addiction Services in the Department of Human Services, who  
29 certifies that the request is for the purpose of providing health care  
30 to a current patient or verifying information with respect to a patient  
31 or practitioner, and who furnishes the division with the written  
32 consent of the patient for the mental health practitioner to obtain  
33 prescription monitoring information about the patient. The director  
34 shall establish, by regulation, the terms and conditions under which  
35 a mental health practitioner may request and receive prescription  
36 monitoring information. Nothing in sections 25 through 30 of  
37 P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed  
38 to require or obligate a mental health practitioner to access or check  
39 the prescription monitoring information in the course of treatment  
40 beyond that which may be required as part of the mental health  
41 practitioner's professional practice.

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

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

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

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

26 n. Nothing shall be construed to prohibit the division from  
27 obtaining unsolicited automated reports from the program or  
28 disseminating such reports to pharmacists, practitioners, mental  
29 health care practitioners, and other licensed health care  
30 professionals.

31 o. (1) A current patient of a practitioner may request from that  
32 practitioner that patient's own prescription monitoring information  
33 that has been submitted to the division pursuant to sections 25  
34 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). A  
35 parent or legal guardian of a child who is a current patient of a  
36 practitioner may request from that practitioner the child's  
37 prescription monitoring information that has been submitted to the  
38 division pursuant to sections 25 through 30 of P.L.2007, c.244  
39 (C.45:1-45 through C.45:1-50).

40 (2) Upon receipt of a request pursuant to paragraph (1) of this  
41 subsection, a practitioner or health care professional authorized by  
42 that practitioner may provide the current patient or parent or legal  
43 guardian, as the case may be, with access to or a copy of the  
44 prescription monitoring information pertaining to that patient or  
45 child.

46 (3) The division shall establish a process by which a patient, or  
47 the parent or legal guardian of a child who is a patient, may request  
48 a pharmacy permit holder that submitted prescription monitoring

1 information concerning a prescription for controlled dangerous  
2 substances for that patient or child to the division pursuant to  
3 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
4 C.45:1-50) to correct information that the person believes to have  
5 been inaccurately entered into that patient's or child's prescription  
6 profile. Upon confirmation of the inaccuracy of any such entry into  
7 a patient's or child's prescription profile, the pharmacy permit  
8 holder shall be authorized to correct any such inaccuracies by  
9 submitting corrected information to the division pursuant to  
10 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
11 C.45:1-50). The process shall provide for review by the Board of  
12 Pharmacy of any disputed request for correction, which  
13 determination shall be appealable to the director.

14 (4) The division shall establish a process by which a patient may  
15 request that the patient's prescription monitoring information  
16 include an indication that the patient should not be prescribed  
17 opioid drugs or other controlled substances with a significant  
18 potential for abuse or addiction. The indication shall not be  
19 included in the patient's prescription monitoring information except  
20 at the patient's request. The division shall establish a process for  
21 removing the indication that a patient should not be prescribed  
22 opioid drugs or other controlled substances with a significant  
23 potential for abuse or addiction, at the patient's request. The  
24 division shall also establish a method, for persons who indicate that  
25 they should not be prescribed opioid drugs or other controlled  
26 substances with a significant potential for abuse or addiction, to  
27 communicate this preference, in the event that the person is  
28 incapacitated or otherwise unable to communicate this preference  
29 prior to or while receiving health care services. The division shall  
30 develop an education and outreach program for health care  
31 providers concerning the provisions of this paragraph.

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)

40

41 2. This act shall take effect immediately.

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#### STATEMENT

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46 This bill requires the Division of Consumer Affairs in the  
47 Department of Law and Public Safety to establish a process by  
48 which a patient may request that the patient's prescription

1 monitoring information include an indication that the patient should  
2 not be prescribed opioid drugs or other controlled substances with a  
3 significant potential for abuse or addiction. The indication would  
4 not be included in the patient's prescription monitoring information  
5 except at the patient's request. The division would establish a  
6 process for removing the indication that a patient should not be  
7 prescribed opioid drugs or other controlled substances with a  
8 significant potential for abuse or addiction, at the patient's request.  
9 The division would also establish a method, for persons who  
10 indicate that they should not be prescribed opioid drugs or other  
11 controlled substances with a significant potential for abuse or  
12 addiction, to communicate this preference, in the event that the  
13 person is incapacitated or otherwise unable to communicate this  
14 preference prior to or while receiving health care services. The  
15 division would develop an education and outreach program for  
16 health care providers concerning this process.

17 It is the sponsor's belief that permitting patients to indicate that  
18 they should not be prescribed opioids and certain other controlled  
19 substances will facilitate the recovery process, help patients  
20 maintain sobriety, help avoid the issuance of prescriptions for drugs  
21 that could jeopardize the patient's recovery, and assist health care  
22 practitioners to identify patients who are at risk of abusing or  
23 diverting prescription medications.