

ASSEMBLY, No. 2655

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

SYNOPSIS

Provides Medicaid and certain insurers access to Prescription Monitoring Program.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/13/2020)

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
45 licensing board, and provide the prescription monitoring
46 information required for an investigation.

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 d. (Deleted by amendment, P.L.2015, c.74)

2 e. (Deleted by amendment, P.L.2015, c.74)

3 f. (Deleted by amendment, P.L.2015, c.74)

4 g. (Deleted by amendment, P.L.2015, c.74)

5 h. (1) The division shall register a practitioner to access
6 prescription monitoring information upon issuance or renewal of the
7 practitioner's CDS registration.

8 (2) The division shall provide to a pharmacist who is employed
9 by a current pharmacy permit holder online access to prescription
10 monitoring information for the purpose of providing health care to a
11 current patient or verifying information with respect to a patient or
12 a prescriber.

13 (3) The division shall provide to a practitioner who has a current
14 CDS registration online access to prescription monitoring
15 information for the purpose of providing health care to a current
16 patient or verifying information with respect to a patient or a
17 prescriber. The division shall also grant online access to
18 prescription monitoring information to as many licensed health care
19 professionals as are authorized by a practitioner to access that
20 information and for whom the practitioner is responsible for the use
21 or misuse of that information, subject to a limit on the number of
22 such health care professionals as deemed appropriate by the
23 division for that particular type and size of professional practice, in
24 order to minimize the burden to practitioners to the extent
25 practicable while protecting the confidentiality of the prescription
26 monitoring information obtained. The director shall establish, by
27 regulation, the terms and conditions under which a practitioner may
28 delegate that authorization, including procedures for authorization
29 and termination of authorization, provisions for maintaining
30 confidentiality, and such other matters as the division may deem
31 appropriate.

32 (4) The division shall provide online access to prescription
33 monitoring information to as many medical or dental residents as
34 are authorized by a faculty member of a medical or dental teaching
35 facility to access that information and for whom the practitioner is
36 responsible for the use or misuse of that information. The director
37 shall establish, by regulation, the terms and conditions under which
38 a faculty member of a medical or dental teaching facility may
39 delegate that authorization, including procedures for authorization
40 and termination of authorization, provisions for maintaining
41 confidentiality, provisions regarding the duration of a medical or
42 dental resident's authorization to access prescription monitoring
43 information, and such other matters as the division may deem
44 appropriate.

45 (5) The division shall provide online access to prescription
46 monitoring information to as many certified medical assistants as
47 are authorized by a practitioner to access that information and for
48 whom the practitioner is responsible for the use or misuse of that

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

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

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

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

46 i. The division may provide online access to prescription
47 monitoring information, or may provide access to prescription

1 monitoring information through any other means deemed
2 appropriate by the director, to the following persons:

3 (1) authorized personnel of the division or a vendor or
4 contractor responsible for maintaining the Prescription Monitoring
5 Program;

6 (2) authorized personnel of the division responsible for
7 administration of the provisions of P.L.1970, c.226 (C.24:21-
8 1 et seq.);

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

14 (4) a controlled dangerous substance monitoring program in
15 another state with which the division has established an
16 interoperability agreement, or which participates with the division
17 in a system that facilitates the secure sharing of information
18 between states;

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

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

35 (7) a designated representative of a state Medicaid or other
36 program who certifies that the representative is engaged in a bona
37 fide investigation of a designated practitioner, pharmacist, or
38 patient;

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

41 (9) a licensed mental health practitioner providing treatment for
42 substance abuse to patients at a residential or outpatient substance
43 abuse treatment center licensed by the Division of Mental Health
44 and Addiction Services in the Department of Human Services, who
45 certifies that the request is for the purpose of providing health care
46 to a current patient or verifying information with respect to a patient
47 or practitioner, and who furnishes the division with the written
48 consent of the patient for the mental health practitioner to obtain

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

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

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

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

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

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

46 o. (1) A current patient of a practitioner may request from that
47 practitioner that patient's own prescription monitoring information
48 that has been submitted to the division pursuant to sections 25

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

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

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

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

36 (cf: P.L.2015, c.74, s.4)

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

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STATEMENT

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44 This bill concerns the State's Prescription Monitoring Program
45 and requires the Division of Consumer Affairs in the Department of
46 Law and Public Safety to provide online access to the program's
47 prescription monitoring information to a designated representative
48 of a carrier, as defined in section 2 of P.L.1997, c.192 (C.26:2S-2),

1 that provides coverage for prescription drugs and any third-party
2 administrator or pharmacy benefit manager that administers a
3 pharmacy benefit, and to the Director of the Division of Medical
4 Assistance and Health Services and the Commissioner of Human
5 Services, or their designees, for the purpose of identifying whether
6 a recipient of benefits under the Medicaid program, NJ FamilyCare
7 program, or any other person, as applicable, is obtaining a
8 prescription in a manner that may be indicative of misuse, abuse, or
9 diversion of a controlled dangerous substance or a violation of law
10 or regulation or a breach of standards of practice.

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