

SENATE, No. 1884

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Senator JAMES BEACH
District 6 (Burlington and Camden)

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

As introduced.



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2

1 AN ACT concerning the prescription monitoring program and
2 amending P.L.2007, c.244.

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

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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.

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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) A practitioner shall register to access prescription
8 monitoring information upon initial application for, or renewal of ,
9 the 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) (a) The division shall provide online access to prescription
48 monitoring information to :

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- 1 (i) as many certified medical assistants as are authorized by a
2 practitioner to access that information and for whom the
3 practitioner is responsible for the use or misuse of that information ;
4 (ii) as many medical scribes working in a hospital's emergency
5 department as are authorized by a practitioner to access that
6 information and for whom the practitioner is responsible for the use
7 or misuse of that information; and
8 (iii) as many licensed athletic trainers working in a clinical
9 setting as are authorized by a practitioner to access that information
10 and for whom the practitioner is responsible for the use or misuse of
11 that information.
- 12 (b) The director shall establish, by regulation, the terms and
13 conditions under which a practitioner may delegate authorization
14 pursuant to subparagraph (a) of this paragraph , including
15 procedures for authorization and termination of authorization,
16 provisions for maintaining confidentiality, provisions regarding the
17 duration of a certified medical assistant's , medical scribe's, or
18 licensed athletic trainer's authorization to access prescription
19 monitoring information, and provisions addressing such other
20 matters as the division may deem appropriate.
- 21 (6) The division shall provide online access to prescription
22 monitoring information to as many registered dental assistants as
23 are authorized by a licensed dentist to access that information and
24 for whom the licensed dentist is responsible for the use or misuse of
25 that information. The director shall establish, by regulation, the
26 terms and conditions under which a licensed dentist may delegate
27 that authorization, including procedures for authorization and
28 termination of authorization, provisions for maintaining
29 confidentiality, provisions regarding the duration of a registered
30 dental assistant's authorization to access prescription monitoring
31 information, and such other matters as the division may deem
32 appropriate.
- 33 (7) A person listed in this subsection, as a condition of
34 accessing prescription monitoring information pursuant thereto,
35 shall certify that the request is for the purpose of providing health
36 care to a current patient or verifying information with respect to a
37 patient or practitioner. Such certification shall be furnished through
38 means of an online statement or alternate means authorized by the
39 director, in a form and manner prescribed by rule or regulation
40 adopted by the director. If the information is being accessed by an
41 authorized person using an electronic system authorized pursuant to
42 subsection q. of this section, the certification may be furnished
43 through the electronic system.
- 44 i. The division may provide online access to prescription
45 monitoring information, or may provide access to prescription
46 monitoring information through any other means deemed
47 appropriate by the director, to the following persons:

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

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1 monitoring information. Nothing in sections 25 through 30 of
2 P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed
3 to require or obligate a mental health practitioner to access or check
4 the prescription monitoring information in the course of treatment
5 beyond that which may be required as part of the mental health
6 practitioner's professional practice.

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

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

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

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

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

43 o. (1) A current patient of a practitioner may request from that
44 practitioner that patient's own prescription monitoring information
45 that has been submitted to the division pursuant to sections 25
46 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). A
47 parent or legal guardian of a child who is a current patient of a
48 practitioner may request from that practitioner the child's
49 prescription monitoring information that has been submitted to the

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1 division pursuant to sections 25 through 30 of P.L.2007, c.244
2 (C.45:1-45 through C.45:1-50).

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

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

25 (4) The division shall establish a process by which a patient may
26 request that the patient's prescription monitoring information
27 include an indication that the patient should not be prescribed
28 opioid drugs or other controlled substances with a significant
29 potential for abuse or addiction. The indication shall not be
30 included in the patient's prescription monitoring information except
31 at the patient's request. The division shall establish a process for
32 removing the indication that a patient should not be prescribed
33 opioid drugs or other controlled substances with a significant
34 potential for abuse or addiction, at the patient's request. The
35 division shall also establish a method, for persons who indicate that
36 they should not be prescribed opioid drugs or other controlled
37 substances with a significant potential for abuse or addiction, to
38 communicate this preference, in the event that the person is
39 incapacitated or otherwise unable to communicate this preference
40 prior to or while receiving health care services. The division shall
41 develop an education and outreach program for health care
42 providers concerning the provisions of this paragraph.

43 p. The division shall take steps to ensure that appropriate
44 channels of communication exist to enable any licensed health care
45 professional, licensed pharmacist, mental health practitioner,
46 pharmacy permit holder, or other practitioner who has online access
47 to the Prescription Monitoring Program pursuant to this section to
48 seek or provide information to the division related to the provisions
49 of this section.

1 q. (1) The division may make prescription monitoring
2 information available on electronic systems that collect and display
3 health information, such as an electronic system that connects
4 hospital emergency departments for the purpose of transmitting and
5 obtaining patient health data from multiple sources , or an
6 electronic system that notifies practitioners of information
7 pertaining to the treatment of overdoses ; provided that the division
8 determines that any such electronic system has appropriate security
9 protections in place.

10 (2) Practitioners who are required to access prescription
11 monitoring information pursuant to section 8 of P.L.2015, c.74
12 (C.45:1-46.1) may discharge that responsibility by accessing one or
13 more authorized electronic systems into which the prescription
14 monitoring information maintained by the division has been
15 integrated.

16 (cf: P.L.2017, c.341, s.3)

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18 2. This act shall take effect immediately.

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STATEMENT

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23 This bill requires the Division of Consumer Affairs in the
24 Department of Law and Public Safety to establish a process by
25 which a patient may request that the patient's prescription
26 monitoring information include an indication that the patient should
27 not be prescribed opioid drugs or other controlled substances with a
28 significant potential for abuse or addiction. The indication would
29 not be included in the patient's prescription monitoring information
30 except at the patient's request. The division would establish a
31 process for removing the indication that a patient should not be
32 prescribed opioid drugs or other controlled substances with a
33 significant potential for abuse or addiction, at the patient's request.
34 The division would also establish a method, for persons who
35 indicate that they should not be prescribed opioid drugs or other
36 controlled substances with a significant potential for abuse or
37 addiction, to communicate this preference, in the event that the
38 person is incapacitated or otherwise unable to communicate this
39 preference prior to or while receiving health care services. The
40 division would develop an education and outreach program for
41 health care providers concerning this process.

42 It is the sponsor's belief that permitting patients to indicate that
43 they should not be prescribed opiates and certain other controlled
44 substances will facilitate the recovery process, help patients
45 maintain sobriety, help avoid the issuance of prescriptions for drugs
46 that could jeopardize the patient's recovery, and assist health care
47 practitioners to identify patients who are at risk of abusing or
48 diverting prescription medications.