45:1-46.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2015 **CHAPTER:** 74

NJSA: 45:1-46.1 (Revises certain provisions of New Jersey Prescription Monitoring Program)

BILL NO: S1998/2119 (Substituted for A3062)

SPONSOR(S) Weinberg and others

DATE INTRODUCED: April 28, 2014

COMMITTEE: **ASSEMBLY:** Budget

SENATE: Health, Human Services and Senior Citizens

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 26, 2015

SENATE: May 18, 2015

DATE OF APPROVAL: July 18, 2015

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint Senate Committee Substitute enacted) Yes

S1998/2119

SPONSOR'S STATEMENT S1998: (Begins on page 12 of introduced bill) Yes

SPONSOR'S STATEMENT S2119: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes 12-18-14
3-16-15

LEGISLATIVE FISCAL ESTIMATE: Yes 3-26-15
5-4-15

A3062

SPONSOR'S STATEMENT: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Judiciary
Appropriations
Budget

SENATE: No

(continued)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or mailto:refdesk@njstatelib.org

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Christie signs bill expanding program to curb 'doctor shopping' for prescriptions," northjersey.com, 7-20-15
"Christie signs bill expanding drug monitoring program," Associated press State Wire: New Jersey, 7-20-15
"Law Strengthens Program to Prevent Prescription Abuse," The Star-Ledger, 7-21-15

LAW/JA

§8 - C.45:1-46.1
§§9,10 –
C.45:1-50.1 &
45:1-50.2
§11 - Repealer
§12 - Note

P.L.2015, CHAPTER 74, ***approved July 18, 2015***
Senate Committee Substitute ***(Third Reprint)*** for
Senate, Nos. 1998 and 2119

AN ACT concerning [3]**[**the New Jersey Prescription Monitoring Program**]** drug abuse[3], revising various parts of the statutory law, and supplementing P.L.2007, c.244.

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

1. Section 34 of P.L.1970, c.226 (C.24:21-34) is amended to read as follows:

34. Cooperative arrangements. a. The director may cooperate with federal and other State agencies in discharging **[**his**]** the director's responsibilities concerning traffic in dangerous substances and in suppressing the abuse of dangerous substances. To this end, **[**he**]** the director is authorized to:

(1) Except as otherwise provided by law, arrange for the exchange of information between government officials concerning the use and abuse of dangerous substances; provided, however, that in no case shall any officer having knowledge by virtue of **[**his**]** that individual's office of any such prescription, order, or record divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom the records relate, is a party;

(2) Coordinate and cooperate in training programs on dangerous substances law enforcement at the local and State levels; and

(3) Conduct educational programs **[**of eradication aimed at destroying wild or illicit growth of plant species from which controlled dangerous substances may be extracted**]** for: members of the general public; pharmacy permit holders and pharmacists; and health care professionals, mental health practitioners, and practitioners as defined in section 24 of P.L.2007, c.244 (C.45:1-44).

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.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Senate floor amendments adopted December 18, 2014.
[2] Senate floor amendments adopted March 16, 2015.
[3] Assembly ABU committee amendments adopted March 23, 2015.

b. Results, information, and evidence received from the Drug Enforcement Administration relating to the regulatory functions of P.L.1970, c.226 (C.24:21-1 et seq.), as amended and supplemented, including results of inspections conducted by that agency, may be relied upon and acted upon by the director in conformance with **[**his**]** the director's regulatory functions under P.L.1970, c.226, as amended and supplemented.
(cf: P.L.2007, c.244, s.18)

2. Section 24 of P.L.2007, c.244 (C.45:1-44) is amended to read as follows:

24. Definitions. As used in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50):

"CDS registration" means registration with the Division of Consumer Affairs to manufacture, distribute, dispense, or conduct research with controlled dangerous substances issued pursuant to section 11 of P.L.1970, c.226 (C.24:21-11).

[1]"Certified medical assistant" means a person who is a graduate of a post-secondary medical assisting educational program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation (CAHEA), or its successor, the Accrediting Bureau of Health Education Schools (ABHES), or its successor, or any accrediting agency recognized by the U.S. Department of Education, which educational program includes, at a minimum, 600 clock hours of instruction, and encompasses training in the administration of intramuscular and subcutaneous injections, as well as instruction and demonstration in: pertinent anatomy and physiology appropriate to injection procedures; choice of equipment; proper technique, including sterile technique; hazards and complications; and emergency procedures; and who maintains current certification or registration, as appropriate, from the Certifying Board of the American Association of Medical Assistants (AAMA), the National Center for Competency Testing (NCCT), the American Medical Technologists (AMT), or any other recognized certifying body approved by the Board of Medical Examiners.[1]

"Controlled dangerous substance" means any substance that is listed in Schedules II, III, and IV of the schedules provided under the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.). Controlled dangerous substance also means any substance that is listed in Schedule V under the "New Jersey Controlled Dangerous Substances Act" when the director has determined that reporting Schedule V substances is required by federal law, regulation, or funding eligibility.

[3]"Dental resident" means a person who practices dentistry as a resident pursuant to R.S.45:6-20 and, pursuant to N.J.A.C.13:30-1.3, is a graduate of a dental school approved by the Commission on

Dental Accreditation and has passed Part I and Part II of the National Board Dental examination and obtained a resident permit from the New Jersey Board of Dentistry.[3]

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Licensed health care professional" means a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed pursuant to Title 45 of the Revised Statutes.

"Licensed pharmacist" means a pharmacist licensed pursuant to P.L.2003, c.280 (C.45:14-40 et seq.).

"Medical resident" means a graduate physician who is authorized to practice medicine and surgery by means of a valid permit issued by the State Board of Medical Examiners to a person authorized to engage in the practice of medicine and surgery while in the second year or beyond of a graduate medical education program pursuant to N.J.A.C.13:35-1.5.

"Mental health practitioner" means a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice pursuant to Title 45 of the Revised Statutes.

"Pharmacy permit holder" means an individual or business entity that holds a permit to operate a pharmacy practice site pursuant to P.L.2003, c.280 (C.45:14-40 et seq.).

"Practitioner" means an individual currently licensed, registered, or otherwise authorized by this State or another state to prescribe drugs in the course of professional practice.

[3]"Registered dental assistant" is a person who has fulfilled the requirements for registration established by "The Dental Auxiliaries Act," P.L.1979, c.46 (C.45:6-48 et al.) and works under the direct supervision of a licensed dentist.[3]

"Ultimate user" means a person who has obtained from a dispenser and possesses for **[**his**]** the person's own use, or for the use of a member of **[**his**]** the person's household or an animal owned by **[**his**]** the person or by a member of **[**his**]** the person's household, a controlled dangerous substance.

(cf: P.L.2007, c.244, s.24)

3. Section 25 of P.L.2007, c.244 (C.45:1-45) is amended to read as follows:

25. Prescription Monitoring Program; requirements.

a. There is established the Prescription Monitoring Program in the Division of Consumer Affairs in the Department of Law and Public Safety. The program shall consist of an electronic system

for monitoring controlled dangerous substances that are dispensed in or into the State by a pharmacist in an outpatient setting.

b. Each pharmacy permit holder shall submit, or cause to be submitted, to the division, by electronic means in a format and at such intervals as are specified by the director, information about each prescription for a controlled dangerous substance dispensed by the pharmacy that includes:

(1) The surname, first name, and date of birth of the patient for whom the medication is intended;

(2) The street address and telephone number of the patient;

(3) The date that the medication is dispensed;

(4) The number or designation identifying the prescription and the National Drug Code of the drug dispensed;

(5) The pharmacy permit number of the dispensing pharmacy;

(6) The prescribing practitioner's name and Drug Enforcement Administration registration number;

(7) The name, strength, and quantity of the drug dispensed, the number of refills ordered, and whether the drug was dispensed as a refill or a new prescription;

(8) The date that the prescription was issued by the practitioner;

(9) The source of payment for the drug dispensed; **[**and**]**

(10) Identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription [1], if the pharmacist has a reasonable belief that the person picking up the prescription may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition[1] ; and

(11) Such other information, not inconsistent with federal law, regulation, or funding eligibility requirements, as the director determines necessary.

The pharmacy permit holder shall submit the information to the division with respect to the prescriptions dispensed during the reporting period not less frequently than every **[**30**]** seven days **[**, or according to a schedule to be determined by the director if federal law, regulation or funding eligibility otherwise requires**]**.

c. The division may grant a waiver of electronic submission to any pharmacy permit holder for good cause, including financial hardship, as determined by the director. The waiver shall state the format in which the pharmacy permit holder shall submit the required information.

d. The requirements of this act shall not apply to: the direct administration of a controlled dangerous substance to the body of an ultimate user; or the administration or dispensing of a controlled dangerous substance that is otherwise exempted as determined by the Secretary of Health and Human Services pursuant to the

"National All Schedules Prescription Electronic Reporting Act of 2005," Pub.L.109-60.

e. The provisions of paragraph (10) of subsection b. of this section shall not take effect until the director determines that the Prescription Monitoring Program has the technical capacity to accept the information required by that paragraph.

(cf: P.L.2007, c.244, s.25)

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

26. Access to prescription information.

a. The division shall maintain procedures to ensure privacy and confidentiality of patients and that patient information collected, recorded, transmitted, and maintained is not disclosed, except as permitted in this section, including, but not limited to, the use of a password-protected system for maintaining this information and permitting access thereto as authorized under sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), and a requirement that a person as listed in **[**subsection d.**]** subsections h. or i. of this section provide **[3]**[on-line]**[3]** affirmation of the person's intent to comply with the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) as a condition of accessing the information.

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

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

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

(2) a review to identify whether a violation of law or regulation or a breach of the applicable standards of practice by any person may have occurred, including, but not limited to, diversion of a controlled dangerous substance. If the division determines that such a violation **[**of law or regulations, or a breach of the applicable standards of practice,**]** or breach may have occurred, the division

shall notify the appropriate law enforcement agency or professional licensing board, and provide the prescription monitoring information required for an investigation.

d. **[**The division may provide prescription monitoring information to the following persons:

(1) a practitioner authorized to prescribe, dispense or administer controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient of the practitioner. Nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing or administering medications beyond that which may be required as part of the practitioner's professional practice;

(2) a pharmacist authorized to dispense controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient. Nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice;

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

(4) a State, federal or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient;

(5) a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) authorized personnel of the division or vendor or contractor responsible for establishing and maintaining the program; and

(8) the controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

e. **[**A person listed in subsection d. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify, by means of entering an on-line statement in a form and manner prescribed by regulation of the director, the reasons for seeking to obtain that information.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

f. **[**The division shall offer an on-line tutorial for those persons listed in subsection d. of this section, which shall, at a minimum, include: how to access prescription monitoring information; the rights and responsibilities of persons who are the subject of or access this information and the other provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and the regulations adopted pursuant thereto, regarding the permitted uses of that information and penalties for violations thereof; and a summary of the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164 and a hypertext link to the federal Department of Health and Human Services website for further information about the specific provisions of the privacy rule.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

g. **[**The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research or educational purposes.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

h. (1) The division shall register a **[1]**[pharmacist or]**[1]** practitioner to access prescription monitoring information upon issuance or renewal of the **[1]**[pharmacist or]**[1]** practitioner's CDS registration.

(2) The division shall provide to a pharmacist who **[1]**[has a current CDS registration]**[1]** is employed by a current pharmacy permit holder**[1]** online access to prescription monitoring information for the purpose of providing health care to a current patient or verifying information with respect to a patient or a prescriber.

(3) The division shall provide to a practitioner who has a current CDS registration online access to prescription monitoring information for the purpose of providing health care to a current patient or verifying information with respect to a patient or a prescriber. The division shall also grant online access to prescription monitoring information to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice, in order to minimize the burden to practitioners to the extent practicable while protecting the confidentiality of the prescription

monitoring information obtained. The director shall establish, by regulation, the terms and conditions under which a practitioner may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, and such other matters as the division may deem appropriate.

(4) The division shall provide online access to prescription monitoring information to as many medical [2]or dental[2] residents as are authorized by a faculty member of a medical [2]or dental[2] teaching facility to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director shall establish, by regulation, the terms and conditions under which a faculty member of a medical [2]or dental[2] teaching facility may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, provisions regarding the duration of a medical [2]or dental[2] resident's authorization to access prescription monitoring information, and such other matters as the division may deem appropriate.

(5) [1]The division shall provide online access to prescription monitoring information to as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director shall establish, by regulation, the terms and conditions under which a practitioner may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, provisions regarding the duration of a certified medical assistant's authorization to access prescription monitoring information, and such other matters as the division may deem appropriate.

(6)[1] [2]The division shall provide online access to prescription monitoring information to as many registered dental assistants as are authorized by a licensed dentist to access that information and for whom the licensed dentist is responsible for the use or misuse of that information. The director shall establish, by regulation, the terms and conditions under which a licensed dentist may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, provisions regarding the duration of a registered dental assistant's authorization to access prescription monitoring information, and such other matters as the division may deem appropriate.

(7)[2] A person listed in this subsection, as a condition of accessing prescription monitoring information pursuant thereto, shall certify that the request is for the purpose of providing health care to a current patient or verifying information with respect to a

patient or practitioner. Such certification shall be furnished through means of an online statement [3]or alternate means authorized by the director[3] , in a form and manner prescribed by rule or regulation adopted by the director.

i. The division may provide online access to prescription monitoring information [1], or may provide access to prescription monitoring information through any other means deemed appropriate by the director,[1] to the following persons:

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

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

(3) the State Medical Examiner, a county medical examiner, [1]**[**or**]**[1] a deputy or assistant county medical examiner [1], or a qualified designated assistant thereof,[1] who certifies that the request is for the purpose of investigating a death pursuant to P.L.1967, c.234 (C.52:17B-78 et seq.);

(4) a controlled dangerous substance monitoring program in another state [1]with which the division has established an interoperability agreement, or[1] which participates with the division in a system that facilitates the secure sharing of information between states;

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

(6) a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner [3], pharmacist,[3] or patient [3]. A law enforcement agency that obtains prescription monitoring information shall comply with security protocols established by the director by regulation[3] ;

(7) a designated representative of a state Medicaid or other program who certifies that the representative is engaged in a bona fide investigation of a designated practitioner [3], pharmacist,[3] or patient;

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

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

j. A person listed in subsection i. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify the reasons for seeking to obtain that information. Such certification shall be furnished through means of an online statement [3]or alternate means authorized by the director[3] , in a form and manner prescribed by rule or regulation adopted by the director.

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

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

m. The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes, in accordance with the provisions

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

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

o. [3]**[**The division shall establish a process by which patients, authorized agents, parents of a minor child, legal guardians, or legal counsel can directly**]** (1) A current patient of a practitioner may[3] request [3]**[**, and obtain access to,**]** from that practitioner that patient's own[3] prescription monitoring information that has been submitted to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). [3]**[**In establishing this process, the division shall, at a minimum: (1) require a patient, authorized agent, parent of a minor child, legal guardian, or legal counsel to mail to the division a notarized request form and proof of a government-issued photo identification; (2) authorize, but not require, physicians and pharmacists to voluntarily share relevant prescription monitoring information with patients; and (3) authorize a patient to submit a request, through the division, for the correction of prescription monitoring information that the patient believes has been improperly recorded in the patient's prescription profile.**]** A parent or legal guardian of a child who is a current patient of a practitioner may request from that practitioner the child's prescription monitoring information that has been submitted to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

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

(3) The division shall establish a process by which a patient, or the parent or legal guardian of a child who is a patient, may request a pharmacy permit holder that submitted prescription monitoring information concerning a prescription for controlled dangerous substances for that patient or child to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) to correct information that the person believes to have been inaccurately entered into that patient's or child's prescription profile. Upon confirmation of the inaccuracy of any such entry into a patient's or child's prescription profile, the pharmacy permit holder shall be authorized to correct any such inaccuracies by submitting corrected information to the division pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through

C.45:1-50). The process shall provide for review by the Board of Pharmacy of any disputed request for correction, which determination shall be appealable to the director.[3]

[2]p. The division shall [3]**[**create a dedicated, secure telephone and email hotline for**]** take steps to ensure that appropriate channels of communication exist to enable[3] any licensed health care professional, licensed pharmacist, mental health practitioner, pharmacy permit holder, or other practitioner who has online access to the Prescription Monitoring Program pursuant to this section [3]**[**, and who wishes**]**[3] to seek or provide [3]**[**any**]**[3] information to the division related to the provisions of this section.[2]

(cf: P.L.2007, c.244, s.26)

5. Section 28 of P.L.2007, c.244 (C.45:1-48) is amended to read as follows:

28. Immunity from liability.

a. The division shall be immune from civil liability arising from inaccuracy of any of the information submitted to it pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

b. A pharmacy permit holder, pharmacist, mental health practitioner, licensed health care professional, or practitioner shall be immune from civil liability arising from compliance with sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

(cf: P.L.2007, c.244, s.28)

6. Section 29 of P.L.2007, c.244 (C.45:1-49) is amended to read as follows:

29. Penalties.

a. A pharmacy permit holder, or a person designated by a pharmacy permit holder to be responsible for submitting data required by section 25 of P.L.2007, c.244 (C.45:1-45), who knowingly fails to submit data as required, shall be subject to disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-21) and may be subject to a civil penalty in an amount not to exceed $1,000 for **[**repeated**]** failure to comply with sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

b. (1) A pharmacy permit holder, pharmacist, mental health practitioner, licensed health care professional, or practitioner, or any other person or entity who knowingly [3]**[**discloses or uses**]** obtains or attempts to obtain[3] prescription monitoring information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be subject to a civil penalty in an amount not to exceed $10,000.

(2) A pharmacy permit holder, pharmacist, mental health practitioner, licensed health care professional, or practitioner who

knowingly discloses or uses prescription monitoring information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall also be subject to disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

c. [3]In addition to any other penalty provided by law, a person who is authorized to obtain prescription monitoring information from the Prescription Monitoring Program who knowingly discloses such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be guilty of a crime of the fourth degree and shall be subject to a civil penalty in an amount not to exceed $10,000.

d. In addition to any other penalty provided by law, a person who is authorized to obtain prescription monitoring information from the Prescription Monitoring Program who uses this information in the course of committing, attempting to commit, or conspiring to commit any criminal offense shall be guilty of a crime of the third degree. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction under this subsection shall not merge with a conviction of any other offense, nor shall any other conviction merge with a conviction under this subsection. The court shall impose separate sentences upon a conviction under this subsection and any other criminal offense.

e. In addition to any other penalty provided by law, a person who is not authorized to obtain prescription monitoring information from the Prescription Monitoring Program who knowingly obtains or attempts to obtain such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall be guilty of a crime of the fourth degree.

f.[3] A civil penalty imposed under [3]**[**subsections a., b., or d. of**]**[3] this section shall be collected by the director pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

[3]**[**d. A person not authorized to obtain prescription monitoring information from the Prescription Monitoring Program, who knowingly obtains or attempts to obtain such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall be subject to a civil penalty in an amount not to exceed $10,000.

e. In addition to any other penalty provided by law, a person who is authorized to obtain prescription monitoring information from the Prescription Monitoring Program who knowingly discloses such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall be guilty of a crime of the fourth degree.

f. In addition to any other penalty provided by law, a person who is authorized to obtain prescription monitoring information

from the Prescription Monitoring Program who uses this information in the course of committing, attempting to commit, or conspiring to commit any criminal offense shall be guilty of a crime of the third degree. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction under this subsection shall not merge with a conviction of any other offense, nor shall any other conviction merge with a conviction under this subsection. The court shall impose separate sentences upon a conviction under this subsection and any other criminal offense.

g. In addition to any other penalty provided by law, a person who is not authorized to obtain prescription monitoring information from the Prescription Monitoring Program who knowingly obtains or attempts to obtain such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall be guilty of a crime of the third degree.**]**[3]

(cf: P.L.2007, c.244, s.29)

[3]7. Section 20 of P.L.2003, c.280 (C.45:14-59) is amended to read as follows:

20. The Division of Consumer Affairs in the Department of Law and Public Safety shall establish the format for uniform, non-reproducible, non-erasable safety paper prescription blanks, to be known as New Jersey Prescription Blanks, which format shall include an identifiable logo or symbol that will appear on all prescription blanks and additional security features to prevent erasure or duplication of prescription blanks that can be accomplished with widely available computer technology. The prescription blanks for each prescriber or health care facility shall be numbered consecutively and, if the prescriber or health care facility has a National Provider Identifier, the prescription blank shall include the National Provider Identifier. The division shall approve a sufficient number of vendors to ensure production of an adequate supply of New Jersey Prescription Blanks for practitioners and health care facilities Statewide, but shall limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.[3]

(cf: P.L.2007, c.244, s.22)

[3]**[**7.**]** 8.[3] (New section) a. (1) Except as provided in subsection b. of this section, a practitioner or other person who is authorized by a practitioner to access prescription monitoring information pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46) shall access prescription monitoring information the first time the practitioner or other person prescribes a [2]Schedule II[2] controlled dangerous substance to a [2]new[2] patient [2]**[**, and not less than quarterly thereafter if the**]** for acute or chronic pain. In addition,

[3]⟦such⟧ for any prescription of a Schedule II controlled dangerous substance for a new or current patient for acute or chronic pain which is written on or after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill)[3] a practitioner or other authorized person shall access prescription monitoring information on [3]⟦at least⟧[3] a quarterly basis during the period of time [3]⟦that follows a patient's initial receipt of a prescription for a Schedule II controlled dangerous substance, if⟧[3] the[2] patient continues to receive [3]such[3] prescriptions [3]⟦for [2]Schedule II[2] controlled dangerous substances [2]for acute or chronic pain during such period[2]⟧[3]. [2]⟦In addition, a practitioner or other person who is authorized by the practitioner to access prescription monitoring information pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46) shall access prescription monitoring information when the practitioner or other person has a reasonable belief that the patient may be seeking the controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition.⟧[2]

(2) (a) A pharmacist shall not dispense a [2]Schedule II[2] controlled dangerous substance to any person without first accessing the prescription monitoring information, as authorized pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46), to determine if the person has received other prescriptions that indicate misuse, abuse, or diversion, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any [2]⟦reason⟧ purpose[2] other than the treatment of an existing medical condition [2], such as for purposes of misuse, abuse, or diversion[2].

(b) A pharmacist shall not dispense a prescription to a person other than the patient for whom the prescription is intended [1],[1] unless the person [1]⟦receiving⟧ picking up[1] the prescription provides personal identification [1]⟦, which the⟧ to the[1] pharmacist [1]⟦shall input⟧ , and the pharmacist, as required by subsection b. of section 25 of P.L.2007, c.244 (C.45:1-45), inputs that identifying information[1] into the Prescription Monitoring Program [1]⟦as required pursuant to subsection b. of section 25 of P.L.2007, c.244 (C.45:1-45)⟧ if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition[1]. The provisions of this subparagraph shall not take effect until the director determines that the Prescription Monitoring Program has the technical capacity to accept such information.

b. The provisions of subsection a. of this section shall not apply to:

(1) a veterinarian;

(2) a practitioner or the practitioner's agent administering methadone, or another controlled dangerous substance designated by the director as appropriate for treatment of a patient with a substance abuse disorder, as interim treatment for a patient on a waiting list for admission to an authorized substance abuse treatment program;

(3) a practitioner administering a controlled dangerous substance directly to a patient;

(4) a practitioner prescribing a controlled dangerous substance to be dispensed by an institutional pharmacy, as defined in N.J.A.C.13:39-9.2;

(5) a practitioner prescribing a controlled dangerous substance in the emergency department of a general hospital, provided that the quantity prescribed does not exceed a five day supply of the substance;

(6) a practitioner prescribing a controlled dangerous substance to a patient under the care of a hospice;

(7) a situation in which it is not reasonably possible for the practitioner or pharmacist to access the [1]**[**registry**]** Prescription Monitoring Program[1] in a timely manner, no other individual authorized to access the [1]**[**registry**]** Prescription Monitoring Program[1] is reasonably available, and the quantity of controlled dangerous substance prescribed or dispensed does not exceed a five day supply of the substance;

(8) a practitioner or pharmacist acting in compliance with regulations promulgated by the director as to circumstances under which consultation of the [1]**[**registry**]** Prescription Monitoring Program[1] would result in a patient's inability to obtain a prescription in a timely manner, thereby adversely impacting the medical condition of the patient;

(9) a situation in which the [1]**[**registry**]** Prescription Monitoring Program[1] is not operational as determined by the division or where it cannot be accessed by the practitioner due to a temporary technological or electrical failure, as set forth in regulation; [2]**[**or**]**[2]

(10) a practitioner or pharmacist who has been granted a waiver due to technological limitations that are not reasonably within the control of the practitioner or pharmacist, or other exceptional circumstances demonstrated by the practitioner or pharmacist, pursuant to a process established in regulation, and in the discretion of the director [2]; or[2]

[2](11) a practitioner who is prescribing a controlled dangerous substance to a patient immediately after the patient has undergone an operation, procedure, or treatment for acute trauma, when less than a 30-day supply is prescribed[2].

[3]**[**8.(New section) a. The division shall establish and operate a pilot program to test the practicality and effectiveness of integrating the Prescription Monitoring Program with Electronic Medical Records. Participants in the pilot program shall include one or more vendors and one or more practitioners selected by the division, following application thereto.

b. The pilot program shall be established, and vendors and practitioners selected for participation therein, within 180 days after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

c. The pilot program shall operate for a period of one year. Not later than one year after the date the pilot program is established and becomes operative, the director shall submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The report shall contain the number and names of practitioners who participated in the pilot program, and shall provide the director's recommendation on the feasibility of implementing the pilot program on a Statewide basis.

d. As used in this section, "vendor" means a person or entity that has contracted with a practitioner to provide Electronic Medical Records data.**]**[3]

[1]9. (New section) The division shall annually submit a report to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), which provides information on the nature and extent of registration with, and utilization of, the Prescription Monitoring Program, as well as recommendations for program improvement.[1]

[1]**[**9.**]** 10.[1] (New section) The division shall complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring system, and shall report its assessment and any recommendations to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), within 18 months after the enactment of this P.L. , c. (C.) (pending before the Legislature as this bill).

[1]**[**10.**]** 11.[1] Section 39 of P.L.1970, c.226 (C.24:21-39) is repealed.

[1]**[**11.**]** 12.[1] This act shall take effect on the first day of the fourth month next following the date of enactment [3]**[**, [2]**[**but the**]** except that section 7 shall not take effect until the pilot program required by section 8 of this act is completed**]**[3] . The[2] Director of the Division of Consumer Affairs may take such anticipatory administrative action in advance [2]**[**thereof**]** [3]**[**of these effective

dates,[2]] thereof[3] as shall be necessary for the implementation of this act.

Revises certain provisions of New Jersey Prescription Monitoring Program.

SENATE, No. 1998

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED APRIL 28, 2014

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator JOSEPH F. VITALE
District 19 (Middlesex)
Senator JAMES W. HOLZAPFEL
District 10 (Ocean)

SYNOPSIS

Revises certain provisions of New Jersey Prescription Monitoring Program.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 9/19/2014)

AN ACT concerning the New Jersey Prescription Monitoring Program, revising various parts of the statutory law, and supplementing P.L.2007, c.244.

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

1. Section 34 of P.L.1970, c.226 (C.24:21-34) is amended to read as follows:

34. Cooperative arrangements. a. The director may cooperate with federal and other State agencies in discharging **[**his**]** the director's responsibilities concerning traffic in dangerous substances and in suppressing the abuse of dangerous substances. To this end, **[**he**]** the director is authorized to:

(1) Except as otherwise provided by law, arrange for the exchange of information between government officials concerning the use and abuse of dangerous substances; provided, however, that in no case shall any officer having knowledge by virtue of **[**his**]** that individual's office of any such prescription, order, or record divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom the records relate, is a party;

(2) Coordinate and cooperate in training programs on dangerous substances law enforcement at the local and State levels; and

(3) Conduct educational programs **[**of eradication aimed at destroying wild or illicit growth of plant species from which controlled dangerous substances may be extracted**]** for: members of the general public; pharmacy permit holders and pharmacists; and health care professionals, mental health practitioners, and practitioners as defined in section 24 of P.L.2007, c.244 (C.45:1-44).

b. Results, information, and evidence received from the Drug Enforcement Administration relating to the regulatory functions of P.L.1970, c.226 (C.24:21-1 et seq.), as amended and supplemented, including results of inspections conducted by that agency, may be relied upon and acted upon by the director in conformance with **[**his**]** the director's regulatory functions under P.L.1970, c.226, as amended and supplemented.

(cf: P.L.2007, c.244, s.18)

2. Section 24 of P.L.2007, c.244 (C.45:1-44) is amended to read as follows:

24. Definitions. As used in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50):

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.

"Controlled dangerous substance" means any substance that is listed in Schedules II, III, and IV of the schedules provided under the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.). Controlled dangerous substance also means any substance that is listed in Schedule V under the "New Jersey Controlled Dangerous Substances Act" when the director has determined that reporting Schedule V substances is required by federal law, regulation, or funding eligibility.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Licensed health care professional" means a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed pursuant to Title 45 of the Revised Statutes.

"Licensed pharmacist" means a pharmacist licensed pursuant to P.L.2003, c.280 (C.45:14-40 et seq.).

"Mental health practitioner" means a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice pursuant to Title 45 of the Revised Statutes.

"Pharmacy permit holder" means an individual or business entity that holds a permit to operate a pharmacy practice site pursuant to P.L.2003, c.280 (C.45:14-40 et seq.).

"Practitioner" means an individual currently licensed, registered, or otherwise authorized by this State or another state to prescribe drugs in the course of professional practice.

"Ultimate user" means a person who has obtained from a dispenser and possesses for **[**his**]** the person's own use, or for the use of a member of **[**his**]** the person's household or an animal owned by **[**his**]** the person's or by a member of **[**his**]** the person's household, a controlled dangerous substance.

(cf: P.L.2007, c.244, s.24)

3. Section 25 of P.L.2007, c.244 (C.45:1-45) is amended to read as follows:

25. Prescription Monitoring Program; requirements.

a. There is established the Prescription Monitoring Program in the Division of Consumer Affairs in the Department of Law and Public Safety. The program shall consist of an electronic system for monitoring controlled dangerous substances that are dispensed in or into the State by a pharmacist in an outpatient setting.

b. Each pharmacy permit holder shall submit, or cause to be submitted, to the division, by electronic means in a format and at such intervals as are specified by the director, information about

each prescription for a controlled dangerous substance dispensed by the pharmacy that includes:

(1) The surname, first name, and date of birth of the patient for whom the medication is intended;

(2) The street address and telephone number of the patient;

(3) The date that the medication is dispensed;

(4) The number or designation identifying the prescription and the National Drug Code of the drug dispensed;

(5) The pharmacy permit number of the dispensing pharmacy;

(6) The prescribing practitioner's name and Drug Enforcement Administration registration number;

(7) The name, strength, and quantity of the drug dispensed, the number of refills ordered, and whether the drug was dispensed as a refill or a new prescription;

(8) The date that the prescription was issued by the practitioner;

(9) The source of payment for the drug dispensed; **[**and**]**

(10) Identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription; and

(11) Such other information, not inconsistent with federal law, regulation, or funding eligibility requirements, as the director determines necessary.

The pharmacy permit holder shall submit the information to the division with respect to the prescriptions dispensed during the reporting period not less frequently than every **[**30**]** seven days **[**, or according to a schedule to be determined by the director if federal law, regulation or funding eligibility otherwise requires**]**.

c. The division may grant a waiver of electronic submission to any pharmacy permit holder for good cause, including financial hardship, as determined by the director. The waiver shall state the format in which the pharmacy permit holder shall submit the required information.

d. The requirements of this act shall not apply to: the direct administration of a controlled dangerous substance to the body of an ultimate user; or the administration or dispensing of a controlled dangerous substance that is otherwise exempted as determined by the Secretary of Health and Human Services pursuant to the "National All Schedules Prescription Electronic Reporting Act of 2005," Pub.L.109-60.

(cf: P.L.2007, c.244, s.25)

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

26. Access to prescription information.

a. The division shall maintain procedures to ensure privacy and confidentiality of patients and that patient information collected, recorded, transmitted, and maintained is not disclosed, except as permitted in this section, including, but not limited to, the use of a

password-protected system for maintaining this information and permitting access thereto as authorized under sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), and a requirement that a person as listed in **[**subsection d.**]** subsections h. or i. of this section provide on-line affirmation of the person's intent to comply with the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) as a condition of accessing the information.

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

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

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

(2) a review to identify whether a violation of law or regulation or a breach of the applicable standards of practice by any person may have occurred, including, but not limited to, diversion of a controlled dangerous substance. If the division determines that such a violation **[**of law or regulations, or a breach of the applicable standards of practice,**]** or breach may have occurred, the division shall notify the appropriate law enforcement agency or professional licensing board, and provide the prescription monitoring information required for an investigation.

d. **[**The division may provide prescription monitoring information to the following persons:

(1) a practitioner authorized to prescribe, dispense or administer controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient of the practitioner. Nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing or administering medications beyond that which may be required as part of the practitioner's professional practice;

(2) a pharmacist authorized to dispense controlled dangerous substances who certifies that the request is for the purpose of

providing health care to a current patient. Nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice;

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

(4) a State, federal or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient;

(5) a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) authorized personnel of the division or vendor or contractor responsible for establishing and maintaining the program; and

(8) the controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

e. **[**A person listed in subsection d. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify, by means of entering an on-line statement in a form and manner prescribed by regulation of the director, the reasons for seeking to obtain that information.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

f. **[**The division shall offer an on-line tutorial for those persons listed in subsection d. of this section, which shall, at a minimum, include: how to access prescription monitoring information; the rights and responsibilities of persons who are the subject of or access this information and the other provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and the regulations adopted pursuant thereto, regarding the permitted uses of that information and penalties for violations thereof; and a summary of the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164 and a hypertext link to the federal Department of Health and Human Services website for

further information about the specific provisions of the privacy rule.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

g. **[**The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research or educational purposes.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

h. (1) The division shall register a pharmacist or practitioner to access prescription monitoring information upon issuance or renewal of the pharmacist or practitioner's registration to prescribe, dispense, or administer controlled dangerous substances.

(2) The division shall provide to a pharmacist who is registered to prescribe, dispense, or administer controlled dangerous substances online access to prescription monitoring information for the purpose of providing health care to a current patient or verifying information with respect to a patient or a prescriber.

(3) The division shall provide to a practitioner who is registered to prescribe, dispense, or administer controlled dangerous substances online access to prescription monitoring information for the purpose of providing health care to a current patient or verifying information with respect to a patient or a prescriber. The division shall also grant online access to prescription monitoring information to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice, in order to minimize the burden to practitioners to the extent practicable while protecting the confidentiality of the prescription monitoring information obtained. The director shall establish, by regulation, the terms and conditions under which a practitioner may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, and such other matters as the division may deem appropriate.

(4) As a condition of accessing prescription monitoring information, a pharmacist, practitioner, or other authorized health care professional shall certify that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner.

i. The division may provide online access to prescription monitoring information to the following persons:

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

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

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

(4) a controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement if an interoperability agreement is required by that state, or which participates with the division in a system that facilitates the secure sharing of information between states;

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

(6) a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient;

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

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

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

j. A person listed in subsection h. or i. of this section, as a condition of obtaining prescription monitoring information pursuant

thereto, shall furnish the required certification in a form and manner prescribed by regulation of the director.

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

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

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

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

(cf: P.L.2007, c.244, s.26)

5. Section 28 of P.L.2007, c.244 (C.45:1-48) is amended to read as follows:

28. Immunity from liability.

a. The division shall be immune from civil liability arising from inaccuracy of any of the information submitted to it pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

b. A pharmacy permit holder, pharmacist, mental health practitioner, licensed health care professional, or practitioner shall be immune from civil liability arising from compliance with sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

(cf: P.L.2007, c.244, s.28)

6. Section 29 of P.L.2007, c.244 (C.45:1-49) is amended to read as follows:

29. Penalties.

a. A pharmacy permit holder, or a person designated by a pharmacy permit holder to be responsible for submitting data required by section 25 of P.L.2007, c.244 (C.45:1-45), who knowingly fails to submit data as required, shall be subject to disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-21) and may be subject to a civil penalty in an amount not to exceed $1,000 for **[**repeated**]** failure to comply with sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

b. (1) A pharmacy permit holder, pharmacist, mental health practitioner, licensed health care professional, or practitioner, or any other person or entity who knowingly discloses or uses prescription monitoring information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be subject to a civil penalty in an amount not to exceed $10,000.

(2) A pharmacy permit holder, pharmacist, mental health practitioner, licensed health care professional, or practitioner who knowingly discloses or uses prescription monitoring information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall also be subject to disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

c. A civil penalty imposed under subsections a., b., or d. of this section shall be collected by the director pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

d. A person not authorized to obtain prescription monitoring information from the Prescription Monitoring Program, who knowingly obtains or attempts to obtain such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall be subject to a civil penalty in an amount not to exceed $10,000.

e. In addition to any other penalty provided by law, a person who is authorized to obtain prescription monitoring information from the Prescription Monitoring Program who knowingly discloses such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall be guilty of a crime of the fourth degree.

f. In addition to any other penalty provided by law, a person who is authorized to obtain prescription monitoring information from the Prescription Monitoring Program who uses this information in the course of committing, attempting to commit, or conspiring to commit any criminal offense shall be guilty of a crime of the third degree. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction under this subsection shall not merge with a conviction of any other offense, nor shall any

other conviction merge with a conviction under this subsection. The court shall impose separate sentences upon a conviction under this subsection and any other criminal offense.

g. In addition to any other penalty provided by law, a person who is not authorized to obtain prescription monitoring information from the Prescription Monitoring Program who knowingly obtains or attempts to obtain such information in violation of the provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall be guilty of a crime of the third degree.

(cf: P.L.2007, c.244, s.29)

7. (New section) a. Except as provided in subsection b. of this section, a practitioner or pharmacist, as applicable, shall not prescribe or dispense a controlled dangerous substance without first accessing the prescription monitoring information, as authorized pursuant to section 26 of P.L.2007, c.244 (C.45:1-46), to determine if the patient has received other prescriptions that indicate misuse, abuse, or diversion. A pharmacist shall not dispense a prescription to a person other than the patient for whom the prescription is intended unless the person receiving the prescription provides personal identification, which the pharmacist shall input into the Prescription Monitoring Program as required pursuant to subsection b. of section 25 of P.L.2007, c.244 (C.45:1-45).

b. The provisions of subsection a. of this section shall not apply to:

(1) a veterinarian;

(2) a practitioner or the practitioner's agent administering methadone, or another controlled dangerous substance designated by the director as appropriate for treatment of a patient with a substance abuse disorder, as interim treatment for a patient on a waiting list for admission to an authorized substance abuse treatment program;

(3) a practitioner administering a controlled dangerous substance directly to a patient;

(4) a practitioner prescribing a controlled dangerous substance to be dispensed by an institutional pharmacy, as defined in N.J.A.C.13:39-9.2;

(5) a practitioner prescribing a controlled dangerous substance in the emergency department of a general hospital, provided that the quantity prescribed does not exceed a five day supply of the substance;

(6) a practitioner prescribing a controlled dangerous substance to a patient under the care of a hospice;

(7) a situation in which it is not reasonably possible for the practitioner or pharmacist to access the registry in a timely manner, no other individual authorized to access the registry is reasonably available, and the quantity of controlled dangerous substance

prescribed or dispensed does not exceed a five day supply of the substance;

(8) a practitioner or pharmacist acting in compliance with regulations promulgated by the director as to circumstances under which consultation of the registry would result in a patient's inability to obtain a prescription in a timely manner, thereby adversely impacting the medical condition of the patient;

(9) a situation in which the registry is not operational as determined by the division or where it cannot be accessed by the practitioner due to a temporary technological or electrical failure, as set forth in regulation; or

(10) a practitioner or pharmacist who has been granted a waiver due to technological limitations that are not reasonably within the control of the practitioner or pharmacist, or other exceptional circumstances demonstrated by the practitioner or pharmacist, pursuant to a process established in regulation, and in the discretion of the director.

8. Section 39 of P.L.1970, c.226 (C.24:21-39) is repealed.

9. This act shall take effect on the first day of the fourth month next following the date of enactment, but the Director of the Division of Consumer Affairs may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals specified in the bill.

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the bill requires them to submit identifying information for any individual other than the patient for whom the prescription was written who picks up a prescription. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The bill adds a provision requiring that the division evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous

substance. If there is indication that a person is obtaining a prescription for the same or similar drug from multiple practitioners or pharmacists during the same time period, the division may provide prescription monitoring information about that person to practitioners and pharmacists. In addition, the bill directs the division to evaluate whether any violation of law or regulations, or a breach of a standard of practice by any person may have occurred, including possible diversion of controlled dangerous substances. If the division determines that such a violation or breach may have occurred, the division is to notify the appropriate law enforcement agency or professional licensing board and provide relevant information for an investigation.

The bill also revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. Specifically, the bill would require the division to automatically register pharmacists and practitioners to participate in the prescription monitoring program as part of their registration to dispense controlled dangerous substances. The division must provide online access to prescription monitoring information to practitioners and pharmacists for purposes of providing health care to their patients or verifying information with respect to a patient or a prescriber. The division would also grant access to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice, in order to minimize the burden to practitioners to the extent practicable while protecting the confidentiality of the prescription monitoring information obtained. The director would establish, by regulation, the terms and conditions under which a practitioner may delegate that authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, and such other matters as the division may deem appropriate.

In addition, the division is permitted to provide online access to the following:

-- authorized personnel of the division, vendors, and contractors responsible for maintaining the PMP;

-- authorized personnel of the division responsible for administration and enforcement of the "New Jersey Controlled Dangerous Substances Act";

-- the State Medical Examiner, a county medical examiner, or a deputy or assistant county medical examiner investigating a death;

-- controlled dangerous substance monitoring programs in other states with which the division has established interoperability agreements (if required by those states), or which participate with

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

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient;

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The bill provides that a mental health practitioner is not required to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the practitioner's professional practice.

The bill authorizes the division to request and receive prescription monitoring information from prescription monitoring programs in other states and to use that information for the purposes of the PMP. The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit the division from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The bill amends the immunity and penalty provisions of the law governing the PMP to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands the penalty provisions of the law governing the PMP to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one

failure, rather than repeated failures. It also provides for a civil penalty up to $10,000 for a person not authorized to obtain prescription monitoring information from the Prescription Monitoring Program, who knowingly obtains or attempts to obtain such information. The bill would make it a crime of the fourth degree (punishable by imprisonment for a term of up to 18 months, or a fine of up to $10,000, or both) for a person who is authorized to obtain prescription monitoring information from the Prescription Monitoring Program to knowingly disclose such information in violation of the law. In addition, the bill would make it a crime of the third degree (punishable by imprisonment for a term of three to five years, or a fine of up to $15,000, or both) for a person who is authorized to obtain prescription monitoring information to use the information in the furtherance of other crimes, or for a person who is not authorized to obtain prescription monitoring information from the Prescription Monitoring Program to knowingly obtain or attempt to obtain such information in violation of the law.

Under the bill, prescribers and pharmacists would be prohibited from prescribing or dispensing a controlled dangerous substance without first accessing the prescription monitoring information, to determine if the patient has received other prescriptions that indicate misuse, abuse, or diversion. This requirement would not apply to certain instances specified in the bill in which the circumstances are unlikely to be associated with a significant risk of substance abuse, or in which accessing the PMP in a timely manner is not reasonably possible and the quantity does not exceed a five day supply, or in which accessing the PMP may not be feasible due to technological or other factors.

Finally, the bill repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires that every practitioner, within 24 hours after determining that a person is a drug dependent person by reason of the use of a controlled dangerous substance for purposes other than the treatment of sickness or injury prescribed and administered as authorized by law, report that determination to the Director of the division.

SENATE, No. 2119

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED MAY 19, 2014

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Implements certain recommendations of the SCI report entitled “Scenes from an Epidemic” concerning prescription drug and heroin abuse.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning drug abuse and amending and supplementing various parts of the statutory law.

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

1. (New section) a. For the purposes of this section:

"Commercial motor vehicle" means every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

"Controlled dangerous substance" has the meaning given the term in N.J.S.2C:35-2.

“Dealer” means any person actively engaged in the business of buying, selling, or exchanging motor vehicles or motorcycles and who has an established place of business.

"Hidden compartment" means a container, space, or enclosure that conceals, hides, or otherwise prevents the discovery of the contents of the container, space, or enclosure and includes, but is not limited to, any of the following: false, altered, or modified fuel tanks; original factory equipment on a vehicle that has been modified to conceal, hide, or prevent the discovery of the modified equipment's contents; or a compartment, space, box, or other closed container that is added or attached to existing compartments, spaces, boxes, or closed containers integrated or attached to a vehicle.

“Manufacturer” means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

"Mobile home” means a house trailer serving as a permanent home and connected to utilities.

"Motor home" means a motor vehicle built on a truck or bus chassis which is equipped to serve as a self-contained living quarters for recreational travel.

"Motor vehicle” means every vehicle propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Noncommercial truck” means every motor vehicle designed primarily for transportation of property, and which is not a "commercial motor vehicle."

“Recreation vehicle” means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational,

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 <u>thus</u> is new matter.

camping or travel purposes and used solely as a family or personal conveyance.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Vehicle" means every device in, upon, or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles and includes, but is not limited to, a motor vehicle, commercial motor vehicle, trailer, noncommercial truck, semitrailer, mobile home, recreation vehicle, or motor home.

b. A person who, with the intent to facilitate the unlawful concealment or transportation of a controlled dangerous substance, knowingly designs, builds, constructs, or fabricates, or publishes plans or instructions to design, build, construct, or fabricate, a vehicle with a hidden compartment, or modifies or alters any portion of a vehicle in order to create or add a hidden compartment, is guilty of a crime of the third degree.

c. A person who knowingly operates, possesses, or uses a vehicle with a hidden compartment with knowledge that the hidden compartment is used or intended to be used to facilitate the unlawful concealment or transportation of a controlled dangerous substance is guilty of a crime of the fourth degree.

d. This section shall not apply to:

(1) any law enforcement officer acting in the performance of the law enforcement officer's duties;

(2) any licensed motor vehicle dealer or motor vehicle manufacturer that in the ordinary course of business repairs, purchases, receives in trade, leases, or sells a motor vehicle; or

(3) any box, safe, container, or other item added to a vehicle for the purpose of securing valuables, electronics, or firearms provided that, at the time of discovery, the box, safe, container, or other item added to the vehicle does not contain a controlled substance or visible residue of a controlled substance.

e. This section shall not be construed to impose a duty on a licensed motor vehicle dealer to know, discover, report, repair, or disclose the existence of a hidden compartment.

2. (New Section) a. As used in this section:

"Health care professional" means a person who is licensed, registered, or otherwise authorized to practice as a health care professional pursuant to Title 45 or Title 52 of the Revised Statutes.

"Improper prescribing" means the prescribing or ordering of a drug in an indiscriminate manner, or not in good faith, or without good cause, or otherwise in violation of any State or federal law or regulation, and which constitutes professional misconduct as determined by the board. For the purposes of this section, the issuance of an initial improper prescription or order and any refill of that initial prescription or order shall each be counted as a separate instance of improper prescribing.

b. Notwithstanding the provisions of subsection a. of section 12 of P.L.1978, c.73 (C.45:1-25) to the contrary, and in addition to any other penalty provided by law, a health care professional who engages in improper prescribing shall be liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation.

3. Section 25 of P.L.2007, c.244 (C.45:1-45) is amended to read as follows:

25. Prescription Monitoring Program; requirements.

a. There is established the Prescription Monitoring Program in the Division of Consumer Affairs in the Department of Law and Public Safety. The program shall consist of an electronic system for monitoring controlled dangerous substances that are dispensed in or into the State by a pharmacist in an outpatient setting.

b. Each pharmacy permit holder shall submit, or cause to be submitted, to the division, by electronic means in a format and at such intervals as are specified by the director, information about each prescription for a controlled dangerous substance dispensed by the pharmacy that includes:

(1) The surname, first name, and date of birth of the patient for whom the medication is intended;

(2) The street address and telephone number of the patient;

(3) The date that the medication is dispensed;

(4) The number or designation identifying the prescription and the National Drug Code of the drug dispensed;

(5) The pharmacy permit number of the dispensing pharmacy;

(6) The prescribing practitioner's name and Drug Enforcement Administration registration number;

(7) The name, strength, and quantity of the drug dispensed, the number of refills ordered, and whether the drug was dispensed as a refill or a new prescription;

(8) The date that the prescription was issued by the practitioner;

(9) The source of payment for the drug dispensed; and

(10) Such other information, not inconsistent with federal law, regulation, or funding eligibility requirements, as the director determines necessary.

The pharmacy permit holder shall submit the information to the division with respect to the prescriptions dispensed during the reporting period not less frequently than once every ⟦30 days⟧ business day, or according to a schedule to be determined by the director if federal law, regulation, or funding eligibility otherwise requires.

c. The division may grant a waiver of electronic submission to any pharmacy permit holder for good cause, including financial hardship, as determined by the director. The waiver shall state the format in which the pharmacy permit holder shall submit the required information.

d. The requirements of this act shall not apply to: the direct administration of a controlled dangerous substance to the body of an ultimate user; or the administration or dispensing of a controlled dangerous substance that is otherwise exempted as determined by the Secretary of Health and Human Services pursuant to the "National All Schedules Prescription Electronic Reporting Act of 2005," Pub.L.109-60.

(cf: P.L.2007, c.244, s.25)

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

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

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

c. The division shall review the prescription monitoring information provided by a pharmacy permit holder pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). If the division determines that a violation of law or regulations, or a breach of the applicable standards of practice, may have occurred, the division shall notify the appropriate law enforcement agency or professional licensing board, and provide the prescription monitoring information required for an investigation.

d. The division may provide prescription monitoring information to the following persons:

(1) a practitioner authorized to prescribe, dispense, or administer controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient of the practitioner. ⟦Nothing⟧ Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing, or administering medications beyond that which may be required as part of the practitioner's professional practice;

(2) a pharmacist authorized to dispense controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient. ⟦Nothing⟧ Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice;

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

(4) an officer of a State, federal, or municipal law enforcement ⟦officer⟧ agency who is ⟦acting pursuant to a court order and certifies that the officer⟧ is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information shall comply with security protocols established by the director by regulation, which shall at minimum include the following:

(a) clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information;

(b) official documentation signed by a representative of the law enforcement agency agreeing to all security requirements;

(c) designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information;

(d) a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information;

(e) submission to periodic audits to ensure compliance with security requirements; and

(f) penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties;

(5) a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) authorized personnel of the division or vendor or contractor responsible for establishing and maintaining the program; and

(8) the controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement.

e. A person listed in subsection d. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify, by means of entering an on-line statement in a form and manner prescribed by regulation of the director, the reasons for seeking to obtain that information.

f. The division shall offer an on-line tutorial for those persons listed in subsection d. of this section, which shall, at a minimum, include: how to access prescription monitoring information; the rights and responsibilities of persons who are the subject of or access this information and the other provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and the regulations adopted pursuant thereto, regarding the permitted uses of that information and penalties for violations thereof; and a summary of the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164 and a hypertext link to the federal Department of Health and Human Services website for further information about the specific provisions of the privacy rule.

g. The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes.

(cf: P.L.2007, c.244, s.26)

5. (New section) Prior to prescribing or dispensing a Schedule II controlled dangerous substance to a patient, a practitioner or pharmacist, as applicable, shall access the prescription monitoring information, as authorized pursuant to subsection d. of section 26 of P.L.2007, c.244 (C.45:1-46), to determine if the patient has received other prescriptions that indicate, in the professional judgment of the practitioner or pharmacist, prescription abuse or diversion.

6. (New section) a. The Division of Consumer Affairs in the Department of Law and Public Safety shall have the authority to gather information on any significant business relationships involving the medical practice of a licensee of the State Board of Medical Examiners. The division may, at the time of a licensee's biennial license renewal, require that a licensee provide information on any medical practice in which the licensee is an owner, part owner, partner, associate, shareholder, or employee, or in which the licensee otherwise has a significant financial interest. This information may include, but need not be limited to, the following:

(1) the name and address of the practice;

(2) any party that conducts business on the premises of the practice, including those not formally associated with the practice;

(3) any non-medical personnel employed by the practice;

(4) any non-medical business with which the practice is associated, including a management company; and

(5) any financial relationship related to the medical practice with any individual who is not a health care professional.

b. The State Board of Medical Examiners shall not approve a licensee's renewal application unless the applicant provides all information required by the division pursuant to subsection a. of this section.

7. Section 1 of P.L.1997, c.249 (C.45:9-22.19) is amended to read as follows:

1. a. A physician licensed pursuant to chapter 9 of Title 45 of the Revised Statutes may prescribe a Schedule II controlled dangerous substance for the use of a patient in any quantity which does not exceed a 30-day supply, as defined by regulations adopted by the State Board of Medical Examiners in consultation with the Department of Health **[**and Senior Services**]**. The physician shall document the diagnosis and the medical need for the prescription in the patient's medical record, in accordance with guidelines established by the State Board of Medical Examiners.

b. A physician may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled dangerous substance, provided that the following conditions are met:

(1) each separate prescription is issued for a legitimate medical purpose by the physician acting in the usual course of professional practice;

(2) the physician provides written instructions on each prescription, other than the first prescription if it is to be filled immediately, indicating the earliest date on which a pharmacy may fill each prescription;

(3) the physician determines that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the physician complies with all other applicable State and federal laws and regulations.

c. The State Board of Medical Examiners shall, by regulation, adopt a policy setting forth clear standards for the use of prescription drugs in pain management. The policy shall emphasize the primary goal of ensuring that suffering patients find relief, and shall also consider the need to protect the public health and safety by limiting access to controlled dangerous substances. In developing the policy, the State Board of Medical Examiners shall consider the provisions of the model policy established by the Federation of State Medical Boards.

(cf: P.L.2009, c.165, s.1)

8. Section 20 of P.L.2003, c.280 (C.45:14-59) is amended to read as follows:

20. The Division of Consumer Affairs in the Department of Law and Public Safety shall establish the format for uniform, non-reproducible, non-erasable safety paper prescription blanks, to be known as New Jersey Prescription Blanks, which format shall include an identifiable logo or symbol that will appear on all prescription blanks and additional security features to prevent erasure or duplication of prescription blanks that can be accomplished with widely available computer technology. The prescription blanks for each prescriber or health care facility shall be numbered consecutively and, if the prescriber or health care facility has a National Provider Identifier, the prescription blank shall include the National Provider Identifier. The division shall approve a sufficient number of vendors to ensure production of an adequate supply of New Jersey Prescription Blanks for practitioners and health care facilities Statewide, but shall limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

(cf: P.L.2007, c.244, s.22)

9. a. The Director of the Division of Consumer Affairs, in consultation with the State Board of Medical Examiners, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of section 3 of this act.

b. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 4 through 6 and 8 of this act.

c. The State Board of Medical Examiners, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

seq.), shall adopt rules and regulations to effectuate the purposes of section 7 of this act.

10. Sections 1 and 2 of this act shall take effect immediately. Sections 3 through 8 shall take effect on the first day of the seventh month next following the date of enactment, but the State Board of Medical Examiners and the Director of the Division of Consumer Affairs may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill implements certain of the recommendations of the State Commission of Investigation's July 2013 report entitled "Scenes from an Epidemic: A Report on the SCI's Investigation of Prescription Pill and Heroin Abuse." The recommendations expand on current law in several areas to strengthen the ability of law enforcement agencies to combat illicit drug distribution and drug use, increase civil penalties related to prescription drug abuse, and impose stronger controls over access to prescription drugs.

Section 1 of the bill would implement recommendation number eight from the report to make it a crime of the third degree to knowingly design, build, construct, or fabricate a motor vehicle equipped with a hidden compartment to be used to unlawfully conceal a controlled dangerous substance, or to alter a motor vehicle to add such a hidden compartment. This section would also make it a crime of the fourth degree to operate or possess a vehicle with a hidden compartment.

Section 2 of the bill would implement recommendation number two from the report to provide that, in addition to any other penalty provided by law, a health care professional who engages in improper prescribing is liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation. Current law provides a maximum fine of $10,000 for the first violation and $20,000 for a second or subsequent violation. This section also specifies that any prescription and any refill of a prescription is each to be counted as a separate instance of improper prescribing.

Section 3 of the bill would implement the third part of recommendation number five from the report to require pharmacies to submit information on dispensed prescriptions at least once each business day, or according to a schedule to be determined by the Director of the Division of Consumer Affairs if federal law, regulation, or funding eligibility otherwise requires. Pharmacies are currently required by the Division of Consumer Affairs to report once each 15 days.

Section 4 of the bill would implement the first part of recommendation number five from the report to provide greater access to prescription monitoring information by law enforcement agencies. Under the bill, an officer of a law enforcement agency who is engaged in a bona fide specific investigation of a designated practitioner or patient may access prescription monitoring information without a court order or grand jury subpoena (required by current law), so long as the agency complies with security protocols established by the director by regulation. The security protocols must, at minimum, include: clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information; official documentation signed by a representative of the law enforcement agency agreeing to all security requirements; designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information; a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information; submission to periodic audits to ensure compliance with security requirements; and penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties.

Section 5 of the bill would implement the second part of recommendation number five from the report to require health care practitioners who prescribe, and pharmacists who dispense, Schedule II drugs to check the information available through the prescription monitoring program prior to doing so in order to determine if the patient has received other prescriptions that indicate prescription abuse or diversion.

Section 6 of the bill would implement recommendation number four from the report to grant the Division of Consumer Affairs authority to gather information on any significant business relationships involving the medical practice of a licensee of the State Board of Medical Examiners. The division may, at the time of a licensee's biennial license renewal, require that a licensee provide information on any medical practice in which the licensee is an owner, part owner, partner, associate, shareholder, or employee, or in which the licensee otherwise has a significant financial interest. This information may include, but need not be limited to: the name and address of the practice; parties that conduct business on the premises of the practice, including those not formally associated with the practice; non-medical personnel employed by the practice; any non-medical business associations, including associations with management companies; and any financial relationships related to the medical practice with individuals who are not health care professionals. The State Board of Medical Examiners would be prohibited from approving a licensee's renewal application unless the applicant provides all information required by the division.

Section 7 of the bill would implement recommendation number one from the report to direct the State Board of Medical Examiners to adopt regulations setting forth clear standards for the use of prescription drugs in pain management. This section would require that the standards emphasize the primary goal of ensuring that suffering patients find relief, and also consider the need to protect the public health and safety by limiting access to controlled dangerous substances. In developing the standards, the State Board of Medical Examiners would be required to consider the provisions of the model policy established by the Federation of State Medical Boards.

Section 8 of the bill would implement recommendation number six from the report to require that New Jersey Prescription Blanks incorporate additional security features to prevent erasure or duplication of prescription blanks that can be accomplished with widely available computer technology. It is expected that this provision will encourage the adoption of regulations similar or identical to those proposed by the Division of Consumer Affairs in November 2012. This section would also require the Division of Consumer Affairs to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1998 and 2119

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 2015

The Assembly Budget Committee reports favorably Assembly Bill Nos. 1998 and 2119 (SCS 2R), with committee amendments.

As amended, this bill revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals.

The bill also expands the definitional section in current law to add definitions for the following terms: “CDS registration,” “certified medical assistant,” “dental resident,” “licensed health care professional,” “licensed pharmacist,” “medical resident,” “mental health practitioner,” “pharmacy permit holder,” and “registered dental assistant.”

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the bill requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription if the pharmacist has reasonable belief that the person may be seeking a CDS for any reason other than delivering it for medical treatment. This requirement would not become effective, however, until the DCA director determines that the PMP has the technical capacity to accept such information. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The bill adds a provision requiring the DCA to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance. If

there is indication that a person is obtaining a prescription for the same or similar drug from multiple practitioners or pharmacists during the same time period, the division may provide prescription monitoring information about that person to practitioners and pharmacists. In addition, the bill directs the DCA to evaluate whether any violation of law or regulations, or a breach of a standard of practice by any person may have occurred, including possible diversion of controlled dangerous substances. If the DCA determines that such a violation or breach may have occurred, it is required to notify the appropriate law enforcement agency or professional licensing board and provide relevant information for an investigation.

The bill also revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. Specifically, the bill requires the DCA to automatically register pharmacists and practitioners to participate in the prescription monitoring program as part of their registration to prescribe, dispense, or administer controlled dangerous substances. The DCA must provide online access to prescription monitoring information to practitioners and pharmacists for purposes of providing health care to their patients or verifying information with respect to a patient or a prescriber.

The bill also authorizes access to PMP by licensed health care professionals, medical residents, dental residents, certified medical assistants, and registered dental assistants under certain circumstances. The DCA would grant access to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a health care professional. The DCA would grant access to as many medical or dental residents as are authorized by a faculty member of a medical or dental teaching facility to access PMP information, and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner or faculty member may delegate PMP authorization to a medical or dental resident. The DCA would also grant access to as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a certified medical assistant. In addition, the DCA would grant access to as many registered dental assistants as are authorized by a licensed dentist to access that information and for whom the licensed dentist is

responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a licensed dentist may delegate that authorization.

A person who is entitled to PMP access will be required, as a condition of such access, to certify that the request for information is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

In addition to the parties who are entitled to have access to PMP information, the division will also be permitted to provide online PMP access to the following persons:

-- authorized DCA personnel, vendors, and contractors responsible for maintaining the PMP;

-- authorized DCA personnel responsible for administration and enforcement of the "New Jersey Controlled Dangerous Substances Act";

-- the State Medical Examiner, a county medical examiner, a deputy or assistant county medical examiner, or a qualified designated assistant thereof, investigating a death;

-- controlled dangerous substance monitoring programs in other states that participate with the division in a system that facilitates secure sharing of information between states;

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner, pharmacist, or patient;

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The bill provides that a mental health practitioner is not required to access or check the prescription monitoring information in

the course of treatment beyond that which may be required as part of the practitioner's professional practice.

PMP access will be available to a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information will be required to comply with security protocols established by the director by regulation.

A person who is permitted by DCA (but who is not entitled) to access PMP information will be required, as a condition of accessing PMP information, to certify the person's reasons for seeking to obtain the information. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

The bill requires DCA to provide an online tutorial for persons who are entitled, or otherwise authorized by the DCA, to access PMP information. Such tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof, and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The bill authorizes DCA to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP. The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit DCA from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The bill requires the DCA to establish a process by which patients and persons on behalf of those patients can access PMP information.

The bill requires the DCA to establish communications channels for persons with online access to seek or provide information.

The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather

than repeated failures. The bill also establishes new crimes for wrongful disclosure and wrongful use of PMP information. Under current law, a pharmacy permit holder, pharmacist or practitioner or any other person or entity who knowingly discloses or uses PMP information in violation of the statutes governing the program is subject to a civil penalty in an amount of up to $10,000. These persons are also subject to disciplinary action. Under the bill, any of the above-listed persons, as well as a mental health practitioner or a licensed health care professional, who knowingly obtains or attempts to obtain PMP information in violation of the law will be subject to the civil penalty. These persons will no longer be subject to a civil penalty for disclosing or using PMP information in violation of the law; they will, however, remain subject to disciplinary action for disclosing or using PMP information in violation of the law.

The bill also provides that a person who is authorized to obtain PMP information who knowingly discloses such information in violation of the law will be guilty of a crime of the fourth degree and will also be subject to a civil penalty in an amount of up to $10,000. The bill makes it a crime of the third degree for a person who is authorized to obtain PMP information to use the information in the course of committing, attempting to commit, or conspiring to commit any criminal offense. It will be a crime of the fourth degree for a person who is not authorized to obtain PMP information to knowingly obtain the information in violation of the law.

A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000, or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

Under the bill, a practitioner, or another person who is authorized thereby to access PMP information, pursuant to the bill's provisions, will be required to consult the PMP when they prescribe a controlled dangerous substance to a patient for acute or chronic pain, and quarterly thereafter if the patient continues to receive prescriptions for controlled dangerous substances for acute or chronic pain. In addition, a practitioner, or other person authorized thereby to access PMP information, will be required to access PMP information when the practitioner or other person has a reasonable belief that the patient may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. A pharmacist will similarly be prohibited from dispensing a controlled dangerous substance to any person without first accessing PMP information, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. These provisions, which require practitioners and pharmacists to consult the PMP, will not apply to certain actors or in certain instances specified in the bill, where the circumstances are

unlikely to be associated with a significant risk of substance abuse, or where accessing the PMP may not be feasible due to technological or other factors.

The bill provides that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. This provision will not take effect until the director of the DCA determines that the PMP has the technical capacity to accept such information.

The bill requires the DCA to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology. The DCA will also be required to approve a sufficient number of vendors to ensure production of an adequate supply of prescription blanks for practitioners and health care facilities Statewide, but to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

The bill requires the DCA to annually submit a report to the Legislature which provides information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement.

The bill requires the DCA to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, and submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the bill’s effective date.

The bill repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner, within 24 hours after making a determination that a person is drug dependent, to report that determination to the DCA

FISCAL IMPACT:

There is insufficient information available at this time to determine the fiscal impact of this amended bill's revisions to the Prescription Monitoring Program.

COMMITTEE AMENDMENTS:

The amendments:

add the definitions of “dental resident” and “registered dental assistant;

provide regulatory flexibility by allowing the director to provide alternatives to online statements as a means of certification of access to the system and to seek or provide information;

grant the director authority to establish security protocols by regulation;

eliminate direct patient and guardian access to prescription monitoring information while maintaining the ability of patients and guardians to request submitted monitoring information from practitioners;

reorganize the new criminal penalty provisions;

require the DCA to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology;

limit the “per prescription” practitioner mandatory access check to new patients, while maintaining the quarterly access check for all current patients;

omit a pilot program to test integrating the PMP with Electronic Medical Records; and

make corresponding technical corrections to the Title and effective date.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1998 and 2119

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 2015

The Assembly Budget Committee reports favorably Assembly Bill Nos. 1998 and 2119 (SCS 2R), with committee amendments.

As amended, this bill revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals.

The bill also expands the definitional section in current law to add definitions for the following terms: “CDS registration,” “certified medical assistant,” “dental resident,” “licensed health care professional,” “licensed pharmacist,” “medical resident,” “mental health practitioner,” “pharmacy permit holder,” and “registered dental assistant.”

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the bill requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription if the pharmacist has reasonable belief that the person may be seeking a CDS for any reason other than delivering it for medical treatment. This requirement would not become effective, however, until the DCA director determines that the PMP has the technical capacity to accept such information. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The bill adds a provision requiring the DCA to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance. If

there is indication that a person is obtaining a prescription for the same or similar drug from multiple practitioners or pharmacists during the same time period, the division may provide prescription monitoring information about that person to practitioners and pharmacists. In addition, the bill directs the DCA to evaluate whether any violation of law or regulations, or a breach of a standard of practice by any person may have occurred, including possible diversion of controlled dangerous substances. If the DCA determines that such a violation or breach may have occurred, it is required to notify the appropriate law enforcement agency or professional licensing board and provide relevant information for an investigation.

The bill also revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. Specifically, the bill requires the DCA to automatically register pharmacists and practitioners to participate in the prescription monitoring program as part of their registration to prescribe, dispense, or administer controlled dangerous substances. The DCA must provide online access to prescription monitoring information to practitioners and pharmacists for purposes of providing health care to their patients or verifying information with respect to a patient or a prescriber.

The bill also authorizes access to PMP by licensed health care professionals, medical residents, dental residents, certified medical assistants, and registered dental assistants under certain circumstances. The DCA would grant access to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a health care professional. The DCA would grant access to as many medical or dental residents as are authorized by a faculty member of a medical or dental teaching facility to access PMP information, and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner or faculty member may delegate PMP authorization to a medical or dental resident. The DCA would also grant access to as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a certified medical assistant. In addition, the DCA would grant access to as many registered dental assistants as are authorized by a licensed dentist to access that information and for whom the licensed dentist is

responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a licensed dentist may delegate that authorization.

A person who is entitled to PMP access will be required, as a condition of such access, to certify that the request for information is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

In addition to the parties who are entitled to have access to PMP information, the division will also be permitted to provide online PMP access to the following persons:

-- authorized DCA personnel, vendors, and contractors responsible for maintaining the PMP;

-- authorized DCA personnel responsible for administration and enforcement of the "New Jersey Controlled Dangerous Substances Act";

-- the State Medical Examiner, a county medical examiner, a deputy or assistant county medical examiner, or a qualified designated assistant thereof, investigating a death;

-- controlled dangerous substance monitoring programs in other states that participate with the division in a system that facilitates secure sharing of information between states;

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner, pharmacist, or patient;

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The bill provides that a mental health practitioner is not required to access or check the prescription monitoring information in

the course of treatment beyond that which may be required as part of the practitioner's professional practice.

PMP access will be available to a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information will be required to comply with security protocols established by the director by regulation.

A person who is permitted by DCA (but who is not entitled) to access PMP information will be required, as a condition of accessing PMP information, to certify the person's reasons for seeking to obtain the information. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

The bill requires DCA to provide an online tutorial for persons who are entitled, or otherwise authorized by the DCA, to access PMP information. Such tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof, and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The bill authorizes DCA to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP. The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit DCA from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The bill requires the DCA to establish a process by which patients and persons on behalf of those patients can access PMP information.

The bill requires the DCA to establish communications channels for persons with online access to seek or provide information.

The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather

than repeated failures. The bill also establishes new crimes for wrongful disclosure and wrongful use of PMP information. Under current law, a pharmacy permit holder, pharmacist or practitioner or any other person or entity who knowingly discloses or uses PMP information in violation of the statutes governing the program is subject to a civil penalty in an amount of up to $10,000. These persons are also subject to disciplinary action. Under the bill, any of the above-listed persons, as well as a mental health practitioner or a licensed health care professional, who knowingly obtains or attempts to obtain PMP information in violation of the law will be subject to the civil penalty. These persons will no longer be subject to a civil penalty for disclosing or using PMP information in violation of the law; they will, however, remain subject to disciplinary action for disclosing or using PMP information in violation of the law.

The bill also provides that a person who is authorized to obtain PMP information who knowingly discloses such information in violation of the law will be guilty of a crime of the fourth degree and will also be subject to a civil penalty in an amount of up to $10,000. The bill makes it a crime of the third degree for a person who is authorized to obtain PMP information to use the information in the course of committing, attempting to commit, or conspiring to commit any criminal offense. It will be a crime of the fourth degree for a person who is not authorized to obtain PMP information to knowingly obtain the information in violation of the law.

A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000, or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

Under the bill, a practitioner, or another person who is authorized thereby to access PMP information, pursuant to the bill's provisions, will be required to consult the PMP when they prescribe a controlled dangerous substance to a patient for acute or chronic pain, and quarterly thereafter if the patient continues to receive prescriptions for controlled dangerous substances for acute or chronic pain. In addition, a practitioner, or other person authorized thereby to access PMP information, will be required to access PMP information when the practitioner or other person has a reasonable belief that the patient may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. A pharmacist will similarly be prohibited from dispensing a controlled dangerous substance to any person without first accessing PMP information, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. These provisions, which require practitioners and pharmacists to consult the PMP, will not apply to certain actors or in certain instances specified in the bill, where the circumstances are

unlikely to be associated with a significant risk of substance abuse, or where accessing the PMP may not be feasible due to technological or other factors.

The bill provides that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. This provision will not take effect until the director of the DCA determines that the PMP has the technical capacity to accept such information.

The bill requires the DCA to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology. The DCA will also be required to approve a sufficient number of vendors to ensure production of an adequate supply of prescription blanks for practitioners and health care facilities Statewide, but to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

The bill requires the DCA to annually submit a report to the Legislature which provides information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement.

The bill requires the DCA to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, and submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the bill’s effective date.

The bill repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner, within 24 hours after making a determination that a person is drug dependent, to report that determination to the DCA

FISCAL IMPACT:

There is insufficient information available at this time to determine the fiscal impact of this amended bill's revisions to the Prescription Monitoring Program.

COMMITTEE AMENDMENTS:

The amendments:

add the definitions of “dental resident” and “registered dental assistant;

provide regulatory flexibility by allowing the director to provide alternatives to online statements as a means of certification of access to the system and to seek or provide information;

grant the director authority to establish security protocols by regulation;

eliminate direct patient and guardian access to prescription monitoring information while maintaining the ability of patients and guardians to request submitted monitoring information from practitioners;

reorganize the new criminal penalty provisions;

require the DCA to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology;

limit the “per prescription” practitioner mandatory access check to new patients, while maintaining the quarterly access check for all current patients;

omit a pilot program to test integrating the PMP with Electronic Medical Records; and

make corresponding technical corrections to the Title and effective date.

SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1998 and 2119

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2014

The Senate Health, Human Services and Senior Services Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 1998 and 2119.

This substitute revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The substitute requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals specified in the substitute.

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the substitute requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription. This requirement would not become effective, however, until the DCA director determines that the PMP has the technical capacity to accept such information. The substitute also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The substitute adds a provision requiring the DCA to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance. If there is indication that a person is obtaining a prescription for the same or similar drug from multiple practitioners or pharmacists during the same time period, the division may provide prescription monitoring information about that person to practitioners and pharmacists. In addition, the substitute directs the DCA to evaluate whether any violation of law or regulations, or a breach of a standard of practice by any person may have occurred, including possible diversion of controlled dangerous substances. If the DCA determines that such a violation or breach may have occurred, it is required to notify the

appropriate law enforcement agency or professional licensing board and provide relevant information for an investigation.

The substitute also revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. Specifically, the substitute would require the DCA to automatically register pharmacists and practitioners to participate in the prescription monitoring program as part of their registration to prescribe, dispense, or administer controlled dangerous substances. The DCA must provide online access to prescription monitoring information to practitioners and pharmacists for purposes of providing health care to their patients or verifying information with respect to a patient or a prescriber. It would also be required to grant access to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice. Finally, the DCA would grant access to as many medical residents as are authorized by a faculty member of a medical teaching facility to access PMP information, and for whom the practitioner is responsible for the use or misuse of that information. The director would be required to establish, by regulation, the terms and conditions under which a practitioner or faculty member may delegate PMP authorization to a health care professional or medical resident, as the case may be, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, provisions regarding the duration of a medical resident's authorization to access PMP information, and such other matters as the DCA may deem appropriate.

A person who is entitled to PMP access would be required, as a condition of such access, to certify that the request for information is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner. Such certification would be furnished through means of an online statement, in a form and manner prescribed by DCA rule or regulation.

In addition to the parties who are entitled to have access to PMP information, the division would also be permitted to provide online PMP access to the following persons:

-- authorized DCA personnel, vendors, and contractors responsible for maintaining the PMP;

-- authorized DCA personnel responsible for administration and enforcement of the "New Jersey Controlled Dangerous Substances Act";

-- the State Medical Examiner, a county medical examiner, or a deputy or assistant county medical examiner investigating a death;

-- controlled dangerous substance monitoring programs in other states that participate with the division in a system that facilitates secure sharing of information between states;

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient;

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The substitute provides that a mental health practitioner is not required to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the practitioner's professional practice.

A person who is permitted by DCA (but who is not entitled) to access PMP information would be required, as a condition of accessing PMP information, to certify the person's reasons for seeking to obtain the information. Such certification would be furnished through means of an online statement, in a form and manner prescribed by DCA rule or regulation.

The DCA is required to provide an online tutorial for persons who are entitled, or otherwise authorized by the division, to access PMP information. Such tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof, and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The substitute authorizes DCA to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP. The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The substitute states that nothing is

to prohibit DCA from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The substitute amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The substitute expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather than repeated failures. It further specifies that any person who is not authorized to obtain PMP information, and who knowingly obtains or attempts to obtain such information, will be subject to a civil penalty up to $10,000, and will additionally be guilty of a crime of the third degree, which is punishable by imprisonment for a term of three to five years, or a fine of up to $15,000, or both. In addition, any person who is authorized to access PMP information, and who knowingly discloses such information in violation of the law, will be guilty of a crime of the fourth degree, which is punishable by imprisonment for a term of up to 18 months, or a fine of up to $10,000, or both, and any person who is authorized to obtain PMP information, and who uses that information in the furtherance of any criminal offenses, will be guilty of a crime of the third degree.

Under the substitute, a practitioner, or another person who is authorized thereby to access PMP information, pursuant to the subsitute's provisions, would be required to consult the PMP the first time they prescribe a controlled dangerous substance to a patient, and at least quarterly thereafter if the patient continues to receive prescriptions for controlled dangerous substances. In addition, a practitioner, or other person authorized thereby to access PMP information, would be required to access PMP information when the practitioner or other person has a reasonable belief that the patient may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. A pharmacist would similarly be prohibited from dispensing a controlled dangerous substance to any person without first accessing PMP information, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. These provisions, which require practitioners and pharmacists to consult the PMP, would not apply to certain actors or in certain instances specified in the substitute, where the circumstances

are unlikely to be associated with a significant risk of substance abuse, or where accessing the PMP may not be feasible due to technological or other factors.

The substitute also requires the DCA to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, and submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the substitute's effective date.

Finally, the substitute repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner to report their determination that a person is drug dependent, based on the person's use of controlled dangerous substances, within 24 hours after making such determination.

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1998 and 2119

with Senate Floor Amendments
(Proposed by Senator WEINBERG)

ADOPTED: DECEMBER 18, 2014

These floor amendments would make the following changes to the committee substitute for S1998 and S2119:

Insert a definition for the term “certified medical assistant”;

Require the division to provide online access to Prescription Monitoring Program (PMP) information to as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, and require the Director of the Division of Consumer Affairs in the Department of Law and Public Safety to establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a certified medical assistant;

Clarify that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient, but only if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition;

Clarify that the requirement for the division to register practitioners to access PMP information upon issuance or renewal of the practitioner’s controlled dangerous substance (CDS) registration does not apply to pharmacists, and remove an additional reference to pharmacist CDS registrations;

In relation to the persons who may be authorized by the division to obtain access to PMP information, specify that the division may provide such access through online means or through any other means deemed appropriate by the division director;

Authorize the division to provide access to PMP information to the “qualified designated assistant” of the State Medical Examiner, a county medical examiner, or a deputy or assistant county medical examiner;

Clarify that PMP access may be granted to a CDS monitoring program in another state with which the division has established an interoperability agreement, to the same extent that PMP access may be granted to a CDS monitoring program in another state that participates with the division in a system that facilitates the secure sharing of information;

In section 7, replace the references to the “registry” with references to the “Prescription Monitoring Program”;

Insert a new section requiring the division to submit a report to the Legislature providing information on the nature and extent of registration with, and utilization of, the PMP, and recommendations for program improvement; and

Make technical and clarifying corrections to ensure the correct use of terminology and language throughout the bill.

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1998 and 2119

Senate Floor Amendments
(Proposed by Senator WEINBERG)

ADOPTED: MARCH 16, 2015

These floor amendments would make the following changes to the first reprint of the committee substitute for S1998 and S2119:

– Require the Division of Consumer Affairs in the Department of Law and Public Safety to create a dedicated, secure telephone and email hotline for any licensed health care professional, pharmacist, mental health practitioner, pharmacy permit holder, or other practitioner who has online access to the Prescription Monitoring Program (PMP) pursuant to the bill's provisions, and who wishes to seek or provide any information to the division in relation to the provisions of section 4 of the bill;

– Clarify that PMP information must be accessed by a prescribing practitioner, or by another person authorized by the practitioner to access such information, the first time the practitioner or other person prescribes a Schedule II controlled dangerous substance to a new patient for acute or chronic pain;

– Clarify that PMP information must additionally be accessed on a quarterly basis by a prescribing practitioner, or by another person authorized by the practitioner to access such information, if any patient thereof continues to receive prescriptions for Schedule II controlled dangerous substances for acute or chronic pain during the period of time that follows the patient's initial receipt of a prescription for such a controlled dangerous substance;

– Clarify that a pharmacist will be prohibited from dispensing a Schedule II controlled dangerous substance to a person without first accessing PMP information to determine if the person has received other prescriptions indicating misuse, abuse, or diversion only if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance for non-medical purposes, such as for purposes of misuse, abuse, or diversion;

– Clarify that PMP information need only be accessed by a pharmacist if the pharmacist is dispensing a Schedule II controlled dangerous substance;

– Remove the provision in section 7 of the bill that would have required a prescribing practitioner, or other person authorized by the practitioner, to access PMP information whenever the practitioner or other person has a reasonable belief that the patient may be seeking the

controlled dangerous substance for any reason other than the treatment of an existing medical condition;

– Specify that the provisions of the bill, which require a practitioner to access PMP information, will not apply to a practitioner who is prescribing a controlled dangerous substance to a patient immediately after the patient has undergone an operation, procedure, or treatment for acute trauma, when less than a 30-day supply is prescribed; and

– Clarify that section 7 of the bill will not take effect until the pilot program required by section 8 of the bill is completed.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 1998 and 2119

STATE OF NEW JERSEY
216th LEGISLATURE

DATED: MARCH 26, 2015

SUMMARY

Synopsis:	Revises certain provisions of New Jersey Prescription Monitoring Program.
Type of Impact:	Minimal, if any, expenditure increase.
Agencies Affected:	Department of Law and Public Safety; Division of Consumer Affairs.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Minimal increase if any – See comments below		

- The Office of Legislative Services (OLS) projects that this bill expands current practice and would create minimal, if any, additional fiscal impact relating to the pilot program, educational programs, and overall program assessment.

- The bill expands participants authorized in the program, requires the establishment of a tutorial program and a dedicated and secure telephone hotline and email by the Division of Consumer Affairs (DCA), and revises guidelines for access to maintain patient privacy.

- The DCA would establish a one-year pilot program to test the integration of the Prescription Monitoring Program (PMP) and the Electronic Medical Records program.

- The bill requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as currently required by statute.

- The division would complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program.

- The current penalties and fines are enhanced under the bill.

BILL DESCRIPTION

The Senate Committee Substitute for the Second Reprint to Senate Bill Nos. 1998 and 2119 of 2014 revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director of DCA conduct educational programs concerning controlled dangerous substances for the general public and various specified health care professionals.

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the bill requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription. This requirement would not become effective until the director determines that the PMP has the technical capacity to accept such information. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as currently required by statute.

The bill revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. The DCA is required to provide an online tutorial for persons who are entitled or authorized to access PMP information. The tutorial would explain how to access the PMP information, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof, and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The bill authorizes the DCA to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP. The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit the DCA from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The DCA would be required to create a dedicated, secure telephone and email hotline for any licensed health care professional, pharmacist, mental health practitioner, pharmacy permit holder, or other practitioner who has online access to the PMP, in order to allow those persons to seek or provide any prescription related information.

The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands and enhances the current penalties in the PMP law. A person who is not authorized to obtain PMP information, and who knowingly obtains or attempts to obtain such information, is subject to a civil penalty of up to $10,000, and also is guilty of a crime of the third degree, which is punishable by imprisonment for a term of three to five years, a fine of up to $15,000, or both. A person who is authorized to access PMP information, and who knowingly discloses such information in violation of the law, is guilty of a crime of the fourth degree, which is punishable by imprisonment for a term of up to 18 months, a fine of up to $10,000, or both.

Additionally, a person who is authorized to obtain PMP information, and who uses that information in the furtherance of any criminal offenses, is guilty of a crime of the third degree.

The bill's provisions also require the division to establish and operate a one-year pilot program to test the practicality and effectiveness of integrating the Prescription Monitoring Program with Electronic Medical Records. One year after the pilot program is established and becomes operative, the director is to submit a report to the Governor and the Legislature containing the number and names of practitioners who participated in the pilot program, and provide a recommendation on the feasibility of implementing the pilot program on a Statewide basis.

Under the bill, the DCA is required to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, and to submit, within 18 months after the bill's enactment, a report of its assessment, including any recommendations, to the Legislature. The DCA is also required to submit an annual report to the Legislature with information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvements.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that this bill expands current practice and would create minimal, if any, additional fiscal impact relating to the pilot program integrating the PMP with Electronic Medical Records, educational programs, and overall program assessment. The OLS estimates that there would be expenditures associated with the establishment and continued operation and staffing of the telephone hotline and email to support the practitioners with PMP access.

A December 2014 Attorney General press release stated that approximately 20,000 out of the 30,000 New Jersey physicians and 5,000 other licensed healthcare practitioners gained direct access to the New Jersey Prescription Monitoring Program (NJPMP) in 2014. Further, 85 percent of New Jersey's physicians, or 25,501 of the State's eligible physicians, are able to access the NJPMP, representing a 467 percent increase since December 2013, when approximately 4,500 physicians had NJPMP access. Additionally, 56 percent of all healthcare practitioners in New Jersey – or 35,500 of the State's eligible prescribers and pharmacists of all kinds – have direct access to the prescription-tracking database. This represents a 256 percent increase since December 2013, when 9,965 healthcare practitioners had access to the NJPMP.

The NJPMP currently collects detailed information on prescriptions filled in New Jersey for controlled dangerous substances, the category of drugs that includes potentially addictive opiate painkillers. It includes data on more than 40 million prescriptions written since September 2011. This bill tightens certain guidelines and expands access to the NJPMP database to additional health care professionals, which will create the opportunity for a more complete system. The bill further increases and expands and enhances the penalties under current law.

Section:	*Law and Public Safety*
Analyst:	*Amy Denholtz* *Senior Research Analyst*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 1998 and 2119

STATE OF NEW JERSEY
216th LEGISLATURE

DATED: MAY 4, 2015

SUMMARY

Synopsis: Revises certain provisions of New Jersey Prescription Monitoring Program.

Type of Impact: Indeterminate Impact.

Agencies Affected: Department of Law and Public Safety; Division of Consumer Affairs; Prescription Monitoring Program.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services finds that the expenditures related to the revision of the Prescription Monitoring Program (PMP) to be indeterminate at this time. The PMP is an existing program and it is unknown how the revisions will effect the current operation and expenditures of the program.

- The bill requires the Division of Consumer Affairs (division) to report to the Legislature 1) information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement and 2) an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, including any recommendations.

- The division is also required to do the following: 1) establish appropriate communication for certain persons to seek and receive information, 2) collect professional certifications, and 3) establish certain educational and training programs for health care professionals and the general public.

- The bill expands access to the PMP to specific professionals under certain circumstances; however, the bill requires the professionals to submit certifications as recommended by the division as to the reason for access to the PMP.

- The bill requires pharmacy permit holders to 1) submit to the PMP identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription and 2) submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute. The bill, however, repeals the requirement that every practitioner, within 24 hours after making a determination that a person is drug dependent, report that determination to the division.

- The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners and other licensed health care professionals and expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure.

BILL DESCRIPTION

The Third Reprint to the Senate Committee Substitute to Senate Bill Nos. 1998 and 2119 of 2014 revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals. Additionally, the bill requires the division to provide an online tutorial for persons who are entitled, or otherwise authorized by the division, to access PMP information. The tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof; and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The bill revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. The director will establish, by regulation, the terms and conditions under which practitioners and professionals may delegate PMP authorization to medical, health care and other professionals, such as law enforcement.

A person who is entitled, or a person who is permitted by the division (but who is not entitled), to PMP access will be required, as a condition of having access, to certify that the request for information is for certain valid purposes as noted in the bill. The certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by division rule or regulation.

The bill adds a provision requiring the division to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance and if so to take appropriate action as reflected in the bill.

The bill authorizes the division to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP.

The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit the division from obtaining unsolicited automated reports from the program or disseminating the reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The bill requires the division to establish a process by which patients and persons on behalf of those patients can access PMP information. The bill requires the division to establish communications channels for certain persons with online access to seek or provide information.

The bill requires the division to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology. The division will also be required to approve a sufficient number of vendors to ensure production of an adequate supply of prescription blanks for practitioners and health care facilities Statewide, but to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

The bill requires the division to annually submit a report to the Legislature which provides information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement.

The bill requires the division to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program; and submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the bill's effective date.

The bill repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner, within 24 hours after making a determination that a person is drug dependent, to report that determination to the division.

In addition to the information that pharmacy permit holders are required to submit to the PMP under current law, the bill requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription if the pharmacist has reasonable belief that the person may be seeking a CDS for any reason other than delivering it for medical treatment. This requirement would not become effective, however, until the division director determines that the PMP has the technical capacity to accept such information. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The bill provides that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. This provision will not take effect until the director of the division determines that the PMP has the technical capacity to accept the information.

The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather than repeated failures. The bill also establishes new crimes for wrongful

disclosure and wrongful use of PMP information. Under current law, a pharmacy permit holder, pharmacist or practitioner or any other person or entity who knowingly discloses or uses PMP information in violation of the statutes governing the program is subject to a civil penalty in an amount of up to $10,000. These persons are also subject to disciplinary action.

Under the bill, anyone with access who knowingly obtains or attempts to obtain PMP information in violation of the law will be subject to disciplinary action for disclosing or using PMP information in violation of the law.

The bill also provides that a person who is authorized to obtain PMP information who knowingly discloses such information in violation of the law will be guilty of a crime of the fourth degree and will also be subject to a civil penalty in an amount of up to $10,000.

The bill makes it a crime of the third degree for a person who is authorized to obtain PMP information to use the information in the course of committing, attempting to commit, or conspiring to commit any criminal offense. It will be a crime of the fourth degree for a person who is not authorized to obtain PMP information to knowingly obtain the information in violation of the law. A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000, or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services finds that the expenditures related to the revision of the PMP to be indeterminate at this time. The PMP is an existing program and it is unknown how the revisions will effect the current operation and expenditures of the program.

A December 2014 Attorney General press release stated that approximately 20,000 out of the 30,000 New Jersey physicians and 5,000 other licensed healthcare practitioners gained direct access to the New Jersey Prescription Monitoring Program (NJPMP) in 2014. Further, 85 percent of New Jersey's physicians, or 25,501 of the State's eligible physicians, are able to access the NJPMP, representing a 467 percent increase since December 2013, when approximately 4,500 physicians had NJPMP access. Additionally, 56 percent of all healthcare practitioners in New Jersey – or 35,500 of the State's eligible prescribers and pharmacists of all kinds – have direct access to the prescription-tracking database. This represents a 256 percent increase since December 2013, when 9,965 healthcare practitioners had access to the NJPMP.

The NJPMP currently collects detailed information on prescriptions filled in New Jersey for controlled dangerous substances, the category of drugs that includes potentially addictive opiate painkillers. It includes data on more than 40 million prescriptions written since September 2011. This bill tightens certain guidelines and expands access to the NJPMP database to additional professionals, which will create the opportunity for a more complete system. The bill further increases and expands and enhances the penalties under current law.

Section:	*Law and Public Safety*
Analyst:	*Kristin Brunner Santos* *Senior Fiscal Analyst*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3062

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED MARCH 24, 2014

Sponsored by:
Assemblyman JOSEPH A. LAGANA
District 38 (Bergen and Passaic)
Assemblywoman MARLENE CARIDE
District 36 (Bergen and Passaic)
Assemblyman JOHN F. MCKEON
District 27 (Essex and Morris)
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)

Co-Sponsored by:
Assemblyman Johnson and Assemblywoman Mosquera

SYNOPSIS

Implements certain recommendations of the SCI report entitled "Scenes from an Epidemic" concerning prescription drug and heroin abuse.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/16/2014)

AN ACT concerning drug abuse and amending and supplementing various parts of the statutory law.

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

1. (New section) a. For the purposes of this section:

"Commercial motor vehicle" means every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

"Controlled dangerous substance" has the meaning given the term in N.J.S.2C:35-2.

“Dealer” means any person actively engaged in the business of buying, selling, or exchanging motor vehicles or motorcycles and who has an established place of business.

"Hidden compartment" means a container, space, or enclosure that conceals, hides, or otherwise prevents the discovery of the contents of the container, space, or enclosure and includes, but is not limited to, any of the following: false, altered, or modified fuel tanks; original factory equipment on a vehicle that has been modified to conceal, hide, or prevent the discovery of the modified equipment's contents; or a compartment, space, box, or other closed container that is added or attached to existing compartments, spaces, boxes, or closed containers integrated or attached to a vehicle.

“Manufacturer” means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

"Mobile home” means a house trailer serving as a permanent home and connected to utilities.

"Motor home" means a motor vehicle built on a truck or bus chassis which is equipped to serve as a self-contained living quarters for recreational travel.

"Motor vehicle” means every vehicle propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Noncommercial truck” means every motor vehicle designed primarily for transportation of property, and which is not a "commercial motor vehicle."

“Recreation vehicle” means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational,

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 <u>thus</u> is new matter.

camping or travel purposes and used solely as a family or personal conveyance.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Vehicle" means every device in, upon, or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles and includes, but is not limited to, a motor vehicle, commercial motor vehicle, trailer, noncommercial truck, semitrailer, mobile home, recreation vehicle, or motor home.

b. A person who, with the intent to facilitate the unlawful concealment or transportation of a controlled dangerous substance, knowingly designs, builds, constructs, or fabricates, or publishes plans or instructions to design, build, construct, or fabricate, a vehicle with a hidden compartment, or modifies or alters any portion of a vehicle in order to create or add a hidden compartment, is guilty of a crime of the third degree.

c. A person who knowingly operates, possesses, or uses a vehicle with a hidden compartment with knowledge that the hidden compartment is used or intended to be used to facilitate the unlawful concealment or transportation of a controlled dangerous substance is guilty of a crime of the fourth degree.

d. This section shall not apply to:

(1) any law enforcement officer acting in the performance of the law enforcement officer's duties;

(2) any licensed motor vehicle dealer or motor vehicle manufacturer that in the ordinary course of business repairs, purchases, receives in trade, leases, or sells a motor vehicle; or

(3) any box, safe, container, or other item added to a vehicle for the purpose of securing valuables, electronics, or firearms provided that, at the time of discovery, the box, safe, container, or other item added to the vehicle does not contain a controlled substance or visible residue of a controlled substance.

e. This section shall not be construed to impose a duty on a licensed motor vehicle dealer to know, discover, report, repair, or disclose the existence of a hidden compartment.

2. (New Section) a. As used in this section:

"Health care professional" means a person who is licensed, registered, or otherwise authorized to practice as a health care professional pursuant to Title 45 or Title 52 of the Revised Statutes.

"Improper prescribing" means the prescribing or ordering of a drug in an indiscriminate manner, or not in good faith, or without good cause, or otherwise in violation of any State or federal law or regulation, and which constitutes professional misconduct as determined by the board. For the purposes of this section, the issuance of an initial improper prescription or order and any refill of that initial prescription or order shall each be counted as a separate instance of improper prescribing.

b. Notwithstanding the provisions of subsection a. of section 12 of P.L.1978, c.73 (C.45:1-25) to the contrary, and in addition to any other penalty provided by law, a health care professional who engages in improper prescribing shall be liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation.

3. Section 25 of P.L.2007, c.244 (C.45:1-45) is amended to read as follows:

25. Prescription Monitoring Program; requirements.

a. There is established the Prescription Monitoring Program in the Division of Consumer Affairs in the Department of Law and Public Safety. The program shall consist of an electronic system for monitoring controlled dangerous substances that are dispensed in or into the State by a pharmacist in an outpatient setting.

b. Each pharmacy permit holder shall submit, or cause to be submitted, to the division, by electronic means in a format and at such intervals as are specified by the director, information about each prescription for a controlled dangerous substance dispensed by the pharmacy that includes:

(1) The surname, first name, and date of birth of the patient for whom the medication is intended;

(2) The street address and telephone number of the patient;

(3) The date that the medication is dispensed;

(4) The number or designation identifying the prescription and the National Drug Code of the drug dispensed;

(5) The pharmacy permit number of the dispensing pharmacy;

(6) The prescribing practitioner's name and Drug Enforcement Administration registration number;

(7) The name, strength, and quantity of the drug dispensed, the number of refills ordered, and whether the drug was dispensed as a refill or a new prescription;

(8) The date that the prescription was issued by the practitioner;

(9) The source of payment for the drug dispensed; and

(10) Such other information, not inconsistent with federal law, regulation, or funding eligibility requirements, as the director determines necessary.

The pharmacy permit holder shall submit the information to the division with respect to the prescriptions dispensed during the reporting period not less frequently than once every ⟦30 days⟧ business day, or according to a schedule to be determined by the director if federal law, regulation, or funding eligibility otherwise requires.

c. The division may grant a waiver of electronic submission to any pharmacy permit holder for good cause, including financial hardship, as determined by the director. The waiver shall state the format in which the pharmacy permit holder shall submit the required information.

d. The requirements of this act shall not apply to: the direct administration of a controlled dangerous substance to the body of an ultimate user; or the administration or dispensing of a controlled dangerous substance that is otherwise exempted as determined by the Secretary of Health and Human Services pursuant to the "National All Schedules Prescription Electronic Reporting Act of 2005," Pub.L.109-60.

(cf: P.L.2007, c.244, s.25)

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

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

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

c. The division shall review the prescription monitoring information provided by a pharmacy permit holder pursuant to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50). If the division determines that a violation of law or regulations, or a breach of the applicable standards of practice, may have occurred, the division shall notify the appropriate law enforcement agency or professional licensing board, and provide the prescription monitoring information required for an investigation.

d. The division may provide prescription monitoring information to the following persons:

(1) a practitioner authorized to prescribe, dispense, or administer controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient of the practitioner. ⟦Nothing⟧ Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing, or administering medications beyond that which may be required as part of the practitioner's professional practice;

(2) a pharmacist authorized to dispense controlled dangerous substances who certifies that the request is for the purpose of providing health care to a current patient. ⟦Nothing⟧ Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice;

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

(4) an officer of a State, federal, or municipal law enforcement ⟦officer⟧ agency who is ⟦acting pursuant to a court order and certifies that the officer⟧ is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information shall comply with security protocols established by the director by regulation, which shall at minimum include the following:

(a) clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information;

(b) official documentation signed by a representative of the law enforcement agency agreeing to all security requirements;

(c) designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information;

(d) a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information;

(e) submission to periodic audits to ensure compliance with security requirements; and

(f) penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties;

(5) a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

(6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

(7) authorized personnel of the division or vendor or contractor responsible for establishing and maintaining the program; and

(8) the controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement.

e. A person listed in subsection d. of this section, as a condition of obtaining prescription monitoring information pursuant thereto, shall certify, by means of entering an on-line statement in a form and manner prescribed by regulation of the director, the reasons for seeking to obtain that information.

f. The division shall offer an on-line tutorial for those persons listed in subsection d. of this section, which shall, at a minimum, include: how to access prescription monitoring information; the rights and responsibilities of persons who are the subject of or access this information and the other provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and the regulations adopted pursuant thereto, regarding the permitted uses of that information and penalties for violations thereof; and a summary of the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164 and a hypertext link to the federal Department of Health and Human Services website for further information about the specific provisions of the privacy rule.

g. The director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes.

(cf: P.L.2007, c.244, s.26)

5. (New section) Prior to prescribing or dispensing a Schedule II controlled dangerous substance to a patient, a practitioner or pharmacist, as applicable, shall access the prescription monitoring information, as authorized pursuant to subsection d. of section 26 of P.L.2007, c.244 (C.45:1-46), to determine if the patient has received other prescriptions that indicate, in the professional judgment of the practitioner or pharmacist, prescription abuse or diversion.

6. (New section) a. The Division of Consumer Affairs in the Department of Law and Public Safety shall have the authority to gather information on any significant business relationships involving the medical practice of a licensee of the State Board of Medical Examiners. The division may, at the time of a licensee's biennial license renewal, require that a licensee provide information on any medical practice in which the licensee is an owner, part owner, partner, associate, shareholder, or employee, or in which the licensee otherwise has a significant financial interest. This information may include, but need not be limited to, the following:

(1) the name and address of the practice;

(2) any party that conducts business on the premises of the practice, including those not formally associated with the practice;

(3) any non-medical personnel employed by the practice;

(4) any non-medical business with which the practice is associated, including a management company; and

(5) any financial relationship related to the medical practice with any individual who is not a health care professional.

b. The State Board of Medical Examiners shall not approve a licensee's renewal application unless the applicant provides all information required by the division pursuant to subsection a. of this section.

7. Section 1 of P.L.1997, c.249 (C.45:9-22.19) is amended to read as follows:

1. a. A physician licensed pursuant to chapter 9 of Title 45 of the Revised Statutes may prescribe a Schedule II controlled dangerous substance for the use of a patient in any quantity which does not exceed a 30-day supply, as defined by regulations adopted by the State Board of Medical Examiners in consultation with the Department of Health **[**and Senior Services**]**. The physician shall document the diagnosis and the medical need for the prescription in the patient's medical record, in accordance with guidelines established by the State Board of Medical Examiners.

b. A physician may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled dangerous substance, provided that the following conditions are met:

(1) each separate prescription is issued for a legitimate medical purpose by the physician acting in the usual course of professional practice;

(2) the physician provides written instructions on each prescription, other than the first prescription if it is to be filled immediately, indicating the earliest date on which a pharmacy may fill each prescription;

(3) the physician determines that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the physician complies with all other applicable State and federal laws and regulations.

c. The State Board of Medical Examiners shall, by regulation, adopt a policy setting forth clear standards for the use of prescription drugs in pain management. The policy shall emphasize the primary goal of ensuring that suffering patients find relief, and shall also consider the need to protect the public health and safety by limiting access to controlled dangerous substances. In developing the policy, the State Board of Medical Examiners shall consider the provisions of the model policy established by the Federation of State Medical Boards.

(cf: P.L.2009, c.165, s.1)

8. Section 20 of P.L.2003, c.280 (C.45:14-59) is amended to read as follows:

20. The Division of Consumer Affairs in the Department of Law and Public Safety shall establish the format for uniform, non-reproducible, non-erasable safety paper prescription blanks, to be known as New Jersey Prescription Blanks, which format shall include an identifiable logo or symbol that will appear on all prescription blanks and additional security features to prevent erasure or duplication of prescription blanks that can be accomplished with widely available computer technology. The prescription blanks for each prescriber or health care facility shall be numbered consecutively and, if the prescriber or health care facility has a National Provider Identifier, the prescription blank shall include the National Provider Identifier. The division shall approve a sufficient number of vendors to ensure production of an adequate supply of New Jersey Prescription Blanks for practitioners and health care facilities Statewide, but shall limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

(cf: P.L.2007, c.244, s.22)

9. a. The Director of the Division of Consumer Affairs, in consultation with the State Board of Medical Examiners, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of section 3 of this act.

b. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of sections 4 through 6 and 8 of this act.

c. The State Board of Medical Examiners, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

seq.), shall adopt rules and regulations to effectuate the purposes of section 7 of this act.

10. Sections 1 and 2 of this act shall take effect immediately. Sections 3 through 8 shall take effect on the first day of the seventh month next following the date of enactment, but the State Board of Medical Examiners and the Director of the Division of Consumer Affairs may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill implements certain of the recommendations of the State Commission of Investigation's July 2013 report entitled "Scenes from an Epidemic: A Report on the SCI's Investigation of Prescription Pill and Heroin Abuse." The recommendations expand on current law in several areas to strengthen the ability of law enforcement agencies to combat illicit drug distribution and drug use, increase civil penalties related to prescription drug abuse, and impose stronger controls over access to prescription drugs.

Section 1 of the bill would implement recommendation number eight from the report to make it a crime of the third degree to knowingly design, build, construct, or fabricate a motor vehicle equipped with a hidden compartment to be used to unlawfully conceal a controlled dangerous substance, or to alter a motor vehicle to add such a hidden compartment. This section would also make it a crime of the fourth degree to operate or possess a vehicle with a hidden compartment.

Section 2 of the bill would implement recommendation number two from the report to provide that, in addition to any other penalty provided by law, a health care professional who engages in improper prescribing is liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation. Current law provides a maximum fine of $10,000 for the first violation and $20,000 for a second or subsequent violation. This section also specifies that any prescription and any refill of a prescription is each to be counted as a separate instance of improper prescribing.

Section 3 of the bill would implement the third part of recommendation number five from the report to require pharmacies to submit information on dispensed prescriptions at least once each business day, or according to a schedule to be determined by the Director of the Division of Consumer Affairs if federal law, regulation, or funding eligibility otherwise requires. Pharmacies are currently required by the Division of Consumer Affairs to report once each 15 days.

Section 4 of the bill would implement the first part of recommendation number five from the report to provide greater access to prescription monitoring information by law enforcement agencies. Under the bill, an officer of a law enforcement agency who is engaged in a bona fide specific investigation of a designated practitioner or patient may access prescription monitoring information without a court order or grand jury subpoena (required by current law), so long as the agency complies with security protocols established by the director by regulation. The security protocols must, at minimum, include: clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information; official documentation signed by a representative of the law enforcement agency agreeing to all security requirements; designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information; a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information; submission to periodic audits to ensure compliance with security requirements; and penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties.

Section 5 of the bill would implement the second part of recommendation number five from the report to require health care practitioners who prescribe, and pharmacists who dispense, Schedule II drugs to check the information available through the prescription monitoring program prior to doing so in order to determine if the patient has received other prescriptions that indicate prescription abuse or diversion.

Section 6 of the bill would implement recommendation number four from the report to grant the Division of Consumer Affairs authority to gather information on any significant business relationships involving the medical practice of a licensee of the State Board of Medical Examiners. The division may, at the time of a licensee's biennial license renewal, require that a licensee provide information on any medical practice in which the licensee is an owner, part owner, partner, associate, shareholder, or employee, or in which the licensee otherwise has a significant financial interest. This information may include, but need not be limited to: the name and address of the practice; parties that conduct business on the premises of the practice, including those not formally associated with the practice; non-medical personnel employed by the practice; any non-medical business associations, including associations with management companies; and any financial relationships related to the medical practice with individuals who are not health care professionals. The State Board of Medical Examiners would be prohibited from approving a licensee's renewal application unless the applicant provides all information required by the division.

Section 7 of the bill would implement recommendation number one from the report to direct the State Board of Medical Examiners to adopt regulations setting forth clear standards for the use of prescription drugs in pain management. This section would require that the standards emphasize the primary goal of ensuring that suffering patients find relief, and also consider the need to protect the public health and safety by limiting access to controlled dangerous substances. In developing the standards, the State Board of Medical Examiners would be required to consider the provisions of the model policy established by the Federation of State Medical Boards.

Section 8 of the bill would implement recommendation number six from the report to require that New Jersey Prescription Blanks incorporate additional security features to prevent erasure or duplication of prescription blanks that can be accomplished with widely available computer technology. It is expected that this provision will encourage the adoption of regulations similar or identical to those proposed by the Division of Consumer Affairs in November 2012. This section would also require the Division of Consumer Affairs to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3062

STATE OF NEW JERSEY

DATED: MAY 15, 2014

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3062.

This bill as amended implements certain recommendations of the State Commission of Investigation's July 2013 report entitled "Scenes from an Epidemic: A Report on the SCI's Investigation of Prescription Pill and Heroin Abuse." The recommendations expand on current law in several areas to strengthen the ability of law enforcement agencies to combat illicit drug distribution and drug use, increase civil penalties related to prescription drug abuse, and impose stronger controls over access to prescription drugs.

Section 1 of the bill would make it a crime of the third degree to knowingly design, build, construct, or fabricate a motor vehicle equipped with a hidden compartment to be used to unlawfully conceal a controlled dangerous substance, or to alter a motor vehicle to add such a hidden compartment. This section would also make it a crime of the fourth degree to operate or possess a vehicle with a hidden compartment. A crime of the third degree is punishable by a by a term of three to five years or a fine up to $15,000, or both; a crime of the fourth degree is punishable by a term up to 18 months or a fine up to $10,000, or both.

As introduced, section 2 provided that, in addition to any other penalty provided by law, a health care professional who engages in improper prescribing is liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation. Current law provides a maximum fine of $10,000 for the first violation and $20,000 for a second or subsequent violation. This section also specifies that any prescription and any refill of a prescription is each to be counted as a separate instance of improper prescribing. Section 2 of the bill defines "improper prescribing" as the prescribing or ordering of a drug in an indiscriminate manner, or not in good faith, or without good cause, or otherwise in violation of any State or federal law or regulation, and which constitutes professional misconduct as determined by the board.

Under current law, the Division of Consumer Affairs in the Department of Law and Public Safety, a pharmacy permit holder, pharmacist or practitioner are immune from civil liability arising from compliance with the Prescription Monitoring Program. Section 2 of

the amended bill amends Section 28 of P.L.2007, c.244 (C.45:1-48) to also provide immunity to mental health practitioners and licensed health care professionals.

Section 3 of the bill, as introduced, would require pharmacies to submit information on dispensed prescriptions at least once each business day, or according to a schedule to be determined by the Director of the Division of Consumer Affairs if federal law, regulation, or funding eligibility otherwise requires. The amendments require pharmacies to submit information once every seven days. Pharmacies are currently required by the Division of Consumer Affairs to report once every 30 days. Under current law each pharmacy permit holder is required to submit information by electronic means in a format and at a frequency specified by the director about each prescription for controlled dangerous substances that is dispensed in or into the State by a pharmacist in an outpatient setting. In addition to the information required under current law, the amendments require each pharmacy permit holder to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription.

Section 4 would provide law enforcement agencies with greater access to the prescription information maintained through the Prescription Monitoring Program in the Division of Consumer Affairs. The program, established by P.L.2007, c.244 (C.45:1-44 et al.), monitors controlled dangerous substances that are dispensed by pharmacists in outpatient settings.

Under section 4 of the bill, as introduced, an officer of a State, federal, or municipal law enforcement agency who is engaged in a bona fide specific investigation of a designated practitioner or patient may access prescription monitoring information without a court order, so long as the agency complies with security protocols established by the director by regulation. Current law requires the law enforcement officer to act pursuant to a court order. The amendments replace the language previously removed by the introduced bill so that the law requiring the law enforcement officer to act pursuant to a court order is unchanged. The amendments remove language stating that except as provided in section 5 of the bill, nothing shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing, or administering medications beyond that which may be required as part of the practitioner's professional practice. Similar language is contained in Section 5 of the bill. The amendments also delete language stating that except as provided in section 5 of the bill, nothing shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice. Similar language is contained in Section 5 of the bill.

The bill requires that the security protocols established by the director must, at minimum, include: clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information; official documentation signed by a representative of the law enforcement agency agreeing to all security requirements; designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information; a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information; submission to periodic audits to ensure compliance with security requirements; and penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties.

The amendments provide for automatic registration of a pharmacist or practitioner to access prescription monitoring information upon issuance or renewal of the pharmacist or practitioner's registration to prescribe, dispense, or administer controlled dangerous substances. Online access to the prescription monitoring program is to be provided to a pharmacist or practitioner who is registered to prescribe, dispense, or administer controlled dangerous substances, as well as a licensed health care professional authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to limitation on the number of such health care professionals as deemed appropriate by the division.

The director of the Division of Consumer Affairs is required to establish, by regulation, the terms and conditions under which a practitioner may delegate authorization, including procedures for authorization and termination of authorization, provisions for maintaining confidentiality, and such other matters as the division may deem appropriate. In addition, the division may provide online access to prescription monitoring information to authorized personnel of the division or a vendor or contractor responsible for maintaining the Prescription Monitoring Program, authorized personnel of the division responsible for administration of the provisions of P.L.1970, c.226 (C.24:21-1 et seq.), the State Medical Examiner, a county medical examiner, or a deputy or assistant county medical examiner who certifies that the request is for the purpose of investigating a death, a controlled dangerous substance monitoring program in another state with which the division has established an interoperability agreement if an interoperability agreement is required by that state, or which participates with the division in a system that facilitates the secure sharing of information between states, a designated representative of the State Board of Medical Examiners, New Jersey State Board of Dentistry, New Jersey Board of Nursing, New Jersey State Board of Optometrists, New Jersey State Board of Pharmacy, State Board of Veterinary Medical Examiners, or any other board in this State or

another state that regulates the practice of persons who are authorized to prescribe or dispense controlled dangerous substances, as applicable, who certifies that the representative is engaged in a bona fide specific investigation of a designated practitioner whose professional practice was or is regulated by that board, a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient, a designated representative of a state Medicaid or other program who certifies that the representative is engaged in a bona fide investigation of a designated practitioner or patient, a properly convened grand jury pursuant to a subpoena properly issued for the records, and a licensed mental health practitioner providing treatment for substance abuse to patients at a residential or outpatient substance abuse treatment center licensed by the Division of Mental Health and Addiction Services in the Department of Human Services, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient.

The amendments further provide that the director shall establish, by regulation, the terms and conditions under which a mental health practitioner may request and receive prescription monitoring information. The bill specifies that nothing in the Prescription Monitoring Program statute shall be construed to require or obligate a mental health practitioner to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the mental health practitioner's professional practice.

As amended, the bill requires that persons authorized to access the information must furnish a certification in a form and manner prescribed by regulation of the director as a condition of obtaining prescription monitoring information. The division must offer an online tutorial concerning the program. The division may request and receive prescription monitoring information from prescription monitoring programs in other states and may use that information for the purposes of the Prescription Monitoring Program.

The bill would also permit the director to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The amendments further require that nothing shall be construed to prohibit the division from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

Section 5 of the bill as introduced provides that, prior to prescribing or dispensing a Schedule II controlled dangerous substance to a patient, health care practitioners and pharmacists would be requires to access the Prescription Monitoring Program in order to

determine if the patient has received other prescriptions that indicate prescription abuse or diversion. The amended bill eliminates the foregoing language from section 5 and replaces it with a requirement that a practitioner or pharmacist must access the Prescription Monitoring Program prior to prescribing or dispensing a controlled dangerous substance, and a pharmacist shall not dispense a prescription to a someone other than the patient for whom the prescription is intended unless the person receiving the prescription provides personal identification, which the pharmacist shall submit to the Prescription Monitoring Program.

Exceptions to these requirements are provided to veterinarians and practitioners who administer certain controlled dangerous substances; practitioners who administer a controlled dangerous substance directly to a patient; practitioners who administer a controlled dangerous substance to a hospice patient; a situation in which is it not reasonably possible for the practitioner or pharmacist to access the registry in a timely manner, no other individual authorized to access the registry is reasonably available, and the quantity of controlled dangerous substance prescribed or dispensed does not exceed a five-day supply of the substance; a practitioner or pharmacist acting in compliance with regulations promulgated by the director as to circumstances under which consultation of the registry would result in a patient's inability to obtain a prescription in a timely manner, thereby adversely impacting the medical condition of the patient; a situation in which the registry is not operational or cannot be accessed by the practitioner due to a temporary technological or electrical failure, as set forth in regulations; a practitioner or pharmacist who has been granted a waiver due to technological limitations that are not reasonably within the control of the practitioner or pharmacist; or other exceptional circumstances demonstrated by the practitioner or pharmacist, pursuant to a process established in regulations, and in the discretion of the director.

Section 6 would grant authority to the Division of Consumer Affairs to gather information on any significant business relationships involving the medical practice of a licensee of the State Board of Medical Examiners. This provision is intended to address an issue identified in the SCI report concerning illicit medical practices that are made up of physicians and other individuals who profit from illegal activities involving prescription drugs. In order to address this issue, the bill provides that the division may, at the time of a licensee’s biennial license renewal, require that a licensee provide information on any medical practice in which the licensee is an owner, part owner, partner, associate, shareholder, or employee, or in which the licensee otherwise has a significant financial interest. This information may include, but need not be limited to: the name and address of the practice; parties that conduct business on the premises of the practice, including those not formally associated with the practice; non-medical

personnel employed by the practice; any non-medical business associations, including associations with management companies; and any financial relationships related to the medical practice with individuals who are not health care professionals. The State Board of Medical Examiners would be prohibited from approving a licensee's renewal application unless the applicant provides all information required by the division.

Section 7 of the bill, as introduced, would have directed the State Board of Medical Examiners to adopt regulations setting forth clear standards for the use of prescription drugs in pain management The committee amendments remove this provision. As amended, the new section 7 requires that a pharmacist is prohibited from dispensing a controlled substance prescription to a person other than the patient for whom the prescription is intended unless the person receiving the prescription provides personal identification, which the pharmacy shall submit to the Prescription Monitoring Program as required pursuant to that program, with the provisions of that section not taking effect until the director determines that the Prescription Monitoring Program has the technical capacity to accept such information.

Section 8 would require that New Jersey Prescription Blanks incorporate additional security features to prevent erasure or duplication that can be accomplished with widely available computer technology. This section would also require the Division of Consumer Affairs to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

Section 9 directs the various State entities to adopt appropriate rules and regulations.

The amendments create a new section 10, which amends the penalty provisions contained in section 29 of P.L.2007, c.244 (C.45:1-49) to include a mental health practitioner and a licensed health care professional as those who are subject to disciplinary action and a civil penalty. In addition, a person not authorized to obtain prescription monitoring information from the Prescription Monitoring Program, who knowingly obtains or attempts to obtain such information shall be subject to a civil penalty in an amount not to exceed $10,000. In addition to any other penalty provided by law, the bill provides that a person who is authorized to obtain prescription monitoring information from the Prescription Monitoring Program who knowingly discloses such information shall be guilty of a crime of the fourth degree. Using this information in the course of committing, attempting to commit, or conspiring to commit any criminal offense would be a crime of the third degree. The court is required to impose separate sentences upon a conviction under this subsection and any other criminal offense. In addition to any other penalty provided by law, a person who is not authorized to obtain prescription monitoring information from the

Prescription Monitoring Program who knowingly obtains or attempts to obtain such information shall be guilty of a crime of the third degree. Notwithstanding the provisions of subsection a. of section 12 of P.L.1978, c.73 (C.45:1-25) to the contrary, and in addition to any other penalty provided by law, a licensed health care professional who engages in improper prescribing shall be liable to a civil penalty of not less than $10,000 for the first violation and not less than $20,000 for the second and each subsequent violation.

COMMITTEE AMENDMENTS:

1. Amend definition of “Controlled Dangerous Substance” in section 1 of the bill.

Remove definitions “Director,” “Division,” “Improper prescribing,” “Licensed health care professional,” “Licensed pharmacist,” “Mental health practitioner,” “Pharmacy permit holder,” “Practitioner,” and “Ultimate user” from section 2 of the bill and add them to section 1.

2. Delete section 2 and insert a new section 2 amending section 28 of P.L.2007, c.244 (C.45:1-48) to add “mental health practitioner,” and “licensed health care professional” to paragraph b. of that section.

3. Add language to subsection b. of section 3 requiring additional information to be submitted by a pharmacy permit holder pursuant to section 25 of P.L.2007, c.244 (C.45:1-45).

Delete “business day, or according to a schedule to be determined by the director if federal law, regulation, or funding eligibility otherwise requires” and add “seven days” to subsection b.

4. In section 4, add to subsection a. the language “subsections” and “h. or i..”

Delete from subsection d., “Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a practitioner to access or check the prescription monitoring information prior to prescribing, dispensing, or administering medications beyond that which may be required as part of the practitioner's professional practice;” and “Except as provided in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed to require or obligate a pharmacist to access or check the prescription monitoring information prior to dispensing medications beyond that which may be required as part of the pharmacist's professional practice.”

Add subsection h. requiring automatic registration of a pharmacist or practitioner to access prescription monitoring information upon issuance or renewal of registration to prescribe, dispense or administer controlled dangerous substances, providing online access to pharmacists, practitioners, or to as many licensed health care

professionals as are authorized by a practitioner to access information, subject to a limit deemed appropriate by the division, and requiring the director to shall establish, by regulation, terms and conditions under which a practitioner may delegate authorization.

Insert a subsection i. providing for online access to certain persons, and listing the persons who are to be provided that access.

Insert a subsection j. providing that as a condition of having access, a person listed in subsection h. or i. shall furnish the required certification in the form and manner prescribed by regulation of the director.

Insert a subsection k. requiring the division to offer an online tutorial and stating the information that must be contained in the tutorial.

Insert a subsection l. providing the division may request and receive prescription monitoring information from programs in other states.

Insert a subsection m. providing that the director may provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research or educational purposes.

Insert a subsection n. specifying that nothing shall be construed to prohibit the division from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

5. Delete section 5 and add new section 5 providing requiring that prior to prescribing or dispensing a controlled dangerous substance, a pharmacist or practitioner must first access the prescription monitoring information to determine if the patient has received other prescriptions that indicate misuse, abuse, or diversion, and providing that a prescription shall not be dispensed to someone other that the patient for whom the prescription is intended unless the person receiving the prescription provides personal identification with the information to be entered into the Prescription Monitoring Program.

Add language setting forth the persons or situations to which the accessing requirements do not apply.

6. Delete section 7 and replace with a new section 7 providing that a pharmacist shall not dispense a controlled substance prescription to a person other than the patient for whom the prescription is intended unless the person receiving the prescription provides personal identification, with such provisions not taking effect until the director determines that the Prescription Monitoring Program has the technical capacity to accept such information.

7. Insert a new section 10, amending section 29 of P.L.2007, c.244 (C.45:1-49).

Delete the word “repeated” from subsection a.

Add “mental health practitioner” and “licensed health care professional” to paragraphs (1) and (2) of subsection b.

Add “civil” and “subsections a., b., or d.” to subsection c.

Add language to subsection d. providing that a person not authorized to obtain prescription monitoring information who knowingly obtains or attempts to obtain such information shall be subject to a civil penalty not to exceed $10,000.

Add language providing that authorized persons who disclose information received from the Prescription Monitoring Program in violation of the provisions in violation of the relevant statute shall be guilty of a fourth degree crime.

Add language providing that, in addition to any other penalty provided by law, a person authorized to obtain prescription monitoring information who using the information to commit a criminal offense shall be guilty of a third degree crime and that such a conviction shall not merge with any other conviction under this section or any other conviction.

Add language providing that, in addition to any other penalty provided by law, a person not authorized to obtain prescription monitoring information who knowingly obtains or attempts to obtain such information shall be guilty of a third degree crime.

Add language which establishes a penalty for improper prescribing of not less than $10,000 for the first violation and not less than $20,000 for the second violation.

8. Renumber section 10 as section 11.

9. Replace the synopsis to read, “Implements certain recommendations of the SCI concerning drug abuse and prescription drug monitoring.”

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3062

STATE OF NEW JERSEY

DATED: MARCH 16, 2015

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3062.

This Assembly Committee Substitute revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The substitute requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals.

The substitute also expands the definitional section in current law to add definitions for the following terms: "CDS registration," "certified medical assistant," "dental resident," "licensed health care professional," "licensed pharmacist," "medical resident," "mental health practitioner," "pharmacy permit holder," and "registered dental assistant."

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the substitute requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription if the pharmacist has reasonable belief that the person may be seeking a CDS for any reason other than delivering it for medical treatment. This requirement would not become effective, however, until the DCA director determines that the PMP has the technical capacity to accept such information. The substitute also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The substitute adds a provision requiring the DCA to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance. If there is indication that a person is obtaining a prescription for the same or similar drug from multiple practitioners or pharmacists during the

same time period, the division may provide prescription monitoring information about that person to practitioners and pharmacists. In addition, the substitute directs the DCA to evaluate whether any violation of law or regulations, or a breach of a standard of practice by any person may have occurred, including possible diversion of controlled dangerous substances. If the DCA determines that such a violation or breach may have occurred, it is required to notify the appropriate law enforcement agency or professional licensing board and provide relevant information for an investigation.

The substitute also revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. Specifically, the substitute requires the DCA to automatically register pharmacists and practitioners to participate in the prescription monitoring program as part of their registration to prescribe, dispense, or administer controlled dangerous substances. The DCA must provide online access to prescription monitoring information to practitioners and pharmacists for purposes of providing health care to their patients or verifying information with respect to a patient or a prescriber.

The substitute also authorizes access to PMP by licensed health care professionals, medical residents, dental residents, certified medical assistants, and registered dental assistants under certain circumstances. The DCA would grant access to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a health care professional. The DCA would grant access to as many medical or dental residents as are authorized by a faculty member of a medical or dental teaching facility to access PMP information, and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner or faculty member may delegate PMP authorization to a medical or dental resident. The DCA would also grant access to as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a certified medical assistant. In addition, the DCA would grant access to as many registered dental assistants as are authorized by a licensed dentist to access that information and for whom the licensed dentist is responsible for the use or misuse of that information. The director will

establish, by regulation, the terms and conditions under which a licensed dentist may delegate that authorization.

A person who is entitled to PMP access will be required, as a condition of such access, to certify that the request for information is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner. Such certification will be furnished through means of an online statement, in a form and manner prescribed by DCA rule or regulation.

In addition to the parties who are entitled to have access to PMP information, the division will also be permitted to provide online PMP access to the following persons:

-- authorized DCA personnel, vendors, and contractors responsible for maintaining the PMP;

-- authorized DCA personnel responsible for administration and enforcement of the "New Jersey Controlled Dangerous Substances Act";

-- the State Medical Examiner, a county medical examiner, a deputy or assistant county medical examiner, or a qualified designated assistant thereof, investigating a death;

-- controlled dangerous substance monitoring programs in other states that participate with the division in a system that facilitates secure sharing of information between states;

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient (in accordance with the security protocols listed below);

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The substitute provides that a mental health practitioner is not required to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the practitioner’s professional practice.

PMP access will be available to a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information will be required to comply with security protocols established by the director by regulation, which would at minimum include the following:

(a) clearly defined rules of conduct for viewing, disseminating, and destroying prescription monitoring information;

(b) official documentation signed by a representative of the law enforcement agency agreeing to all security requirements;

(c) designation of an assigned agency coordinator to serve as a point of contact on matters involving access to prescription monitoring information;

(d) a case number and description for each request for prescription monitoring information, which may be used to track requests to the party that receives the information;

(e) submission to periodic audits to ensure compliance with security requirements; and

(f) penalties for improper use of prescription monitoring information, which may include termination of employment and any applicable criminal penalties.

A person who is permitted by DCA (but who is not entitled) to access PMP information will be required, as a condition of accessing PMP information, to certify the person's reasons for seeking to obtain the information. Such certification will be furnished through means of an online statement, in a form and manner prescribed by DCA rule or regulation.

The substitute requires DCA to provide an online tutorial for persons who are entitled, or otherwise authorized by the DCA, to access PMP information. Such tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof, and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The substitute authorizes DCA to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP. The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The substitute states that nothing is to prohibit DCA from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The substitute requires the DCA to establish a process by which patients and persons on behalf of those patients can access PMP information.

The substitute requires that a telephone or e-mail hotline be established.

The substitute amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The substitute expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather than repeated failures. The substitute also establishes new crimes for wrongful disclosure and wrongful use of PMP information. Under current law, a pharmacy permit holder, pharmacist or practitioner or any other person or entity who knowingly discloses or uses PMP information in violation of the statutes governing the program is subject to a civil penalty in an amount of up to $10,000. These persons are also subject to disciplinary action. Under the substitute, any of the above-listed persons, as well as a mental health practitioner or a licensed health care professional, who knowingly obtains or attempts to obtain PMP information in violation of the law will be subject to the civil penalty. These persons will no longer be subject to a civil penalty for disclosing or using PMP information in violation of the law; they will, however, remain subject to disciplinary action for disclosing or using PMP information in violation of the law.

The substitute also provides that a person who is authorized to obtain PMP information who knowingly discloses such information in violation of the law will be guilty of a crime of the fourth degree and will also be subject to a civil penalty in an amount of up to $10,000. The substitute makes it a crime of the third degree for a person who is authorized to obtain PMP information to use the information in the course of committing, attempting to commit, or conspiring to commit any criminal offense. It will be a crime of the fourth degree for a person who is not authorized to obtain PMP information to knowingly obtain the information in violation of the law.

A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000, or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

Under the substitute, a practitioner, or another person who is authorized thereby to access PMP information, pursuant to the substitute's provisions, will be required to consult the PMP when they

prescribe a controlled dangerous substance to a patient for acute or chronic pain, and quarterly thereafter if the patient continues to receive prescriptions for controlled dangerous substances for acute or chronic pain. In addition, a practitioner, or other person authorized thereby to access PMP information, will be required to access PMP information when the practitioner or other person has a reasonable belief that the patient may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. A pharmacist will similarly be prohibited from dispensing a controlled dangerous substance to any person without first accessing PMP information, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. These provisions, which require practitioners and pharmacists to consult the PMP, will not apply to certain actors or in certain instances specified in the substitute, where the circumstances are unlikely to be associated with a significant risk of substance abuse, or where accessing the PMP may not be feasible due to technological or other factors.

The substitute provides that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. This provision will not take effect until the director of the DCA determines that the PMP has the technical capacity to accept such information.

The substitute requires the DCA to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology. The DCA will also be required to approve a sufficient number of vendors to ensure production of an adequate supply of prescription blanks for practitioners and health care facilities Statewide, but to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

The substitute requires the DCA to establish a pilot program to test integrating the PMP with Electronic Medical Records.

The substitute requires the DCA to annually submit a report to the Legislature which provides information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement.

The substitute requires the DCA to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, and

submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the substitute's effective date.

The substitute repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner, within 24 hours after making a determination that a person is drug dependent, to report that determination to the DCA.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3062

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 2015

The Assembly Budget Committee reports favorably Assembly Bill No. 3062 (ACS), with committee amendments.

As amended, this bill revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals.

The bill also expands the definitional section in current law to add definitions for the following terms: “CDS registration,” “certified medical assistant,” “dental resident,” “licensed health care professional,” “licensed pharmacist,” “medical resident,” “mental health practitioner,” “pharmacy permit holder,” and “registered dental assistant.”

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the bill requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription if the pharmacist has reasonable belief that the person may be seeking a CDS for any reason other than delivering it for medical treatment. This requirement would not become effective, however, until the DCA director determines that the PMP has the technical capacity to accept such information. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The bill adds a provision requiring the DCA to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance. If there is indication that a person is obtaining a prescription for the same or similar drug from multiple practitioners or pharmacists during the same time period, the division may provide prescription monitoring

information about that person to practitioners and pharmacists. In addition, the bill directs the DCA to evaluate whether any violation of law or regulations, or a breach of a standard of practice by any person may have occurred, including possible diversion of controlled dangerous substances. If the DCA determines that such a violation or breach may have occurred, it is required to notify the appropriate law enforcement agency or professional licensing board and provide relevant information for an investigation.

The bill also revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. Specifically, the bill requires the DCA to automatically register pharmacists and practitioners to participate in the prescription monitoring program as part of their registration to prescribe, dispense, or administer controlled dangerous substances. The DCA must provide online access to prescription monitoring information to practitioners and pharmacists for purposes of providing health care to their patients or verifying information with respect to a patient or a prescriber.

The bill also authorizes access to PMP by licensed health care professionals, medical residents, dental residents, certified medical assistants, and registered dental assistants under certain circumstances. The DCA would grant access to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a health care professional. The DCA would grant access to as many medical or dental residents as are authorized by a faculty member of a medical or dental teaching facility to access PMP information, and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner or faculty member may delegate PMP authorization to a medical or dental resident. The DCA would also grant access to as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a certified medical assistant. In addition, the DCA would grant access to as many registered dental assistants as are authorized by a licensed dentist to access that information and for whom the licensed dentist is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a licensed dentist may delegate that authorization.

A person who is entitled to PMP access will be required, as a condition of such access, to certify that the request for information is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

In addition to the parties who are entitled to have access to PMP information, the division will also be permitted to provide online PMP access to the following persons:

-- authorized DCA personnel, vendors, and contractors responsible for maintaining the PMP;

-- authorized DCA personnel responsible for administration and enforcement of the "New Jersey Controlled Dangerous Substances Act";

-- the State Medical Examiner, a county medical examiner, a deputy or assistant county medical examiner, or a qualified designated assistant thereof, investigating a death;

-- controlled dangerous substance monitoring programs in other states that participate with the division in a system that facilitates secure sharing of information between states;

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner, pharmacist, or patient;

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The bill provides that a mental health practitioner is not required to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the practitioner’s professional practice.

PMP access will be available to a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and

certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information will be required to comply with security protocols established by the director by regulation.

A person who is permitted by DCA (but who is not entitled) to access PMP information will be required, as a condition of accessing PMP information, to certify the person's reasons for seeking to obtain the information. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

The bill requires DCA to provide an online tutorial for persons who are entitled, or otherwise authorized by the DCA, to access PMP information. Such tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof, and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The bill authorizes DCA to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP. The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit DCA from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The bill requires the DCA to establish a process by which patients and persons on behalf of those patients can access PMP information.

The bill requires the DCA to establish communications channels for persons with online access to seek or provide information.

The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather than repeated failures. The bill also establishes new crimes for wrongful disclosure and wrongful use of PMP information. Under current law, a pharmacy permit holder, pharmacist or practitioner or any other person or entity who knowingly <u>discloses or uses</u> PMP

information in violation of the statutes governing the program is subject to a civil penalty in an amount of up to $10,000. These persons are also subject to disciplinary action. Under the bill, any of the above-listed persons, as well as a mental health practitioner or a licensed health care professional, who knowingly obtains or attempts to obtain PMP information in violation of the law will be subject to the civil penalty. These persons will no longer be subject to a civil penalty for disclosing or using PMP information in violation of the law; they will, however, remain subject to disciplinary action for disclosing or using PMP information in violation of the law.

The bill also provides that a person who is authorized to obtain PMP information who knowingly discloses such information in violation of the law will be guilty of a crime of the fourth degree and will also be subject to a civil penalty in an amount of up to $10,000. The bill makes it a crime of the third degree for a person who is authorized to obtain PMP information to use the information in the course of committing, attempting to commit, or conspiring to commit any criminal offense. It will be a crime of the fourth degree for a person who is not authorized to obtain PMP information to knowingly obtain the information in violation of the law.

A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000, or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

Under the bill, a practitioner, or another person who is authorized thereby to access PMP information, pursuant to the bill's provisions, will be required to consult the PMP when they prescribe a controlled dangerous substance to a patient for acute or chronic pain, and quarterly thereafter if the patient continues to receive prescriptions for controlled dangerous substances for acute or chronic pain. In addition, a practitioner, or other person authorized thereby to access PMP information, will be required to access PMP information when the practitioner or other person has a reasonable belief that the patient may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. A pharmacist will similarly be prohibited from dispensing a controlled dangerous substance to any person without first accessing PMP information, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. These provisions, which require practitioners and pharmacists to consult the PMP, will not apply to certain actors or in certain instances specified in the bill, where the circumstances are unlikely to be associated with a significant risk of substance abuse, or where accessing the PMP may not be feasible due to technological or other factors.

The bill provides that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. This provision will not take effect until the director of the DCA determines that the PMP has the technical capacity to accept such information.

The bill requires the DCA to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology. The DCA will also be required to approve a sufficient number of vendors to ensure production of an adequate supply of prescription blanks for practitioners and health care facilities Statewide, but to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

The bill requires the DCA to annually submit a report to the Legislature which provides information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement.

The bill requires the DCA to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, and submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the bill’s effective date.

The bill repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner, within 24 hours after making a determination that a person is drug dependent, to report that determination to the DCA

FISCAL IMPACT:

There is insufficient information available at this time to determine the fiscal impact of this amended bill's revisions to the Prescription Monitoring Program.

COMMITTEE AMENDMENTS:

The amendments:

provide regulatory flexibility by allowing the director to provide alternatives to online statements as a means of certification of access to the system and to seek or provide information;

omit detailed statutory protocols for law enforcement agencies to obtain prescription monitoring information (instead allowing the director authority to establish security protocols by regulation);

eliminate direct patient and guardian access to prescription monitoring information while maintaining the ability of patients and

guardians to request submitted monitoring information from practitioners;

limit the “per prescription” practitioner mandatory access check to new patients, while maintaining the quarterly access check for all current patients;

omit a pilot program to test integrating the PMP with Electronic Medical Records; and

make corresponding technical corrections to the Title.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3062

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 2015

The Assembly Budget Committee reports favorably Assembly Bill No. 3062 (ACS), with committee amendments.

As amended, this bill revises various statutory provisions related to the Prescription Monitoring Program (PMP), which was established in the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals.

The bill also expands the definitional section in current law to add definitions for the following terms: “CDS registration,” “certified medical assistant,” “dental resident,” “licensed health care professional,” “licensed pharmacist,” “medical resident,” “mental health practitioner,” “pharmacy permit holder,” and “registered dental assistant.”

In addition to the information that pharmacy permit holders must submit to the PMP under current law, the bill requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription if the pharmacist has reasonable belief that the person may be seeking a CDS for any reason other than delivering it for medical treatment. This requirement would not become effective, however, until the DCA director determines that the PMP has the technical capacity to accept such information. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The bill adds a provision requiring the DCA to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance. If there is indication that a person is obtaining a prescription for the same or similar drug from multiple practitioners or pharmacists during the same time period, the division may provide prescription monitoring

information about that person to practitioners and pharmacists. In addition, the bill directs the DCA to evaluate whether any violation of law or regulations, or a breach of a standard of practice by any person may have occurred, including possible diversion of controlled dangerous substances. If the DCA determines that such a violation or breach may have occurred, it is required to notify the appropriate law enforcement agency or professional licensing board and provide relevant information for an investigation.

The bill also revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. Specifically, the bill requires the DCA to automatically register pharmacists and practitioners to participate in the prescription monitoring program as part of their registration to prescribe, dispense, or administer controlled dangerous substances. The DCA must provide online access to prescription monitoring information to practitioners and pharmacists for purposes of providing health care to their patients or verifying information with respect to a patient or a prescriber.

The bill also authorizes access to PMP by licensed health care professionals, medical residents, dental residents, certified medical assistants, and registered dental assistants under certain circumstances. The DCA would grant access to as many licensed health care professionals as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information, subject to a limit on the number of such health care professionals as deemed appropriate by the division for that particular type and size of professional practice. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a health care professional. The DCA would grant access to as many medical or dental residents as are authorized by a faculty member of a medical or dental teaching facility to access PMP information, and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner or faculty member may delegate PMP authorization to a medical or dental resident. The DCA would also grant access to as many certified medical assistants as are authorized by a practitioner to access that information and for whom the practitioner is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a practitioner may delegate PMP authorization to a certified medical assistant. In addition, the DCA would grant access to as many registered dental assistants as are authorized by a licensed dentist to access that information and for whom the licensed dentist is responsible for the use or misuse of that information. The director will establish, by regulation, the terms and conditions under which a licensed dentist may delegate that authorization.

A person who is entitled to PMP access will be required, as a condition of such access, to certify that the request for information is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

In addition to the parties who are entitled to have access to PMP information, the division will also be permitted to provide online PMP access to the following persons:

-- authorized DCA personnel, vendors, and contractors responsible for maintaining the PMP;

-- authorized DCA personnel responsible for administration and enforcement of the "New Jersey Controlled Dangerous Substances Act";

-- the State Medical Examiner, a county medical examiner, a deputy or assistant county medical examiner, or a qualified designated assistant thereof, investigating a death;

-- controlled dangerous substance monitoring programs in other states that participate with the division in a system that facilitates secure sharing of information between states;

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner, pharmacist, or patient;

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The bill provides that a mental health practitioner is not required to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the practitioner’s professional practice.

PMP access will be available to a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and

certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient. A law enforcement agency that obtains prescription monitoring information will be required to comply with security protocols established by the director by regulation.

A person who is permitted by DCA (but who is not entitled) to access PMP information will be required, as a condition of accessing PMP information, to certify the person's reasons for seeking to obtain the information. Such certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by DCA rule or regulation.

The bill requires DCA to provide an online tutorial for persons who are entitled, or otherwise authorized by the DCA, to access PMP information. Such tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof, and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The bill authorizes DCA to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP. The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit DCA from obtaining unsolicited automated reports from the program or disseminating such reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The bill requires the DCA to establish a process by which patients and persons on behalf of those patients can access PMP information.

The bill requires the DCA to establish communications channels for persons with online access to seek or provide information.

The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather than repeated failures. The bill also establishes new crimes for wrongful disclosure and wrongful use of PMP information. Under current law, a pharmacy permit holder, pharmacist or practitioner or any other person or entity who knowingly <u>discloses or uses</u> PMP

information in violation of the statutes governing the program is subject to a civil penalty in an amount of up to $10,000. These persons are also subject to disciplinary action. Under the bill, any of the above-listed persons, as well as a mental health practitioner or a licensed health care professional, who knowingly obtains or attempts to obtain PMP information in violation of the law will be subject to the civil penalty. These persons will no longer be subject to a civil penalty for disclosing or using PMP information in violation of the law; they will, however, remain subject to disciplinary action for disclosing or using PMP information in violation of the law.

The bill also provides that a person who is authorized to obtain PMP information who knowingly discloses such information in violation of the law will be guilty of a crime of the fourth degree and will also be subject to a civil penalty in an amount of up to $10,000. The bill makes it a crime of the third degree for a person who is authorized to obtain PMP information to use the information in the course of committing, attempting to commit, or conspiring to commit any criminal offense. It will be a crime of the fourth degree for a person who is not authorized to obtain PMP information to knowingly obtain the information in violation of the law.

A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000, or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

Under the bill, a practitioner, or another person who is authorized thereby to access PMP information, pursuant to the bill's provisions, will be required to consult the PMP when they prescribe a controlled dangerous substance to a patient for acute or chronic pain, and quarterly thereafter if the patient continues to receive prescriptions for controlled dangerous substances for acute or chronic pain. In addition, a practitioner, or other person authorized thereby to access PMP information, will be required to access PMP information when the practitioner or other person has a reasonable belief that the patient may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. A pharmacist will similarly be prohibited from dispensing a controlled dangerous substance to any person without first accessing PMP information, if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than the treatment of an existing medical condition. These provisions, which require practitioners and pharmacists to consult the PMP, will not apply to certain actors or in certain instances specified in the bill, where the circumstances are unlikely to be associated with a significant risk of substance abuse, or where accessing the PMP may not be feasible due to technological or other factors.

The bill provides that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. This provision will not take effect until the director of the DCA determines that the PMP has the technical capacity to accept such information.

The bill requires the DCA to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology. The DCA will also be required to approve a sufficient number of vendors to ensure production of an adequate supply of prescription blanks for practitioners and health care facilities Statewide, but to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

The bill requires the DCA to annually submit a report to the Legislature which provides information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement.

The bill requires the DCA to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, and submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the bill’s effective date.

The bill repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner, within 24 hours after making a determination that a person is drug dependent, to report that determination to the DCA

FISCAL IMPACT:

There is insufficient information available at this time to determine the fiscal impact of this amended bill's revisions to the Prescription Monitoring Program.

COMMITTEE AMENDMENTS:

The amendments:

provide regulatory flexibility by allowing the director to provide alternatives to online statements as a means of certification of access to the system and to seek or provide information;

omit detailed statutory protocols for law enforcement agencies to obtain prescription monitoring information (instead allowing the director authority to establish security protocols by regulation);

eliminate direct patient and guardian access to prescription monitoring information while maintaining the ability of patients and

guardians to request submitted monitoring information from practitioners;

limit the “per prescription” practitioner mandatory access check to new patients, while maintaining the quarterly access check for all current patients;

omit a pilot program to test integrating the PMP with Electronic Medical Records; and

make corresponding technical corrections to the Title.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 3062

STATE OF NEW JERSEY
216th LEGISLATURE

DATED: MAY 4, 2015

SUMMARY

Synopsis: Revises certain provisions of New Jersey Prescription Monitoring Program.

Type of Impact: Indeterminate Impact.

Agencies Affected: Department of Law and Public Safety; Division of Consumer Affairs; Prescription Monitoring Program.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services finds that the expenditures related to the revision of the Prescription Monitoring Program (PMP) to be indeterminate at this time. The PMP is an existing program and it is unknown how the revisions will effect the current operation and expenditures of the program.

- The bill requires the Division of Consumer Affairs (the division) to report to the Legislature 1) information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement and 2) an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program, including any recommendations.

- The division is also required to do the following: 1) establish appropriate communication for certain persons to seek and receive information, 2) collect professional certifications, and 3) establish certain educational and training programs for health care professionals and the general public.

Office of Legislative Services
State House Annex
P.O. Box 068
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- The bill expands access to the PMP to specific professionals under certain circumstances; however, the bill requires the professionals to submit certifications as recommended by the division as to the reason for access to the PMP.

- The bill requires pharmacy permit holders to 1) submit to the PMP identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription and 2) submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute. The bill, however, repeals the requirement that every practitioner, within 24 hours after making a determination that a person is drug dependent, report that determination to the division.

- The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners and other licensed health care professionals and expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure.

BILL DESCRIPTION

The First Reprint to the Assembly Committee Substitute for Assembly Bill No. 3062 of 2014 revises various statutory provisions related to the PMP, which was established in the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The PMP is an electronic system for monitoring controlled dangerous substances dispensed in or into the State in outpatient settings.

The bill requires that the director conduct educational programs concerning controlled dangerous substances for the general public and various health care professionals. Additionally, the bill requires the division to provide an online tutorial for persons who are entitled, or otherwise authorized by the division, to access PMP information. The tutorial would explain how to use the PMP system, the rights of persons who are the subject of PMP information, the responsibilities of persons accessing the system, and the permitted uses of the information and penalties for violations thereof; and would provide information related to the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The bill revises current provisions that delineate the types of access to the PMP that are made available to various parties seeking information. The director will establish, by regulation, the terms and conditions under which practitioners and professionals may delegate PMP authorization to medical, health care and other professionals, such as law enforcement.

A person who is entitled, or a person who is permitted by the division (but who is not entitled), to PMP access will be required, as a condition of having access, to certify that the request for information is for certain valid purposes as noted in the bill. The certification will be furnished through means of an online statement, or alternate means authorized by the director, in a form and manner prescribed by division rule or regulation.

The bill adds a provision requiring the division to evaluate whether any person is obtaining a prescription in a manner indicative of misuse, abuse, or diversion of a controlled dangerous substance and if so to take appropriate action as reflected in the bill.

The bill authorizes the division to request and receive prescription monitoring information from prescription monitoring programs in other states, and to use that information for the purposes of the PMP.

The director is authorized to provide nonidentifying prescription drug monitoring information to public or private entities for statistical, research, or educational purposes. The bill states that nothing is to prohibit the division from obtaining unsolicited automated reports from the program or disseminating the reports to pharmacists, practitioners, mental health care practitioners, and other licensed health care professionals.

The bill requires the division to establish a process by which patients and persons on behalf of those patients can access PMP information. The bill requires the division to establish communications channels for certain persons with online access to seek or provide information.

The bill requires the division to establish a format for additional security features for New Jersey Prescription Blanks to prevent erasure or duplication that can be accomplished with widely available computer technology. The division will also be required to approve a sufficient number of vendors to ensure production of an adequate supply of prescription blanks for practitioners and health care facilities Statewide, but to limit the number of vendors as necessary to ensure that vendors may be appropriately monitored to ensure that prescription blanks are delivered only to intended prescribers and health care facilities.

The bill requires the division to annually submit a report to the Legislature which provides information on the nature and extent of registration with, and utilization of, the PMP, as well as recommendations for program improvement.

The bill requires the division to complete an assessment regarding the design, implementation requirements, and costs associated with a real time prescription monitoring program; and submit a report of its assessment, including any recommendations, to the Legislature, within 18 months after the bill's effective date.

The bill repeals section 39 of P.L.1970, c.226 (C.24:21-39), which requires every practitioner, within 24 hours after making a determination that a person is drug dependent, to report that determination to the division.

In addition to the information that pharmacy permit holders are required to submit to the PMP under current law, the bill requires them to submit identifying information for any individual, other than the patient for whom the prescription was written, who picks up a prescription if the pharmacist has reasonable belief that the person may be seeking a CDS for any reason other than delivering it for medical treatment. This requirement would not become effective, however, until the division director determines that the PMP has the technical capacity to accept such information. The bill also requires that pharmacy permit holders submit prescription monitoring information to the division every seven days, rather than every 30 days as provided by current statute.

The bill provides that a pharmacist will be required to check PMP information when a person other than the patient picks up a prescription for the patient if the pharmacist has a reasonable belief that the person may be seeking a controlled dangerous substance, in whole or in part, for any reason other than delivering the substance to the patient for the treatment of an existing medical condition. This provision will not take effect until the director of the division determines that the PMP has the technical capacity to accept the information.

The bill amends the immunity and penalty provisions of the existing PMP law to include mental health practitioners (i.e., a clinical social worker, marriage and family therapist, alcohol and drug counselor, professional counselor, psychologist, or psychoanalyst licensed or otherwise authorized to practice under State law) and other licensed health care professionals (i.e., a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed under State law).

The bill expands the penalty provisions contained in the PMP law to provide that civil penalties for pharmacy permit holders who fail to submit information to the program may apply after one failure, rather than repeated failures. The bill also establishes new crimes for wrongful

disclosure and wrongful use of PMP information. Under current law, a pharmacy permit holder, pharmacist or practitioner or any other person or entity who knowingly discloses or uses PMP information in violation of the statutes governing the program is subject to a civil penalty in an amount of up to $10,000. These persons are also subject to disciplinary action.

Under the bill, anyone with access who knowingly obtains or attempts to obtain PMP information in violation of the law will be subject to disciplinary action for disclosing or using PMP information in violation of the law.

The bill also provides that a person who is authorized to obtain PMP information who knowingly discloses such information in violation of the law will be guilty of a crime of the fourth degree and will also be subject to a civil penalty in an amount of up to $10,000.

The bill makes it a crime of the third degree for a person who is authorized to obtain PMP information to use the information in the course of committing, attempting to commit, or conspiring to commit any criminal offense. It will be a crime of the fourth degree for a person who is not authorized to obtain PMP information to knowingly obtain the information in violation of the law. A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000, or both; a crime of the third degree, by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services finds that the expenditures related to the revision of the PMP to be indeterminate at this time. The PMP is an existing program and it is unknown how the revisions will effect the current operation and expenditures of the program.

A December 2014 Attorney General press release stated that approximately 20,000 out of the 30,000 New Jersey physicians and 5,000 other licensed healthcare practitioners gained direct access to the New Jersey Prescription Monitoring Program (NJPMP) in 2014. Further, 85 percent of New Jersey's physicians, or 25,501 of the State's eligible physicians, are able to access the NJPMP, representing a 467 percent increase since December 2013, when approximately 4,500 physicians had NJPMP access. Additionally, 56 percent of all healthcare practitioners in New Jersey – or 35,500 of the State's eligible prescribers and pharmacists of all kinds – have direct access to the prescription-tracking database. This represents a 256 percent increase since December 2013, when 9,965 healthcare practitioners had access to the NJPMP.

The NJPMP currently collects detailed information on prescriptions filled in New Jersey for controlled dangerous substances, the category of drugs that includes potentially addictive opiate painkillers. It includes data on more than 40 million prescriptions written since September 2011. This bill tightens certain guidelines and expands access to the NJPMP database to additional professionals, which will create the opportunity for a more complete system. The bill further increases and expands and enhances the penalties under current law.

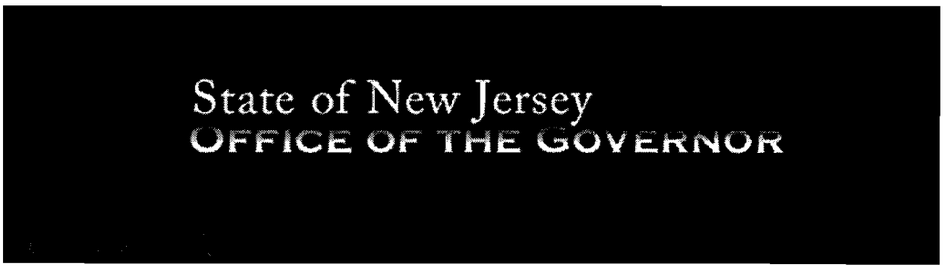
Section:	*Law and Public Safety*
Analyst:	*Kristin Brunner Santos* *Senior Fiscal Analyst*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Christie Strengthens New Jersey's Prescription Monitoring Program to Further Curb Prescription Drug Abuse

Monday, July 20, 2015 Tags: Addiction Taskforce



Trenton, NJ - Empowering healthcare professionals with effective tools to join the fight against prescription drug abuse, Governor Chris Christie signed legislation that expands the New Jersey Attorney General's Division of Consumer Affairs Prescription Monitoring Program (NJPMP), an online database that tracks the prescription sale of drugs classified as controlled dangerous substances (CDS). The bill, S-1998, expands existing law with regard to access, registration, and utilization of the NJPMP. The new changes will help prevent "doctor shopping" that often occurs with prescription and opioid abuse.

"We have taken great strides in the fight against opiate abuse through a comprehensive strategy that encourages healthcare professionals, treatment providers, law enforcement, and members of the public to each embrace their role in addressing this healthcare crisis," Governor Christie said. "By signing S-1998, we're not only making the New Jersey Prescription Monitoring Program even stronger, we're demonstrating that by working together, we can all be part of the solution - a solution that fights the stigma of addiction, saves lives and helps rebuild families."

Currently, the NJPMP contains data on more than 48.4 million prescriptions for CDS and human growth hormone. It has responded to more than 4 million data requests from licensed prescribers and pharmacists, including more than 180,000 requests made during the last 30 days alone.

S-1998 expands New Jersey healthcare professionals' access to the NJPMP by, among other things, requiring that prescribers and pharmacists register for NJPMP access, and requiring that physicians consult the NJPMP under limited circumstances.

For example, the legislation mandates that physicians consult the online NJPMP database the first time they prescribe a drug classified as a Schedule II CDS (such as oxycodone) to a patient for acute and chronic pain. They also must continue to consult the NJPMP at least quarterly thereafter for patients that continue to receive such medications. In addition, pharmacists would be required to check the database prior to dispensing a Schedule II CDS if there is a reasonable belief that the patient may be seeking the prescription for any reason other than the treatment of a medical condition.

In addition, pharmacists are required to submit identifying information for any individual who picks up a prescription for a patient. It further requires pharmacies to submit information to the NJPMP every seven days, rather than every 30 days as provided in current law. The Division of Consumer Affairs has notified pharmacies that, as of September 1, 2015, it will require them to report information to the NJPMP on a daily basis, no more than one business day after the date the CDS was dispensed.

"The Medical Society of New Jersey is committed to reducing prescription medication abuse and diversion." said Mishael Azam, Esq., Senior Manager for Legislative Affairs at the Medical Society of New Jersey. "As such, we have long advocated for the Prescription Monitoring Program to be a more user-friendly tool for prescribers. This bill improves data quality, accessibility, interoperability and reliability. We commend Governor Christie for investing in the PMP."

In an effort to promote greater NJPMP usage, the Division of Consumer Affairs launched an awareness campaign and streamlined the registration process to grant automatic enrollment to prescribers upon the annual renewal of their State registration to prescribe or dispense CDS. These efforts have increased the registration of physicians by more than