

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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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

1 AN ACT concerning ³**the New Jersey Prescription Monitoring**
2 **Program** drug abuse³, revising various parts of the statutory
3 law, and supplementing P.L.2007, c.244.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

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

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

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

26 (3) Conduct educational programs **of eradication aimed at**
27 **destroying wild or illicit growth of plant species from which**
28 **controlled dangerous substances may be extracted** for: members of
29 the general public; pharmacy permit holders and pharmacists; and
30 health care professionals, mental health practitioners, and
31 practitioners as defined in section 24 of P.L.2007, c.244 (C.45:1-
32 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.

1 b. Results, information, and evidence received from the Drug
2 Enforcement Administration relating to the regulatory functions of
3 P.L.1970, c.226 (C.24:21-1 et seq.), as amended and supplemented,
4 including results of inspections conducted by that agency, may be
5 relied upon and acted upon by the director in conformance with
6 **[his]** the director's regulatory functions under P.L.1970, c.226, as
7 amended and supplemented.
8 (cf: P.L.2007, c.244, s.18)
9

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

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

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

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

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

45 ³"Dental resident" means a person who practices dentistry as a
46 resident pursuant to R.S.45:6-20 and, pursuant to N.J.A.C.13:30-
47 1.3, is a graduate of a dental school approved by the Commission on

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

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

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

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

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

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

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

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

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

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

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

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

41

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

44 25. Prescription Monitoring Program; requirements.

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

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

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

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

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

11 (3) The date that the medication is dispensed;

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

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

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

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

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

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

22 (10) Identifying information for any individual, other than the
23 patient for whom the prescription was written, who picks up a
24 prescription¹, if the pharmacist has a reasonable belief that the
25 person picking up the prescription may be seeking a controlled
26 dangerous substance, in whole or in part, for any reason other than
27 delivering the substance to the patient for the treatment of an
28 existing medical condition¹; and

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

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

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

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

1 "National All Schedules Prescription Electronic Reporting Act of
2 2005," Pub.L.109-60.

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

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

8

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

11 26. Access to prescription information.

12 a. The division shall maintain procedures to ensure privacy and
13 confidentiality of patients and that patient information collected,
14 recorded, transmitted, and maintained is not disclosed, except as
15 permitted in this section, including, but not limited to, the use of a
16 password-protected system for maintaining this information and
17 permitting access thereto as authorized under sections 25 through
18 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), and a
19 requirement that a person as listed in **【subsection d.】** subsections h.
20 or i. of this section provide ³**【on-line】³** affirmation of the person's
21 intent to comply with the provisions of sections 25 through 30 of
22 P.L.2007, c.244 (C.45:1-45 through C.45:1-50) as a condition of
23 accessing the information.

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

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

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

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

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

4 d. **【**The division may provide prescription monitoring
5 information to the following persons:

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

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

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

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

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

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

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

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

- 1 e. **【A person listed in subsection d. of this section, as a**
2 **condition of obtaining prescription monitoring information pursuant**
3 **thereto, shall certify, by means of entering an on-line statement in a**
4 **form and manner prescribed by regulation of the director, the**
5 **reasons for seeking to obtain that information.】** (Deleted by
6 amendment, P.L. , c.) (pending before the Legislature as this bill)
- 7 f. **【The division shall offer an on-line tutorial for those persons**
8 **listed in subsection d. of this section, which shall, at a minimum,**
9 **include: how to access prescription monitoring information; the**
10 **rights and responsibilities of persons who are the subject of or**
11 **access this information and the other provisions of sections 25**
12 **through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and**
13 **the regulations adopted pursuant thereto, regarding the permitted**
14 **uses of that information and penalties for violations thereof; and a**
15 **summary of the requirements of the federal health privacy rule set**
16 **forth at 45 CFR Parts 160 and 164 and a hypertext link to the**
17 **federal Department of Health and Human Services website for**
18 **further information about the specific provisions of the privacy**
19 **rule.】** (Deleted by amendment, P.L. , c.) (pending before the
20 Legislature as this bill)
- 21 g. **【The director may provide nonidentifying prescription drug**
22 **monitoring information to public or private entities for statistical,**
23 **research or educational purposes.】** (Deleted by amendment, P.L. ,
24 c.) (pending before the Legislature as this bill)
- 25 h. (1) The division shall register a ¹【pharmacist or】¹
26 practitioner to access prescription monitoring information upon
27 issuance or renewal of the ¹【pharmacist or】¹ practitioner’s CDS
28 registration.
- 29 (2) The division shall provide to a pharmacist who ¹【has a
30 current CDS registration】 is employed by a current pharmacy
31 permit holder¹ online access to prescription monitoring information
32 for the purpose of providing health care to a current patient or
33 verifying information with respect to a patient or a prescriber.
- 34 (3) The division shall provide to a practitioner who has a current
35 CDS registration online access to prescription monitoring
36 information for the purpose of providing health care to a current
37 patient or verifying information with respect to a patient or a
38 prescriber. The division shall also grant online access to
39 prescription monitoring information to as many licensed health care
40 professionals as are authorized by a practitioner to access that
41 information and for whom the practitioner is responsible for the use
42 or misuse of that information, subject to a limit on the number of
43 such health care professionals as deemed appropriate by the
44 division for that particular type and size of professional practice, in
45 order to minimize the burden to practitioners to the extent
46 practicable while protecting the confidentiality of the prescription

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

7 (4) The division shall provide online access to prescription
8 monitoring information to as many medical ²or dental² residents as
9 are authorized by a faculty member of a medical ²or dental²
10 teaching facility to access that information and for whom the
11 practitioner is responsible for the use or misuse of that information.
12 The director shall establish, by regulation, the terms and conditions
13 under which a faculty member of a medical ²or dental² teaching
14 facility may delegate that authorization, including procedures for
15 authorization and termination of authorization, provisions for
16 maintaining confidentiality, provisions regarding the duration of a
17 medical ²or dental² resident's authorization to access prescription
18 monitoring information, and such other matters as the division may
19 deem appropriate.

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

32 (6)^{1 2}The division shall provide online access to prescription
33 monitoring information to as many registered dental assistants as
34 are authorized by a licensed dentist to access that information and
35 for whom the licensed dentist is responsible for the use or misuse of
36 that information. The director shall establish, by regulation, the
37 terms and conditions under which a licensed dentist may delegate
38 that authorization, including procedures for authorization and
39 termination of authorization, provisions for maintaining
40 confidentiality, provisions regarding the duration of a registered
41 dental assistant's authorization to access prescription monitoring
42 information, and such other matters as the division may deem
43 appropriate.

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

1 patient or practitioner. Such certification shall be furnished through
2 means of an online statement³ or alternate means authorized by the
3 director³, in a form and manner prescribed by rule or regulation
4 adopted by the director.

5 i. The division may provide online access to prescription
6 monitoring information¹, or may provide access to prescription
7 monitoring information through any other means deemed
8 appropriate by the director,¹ to the following persons:

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

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

15 (3) the State Medical Examiner, a county medical examiner,
16 '[or]' a deputy or assistant county medical examiner¹, or a
17 qualified designated assistant thereof,¹ who certifies that the request
18 is for the purpose of investigating a death pursuant to P.L.1967,
19 c.234 (C.52:17B-78 et seq.);

20 (4) a controlled dangerous substance monitoring program in
21 another state¹ with which the division has established an
22 interoperability agreement, or¹ which participates with the division
23 in a system that facilitates the secure sharing of information
24 between states;

25 (5) a designated representative of the State Board of Medical
26 Examiners, New Jersey State Board of Dentistry, State Board of
27 Nursing, New Jersey State Board of Optometrists, State Board of
28 Pharmacy, State Board of Veterinary Medical Examiners, or any
29 other board in this State or another state that regulates the practice
30 of persons who are authorized to prescribe or dispense controlled
31 dangerous substances, as applicable, who certifies that the
32 representative is engaged in a bona fide specific investigation of a
33 designated practitioner³ or pharmacist³ whose professional practice
34 was or is regulated by that board;

35 (6) a State, federal, or municipal law enforcement officer who is
36 acting pursuant to a court order and certifies that the officer is
37 engaged in a bona fide specific investigation of a designated
38 practitioner³, pharmacist,³ or patient³. A law enforcement agency
39 that obtains prescription monitoring information shall comply with
40 security protocols established by the director by regulation³;

41 (7) a designated representative of a state Medicaid or other
42 program who certifies that the representative is engaged in a bona
43 fide investigation of a designated practitioner³, pharmacist,³ or
44 patient;

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

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

18 j. A person listed in subsection i. of this section, as a condition
19 of obtaining prescription monitoring information pursuant thereto,
20 shall certify the reasons for seeking to obtain that information.
21 Such certification shall be furnished through means of an online
22 statement³ or alternate means authorized by the director³, in a form
23 and manner prescribed by rule or regulation adopted by the director.

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

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

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

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

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

8 o. ³ [The division shall establish a process by which patients,
9 authorized agents, parents of a minor child, legal guardians, or legal
10 counsel can directly] (1) A current patient of a practitioner may³
11 request ³ [, and obtain access to,] from that practitioner that
12 patient's own³ prescription monitoring information that has been
13 submitted to the division pursuant to sections 25 through 30 of
14 P.L.2007, c.244 (C.45:1-45 through C.45:1-50). ³ [In establishing
15 this process, the division shall, at a minimum: (1) require a patient,
16 authorized agent, parent of a minor child, legal guardian, or legal
17 counsel to mail to the division a notarized request form and proof of
18 a government-issued photo identification; (2) authorize, but not
19 require, physicians and pharmacists to voluntarily share relevant
20 prescription monitoring information with patients; and (3) authorize
21 a patient to submit a request, through the division, for the correction
22 of prescription monitoring information that the patient believes has
23 been improperly recorded in the patient's prescription profile.] A
24 parent or legal guardian of a child who is a current patient of a
25 practitioner may request from that practitioner the child's
26 prescription monitoring information that has been submitted to the
27 division pursuant to sections 25 through 30 of P.L.2007, c.244
28 (C.45:1-45 through C.45:1-50).

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

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

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

4 ²p. The division shall ³[create a dedicated, secure telephone and
5 email hotline for] take steps to ensure that appropriate channels of
6 communication exist to enable³ any licensed health care
7 professional, licensed pharmacist, mental health practitioner,
8 pharmacy permit holder, or other practitioner who has online access
9 to the Prescription Monitoring Program pursuant to this section
10 ³[, and who wishes]³ to seek or provide ³[any]³ information to the
11 division related to the provisions of this section.²

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

13

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

16 28. Immunity from liability.

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

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

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

27

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

30 29. Penalties.

31 a. A pharmacy permit holder, or a person designated by a
32 pharmacy permit holder to be responsible for submitting data
33 required by section 25 of P.L.2007, c.244 (C.45:1-45), who
34 knowingly fails to submit data as required, shall be subject to
35 disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-
36 21) and may be subject to a civil penalty in an amount not to exceed
37 \$1,000 for **[repeated]** failure to comply with sections 25 through 30
38 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

39 b. (1) A pharmacy permit holder, pharmacist, mental health
40 practitioner, licensed health care professional, or practitioner, or
41 any other person or entity who knowingly ³[discloses or uses]
42 obtains or attempts to obtain³ prescription monitoring information
43 in violation of the provisions of sections 25 through 30 of P.L.2007,
44 c.244 (C.45:1-45 through C.45:1-50) shall be subject to a civil
45 penalty in an amount not to exceed \$10,000.

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

1 knowingly discloses or uses prescription monitoring information in
2 violation of the provisions of sections 25 through 30 of P.L.2007,
3 c.244 (C.45:1-45 through C.45:1-50), shall also be subject to
4 disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-
5 21).

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

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

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

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

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

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

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

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

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

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

17

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

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

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

39

40 ³[7.] ³8. (New section) a. (1) Except as provided in subsection
41 b. of this section, a practitioner or other person who is authorized
42 by a practitioner to access prescription monitoring information
43 pursuant to subsection h. of section 26 of P.L.2007, c.244 (C.45:1-
44 46) shall access prescription monitoring information the first time
45 the practitioner or other person prescribes a ²Schedule II² controlled
46 dangerous substance to a ²new² patient ²【, and not less than
47 quarterly thereafter if the ²】 for acute or chronic pain. In addition,

1 ³such for any prescription of a Schedule II controlled dangerous
 2 substance for a new or current patient for acute or chronic pain
 3 which is written on or after the effective date of P.L. _____,
 4 c. (C.) (pending before the Legislature as this bill)³ a
 5 practitioner or other authorized person shall access prescription
 6 monitoring information on ³at least³ a quarterly basis during the
 7 period of time ³that follows a patient's initial receipt of a
 8 prescription for a Schedule II controlled dangerous substance, if³
 9 the² patient continues to receive ³such³ prescriptions ³for
 10 ²Schedule II² controlled dangerous substances ²for acute or chronic
 11 pain during such period²³. ²In addition, a practitioner or other
 12 person who is authorized by the practitioner to access prescription
 13 monitoring information pursuant to subsection h. of section 26 of
 14 P.L.2007, c.244 (C.45:1-46) shall access prescription monitoring
 15 information when the practitioner or other person has a reasonable
 16 belief that the patient may be seeking the controlled dangerous
 17 substance, in whole or in part, for any reason other than the
 18 treatment of an existing medical condition.²

19 (2) (a) A pharmacist shall not dispense a ²Schedule II² controlled
 20 dangerous substance to any person without first accessing the
 21 prescription monitoring information, as authorized pursuant to
 22 subsection h. of section 26 of P.L.2007, c.244 (C.45:1-46), to
 23 determine if the person has received other prescriptions that
 24 indicate misuse, abuse, or diversion, if the pharmacist has a
 25 reasonable belief that the person may be seeking a controlled
 26 dangerous substance, in whole or in part, for any ²reason
 27 purpose² other than the treatment of an existing medical
 28 condition ², such as for purposes of misuse, abuse, or diversion².

29 (b) A pharmacist shall not dispense a prescription to a person
 30 other than the patient for whom the prescription is intended ^{1,1}
 31 unless the person ¹receiving picking up¹ the prescription provides
 32 personal identification ¹, which the to the¹ pharmacist ¹shall
 33 input , and the pharmacist, as required by subsection b. of section
 34 25 of P.L.2007, c.244 (C.45:1-45), inputs that identifying
 35 information¹ into the Prescription Monitoring Program ¹as
 36 required pursuant to subsection b. of section 25 of P.L.2007, c.244
 37 (C.45:1-45) if the pharmacist has a reasonable belief that the
 38 person may be seeking a controlled dangerous substance, in whole
 39 or in part, for any reason other than delivering the substance to the
 40 patient for the treatment of an existing medical condition¹. The
 41 provisions of this subparagraph shall not take effect until the
 42 director determines that the Prescription Monitoring Program has
 43 the technical capacity to accept such information.

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

46 (1) a veterinarian;

- 1 (2) a practitioner or the practitioner's agent administering
2 methadone, or another controlled dangerous substance designated
3 by the director as appropriate for treatment of a patient with a
4 substance abuse disorder, as interim treatment for a patient on a
5 waiting list for admission to an authorized substance abuse
6 treatment program;
- 7 (3) a practitioner administering a controlled dangerous
8 substance directly to a patient;
- 9 (4) a practitioner prescribing a controlled dangerous substance
10 to be dispensed by an institutional pharmacy, as defined in
11 N.J.A.C.13:39-9.2;
- 12 (5) a practitioner prescribing a controlled dangerous substance
13 in the emergency department of a general hospital, provided that the
14 quantity prescribed does not exceed a five day supply of the
15 substance;
- 16 (6) a practitioner prescribing a controlled dangerous substance
17 to a patient under the care of a hospice;
- 18 (7) a situation in which it is not reasonably possible for the
19 practitioner or pharmacist to access the ¹**【registry】 Prescription**
20 **Monitoring Program**¹ in a timely manner, no other individual
21 authorized to access the ¹**【registry】 Prescription Monitoring**
22 **Program**¹ is reasonably available, and the quantity of controlled
23 dangerous substance prescribed or dispensed does not exceed a five
24 day supply of the substance;
- 25 (8) a practitioner or pharmacist acting in compliance with
26 regulations promulgated by the director as to circumstances under
27 which consultation of the ¹**【registry】 Prescription Monitoring**
28 **Program**¹ would result in a patient's inability to obtain a
29 prescription in a timely manner, thereby adversely impacting the
30 medical condition of the patient;
- 31 (9) a situation in which the ¹**【registry】 Prescription Monitoring**
32 **Program**¹ is not operational as determined by the division or where
33 it cannot be accessed by the practitioner due to a temporary
34 technological or electrical failure, as set forth in regulation; ²**【or】**²
- 35 (10) a practitioner or pharmacist who has been granted a waiver
36 due to technological limitations that are not reasonably within the
37 control of the practitioner or pharmacist, or other exceptional
38 circumstances demonstrated by the practitioner or pharmacist,
39 pursuant to a process established in regulation, and in the discretion
40 of the director ²; or²
- 41 ²(11) a practitioner who is prescribing a controlled dangerous
42 substance to a patient immediately after the patient has undergone
43 an operation, procedure, or treatment for acute trauma, when less
44 than a 30-day supply is prescribed².

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

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

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

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

22
23 ¹9. (New section) The division shall annually submit a report to
24 the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
25 19.1), which provides information on the nature and extent of
26 registration with, and utilization of, the Prescription Monitoring
27 Program, as well as recommendations for program improvement.¹

28
29 ¹[9.] ¹10.¹ (New section) The division shall complete an
30 assessment regarding the design, implementation requirements, and
31 costs associated with a real time prescription monitoring system,
32 and shall report its assessment and any recommendations to the
33 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
34 19.1), within 18 months after the enactment of this P.L. ,
35 c. (C.) (pending before the Legislature as this bill).

36
37 ¹[10.] ¹11.¹ Section 39 of P.L.1970, c.226 (C.24:21-39) is
38 repealed.

39
40 ¹[11.] ¹12.¹ This act shall take effect on the first day of the
41 fourth month next following the date of enactment ³[, ²[but the]
42 except that section 7 shall not take effect until the pilot program
43 required by section 8 of this act is completed]³ . The² Director of
44 the Division of Consumer Affairs may take such anticipatory
45 administrative action in advance ²[thereof] ³[of these effective

1 dates,²] thereof³ as shall be necessary for the implementation of
2 this act.

3

4

5

6

7 Revises certain provisions of New Jersey Prescription
8 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)

S1998 WEINBERG, VITALE

2

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

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

7
8 1. Section 34 of P.L.1970, c.226 (C.24:21-34) is amended to
9 read as follows:

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

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

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

26 (3) Conduct educational programs **of eradication aimed at**
27 **destroying wild or illicit growth of plant species from which**
28 **controlled dangerous substances may be extracted** for: members of
29 the general public; pharmacy permit holders and pharmacists; and
30 health care professionals, mental health practitioners, and
31 practitioners as defined in section 24 of P.L.2007, c.244 (C.45:1-
32 44).

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

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

41
42 2. Section 24 of P.L.2007, c.244 (C.45:1-44) is amended to
43 read as follows:

44 24. Definitions. As used in sections 25 through 30 of P.L.2007,
45 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.

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

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

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

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

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

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

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

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

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

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

36
37 3. Section 25 of P.L.2007, c.244 (C.45:1-45) is amended to
38 read as follows:

39 25. Prescription Monitoring Program; requirements.

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

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

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

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

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

6 (3) The date that the medication is dispensed;

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

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

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

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

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

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

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

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

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

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

33 d. The requirements of this act shall not apply to: the direct
34 administration of a controlled dangerous substance to the body of
35 an ultimate user; or the administration or dispensing of a controlled
36 dangerous substance that is otherwise exempted as determined by
37 the Secretary of Health and Human Services pursuant to the
38 "National All Schedules Prescription Electronic Reporting Act of
39 2005," Pub.L.109-60.

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

41

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

44 26. Access to prescription information.

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

1 password-protected system for maintaining this information and
2 permitting access thereto as authorized under sections 25 through
3 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), and a
4 requirement that a person as listed in **【subsection d.】** subsections h.
5 or i. of this section provide on-line affirmation of the person's intent
6 to comply with the provisions of sections 25 through 30 of
7 P.L.2007, c.244 (C.45:1-45 through C.45:1-50) as a condition of
8 accessing the information.

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

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

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

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

36 d. **【The division may provide prescription monitoring**
37 **information to the following persons:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34

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

37 28. Immunity from liability.

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

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

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

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

3 29. Penalties.

4 a. A pharmacy permit holder, or a person designated by a
5 pharmacy permit holder to be responsible for submitting data
6 required by section 25 of P.L.2007, c.244 (C.45:1-45), who
7 knowingly fails to submit data as required, shall be subject to
8 disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-
9 21) and may be subject to a civil penalty in an amount not to exceed
10 \$1,000 for **[repeated]** failure to comply with sections 25 through 30
11 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

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

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

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

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

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

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

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

4 g. In addition to any other penalty provided by law, a person
5 who is not authorized to obtain prescription monitoring information
6 from the Prescription Monitoring Program who knowingly obtains
7 or attempts to obtain such information in violation of the provisions
8 of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through
9 C.45:1-50), shall be guilty of a crime of the third degree.
10 (cf: P.L.2007, c.244, s.29)

11
12 7. (New section) a. Except as provided in subsection b. of this
13 section, a practitioner or pharmacist, as applicable, shall not
14 prescribe or dispense a controlled dangerous substance without first
15 accessing the prescription monitoring information, as authorized
16 pursuant to section 26 of P.L.2007, c.244 (C.45:1-46), to determine
17 if the patient has received other prescriptions that indicate misuse,
18 abuse, or diversion. A pharmacist shall not dispense a prescription
19 to a person other than the patient for whom the prescription is
20 intended unless the person receiving the prescription provides
21 personal identification, which the pharmacist shall input into the
22 Prescription Monitoring Program as required pursuant to subsection
23 b. of section 25 of P.L.2007, c.244 (C.45:1-45).

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

26 (1) a veterinarian;

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

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

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

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

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

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

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

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

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

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

18

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

20

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

26

27

28

STATEMENT

29

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

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

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

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

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

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

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

- 39 -- authorized personnel of the division, vendors, and
40 contractors responsible for maintaining the PMP;
- 41 -- authorized personnel of the division responsible for
42 administration and enforcement of the "New Jersey Controlled
43 Dangerous Substances Act";
- 44 -- the State Medical Examiner, a county medical examiner, or a
45 deputy or assistant county medical examiner investigating a death;
- 46 -- controlled dangerous substance monitoring programs in
47 other states with which the division has established interoperability
48 agreements (if required by those states), or which participate with

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

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

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

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

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

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

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

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

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

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

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

29 Finally, the bill repeals section 39 of P.L.1970, c.226 (C.24:21-
30 39), which requires that every practitioner, within 24 hours after
31 determining that a person is a drug dependent person by reason of
32 the use of a controlled dangerous substance for purposes other than
33 the treatment of sickness or injury prescribed and administered as
34 authorized by law, report that determination to the Director of the
35 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.



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

3

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

6

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

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

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

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

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

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

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

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

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

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

44 "Recreation vehicle" means a self-propelled or towed vehicle
45 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 thus is new matter.

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

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

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

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

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

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

31 d. This section shall not apply to:

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

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

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

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

45

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

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

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

12 b. Notwithstanding the provisions of subsection a. of section 12
13 of P.L.1978, c.73 (C.45:1-25) to the contrary, and in addition to any
14 other penalty provided by law, a health care professional who
15 engages in improper prescribing shall be liable to a civil penalty of
16 not less than \$10,000 for the first violation and not less than
17 \$20,000 for the second and each subsequent violation.

18

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

21 25. Prescription Monitoring Program; requirements.

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

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

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

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

35 (3) The date that the medication is dispensed;

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

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

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

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

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

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

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

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

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

12 d. The requirements of this act shall not apply to: the direct
13 administration of a controlled dangerous substance to the body of
14 an ultimate user; or the administration or dispensing of a controlled
15 dangerous substance that is otherwise exempted as determined by
16 the Secretary of Health and Human Services pursuant to the
17 "National All Schedules Prescription Electronic Reporting Act of
18 2005," Pub.L.109-60.

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

20

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

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

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

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

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

1 (1) a practitioner authorized to prescribe, dispense, or
2 administer controlled dangerous substances who certifies that the
3 request is for the purpose of providing health care to a current
4 patient of the practitioner. **Nothing** Except as provided in section
5 5 of P.L. , c. (C.) (pending before the Legislature as this
6 bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-
7 45 through C.45:1-50) shall be construed to require or obligate a
8 practitioner to access or check the prescription monitoring
9 information prior to prescribing, dispensing, or administering
10 medications beyond that which may be required as part of the
11 practitioner's professional practice;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40

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

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

- 11 (1) the name and address of the practice;
12 (2) any party that conducts business on the premises of the
13 practice, including those not formally associated with the practice;
14 (3) any non-medical personnel employed by the practice;
15 (4) any non-medical business with which the practice is
16 associated, including a management company; and
17 (5) any financial relationship related to the medical practice
18 with any individual who is not a health care professional.

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

23

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

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

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

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

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

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

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

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

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

13

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

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

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

35

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

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

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

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

3

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

10

11

12

STATEMENT

13

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

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

30 Section 2 of the bill would implement recommendation number
31 two from the report to provide that, in addition to any other penalty
32 provided by law, a health care professional who engages in
33 improper prescribing is liable to a civil penalty of not less than
34 \$10,000 for the first violation and not less than \$20,000 for the
35 second and each subsequent violation. Current law provides a
36 maximum fine of \$10,000 for the first violation and \$20,000 for a
37 second or subsequent violation. This section also specifies that any
38 prescription and any refill of a prescription is each to be counted as
39 a separate instance of improper prescribing.

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

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

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

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

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

12 Section 8 of the bill would implement recommendation number
13 six from the report to require that New Jersey Prescription Blanks
14 incorporate additional security features to prevent erasure or
15 duplication of prescription blanks that can be accomplished with
16 widely available computer technology. It is expected that this
17 provision will encourage the adoption of regulations similar or
18 identical to those proposed by the Division of Consumer Affairs in
19 November 2012. This section would also require the Division of
20 Consumer Affairs to limit the number of vendors as necessary to
21 ensure that vendors may be appropriately monitored to ensure that
22 prescription blanks are delivered only to intended prescribers and
23 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 substitute'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	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
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 (NJMPMP) in 2014. Further, 85 percent of New Jersey's physicians, or 25,501 of the State's eligible physicians, are able to access the NJMPMP, representing a 467 percent increase since December 2013, when approximately 4,500 physicians had NJMPMP 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 NJMPMP.

The NJMPMP 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 NJMPMP 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	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
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 (NJMPMP) in 2014. Further, 85 percent of New Jersey's physicians, or 25,501 of the State's eligible physicians, are able to access the NJMPMP, representing a 467 percent increase since December 2013, when approximately 4,500 physicians had NJMPMP 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 NJMPMP.

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Section: Law and Public Safety

*Analyst: Kristin Brunner Santos
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

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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)

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

3

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

6

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

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

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

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

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

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

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

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

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

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

44 "Recreation vehicle" means a self-propelled or towed vehicle
45 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 thus is new matter.

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

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

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

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

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

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

31 d. This section shall not apply to:

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

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

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

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

45

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

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

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

12 b. Notwithstanding the provisions of subsection a. of section 12
13 of P.L.1978, c.73 (C.45:1-25) to the contrary, and in addition to any
14 other penalty provided by law, a health care professional who
15 engages in improper prescribing shall be liable to a civil penalty of
16 not less than \$10,000 for the first violation and not less than
17 \$20,000 for the second and each subsequent violation.

18

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

21 25. Prescription Monitoring Program; requirements.

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

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

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

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

35 (3) The date that the medication is dispensed;

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

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

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

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

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

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

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

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

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

12 d. The requirements of this act shall not apply to: the direct
13 administration of a controlled dangerous substance to the body of
14 an ultimate user; or the administration or dispensing of a controlled
15 dangerous substance that is otherwise exempted as determined by
16 the Secretary of Health and Human Services pursuant to the
17 "National All Schedules Prescription Electronic Reporting Act of
18 2005," Pub.L.109-60.

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

20

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

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

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

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

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

1 (1) a practitioner authorized to prescribe, dispense, or
2 administer controlled dangerous substances who certifies that the
3 request is for the purpose of providing health care to a current
4 patient of the practitioner. **Nothing** Except as provided in section
5 5 of P.L. , c. (C.) (pending before the Legislature as this
6 bill), nothing in sections 25 through 30 of P.L.2007, c.244 (C.45:1-
7 45 through C.45:1-50) shall be construed to require or obligate a
8 practitioner to access or check the prescription monitoring
9 information prior to prescribing, dispensing, or administering
10 medications beyond that which may be required as part of the
11 practitioner's professional practice;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40

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

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

- 11 (1) the name and address of the practice;
- 12 (2) any party that conducts business on the premises of the
13 practice, including those not formally associated with the practice;
- 14 (3) any non-medical personnel employed by the practice;
- 15 (4) any non-medical business with which the practice is
16 associated, including a management company; and
- 17 (5) any financial relationship related to the medical practice
18 with any individual who is not a health care professional.

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

23

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

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

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

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

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

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

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

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

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

13
14 8. Section 20 of P.L.2003, c.280 (C.45:14-59) is amended to
15 read as follows:

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

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

35
36 9. a. The Director of the Division of Consumer Affairs, in
37 consultation with the State Board of Medical Examiners, and
38 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
39 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate
40 the purposes of section 3 of this act.

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

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

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

3

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

10

11

12

STATEMENT

13

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

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

30 Section 2 of the bill would implement recommendation number
31 two from the report to provide that, in addition to any other penalty
32 provided by law, a health care professional who engages in
33 improper prescribing is liable to a civil penalty of not less than
34 \$10,000 for the first violation and not less than \$20,000 for the
35 second and each subsequent violation. Current law provides a
36 maximum fine of \$10,000 for the first violation and \$20,000 for a
37 second or subsequent violation. This section also specifies that any
38 prescription and any refill of a prescription is each to be counted as
39 a separate instance of improper prescribing.

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

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

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

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

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

12 Section 8 of the bill would implement recommendation number
13 six from the report to require that New Jersey Prescription Blanks
14 incorporate additional security features to prevent erasure or
15 duplication of prescription blanks that can be accomplished with
16 widely available computer technology. It is expected that this
17 provision will encourage the adoption of regulations similar or
18 identical to those proposed by the Division of Consumer Affairs in
19 November 2012. This section would also require the Division of
20 Consumer Affairs to limit the number of vendors as necessary to
21 ensure that vendors may be appropriately monitored to ensure that
22 prescription blanks are delivered only to intended prescribers and
23 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 required 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 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; 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 than 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 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:

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.

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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).

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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.

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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	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
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.

- 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 (NJMPMP) in 2014. Further, 85 percent of New Jersey's physicians, or 25,501 of the State's eligible physicians, are able to access the NJMPMP, representing a 467 percent increase since December 2013, when approximately 4,500 physicians had NJMPMP 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 NJMPMP.

The NJMPMP 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 NJMPMP 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

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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.).

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Governor Christie Strengthens New Jersey's Prescription Monitoring Program to Further Curb Prescription Drug Abuse

Monday, July 20, 2015

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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 (NJMPMP), 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 NJMPMP. 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 NJMPMP 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 NJMPMP by, among other things, requiring that prescribers and pharmacists register for NJMPMP access, and requiring that physicians consult the NJMPMP under limited circumstances.

For example, the legislation mandates that physicians consult the online NJMPMP 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 NJMPMP 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 NJMPMP 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 NJMPMP 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 NJMPMP 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