

Stricken language would be deleted from and underlined language would be added to present law.
Act 304 of the Regular Session

1 State of Arkansas *As Engrossed: S2/21/11 S2/28/11 S3/2/11 H3/7/11*

2 88th General Assembly

A Bill

3 Regular Session, 2011

SENATE BILL 345

4

5 By: Senators P. Malone, Bledsoe, J. Jeffress, Lavery, B. Pritchard, R. Thompson, Whitaker, Irvin,

6 Burnett, Crumbly, *D. Wyatt*

7 By: Representatives Summers, *Allen, Cheatham, Gaskill, Hall, Lea, Pennartz, T. Thompson, Tyler, Webb,*

8 *B. Wilkins*

9

For An Act To Be Entitled

10

11 AN ACT TO ESTABLISH A PRESCRIPTION DRUG MONITORING
12 PROGRAM; AND FOR OTHER PURPOSES.

13

14

15

Subtitle

16

AN ACT TO ESTABLISH A PRESCRIPTION DRUG
17 MONITORING PROGRAM.

18

19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21

22 SECTION 1. Arkansas Code Title 20, Chapter 7 is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 6 – Prescription Drug Monitoring Program Act

25

26 20-7-601. Title.

27 This subchapter shall be known and may be cited as the "Prescription
28 Drug Monitoring Program Act".

29

30 20-7-602. Purpose.

31 The purpose of this subchapter to protect the state health system and
32 the citizens of Arkansas by:

33 (1) Enhancing patient care by providing prescription monitoring
34 information that will ensure legitimate use of controlled substances in
35 health care, including palliative care, research, and other medical
36 pharmacological uses;



1 (2) Helping curtail the misuse and abuse of controlled
2 substances;

3 (3) Assisting in combating illegal trade in and diversion of
4 controlled substances; and

5 (4) Enabling access to prescription information by
6 practitioners, law enforcement agents, and other authorized individuals and
7 agencies and to make prescription information available to practitioners, law
8 enforcement agents, and other authorized individuals and agencies in other
9 states.

10
11 20-7-603. Definitions.

12 As used in this subchapter:

13 (1) "Controlled substance" means a drug, substance, or immediate
14 precursor in Schedules II-V;

15 (2) "Dispense" means to deliver a controlled substance to an
16 ultimate user or research subject by or pursuant to the lawful order of a
17 practitioner, including without limitation, the prescribing, administering,
18 packaging, labeling, or compounding necessary to prepare the controlled
19 substance for that delivery;

20 (3)(A) "Dispenser" means a practitioner who dispenses.

21 (B) "Dispenser" does not include:

22 (i) A licensed hospital pharmacy when it is
23 distributing controlled substances for the purpose of outpatient services,
24 inpatient hospital care, or at the time of discharge from a hospital, except
25 for a pharmacy owned by a hospital that has a retail pharmacy permit when the
26 pharmacy is distributing controlled substances directly to the public;

27 (ii) A wholesale distributor of Schedule II-
28 Schedule V controlled substances; or

29 (iii) A practitioner or other authorized person who
30 administers a controlled substance;

31 (4) "Exchangeability" means the ability of the program to
32 electronically share reported information with another state's prescription
33 monitoring program if the information concerns the dispensing of a controlled
34 substance either:

35 (A) To a patient who resides in the other state; or

36 (B) Prescribed by a practitioner whose principal place of

1 business is located in the other state;

2 (5) "Investigation" means an active inquiry that is being
3 conducted with a reasonable, good faith belief that the inquiry:

4 (A) Could lead to the filing of administrative, civil, or
5 criminal proceedings; or

6 (B) Is ongoing and continuing and a reasonable, good
7 faith anticipation exists for securing an arrest or prosecution in the
8 foreseeable future;

9 (6) "Patient" means the person or animal who is the ultimate
10 user of a controlled substance for whom a lawful prescription is issued and
11 for whom a controlled substance is lawfully dispensed;

12 (7) "Practitioner" means:

13 (A) A physician, dentist, veterinarian, advanced practice
14 nurse, physician assistant, pharmacist, scientific investigator, or other
15 person licensed, registered, or otherwise permitted to prescribe, distribute,
16 dispense, conduct research with respect to, or to administer a controlled
17 substance in the course of professional practice or research in this state;
18 and

19 (B) A pharmacy, hospital, or other institution licensed,
20 registered, or otherwise permitted to distribute, dispense, conduct research
21 with respect to, or to administer a controlled substance in the course of
22 professional practice or research in this state;

23 (8) "Prescribe" means to issue a direction or authorization, by
24 prescription, permitting a patient lawfully to obtain a controlled substance;

25 (9) "Prescriber" means a practitioner or other authorized person
26 who prescribes a Schedule II, III, IV, or V controlled substance;

27 (10) "Prescription" means a controlled substance lawfully
28 prescribed and subsequently dispensed;

29 (11) "Prescription drug monitoring program" means a program that
30 collects, manages, analyzes, and provides information regarding Schedule II,
31 III, IV, and V controlled substance as provided under the Uniform Controlled
32 Substance Act, § 5-64-101 et seq., §§ 5-64-1101 – 5-64-1103, the Food, Drug
33 and Cosmetic Act, § 20-56-201, et seq., or §§ 20-64-501 – 20-64-513;

34 (12) "Schedule II" means controlled substances that are placed
35 in Schedule II under § 5-64-205;

36 (13) "Schedule III" means controlled substances that are placed

1 in Schedule III under § 5-64-207;

2 (14) "Schedule IV" means controlled substances that are placed
3 in Schedule IV under § 5-64-209;

4 (15) "Schedule V" means controlled substances that are placed in
5 Schedule V under § 5-64-211; and

6 (16) "Ultimate user" means a person who lawfully possesses a
7 controlled substance for:

8 (A) The person's own use;

9 (B) The use of a member of the person's household; or

10 (C) Administering to an animal owned by a person or by a
11 member of the person's household.

12
13 20-7-604. Requirements for the Prescription Drug Monitoring Program.

14 (a) The State Board of Health shall create the Prescription Drug
15 Monitoring Program upon the Department of Health procuring adequate funding
16 to establish the program.

17 (b)(1) Each dispenser shall submit to the department information
18 regarding each controlled substance dispensed.

19 (2) A dispenser located outside Arkansas and licensed and
20 registered by the Arkansas State Board of Pharmacy shall submit to the
21 department information regarding each controlled-substance prescription
22 dispensed to an ultimate user whose address is within Arkansas.

23 (3) The board shall create a controlled substances database for
24 the Prescription Drug Monitoring Program.

25 (c) Each dispenser required to report under subsection (b) of this
26 section shall submit to the department by electronic means information that
27 shall include without limitation:

28 (1) The dispenser's identification number;

29 (2) The date the prescription was filled;

30 (3) The prescription number;

31 (4) Whether the prescription is new or is a refill;

32 (5) The National Drug Code number for the controlled substance
33 that is dispensed;

34 (6) The quantity of the controlled substance dispensed;

35 (7) The number of days' supply dispensed;

36 (8) The number of refills ordered;

1 (9)(A) A patient identifier.

2 (B) A patient identifier shall not be a Social Security
3 number or a driver's license number;

4 (10) The patient's name;

5 (11) The patient's address;

6 (12) The patient's date of birth;

7 (13) The patient's gender;

8 (14) The prescriber's identification number;

9 (15) The date the prescription was issued by the prescriber; and

10 (16) The source of the payment for the prescription.

11 (d) Practitioners are encouraged to access or check the information in
12 the controlled substance database created under this subchapter before
13 prescribing, dispensing, or administering medications.

14 (e) This subchapter does not prohibit licensing boards from requiring
15 practitioners to access or check the information in the controlled substance
16 database as a part of a review of the practitioner's professional practice.

17 (f) Each dispenser shall submit the required information in accordance
18 with transmission methods and frequency established by the department.

19 (g) The department shall create a process for patients to address
20 errors, inconsistencies, and other matters in their record as maintained
21 under this section, including in cases of breach of privacy and security.

22 (h) The department shall limit access to only those employees whose
23 access is reasonably necessary to carry out this section.

24
25 20-7-605. Prescription Drug Monitoring Program Advisory Committee -
26 Creation - Members.

27 (a) The Prescription Drug Monitoring Program Advisory Committee shall
28 be created by the State Board of Health upon the Department of Health
29 procuring adequate funding to establish the program.

30 (b) The mission of the advisory committee is to consult with and
31 advise the Department of Health on matters related to the establishment,
32 maintenance, operation, and evaluation of the prescription drug monitoring
33 program.

34 (c) The committee shall consist of:

35 (1) One (1) representative designated by each of the following
36 organizations:

1 (A) The Arkansas Academy of Physician Assistants;
2 (B) The Arkansas Association of Chiefs of Police;
3 (C) The Arkansas Drug Director;
4 (D) The Arkansas Medical Society;
5 (E) The Arkansas Nurses Association;
6 (F) The Arkansas Optometric Association;
7 (G) The Arkansas Osteopathic Medical Association;
8 (H) The Arkansas Pharmacists Association;
9 (I) The Arkansas Podiatric Medical Association;
10 (J) The Arkansas Prosecuting Attorneys Association;
11 (K) The Arkansas Sheriffs Association;
12 (L) The Arkansas State Dental Association;
13 (M) The Arkansas Veterinary Medical Association;
14 (N) The State Board of Health;
15 (O) The Arkansas Public Defender's Commission; and
16 (P) A mental health provider or certified drug and alcohol
17 counselor; and

18 (2) One (1) consumer appointed by the Governor.

19
20 20-7-606. Confidentiality.

21 (a) Prescription information submitted to the Department of Health
22 under this subchapter is confidential and not subject to the Freedom of
23 Information Act of 1967, § 25-19-101 et seq.

24 (b)(1) The controlled substances database created in this subchapter
25 and all information contained in the controlled substances database and any
26 records maintained by the department or by an entity contracting with the
27 department that is submitted to, maintained, or stored as a part of the
28 controlled substances database is privileged and confidential, is not a
29 public record, and is not subject to subpoena or discovery in a civil
30 proceeding.

31 (2) Information in the controlled substances database may
32 be accessed by:

33 (A) A certified law enforcement officer pursuant to a
34 criminal investigation but only after the law enforcement officer obtains a
35 search warrant signed by a judge that demonstrates probable cause to believe
36 that a violation of federal or state criminal law has occurred, that

1 specified information contained in the database would assist in the
2 investigation of the crime, and that the specified information should be
3 released to the certified law enforcement officer;

4 (B) A regulatory body engaged in the supervision of
5 activities of licensing or regulatory boards of practitioners authorized to
6 prescribe or dispense controlled substances; or

7 (C) A person or entity investigating a case involving
8 breaches of privacy involving the database or its records.

9 (c) This section does not apply to information, documents, or records
10 created or maintained in the regular course of business of a pharmacy,
11 medical, dental, optometric, or veterinary practitioner, or other entity
12 covered by this subchapter, and all information, documents, or records
13 otherwise available from original sources are not immune from discovery or
14 use in a civil proceeding merely because the information contained in the
15 records was reported to the controlled substances database under this
16 subchapter.

17 (d) The department shall establish and enforce policies and procedures
18 to ensure that the privacy and confidentiality of patients are maintained and
19 that patient information collected, recorded, transmitted, and stored is
20 protected and not disclosed to persons except as listed in § 20-7-607.

21 (e) The Prescription Drug Monitoring Program shall establish and
22 maintain a process for verifying the credentials and authorizing the use of
23 prescription information by individuals and agencies listed in § 20-7-607.

24
25 20-7-607. Providing prescription monitoring information.

26 (a)(1) The Department of Health may review the Prescription Drug
27 Monitoring Program Information, including without limitation a review to
28 identify information that appears to indicate whether a person may be
29 obtaining prescriptions in a manner that may represent misuse or abuse of
30 controlled substances.

31 (2) If information of misuse or abuse is identified, the
32 department shall notify the practitioners and dispensers who prescribed or
33 dispensed the prescriptions.

34 (b) The department shall provide information in the Prescription Drug
35 Monitoring Program upon request and at no cost only to the following persons:

36 (1) A person authorized to prescribe or dispense controlled substances

1 for the purpose of providing medical or pharmaceutical care for his or her
2 patients or for reviewing information regarding prescriptions that are
3 recorded as having been issued or dispensed by the requester;

4 (2) A patient who requests his or her own prescription
5 monitoring information;

6 (3) A parent or legal guardian of a minor child who requests the
7 minor child's prescription drug monitoring program information;

8 (4)(A) A designated representative of a professional licensing
9 board of the professions of the healing arts representing health care
10 disciplines whose licensees are prescribers pursuant to an investigation of a
11 specific individual, entity or business licensed or permitted by that board.

12 (B) Except as permitted by subsection (a)(2) of this
13 section, the department shall provide information under subsection (b)(4)(A)
14 of this section only if the requesting board states in writing that the
15 information is necessary for an investigation;

16 (5) The State Medical Examiner as authorized by law to
17 investigate causes of deaths for cases under investigation pursuant to his or
18 her official duties and responsibilities;

19 (6) Local, state, and federal law enforcement or prosecutorial
20 officials engaged in the administration, investigation, or enforcement of the
21 laws governing controlled substances required to be submitted under this
22 subchapter pursuant to the agency's official duties and responsibilities; and

23 (7) Personnel of the department for purposes of administration
24 and enforcement of this subchapter.

25 (c) Information collected under this subchapter shall be maintained
26 for three (3) years.

27 (d) The department may provide information to public or private
28 entities for statistical, research, or educational purposes after encrypting
29 or removing the patient's name, street name and number, patient
30 identification number, month and day of birth, and prescriber information
31 that could be used to identify individual patients, persons who received
32 prescriptions from dispensers, or both.

33
34 20-7-608. Information exchange with other prescription drug monitoring
35 programs.

36 (a) The Department of Health may provide prescription monitoring

1 information to other states' prescription drug monitoring programs and the
2 information may be used by those programs consistent with this subchapter.

3 (b) The department may request and receive prescription monitoring
4 information from other states' prescription drug monitoring programs, and may
5 use the information under this subchapter.

6 (c) The department may develop the capability to transmit information
7 to other prescription drug monitoring programs and receive information from
8 other prescription drug monitoring programs employing the standards of
9 exchangeability.

10 (d) The department may enter into written agreements with other
11 states' prescription drug monitoring programs for the purpose of describing
12 the terms and conditions for sharing of prescription information under this
13 subchapter.

14
15 20-7-609. Authority to contract.

16 (a) The Department of Health may contract with another agency of this
17 state or with a private vendor, as necessary, to ensure the effective
18 operation of the Prescription Drug Monitoring Program.

19 (b) A contractor shall be bound to comply with the provisions
20 regarding confidentiality of prescription information as outlined in this
21 subchapter and shall be subject to the penalties specified in this subchapter
22 for unlawful acts.

23
24 20-7-610. Authority to seek funding.

25 (a) The Department of Health may make application for, receive, and
26 administer grant funding from public or private sources for the development,
27 implementation, or enhancement of the Prescription Drug Monitoring Program.

28 (b) A fee shall not be levied against practitioners for the purpose of
29 funding or complying with the Prescription Drug Monitoring Program.

30
31 20-7-611. Unlawful acts and penalties.

32 (a)(1) It is unlawful for a dispenser to purposely fail to submit
33 prescription monitoring information as required under this subchapter.

34 (2) A violation of subdivision (a)(1) of this section is a Class
35 B misdemeanor.

36 (b)(1) It is unlawful for a dispenser to purposely submit fraudulent

1 prescription information.

2 (2) A violation of subdivision (b)(1) of this section is a Class
3 D felony.

4 (c)(1) It is unlawful for a person authorized to receive prescription
5 monitoring information to purposely disclose the information in violation of
6 this subchapter.

7 (2) A violation of subdivision (c)(1) of this section is a Class
8 C felony.

9 (d)(1) It is unlawful for a person authorized to receive prescription
10 drug monitoring program information to use such information in a manner or
11 for a purpose in violation of this subchapter.

12 (2) A violation of subsection (d)(1) of this section is a Class
13 C felony.

14 (e)(1) It is unlawful for a person to knowingly obtain, use, or
15 disclose, or attempt to obtain use, or disclose information by fraud or
16 deceit from the Prescription Drug Monitoring Program or from a person
17 authorized to receive information from the Prescription Drug Monitoring
18 Program under this subchapter.

19 (2) A violation of subdivision (e)(1) of this section is a Class
20 C felony.

21 (f) In addition to the criminal penalties provided in this section, a
22 dispenser or practitioner who uses or discloses confidential information
23 received from the Prescription Drug Monitoring Program in a manner or for a
24 purpose in violation of this subchapter may be subject to disciplinary action
25 by the dispenser's or practitioner's licensing board.

26 (g) In addition to the criminal penalties provided in this section, a
27 law enforcement officer who uses or discloses confidential information
28 received from the Prescription Drug Monitoring Program in a manner or for a
29 purpose in violation of this subchapter may be subject to disciplinary action
30 by the law enforcement officer's agency or department.

31 (h) This subchapter does not limit a person whose privacy has been
32 compromised unlawfully under this section from bringing a civil action to
33 address the breach of privacy or to recover all damages to which the person
34 may be entitled per violation, including attorney's fees and costs.

35
36 20-76-612. Privacy rights protected.

1 This subchapter does not give authority to any person, agency,
2 corporation, or other legal entity to invade the privacy of any citizen as
3 defined by the General Assembly, the courts, or the United States
4 Constitution or the Constitution of the State of Arkansas other than to the
5 extent provided in this subchapter.

6
7 20-7-613. Rules.

8 The State Board of Health shall adopt rules to implement this
9 subchapter.

10
11 20-7-614. Effective date.

12 (a) The Prescription Drug Monitoring Program shall become operational
13 March 1, 2013 if full funding is available under § 20-7-610.

14 (b) The Director of the Department of Health may suspend operation of
15 the program if adequate funding under § 20-7-610 ceases.

16
17 */s/P. Malone*

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19
20 **APPROVED: 03/17/2011**