Model State Electronic Prescription Monitoring Program Legislation

Produced by the University of Wisconsin’s Pain & Policy Studies Group (PPSG) in partnership with the American Cancer Society Cancer Action Network (ACSCAN) and American Academy of Pain Management (AAPM) – October 2012.

Note: This Model State Electronic Prescription Monitoring Program (PMP) legislation was informed by the updated Model PMP Acts developed by the National Alliance for Model State Drug Laws and the Alliance of States with Prescription Monitoring Programs; by the National All Schedules Prescription Electronic Reporting Act of 2005; and by legislation created in Alabama, Arizona, California, Colorado, Connecticut, Hawaii, Iowa, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, New Mexico, New York, North Carolina, North Dakota, Nevada, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Vermont, Virginia, and Wyoming.

Section 1. Short title

This Act shall be known and may be cited as the "Electronic Prescription Monitoring Program Act".

Section 2. Legislative Intent

[Insert state-appropriate findings, which should emphasize the program’s dual purpose of reducing abuse and diversion of controlled substances in a state while avoiding interfering with appropriate professional practice and patient care, including healthcare practitioners’ use of PMP data to prevent medication interactions, morbidity, or mortality, detecting and providing interventions for aberrant behaviors and abuse, and detecting and correcting inappropriate pain treatment (including nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments). A corresponding example is provided below.]

NORTH CAROLINA: (a) The General Assembly makes the following findings:

(1) North Carolina is experiencing an epidemic of poisoning deaths from unintentional drug overdoses.
(2) Since 1997, the number of deaths from unintentional drug overdoses has increased threefold, from 228 deaths in 1997 to 690 deaths in 2003.
(3) The number of unintentional deaths from licit drugs in North Carolina has decreased since 1992 while unintentional deaths from licit drugs, primarily prescriptions, have increased.
(4) Licit drugs are now responsible for over half of the fatal unintentional poisonings in North Carolina.
(5) Over half of the prescription drugs associated with unintentional deaths are narcotics (opioids).
(6) Of these licit drugs, deaths from methadone, usually prescribed as an analgesic for severe pain, have increased sevenfold since 1997.
(7) Methadone from opioid treatment program clinics is a negligible source of the methadone that has contributed to the dramatic increase in unintentional methadone-related deaths in North Carolina.
(8) Review of the experience of the 19 states that have active controlled substances reporting systems clearly documents that implementation of these reporting systems do not create a "chilling" effect on prescribing.
(9) Review of data from controlled substances reporting systems help:
   a. Support the legitimate medical use of controlled substances.
   b. Identify and prevent diversion of prescribed controlled substances.
   c. Reduce morbidity and mortality from unintentional drug overdoses.
   d. Reduce the costs associated with the misuse and abuse of controlled substances.
   e. Assist clinicians in identifying and referring for treatment patients misusing controlled substances.
   f. Reduce the cost for law enforcement of investigating cases of diversion and misuse.
   g. Inform the public, including health care professionals, of the use and abuse trends related to prescription drugs.
(b) This Article is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances.

Section 3. Purpose

[Insert state-appropriate goals, which can be used to specify the schedules of controlled substances to be monitored and to reaffirm the legislative intent language characterizing the program's dual purpose of reducing abuse and diversion of controlled substances in a state while avoiding interfering with appropriate professional practice and patient care. See acceptable examples below.]

ASPMP: The purposes of this act are to:

1) Enhance patient care by providing prescription monitoring information that will assure legitimate use of controlled substances in health care, including palliative care, research and other medical and pharmacological uses.

2) Help curtail the misuse and abuse of controlled substances.

3) Assist in combating illegal trade in and diversion of controlled substances.

4) Enable the access to prescription information by practitioners, pharmacists, law enforcement, researchers and regulatory and other authorized individuals and agencies, and to make this information available to the same entities in other states.

IDAHO: The board shall maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2726, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

LOUISIANA: The purpose of this Part is to authorize the development, implementation, operation, and evaluation of an electronic system for the monitoring of controlled substances and other drugs of concern that are dispensed in the state or dispensed to an address within the state. The goal of the program is to improve the state's ability to identify and inhibit the diversion of controlled substances and drugs in an efficient and cost-effective manner and in a manner that shall not impede the appropriate utilization of these drugs for legitimate medical purposes.

MISSISSIPPI: The Board of Pharmacy shall develop and implement a computerized program to track prescriptions for controlled substances and to report illegal activity, under the following conditions: (a) The prescriptions tracked shall be prescriptions for controlled substances listed in Schedule II, III, IV or V that are filled by a pharmacy. The program shall provide information regarding the inappropriate use of controlled substances in Schedule II, III, IV and V to pharmacies, practitioners and appropriate state agencies in order to prevent the improper or illegal use of such controlled substances. The program shall not infringe on the legal use of controlled substances for the management of severe or intractable pain.

NEW MEXICO: The objective of the [PMP] is to promote the public health and welfare by detecting and preventing substance abuse and encouraging appropriate treatment of pain and other conditions for
which controlled substances are prescribed. The purpose of the system is to improve access to controlled substances for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient’s pharmaceutical history related to controlled substances. The program’s objectives will include education of the public and health care professionals regarding the nature and extent of the problem of drug abuse, appropriate prescribing and use of controlled substances, and the medical treatment options for abusers of controlled substances and pain management.

SOUTH CAROLINA: This article is intended to improve the state's ability to identify and stop diversion of prescription drugs in an efficient and cost effective manner that will not impede the appropriate medical utilization of licit controlled substances.

Section 4. Definitions

As used in this Act, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

(1) "Administer" or "administration" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) "Advisory Council" means the multidisciplinary entity established by this Act.

(3) “Alcohol and other drug addiction treatment program” means any facility or treatment program that is [licensed], [certified] or [approved] by the state to provide alcohol and other drug addiction treatment on a hospital, non-hospital residential or outpatient basis.

(4) "Board" means the state board of pharmacy [considered “the designated agency”].

(5) “Bona fide patient relationship” means a relationship in which the prescriber has ongoing responsibility for the assessment, care and treatment of a patient’s medical condition.

(6) "Controlled substance" means any substance or drug in Schedules II-V defined, enumerated, or included in [federal/state law].

(7) "De-identified information" means health information that is not individually identifiable information because an expert has made that determination under title 45, CFR, § 164.514 or direct identifiers and specified demographic information have been removed in accordance with the requirements of that section.

(8) “Deliver” means to transfer or to attempt to transfer, a controlled substance or drug of concern, actually or constructively, from one person to another, whether or not there is an agency relationship.

(9) [Designated state agency] means the state agency responsible for the functions established in Section 5 and listed throughout this Act.

(10) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.
(11) "Dispenser" means a person authorized by this state to dispense or distribute to the ultimate user any controlled substance or drug monitored by the program, but shall not include any of the following:

a. A licensed health care facility pharmacy that dispenses or distributes any controlled substance or drug monitored by the program for the purposes of inpatient care, or emergency department care for the immediate use of a controlled substance or drug of concern or when dispensing no more than a [72 hour] supply of a controlled substance.

b. A practitioner who dispenses or distributes to a patient a single quantity of such controlled substance or drug adequate to treat the patient for a maximum of seventy-two hours.

c. A practitioner or other authorized person who administers such controlled substance or drug upon the lawful order of a practitioner.

d. A wholesale distributor of such controlled substance or drug monitored by the program [that is credentialed by the appropriate state agency].

(12) "Distribute" or "distribution" means the delivery of a drug other than by administering or dispensing.

(13) "Drug" means any of the following:

a. Any substance recognized as a drug in the official compendium, or supplement thereto, designated by the [designated state agency] for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals.

b. Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or pain in humans or other animals.

c. Any substance other than food intended to affect the structure or any function of the body of humans or other animals.

(14) "Drugs of concern" means drugs other than controlled substances as defined by rule which demonstrate a potential for abuse or diversion.

(15) "Interoperability" means an agreement to electronically share prescription monitoring information with another state concerning the dispensing of controlled substances or drug monitored by the program (a) to a recipient who resides in the other state, or (b) prescribed by a prescriber whose principal place of business is located in another state.

(16) "Patient" means the person or animal who is the ultimate user of controlled substances or drugs of concern for whom a lawful prescription is issued and for whom a controlled substance or drug is lawfully dispensed.

(17) "Pharmaceutical care" means the responsible provision of drug-related care for the purpose of achieving definite outcomes that improve a patient’s quality of life. These outcomes are (i) cure of a disease; (ii) elimination or reduction of a patient’s symptomatology; (iii) arresting or slowing of a disease process; or (iv) preventing a disease or symptomatology.
“Practitioner” means a physician, dentist, podiatrist, veterinarian [or, as permitted by state law, Advanced Registered Nurse Practitioners and Physician Assistants] licensed or otherwise permitted to prescribe, dispense, or administer a controlled substances or drug monitored by the program in the course of a licensed professional practice.

“Prescribe” means to issue a direction or authorization, by prescription, permitting a patient to obtain lawfully controlled substances.

"Prescriber" means a licensed health care professional with prescriptive authority.

"Prescription monitoring information" means data submitted to and maintained by the prescription monitoring program established by this Act.

"Prescription Monitoring Program" or "PMP" means a program that collects, manages, analyzes, and provides information regarding Schedule II, III, IV and V controlled substances or other drug required to be submitted under this Act or program established by a similar act in another state, district or territory of the United States.

“Schedule II, III, IV and V controlled substances” means drugs or drug products that are included in or assigned to Schedules II, III, IV and V as provided under [insert section of the state controlled substances act] or the Federal Controlled Substances Act.

“State” means state, district or territory of the United States.

“Ultimate user” means an individual who lawfully possesses a controlled substance or drug of concern monitored by the PMP for the individual’s own use or for the use of a member of the individual’s household or for administering to an animal owned by the individual or by a member of the individual’s household.

Section 5. Establishment of prescription monitoring program

The [designated state agency] shall establish and maintain, in consultation with and upon the recommendation of the Advisory Council established in Section 6, an electronic prescription monitoring program for reporting of Schedule II, III, IV, and V controlled substances and drugs of concern that are dispensed in the state or dispensed to an address in the state. The PMP shall be: (1) used to assist law enforcement to identify illegal activity related to the prescribing, dispensing, and consumption of controlled substances or drugs of concern, (2) used to provide information to patients, practitioners, and pharmacists, and state regulatory agencies to help avoid the inappropriate use of controlled substances and drugs of concern, and (3) designed to minimize inconvenience to patients, prescribing practitioners, and pharmacies while effectuating the collection and storage of prescription monitoring information. The PMP shall not interfere with the legal use of a controlled substance or drug of concern to treat pain.

[The [designated state agency] may contract with another agency of this state or with a private vendor, as necessary, to establish and maintain the PMP pursuant to rules promulgated by the [designated state agency]. Any contractor shall be bound to comply with the provisions regarding confidentiality of prescription monitoring information in Section 8 of this Act and further shall be subject to the penalties specified in Section 10 of this Act for unlawful acts.]
If the central repository is not operated by the [designated state agency], the vendor-repository:
(A) Shall provide information in response to the [designated state agency's] inquiries within [a specified time period] and shall provide routine reports on a regular schedule to be specified by the [designated state agency]; and
(B) Shall not withhold access to the collected information for any reason other than failure of the [designated state agency] to pay agreed fees and charges for the use of the central repository.

If the relationship between the [designated state agency] and the vendor-repository is terminated, the vendor-repository shall provide to the [designated state agency] within [a specified time period] all collected information, the database maintained by the vendor-repository, and such software as is needed to access the information and the database.

Section 6. Advisory Council

A. The mission of the Advisory Council is to consult with and advise the [designated state agency] on matters related to the establishment, maintenance, and operation of the PMP, access to the prescription monitoring information, how access is to be regulated, and security of information contained in the prescription monitoring database.

(1) The Advisory Council shall consist of [a specific number of] the following members, each of whom may appoint a designee:
[insert appropriate designees of state healthcare licensing agencies]
[insert appropriate designees of state healthcare societies and associations]
[insert appropriate designees of state healthcare commission and/or Congressional Healthcare Committees]
[insert appropriate pain management representatives]
[insert appropriate designee of state Attorney General office]
[insert appropriate designee of state prosecutorial agencies]
[insert appropriate designees of Federal, state, and local law enforcement agencies]
[insert appropriate designees of independent, chain, and hospital outpatient pharmacies and pharmacists]
[insert appropriate designees of a consumer or patients’ rights organization selected by the Secretary of the [department responsible for public health matters]
[insert appropriate consumer privacy or security advocates]
[insert appropriate community leaders]
[insert appropriate designees of the state association of addiction medicine or addiction treatment, or where there is no such association, an equivalent organization],
[insert appropriate designees of the state’s impaired lawyers organization]
[an individual in recovery from prescription drug and other drug addictions designated by the state association of addiction treatment programs]
[insert appropriate designees of the state association of medical examiners or county coroners or other appropriate association]
[insert appropriate designees of each appropriate state association of prescribing professionals]
[insert appropriate designees of each appropriate state association representing pharmacists, including independent pharmacists]
[insert appropriate designees of the state hospital association]
The [director/administrator] of the [designated state agency] may also appoint persons with recognized expertise, knowledge and experience in the establishment and maintenance of PMPs.

B. Advisory Council members shall serve at the pleasure of the [designated state agency] and their respective appointing authorities, [a specific number] of whom shall constitute a quorum for the transaction of all business. The members shall elect a chairman and vice chairman whose duties shall be established by the Advisory Council. The [designated state agency] shall fix a time and place for regular meetings of the Advisory Council, which shall meet [at a specified frequency]. The Advisory Council shall establish policies and procedures necessary to carry out its duties pursuant to [insert reference to state statute governing reimbursement of expenses and other operational issues].

When an opening on the Advisory Committee occurs, the [designated state agency] shall notify the respective entity set forth in A(1) of the vacancy. The entity shall as soon as practicable designate a new representative and notify the [director/administrator] of [the designated state agency or entity] of its decision.

C. For the purpose of providing input and advice pursuant to subsection A, no Advisory Council member shall receive prescription monitoring information which identifies, or could reasonably be used to identify, the patient, prescriber, dispenser or other person who is the subject of the information.

D. The [designated state agency] shall seek, and the Advisory Council shall provide, information and advice regarding the development and operation of the PMP, including but not limited to the following:

1. Which controlled substances should be monitored, including
   a. Removing a controlled substance listed in Schedules II through V from the PMP, if it is determined that the burden imposed by the program substantially outweighs the risk of diversion of the particular controlled substance; or
   b. Returning a substance previously removed from Schedules II through V to the PMP, if it is determined that the risk of diversion substantially outweighs the burden imposed by the program on the particular controlled substance.

2. Which drugs of concern should be monitored.

3. Use of the PMP to improve patient care, to identify and address addiction, and to facilitate the goal of reducing misuse, abuse, overdose, addiction to and diversion of controlled substances and drugs of concern.

4. Potential safeguards for the release of information to authorized users.
(5) Confidentiality of prescription monitoring information and the integrity of the patient’s relationship with the patient’s health care provider.

(6) Development of criteria for referring prescription monitoring information to a law enforcement or professional licensing agency.

(7) Development of criteria for referring a prescriber or dispenser to a professional licensing agency or impaired professionals association.

(8) Design and implementation of educational courses identified in Section 11.

(9) The methodology to be used for proper analysis and interpretation of prescription monitoring information.

(10) Provision of assessment and referral to alcohol and other drug addiction treatment as part of any other requirements of this Act.


(12) Technological improvements to facilitate the interoperability of the PMP with other state PMPs and electronic health information systems, and to facilitate prescribers’ and dispensers’ access to and use of the PMP.

(13) Design and implementation of a program evaluation identified in Section 13.

(14) Identification of potential additional members to the Advisory Council.

Section 7. Reporting of prescription monitoring information

A. Each dispenser shall submit to the [designated state agency] by electronic means, or other format specified in a waiver granted by the [designated state agency], information regarding each prescription dispensed for a controlled substance or drug of concern monitored by the program. Any dispenser located outside the boundaries of [name of state] and is licensed and registered by the [insert name of state board of registration/licensure in pharmacy] shall submit information regarding each prescription dispensed to an ultimate user who resides within [name of state]. The information submitted for each prescription shall be consistent with standards established by the American Society for Automation in Pharmacy, and shall include, but not be limited to:

(1) Prescriber information.
   - Prescriber name
   - Prescriber address
   - Prescriber telephone number
   - Prescriber license and DEA registration numbers

(2) Patient information.
   - Patient identification number
   - Patient name
   - Patient address
Patient date of birth  
Patient gender  
Patient species  
Name of person to whom drugs are dispensed  
Person who receives the prescription from the dispenser, if other than the patient  
Source of payment for the prescription  

(3) Prescription information.  
Date prescription issued by prescriber  
Date prescription filled  
Prescription number  
Prescription is new or is a refill  
Quantity dispensed  
Day’s supply dispensed  
Number of refills ordered  

(4) Controlled substance or drug information.  
The prescription drug dispensed  
National Drug Code (NDC) number for drug dispensed  
Drug strength and quantity prescribed  

(5) Dispenser information.  
Dispenser name  
Dispenser address  
Dispenser telephone number  
Dispenser license and DEA registration numbers  
Pharmacy from which the drug is dispensed  
Other information consistent with standards of the American Society for Automation in Pharmacy, or as required by rule  

B. Each dispenser shall submit the required information in accordance with transmission methods and frequency established by the [designated state agency], but no more than seven days from the date each prescription was dispensed. The [designated state agency] shall implement a real time reporting requirement as expeditiously as possible.  

C. The [designated state agency] may issue a waiver to a dispenser who is unable to submit prescription information by electronic means [for specific reasons]. The waiver shall state the format and frequency with which the dispenser shall submit the required information.  

D. Nothing in this section requires a prescriber or dispenser to obtain information about a patient from the PMP prior to prescribing or dispensing a controlled substance or drug of concern. A prescriber, dispenser, or other health care practitioner may not be held liable in damages to any person in any civil, criminal, or administrative action on the basis that the prescriber, dispenser, or other health care practitioner did or did not seek to obtain information from the PMP.
Section 8. Access to and use of prescription monitoring information; confidentiality

A. Except as otherwise provided in this Section, prescription monitoring information submitted to the [designated state agency] pursuant to this Act shall be protected health information, not subject to public or open records law, and not subject to disclosure or use except as provided in this Section. Prescription monitoring information shall not be available for civil subpoena nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Professional licensing agencies and law enforcement may utilize prescription monitoring information in the course of any investigation and subsequent administrative and criminal proceedings, but only in accordance with federal and state law and the requirements of this Act.

The [designated state agency] shall establish appropriate safeguards for ensuring the accuracy and completeness of the PMP database.

The [designated state agency] shall not release prescription monitoring information unless it is provided with evidence, satisfactory to the [designated state agency], that the person requesting the information is entitled to receive the data. The PMP shall establish and maintain a process for verifying the credentials and authorizing the use of prescription information by those individuals and agencies listed in subsections F and G of this section.

B. The [designated state agency] shall establish and maintain procedures to protect the privacy and confidentiality of patients and to ensure that patient information collected, recorded, transmitted, and maintained pursuant to this Act is not disclosed to or used by persons or entities, and are not subject to public or open records laws, except as otherwise provided in this Section.

C. The [designated state agency] shall review the prescription monitoring information collected pursuant to this Act.

(1) If the review identifies information that satisfies criteria established by the [designated state agency or entity] in consultation with the Advisory Committee:

(a) for referring information about a patient to a prescriber or dispenser, the [designated state agency] shall provide the relevant information to the appropriate prescribers and dispensers.

(b) for referring information about a patient, prescriber, or dispenser to a law enforcement agency or a professional licensing or certification agency or board, the [designated state agency] shall provide the relevant information to the appropriate agency or board for further inquiry and action, as deemed appropriate by that agency or board.

(2) If there is reasonable cause to believe a breach of professional standards [or violation of law] may have occurred, the [designated state agency] shall notify the appropriate professional licensing agency with jurisdiction over prescribers or dispensers [or the appropriate law enforcement agency] and shall provide prescription monitoring information required for an investigation. The [designated state agency] shall, upon reasonable cause:

(a) refer potential or alleged impaired prescribers and dispensers to the appropriate professional licensing agency to ensure intervention, treatment, and ongoing monitoring and follow-up; and
(b) ensure that individual patients who are identified and who are determined to have become addicted to controlled substances or drugs of concern monitored by the PMP receive addiction treatment.

D. The [designated state agency] shall provide prescription monitoring information to public or private entities, whether located in or outside of the state, for public research, policy, or educational purposes, but only after removing information that identifies or could reasonably be used to identify individual patients or persons who received prescriptions from dispensers.

E. The [designated state agency] may provide prescription monitoring information to an individual who requests his personal prescription monitoring information, or a guardian of the individual, parent or guardian of a minor, or health care agent of the individual acting under a health care directive, in accordance with procedures established by regulation.

F. The following persons, after successful completion of the education and training courses identified in Section 11, and in accordance with procedures adopted by the [designated state agency] and in consultation with and upon the recommendation of the Advisory Council, may directly access the prescription monitoring information at no cost and in the same or similar manner, and for the same or similar purposes, as those persons are authorized to access similar protected health information under federal and state law and regulation:

(1) A person authorized to prescribe controlled substances or drugs of concern, for the purpose of providing medical care for a patient with whom the prescriber has a bona fide patient relationship, or for reviewing information regarding prescriptions that are recorded as having been issued by the requester.
(2) A person authorized to dispense controlled substances or drugs of concern, for the purpose of providing pharmaceutical care for a patient with whom the prescriber has a bona fide patient relationship, or for reviewing information regarding prescriptions that are recorded as having been dispensed by the requester.
(3) A designated representative from an agency or board responsible for licensing or certifying prescribers or dispensers who is involved in a bona fide investigation of a prescriber or dispenser whose professional practice was or is regulated by that agency or board.
(4) Designated representatives from the [insert state Medicaid agency’s unit(s) with legal authority to conduct investigations and utilization review of program services] regarding Medicaid program recipients or Medicaid program providers.
(5) Designated representatives of the [designated state agency] and any vendor or contractor establishing or maintaining the prescription monitoring program.
(6) Designated representatives in another state with which [the state adopting this Act] has established an interoperability agreement.
(7) A medical examiner or county coroner for the purpose of investigating the death of an individual.
(8) A designated physician of an alcohol and other drug addiction treatment program for the purpose of providing medical care to a bona fide patient of the program.
(9) A member of the Advisory Committee for the purpose of providing advice and input to the [designated state agency] pursuant to Section 6.

Each of the professional licensing or certification agencies or boards shall adopt rules and regulations that establish standards and procedures for designated professionals regulated by that agency or board
regarding the access and use of patient information available through the PMP: [list appropriate agencies or boards, e.g., state board of dentistry, state board of nursing, state board of optometry, state medical board]

The [designated state agency] shall maintain a record of all persons who access the prescription monitoring information and shall ensure that any permissible user complies with Section 11 prior to attaining direct access to the information.

G. The [designated state agency] may provide a report containing prescription monitoring information upon application of federal, state, or local law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances or drugs of concern in compliance with and as limited by the relevant requirements of any of the following:

1. An official court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer.

2. A grand jury subpoena.

3. An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided by law enforcement to the [designated state agency], and further, provided all of the following:

   a. The information sought is relevant and material to a legitimate law enforcement inquiry.

   b. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.

   c. De-identified information, or limited information that does not identify or could not reasonably lead to the identification of an individual patient, could not reasonably be used.

H. No one shall knowingly hinder a pharmacist who is eligible to receive information from the PMP from requesting and receiving such information in a timely fashion.

I. The [designated state agency] shall remove from the PMP all information more than [select period no less than two and no more than seven] years old from the date of collection. Such information shall then be destroyed unless a law enforcement agency or a professional licensing or certification agency or board for prescribers or dispensers has submitted a written request to the [designated state agency] for retention of specific information. All requests shall comply with procedures adopted by the [designated state agency].

Section 9. Information exchange with other prescription monitoring programs; interoperability

A. The [designated state agency] may provide prescription monitoring information to other states’ prescription monitoring programs and such information may be used by those programs consistent with the provisions of this Act.
B. The [designated state agency] may request and receive prescription monitoring information from other states’ prescription monitoring programs and may use such information under provisions of this Act.

C. The [designated state agency] may develop the capability to transmit information to and receive information from other prescription monitoring programs employing the standards of interoperability.

D. The [designated state agency] is authorized to enter into written agreements with other states’ prescription monitoring programs for the purpose of describing the terms and conditions for sharing of prescription information under this section.

[Note: Some states have determined that their statute authorizes exchange of prescription monitoring information for individual cases with other PMPs without specific authorization, e.g. their statute lists authorized recipients of prescription monitoring information without regard to the residency of the recipients.]

[Note: Some states have determined that before their PMP begins routine exchange of prescription information with another PMP, their PMP must have a written memorandum of understanding in place with the other states’ PMPs and/or there must be an interstate compact for such exchange (a committee is working on drafting such a compact as of February 2010).]

[Note: This section is not intended to interfere with a state’s prerogative to provide prescription information directly to authorized persons or entities in other states.]

Section 10. Immunity

Option 1
[State officials should review their general immunity statutes to determine if immunity issues regarding the PMP are already addressed by those statutes. If so, then this section may be omitted or may include a reference to the legal citation of the appropriate general immunity law.]

Option 2
[If a state wishes to include specific immunity language in its PMP statute, the following language is recommended.]

Unless there is a finding of [insert appropriate state standard, e.g., lack of good faith, gross negligence, malice or criminal intent], the [designated state agency], the Advisory Council, a prescriber, dispenser, or any other person, agency or entity in proper possession of information pursuant to this Act is not subject to civil liability, administrative action or other legal or equitable relief for any of the following acts or omissions:

(a) Furnishing information pursuant to this Act.
(b) Receiving, using or relying on information received pursuant to this Act.
(c) Not possessing information that was not furnished to the [designated state agency].
(d) Releasing information that was factually incorrect.
(e) Releasing information to the wrong person or entity.
(f) Not referring prescription monitoring information or prescribers or dispensers pursuant to this Act.
(g) Submitting report information in good faith containing prescription monitoring information that is not the subject of the PMP.
Section 11. Education and training; treatment

A. The [designated state agency] shall, in consultation with and upon the recommendation of the Advisory Council, develop and implement the following education and training courses:

(1) An orientation course for persons who are authorized to access the prescription monitoring information, offered during the implementation phase of the PMP, including the transmission, retrieval, and use of prescription monitoring information.

(2) A course for persons who are authorized to access the prescription monitoring information, but who did not participate in the orientation course.

(3) A course for persons who are authorized to access the prescription monitoring information, but who have violated the laws or breached professional standards involving the prescribing, dispensing, or use of any controlled substances or drugs of concern monitored by the PMP.

(4) A continuing education course for health care practitioners on prescribing practices, pharmacology, and the identification, treatment, and referral of a patient addicted to or abusing controlled substances or drugs of concern monitored by the PMP.

B. The [designated state agency] shall, in consultation with and upon the recommendation of the Advisory Council, develop and implement an educational program to inform the public about the legitimate use, diversion, and addiction to or abuse of controlled substances or drugs of concern monitored by the PMP.

C. The [designated state agency] shall, in consultation with and upon the recommendation of the Advisory Council, work with the state or regional chapter of the American Pain Society, the American Academy of Pain Medicine, and the American Society of Addiction Medicine, or comparable state associations, and the state medical society to develop a continuing education course for health care professionals on prescribing practices, pharmacology and identification, referral and treatment of patients addicted to or abusing controlled substances or drugs of concern monitored by the PMP; and

D. The [designated state agency], based on criteria established in consultation with the Advisory Committee, shall refer prescribers and dispensers it has reason to believe may be impaired to the appropriate professional licensing or certification agency, and to the appropriate impaired professionals associations, to provide intervention, assessment and referral to alcohol and other drug addiction treatment programs, and ongoing monitoring and follow-up.

E. The [designated state agency], shall, in consultation with the Advisory Committee, work with the appropriate alcohol and other drug addiction treatment professionals to provide that patients identified through the PMP as potentially addicted to a controlled substance or drug of concern are assessed and referred to alcohol and other drug addiction treatment programs.

Section 12. Unlawful acts and penalties

A. A dispenser who knowingly fails to submit prescription monitoring information to the [designated state agency] as required by this Act, or knowingly submits incorrect prescription monitoring
information, shall be referred to the appropriate professional licensing or certification agency or board for administrative sanctions as deemed appropriate by that agency.

B. A person or entity authorized to possess prescription monitoring information pursuant to this Act who knowingly discloses such information in violation of this Act shall be subject to [insert appropriate administrative, civil or criminal penalty]. Nothing shall restrict the right of a patient to share his or her own prescription monitoring information.

C. A person or entity authorized to possess prescription monitoring information pursuant to this Act who uses such information in a manner or for a purpose in violation of this Act shall be subject to [insert appropriate administrative, civil or criminal penalty].

D. A person who obtains or attempts to obtain information by fraud or deceit from the prescription monitoring program or from a person authorized to receive prescription monitoring information under this Act shall be subject to [insert appropriate administrative, civil or criminal penalty].

Section 13. Evaluation; data analysis; reporting

A. The [designated state agency] shall, in consultation with and upon the recommendation of the Advisory Council, design and implement an evaluation component to identify:

(1) Cost-benefits of the PMP;

(2) Any impact on efforts to reduce misuse, abuse, overdose and diversion of, or addiction to, controlled substances and drugs of concern;

(3) Any impact on prescribing practices for controlled substances and drugs of concern;

(4) Number of patients identified through the PMP as potentially addicted to a controlled substance or drug of concern that were assessed for alcohol and other drug addictions;

(5) Number of patients in (iv) that received alcohol and other drug addiction treatment, and the names of the licensed, certified, or approved alcohol and other drug addiction treatment facilities in which the patients were treated;

(6) Any progress made in implementing real time reporting; and

(7) Other information relevant to policy, research and education involving controlled substances and drugs of concern monitored by the PMP.

B. The [designated state agency] shall annually report the information specified in paragraph (a) to the Advisory Committee members, [insert appropriate state decision makers, e.g. appropriate state legislative committees, Governor], the U.S. Department of Justice (DOJ), the Substance Abuse and Mental Health Services Administration (SAMHSA), the Office of National Drug Control Policy (ONDCP) and members of the state’s U.S. Congressional delegation. Additionally, the [designated state agency] shall make the annual report available to the public.
Section 14. Rules and regulations

The [designated state agency] shall promulgate rules and regulations necessary to implement the provisions of this Act. The [designated state agency], in consultation with and upon the recommendation of the Advisory Council, the appropriate professional licensing agencies with jurisdiction over prescribers and dispensers, the state police, and appropriate medical professional associations, may also promulgate rules for the production of a prescription form on paper that minimizes the potential for forgery. The rules shall not include any requirement that sequential numbers, bar codes, or symbols be affixed, printed, or written on a prescription form or that the prescription form be a state produced prescription form. In examining the need for rules for the production of a prescription form on paper that minimizes the potential for forgery, the [designated state agency] shall consider and identify the following:

(a) Cost, benefits, and barriers.
(b) Overall cost-benefit analysis.
(c) Compatibility with the PMP established under this Act.

Section 15. Funding authority

A. The [designated state agency] shall have the authority to make application for, receive, and administer funding in the form of grants, donations or gifts, federal matching funds, interagency transfers, and appropriated funds designated for the development, implementation, maintenance, or enhancement of the prescription monitoring program. Any funding balance does not lapse but is carried forward to be expended for the same purposes in succeeding fiscal years. Funding received by the [designated state agency] to develop, implement, maintain, or enhance the PMP must be used for the expenses of administering this Act.

B. The [designated state agency] shall not be required to fund any aspect of the PMP.

C. A dispenser shall not be required to pay a new fee dedicated to the operation of the PMP and shall not incur any additional costs solely related to the transmission of prescription monitoring information to the [designated state agency].

Section 16. Severability

If any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Section 17. Effective Date

This Act shall be effective on [insert specific date or reference to normal state method of determining the effective date].