

HOUSE BILL No. 2574

By Committee on Health and Human Services

1-30

1 AN ACT concerning health and healthcare; relating to the prescription
2 monitoring program; pertaining to mandatory enrollment database
3 access; amending K.S.A. 2017 Supp. 65-1685 and repealing the
4 existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) A prescriber, as defined in K.S.A. 65-1626, and
8 amendments thereto, who holds a current registration issued by the DEA
9 and who prescribes or administers scheduled substances, shall, before
10 January 1, 2020, or upon licensure or reinstatement by the applicable state
11 licensing agency, whichever occurs later, register with the board for access
12 to the PMP database and shall maintain such registration continuously
13 during the prescriber's term of active licensure.

14 (b) A pharmacist practicing in Kansas shall, before September 1,
15 2018, or upon licensure or reinstatement by the state board of pharmacy,
16 whichever occurs later, register with the board for access to the PMP
17 database and shall maintain such registration continuously during the
18 pharmacist's term of active licensure.

19 (c) Registration for access to the PMP database shall be in a manner
20 prescribed by the board.

21 (d) As used in this section:

22 (1) "DEA" means the United States drug enforcement agency; and

23 (2) "PMP" means the prescription monitoring program.

24 (e) This section shall be a part of and supplemental to the
25 prescription monitoring program act.

26 Sec. 2. K.S.A. 2017 Supp. 65-1685 is hereby amended to read as
27 follows: 65-1685. (a) The prescription monitoring program database, all
28 information contained therein and any records maintained by the board, or
29 by any entity contracting with the board, submitted to, maintained or
30 stored as a part of the database, shall be privileged and confidential, shall
31 not be subject to subpoena or discovery in civil proceedings and may only
32 be used for investigatory or evidentiary purposes related to violations of
33 state or federal law and regulatory activities of entities charged with
34 administrative oversight of those persons engaged in the prescribing or
35 dispensing of scheduled substances and drugs of concern, shall not be a
36 public record and shall not be subject to the Kansas open records act,

1 K.S.A. 45-215 et seq., and amendments thereto, except as provided in
2 subsections (c) and (d).

3 (b) The board shall maintain procedures to ensure that the privacy
4 and confidentiality of patients and patient information collected, recorded,
5 transmitted and maintained is not disclosed to persons except as provided
6 in subsections (c) and (d).

7 (c) The board is hereby authorized to provide data in the prescription
8 monitoring program to the following persons:

9 (1) Persons authorized to prescribe or dispense scheduled substances
10 and drugs of concern, for the purpose of providing medical or
11 pharmaceutical care for their patients;

12 (2) an individual who requests the individual's own prescription
13 monitoring information in accordance with procedures established by the
14 board;

15 (3) designated representatives from the professional licensing,
16 certification or regulatory agencies charged with administrative oversight
17 of those persons engaged in the prescribing or dispensing of scheduled
18 substances and drugs of concern;

19 (4) local, state and federal law enforcement or prosecutorial officials
20 engaged in the administration, investigation or enforcement of the laws
21 governing scheduled substances and drugs of concern subject to the
22 requirements in K.S.A. 22-2502, and amendments thereto;

23 (5) designated representatives from the department of health and
24 environment regarding authorized medicaid program recipients;

25 (6) persons authorized by a grand jury subpoena, inquisition
26 subpoena, *administrative subpoena* or court order in a criminal action;

27 (7) personnel of the prescription monitoring program advisory
28 committee for the purpose of operation of the program;

29 (8) personnel of the board for purposes of administration and
30 enforcement of this act or the uniform controlled substances act, K.S.A.
31 65-4101 et seq., and amendments thereto;

32 (9) persons authorized to prescribe or dispense scheduled substances
33 and drugs of concern, when an individual is obtaining prescriptions in a
34 manner that appears to be misuse, abuse or diversion of scheduled
35 substances or drugs of concern; ~~and~~

36 (10) medical examiners, coroners or other persons authorized under
37 law to investigate or determine causes of death; *and*

38 (11) *persons operating a provider or pharmacist impaired provider*
39 *program in accordance with K.S.A. 65-4924, and amendments thereto, for*
40 *the purpose of reviewing drugs dispensed to a provider or pharmacist*
41 *enrolled in the impaired provider program.*

42 (d) The prescription monitoring program advisory committee
43 established pursuant to K.S.A. 65-1689, and amendments thereto, ~~is~~

1 ~~authorized~~ shall meet monthly to review and analyze the data for purposes
2 of identifying patterns and activity of concern.

3 (1) (A) *On or before January 7, 2019, the prescription monitoring*
4 *program advisory committee shall develop written criteria for its use in*
5 *identifying patterns and activity of concern. Such criteria shall be*
6 *privileged and confidential, shall not be subject to subpoena or discovery*
7 *in civil proceedings and may only be used for regulatory activities of*
8 *entities charged with administrative oversight of those persons engaged in*
9 *the prescribing or dispensing of scheduled substances and drugs or*
10 *concern, shall not be a public record and shall not be subject to the open*
11 *records act, K.S.A. 45-215 et seq., and amendments thereto. The*
12 *provisions of this paragraph shall expire on July 1, 2023, unless the*
13 *legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,*
14 *and amendments thereto, prior to July 1, 2023.*

15 (B) *The board shall submit such criteria to the senate standing*
16 *committee on public health and welfare and the house standing committee*
17 *on health and human services with the annual report required by K.S.A.*
18 *2017 Supp. 65-1691, and amendments thereto, that occurs immediately*
19 *following January 7, 2019.*

20 (2) If a review of information appears to indicate a person may be
21 obtaining prescriptions in a manner that may represent misuse or abuse of
22 ~~controlled~~ scheduled substances and drugs of concern, the advisory
23 committee is authorized to notify the prescribers and dispensers who
24 prescribed or dispensed the prescriptions. If the review identifies patterns
25 or other evidence sufficient to create a reasonable suspicion of criminal
26 activity, the advisory committee is authorized to notify the appropriate law
27 enforcement agency.

28 (2) (3) If a review of information appears to indicate that a violation
29 of state or federal law relating to prescribing ~~controlled~~ scheduled
30 substances and drugs of concern may have occurred, or that a prescriber or
31 dispenser has knowingly prescribed, dispensed or obtained ~~controlled~~
32 ~~scheduled~~ substances and drugs of concern in a manner that is inconsistent
33 with recognized standards of care for the profession, the advisory
34 committee shall determine whether a report to the professional licensing,
35 certification or regulatory agencies charged with administrative oversight
36 of those persons engaged in prescribing or dispensing of ~~controlled~~
37 ~~scheduled~~ substances and drugs of concern or to the appropriate law
38 enforcement agency is warranted.

39 (A) For purposes of such determination the advisory committee may,
40 in consultation with the appropriate regulatory agencies and professional
41 organizations, establish criteria regarding appropriate standards and utilize
42 volunteer peer review committees of professionals with expertise in the
43 particular practice to create such standards and review individual cases.

1 (B) The peer review committee or committees appointed herein shall
2 have authority to request and receive information in the prescription
3 monitoring program database from the director of the prescription
4 monitoring program.

5 (C) If the determination is made that a referral to a regulatory or law
6 enforcement agency is not warranted but educational or professional
7 advising might be appropriate, the advisory committee may refer the
8 prescribers or dispensers to other such resources.

9 (e) The board is hereby authorized to provide data in the prescription
10 monitoring program to public or private entities for statistical, research or
11 educational purposes after removing information that could be used to
12 identify individual practitioners, dispensers, patients or persons who
13 received prescriptions from dispensers. *Data provided under this section*
14 *shall not be sold to any third party.*

15 (f) *The board may, in its discretion, block access to the prescription*
16 *monitoring program database if the board has reason to believe that*
17 *access to the data is or may be used illegally.*

18 Sec. 3. K.S.A. 2017 Supp. 65-1685 is hereby repealed.

19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the statute book.