CHAPTER 1603

CONTROLLED SUBSTANCES PRESCRIPTION MONITORING

§7245. Legislative intent

It is the intent of the Legislature that the prescription monitoring program established pursuant to this chapter serve as a means to promote the public health and welfare and to detect and prevent substance use disorder. This chapter is not intended to interfere with the legitimate medical use of controlled substances. [PL 2017, c. 407, Pt. A, §87 (AMD).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). PL 2017, c. 407, Pt. A, §87 (AMD).

§7246. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 483, §1 (NEW).]

1. Controlled substance. "Controlled substance" means a controlled substance included in schedules II, III or IV of 21 United States Code, Section 812 or 21 Code of Federal Regulations, Section 1308.
[PL 2003, c. 483, §1 (NEW).]

1-A. Acute pain. "Acute pain" means pain that is the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus. "Acute pain" typically is associated with invasive procedures, trauma and disease and is usually time-limited.
[PL 2015, c. 488, §1 (NEW).]

1-B. Administer. "Administer" means an action to apply a prescription drug directly to a person by any means by a licensed or certified health care professional acting within that professional's scope of practice. "Administer" does not include the delivery, dispensing or distribution of a prescription drug for later use.
[PL 2015, c. 488, §1 (NEW).]

1-C. Chronic pain. "Chronic pain" means pain that persists beyond the usual course of an acute disease or healing of an injury. "Chronic pain" may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.
[PL 2015, c. 488, §1 (NEW).]

2. Dispenser. "Dispenser" means:

A. A pharmacist who is licensed or registered under Title 32; or [PL 2017, c. 360, §1 (NEW).]

B. A veterinarian licensed under Title 32, chapter 71-A with authority to dispense a benzodiazepine or an opioid medication. [PL 2017, c. 360, §1 (NEW).]
[PL 2017, c. 360, §1 (RPR).]

3. Fund. "Fund" means the Controlled Substances Prescription Monitoring Program Fund established in section 7247.
[PL 2003, c. 483, §1 (NEW).]

4. Office.
[PL 2011, c. 657, Pt. AA, §65 (RP).]

5. Prescriber. "Prescriber" means a licensed health care professional with authority to prescribe controlled substances.

[PL 2017, c. 360, §2 (AMD).]

6. Prescription monitoring information. "Prescription monitoring information" means information submitted to and maintained by the program.
[PL 2003, c. 483, §1 (NEW).]

7. Program. "Program" means the Controlled Substances Prescription Monitoring Program established under section 7248.
[PL 2003, c. 483, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). PL 2003, c. 689, §B6 (REV). PL 2011, c. 657, Pt. AA, §65 (AMD). PL 2015, c. 488, §§1, 2 (AMD). PL 2017, c. 213, §2 (AMD). PL 2017, c. 360, §§1, 2 (AMD).

§7247. Controlled Substances Prescription Monitoring Program Fund

The Controlled Substances Prescription Monitoring Program Fund is established within the department to be used by the commissioner to fund or assist in funding the program. Any balance in the fund does not lapse but is carried forward to be expended for the same purposes in succeeding fiscal years. The fund must be deposited with and maintained and administered by the department. The commissioner may accept funds into the fund from any source, public or private, including grants or contributions of money or other things of value, that the commissioner determines necessary to carry out the purposes of this chapter. Money received by the department to establish and maintain the program must be used for the expenses of administering this chapter. [PL 2011, c. 657, Pt. AA, §66 (AMD).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). PL 2011, c. 380, Pt. WW, §1 (AMD). PL 2011, c. 657, Pt. AA, §66 (AMD).

§7248. Controlled Substances Prescription Monitoring Program

1. Establishment of monitoring program. Contingent upon the receipt of funds pursuant to section 7247 sufficient to carry out the purposes of this chapter, the Controlled Substances Prescription Monitoring Program is established. No later than January 2, 2004, to implement the program, the department shall establish an electronic system for monitoring any controlled substance that is dispensed to a person in the State by a dispenser.
[PL 2011, c. 657, Pt. AA, §67 (AMD).]

2. Contract for services. The department may contract with a vendor to establish and maintain the program pursuant to rules adopted by the department.
[PL 2011, c. 657, Pt. AA, §67 (AMD).]

3. Information available. The program must rapidly provide information in an electronic format to prescribers and dispensers.
[PL 2003, c. 483, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). PL 2011, c. 657, Pt. AA, §67 (AMD).

§7249. Reporting of prescription monitoring information

1. Information required. Except as provided in subsection 1-A or 1-B, each dispenser shall submit to the department, by electronic means or other format specified in a waiver granted by the department, specific items of information regarding dispensed controlled substances determined by the department from the following list:

A. The dispenser identification number; [PL 2003, c. 483, §1 (NEW).]

B. The date the prescription was filled; [PL 2003, c. 483, §1 (NEW).]

C. The prescription number; [PL 2003, c. 483, §1 (NEW).]

D. Whether the prescription is new or is a refill; [PL 2003, c. 483, §1 (NEW).]

E. The National Drug Code (NDC) for the drug dispensed; [PL 2003, c. 483, §1 (NEW).]

F. The quantity dispensed; [PL 2003, c. 483, §1 (NEW).]

G. The dosage; [PL 2003, c. 483, §1 (NEW).]

H. The patient identification number; [PL 2003, c. 483, §1 (NEW).]

I. The patient name; [PL 2003, c. 483, §1 (NEW).]

J. The patient address; [PL 2003, c. 483, §1 (NEW).]

K. The patient date of birth; [PL 2003, c. 483, §1 (NEW).]

L. The prescriber identification number; [PL 2003, c. 483, §1 (NEW).]

M. The date the prescription was issued by the prescriber; and [PL 2003, c. 483, §1 (NEW).]

N. The department-issued serial number if the department chooses to establish a serial prescription system. [PL 2011, c. 657, Pt. AA, §68 (AMD).]

[PL 2017, c. 360, §3 (AMD).]

1-A. Small quantity dispensing. If a controlled substance is dispensed by a hospital emergency department to a person receiving care in the emergency department for use by that person during a period of 48 hours or less after the controlled substance is dispensed, the dispenser is not required to comply with subsection 1.
[PL 2017, c. 213, §4 (NEW).]

1-B. Small quantity dispensing by veterinarians. If a benzodiazepine or an opioid medication is dispensed by a veterinarian for an animal in a mobile or emergency setting or in an amount to be used during a period of 48 hours or less after the benzodiazepine or opioid medication is dispensed, the dispenser is not required to comply with subsection 1.
[PL 2017, c. 360, §4 (NEW).]

2. Frequency. Each dispenser shall submit the information required under subsection 1 as frequently as specified by the department.
[PL 2011, c. 657, Pt. AA, §68 (AMD).]

3. Waiver. The department may grant a waiver of the electronic submission requirement under subsection 1 to any dispenser for good cause, including financial hardship, as determined by the department. The waiver must state the format and frequency with which the dispenser is required to submit the required information.
[PL 2011, c. 657, Pt. AA, §68 (AMD).]

4. Immunity from liability. A dispenser or prescriber is immune from liability for disclosure of information if the disclosure was made pursuant to and in accordance with this chapter.
[PL 2015, c. 488, §3 (AMD).]

5. Participation requirements.

[PL 2013, c. 587, §1 (RP).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). PL 2011, c. 477, Pt. K, §1 (AMD). PL 2011, c. 657, Pt. AA, §68 (AMD). PL 2013, c. 587, §1 (AMD). PL 2015, c. 488, §3 (AMD). PL 2017, c. 213, §§3, 4 (AMD). PL 2017, c. 360, §§3, 4 (AMD).

§7249-A. Reporting of methadone treatment with consent

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE ON CONTINGENCY: See PL 2017, c. 243, §5)

1. Consent form; methadone treatment. The department shall develop a consent form to be presented to every patient receiving treatment at any facility that provides methadone for the treatment of opioid dependency. The form records the patient's identifying information along with consent to enter the name of the patient's methadone treatment facility and dosage information into the program. The form must be available to the facility for use in paper or electronic form. The contents of the form may be disclosed only in a medical emergency as described in section 7250, subsection 7. The patient may decline consent.
[PL 2017, c. 243, §2 (NEW); PL 2017, c. 243, §5 (AFF).]

2. Treatment facility to enter information into the program. For a patient who has provided consent pursuant to subsection 1, a prescriber or the prescriber's designee at a facility that provides methadone for the treatment of opioid dependency shall enter the patient's identifying information along with the name of the methadone treatment facility and the dosage information into the program. Dosage information must be entered at the beginning of treatment, after the first 90 days of treatment and every 180 days after that. If a patient ceases treatment or moves to a different facility, the patient's methadone treatment facility must notify the program within 30 days of that change in status.
[PL 2017, c. 243, §2 (NEW); PL 2017, c. 243, §5 (AFF).]

3. Renewal of consent form. A facility that provides methadone for the treatment of opioid dependency must provide a new consent form under subsection 1 to a patient annually and renew that patient's consent. The patient may choose to decline consent or void consent at any time.
[PL 2017, c. 243, §2 (NEW); PL 2017, c. 243, §5 (AFF).]

SECTION HISTORY

PL 2017, c. 243, §2 (NEW). PL 2017, c. 243, §5 (AFF).

§7249-B. Opioid medication distribution monitoring information

A manufacturer of an opioid medication that is available in this State and a wholesaler that sells or distributes an opioid medication in this State shall submit to the department, by electronic means or other format specified in a waiver granted by the department, information for this State submitted to the United States Drug Enforcement Administration's Automation of Reports and Consolidated Orders System pursuant to 21 United States Code, Subchapter I and 21 Code of Federal Regulations, Section 1304.33 at the time that information is submitted to the United States Drug Enforcement Administration. As used in this section, the terms "manufacturer" and "opioid medication" have the same meanings as in Title 32, section 13702-A. [PL 2019, c. 536, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 536, §2 (NEW).

§7250. Access to prescription monitoring information and confidentiality

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Confidentiality. Except as provided in this section, prescription monitoring information submitted to the department is confidential and is not a public record as defined in Title 1, section 402, subsection 3.
[PL 2011, c. 657, Pt. AA, §69 (AMD).]

2. Review of information. If the prescription monitoring information surpasses thresholds as established by the department, the department shall notify the prescriber, the dispenser and, if the department determines it to be necessary, the professional licensing entity and provide all relevant

prescription monitoring information to those persons and entities through an established letter of notification.
[PL 2011, c. 657, Pt. AA, §69 (AMD).]

3. Permissible disclosure of information. The department may provide prescription monitoring information for public research, policy or education purposes as long as all information reasonably likely to reveal the patient or other person who is the subject of the information has been removed.
[PL 2011, c. 657, Pt. AA, §69 (AMD).]

4. Access to information. The following persons may access prescription monitoring information:

A. A prescriber, insofar as the information relates to a patient under the prescriber's care; [PL 2003, c. 483, §1 (NEW).]

B. A dispenser, insofar as the information relates to a customer of the dispenser seeking to have a prescription filled; [PL 2003, c. 483, §1 (NEW).]

C. The executive director, or a board investigator as designated by each board, of the state boards of licensure of podiatric medicine, dentistry, pharmacy, medicine, osteopathy, veterinary medicine, nursing or other boards representing health care disciplines whose licensees are prescribers, as required for an investigation, with reasonable cause; [PL 2003, c. 483, §1 (NEW).]

D. A patient to whom a prescription is written, insofar as the information relates to that patient; [PL 2009, c. 196, §1 (AMD); PL 2009, c. 298, §1 (AMD).]

E. Department personnel or personnel of any vendor or contractor, as necessary for establishing and maintaining the program's electronic system; [PL 2011, c. 657, Pt. AA, §69 (AMD).]

F. The Office of Chief Medical Examiner for the purpose of conducting an investigation or inquiry into the cause, manner and circumstances of death in a medical examiner case as described in section 3025. Prescription monitoring information in the possession or under the control of the Office of Chief Medical Examiner is confidential and, notwithstanding section 3022, may not be disseminated. Information that is not prescription monitoring information and is separately acquired following access to prescription monitoring information pursuant to this paragraph remains subject to protection or dissemination in accordance with section 3022; [PL 2011, c. 218, §1 (AMD).]

REVISOR'S NOTE: (Paragraph F as enacted by PL 2009, c. 298, §3 is REALLOCATED TO TITLE 22, SECTION 7250, SUBSECTION 4, PARAGRAPH G)

G. **(REALLOCATED FROM T. 22, §7250, sub-§4, ¶F)** The office that administers the MaineCare program pursuant to chapter 855 for the purposes of managing the care of its members, monitoring the purchase of controlled substances by its members, avoiding duplicate dispensing of controlled substances and providing treatment pattern data under subsection 6; [PL 2015, c. 488, §4 (AMD).]

H. Another state or a Canadian province pursuant to subsection 4-A; [PL 2015, c. 488, §5 (AMD).]

I. Staff members of a licensed hospital who are authorized by the chief medical officer of the hospital, insofar as the information relates to a patient receiving care in the hospital's emergency department or receiving inpatient services or surgical services from the hospital; [PL 2017, c. 213, §5 (AMD).]

J. Staff members of a pharmacist who are authorized by the pharmacist on duty, insofar as the information relates to a customer seeking to have a prescription filled; [PL 2017, c. 213, §5 (AMD).]

K. The chief medical officer, medical director or other administrative prescriber employed by a licensed hospital, insofar as the information relates to prescriptions written by prescribers employed by that licensed hospital; [PL 2021, c. 161, §2 (AMD).]

K-1. The chief medical officer, medical director or other administrative prescriber employed by a federally qualified health center as defined in 42 United States Code, Section 1395x, subsection (aa) (1993) or a group practice of prescribers insofar as the information relates to prescriptions written by prescribers employed by the federally qualified health center or the group practice; and [PL 2021, c. 161, §3 (NEW).]

L. Staff members of a group practice of prescribers who are authorized by a designated group practice leader, insofar as the information relates to a patient receiving care from that group practice. [PL 2017, c. 213, §7 (NEW).]

[PL 2021, c. 161, §§2, 3 (AMD).]

4-A. Information sharing with other states and Canadian provinces. The department may provide prescription monitoring information to and receive prescription monitoring information from another state or a Canadian province that has prescription monitoring information provisions consistent with this chapter and has entered into a prescription monitoring information sharing agreement with the department. The department may enter into a prescription monitoring information sharing agreement with another state or a Canadian province to establish the terms and conditions of prescription monitoring information sharing and interoperability of information systems and to carry out the purposes of this subsection. For purposes of this subsection, "another state" means any state other than Maine and any territory or possession of the United States, but does not include a foreign country.

[PL 2015, c. 488, §7 (AMD).]

5. Purge of information. The department shall purge from the program all information that is more than 6 years old.

[PL 2011, c. 657, Pt. AA, §69 (AMD).]

6. Treatment pattern data. The department may provide to a prescriber who treats a member under the MaineCare program prescription monitoring information on the prescriber and other prescribers that is de-identified as to prescriber and patient and that indicates treatment patterns in comparison among peers. If the department has shared with a prescriber treatment pattern data under this subsection, the department shall allow the prescriber time to align the prescriber's prescribing patterns with the patterns of the peers of the prescriber. The department may take appropriate actions with regard to a prescriber who is unable to achieve treatment pattern alignment as provided in this subsection.

[PL 2011, c. 657, Pt. O, §4 (NEW).]

7. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2017, c. 243, §3) Disclosure of methadone treatment in a medical emergency; documentation. Records entered pursuant to section 7249-A may be disclosed in an emergency setting only to the extent necessary to meet a bona fide emergency in which the patient's prior informed consent cannot be obtained and only to the health care professionals involved in treating the patient. These records may not be disclosed in any other circumstances, including to prescribers using the program to enter or check information outside of the medical emergency. Records disclosed pursuant to this subsection may not be used to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation. Any disclosure pursuant to this subsection is subject to 42 Code of Federal Regulations, Section 2.32 and the following requirements.

A. The disclosure must be documented by the health care professional involved in treating the patient and entered into the program and communicated to the patient's methadone treatment facility. The documentation must include the date and time of the disclosure, the nature of the

patient's emergency, the name of the facility or the hospital where the disclosure occurred and the names of the health care professionals who accessed the records. [PL 2017, c. 243, §3 (NEW); PL 2017, c. 243, §5 (AFF).]

B. Any disclosure must include a statement that informs the health care professionals accessing the program that federal law prohibits the health care professionals from making further disclosures that identify the patient without the specific written consent of the patient. [PL 2017, c. 243, §3 (NEW); PL 2017, c. 243, §5 (AFF).]

[PL 2017, c. 243, §3 (NEW); PL 2017, c. 243, §5 (AFF).]

8. Report regarding program. The department shall provide to the joint standing committee of the Legislature having jurisdiction over health and human services matters on or before January 15th of each year, and at such other times as the committee requests, data pertaining to the aggregate number of prescriptions of each drug required to be included in the program, the number of prescribers participating in the program categorized by specialty, any historical trends or patterns in prescribing practices within the State, any progress in the implementation of information sharing agreements authorized by subsection 4-A and any other information pertaining to the work of the program as requested by the committee that is reasonably available to the department, as long as all information reasonably likely to reveal the patient or the prescriber or other person who is the subject of the information has been removed.

[PL 2017, c. 460, Pt. F, §6 (NEW).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). RR 2009, c. 1, §§14-16 (COR). PL 2009, c. 196, §§1-3 (AMD). PL 2009, c. 298, §§1-3 (AMD). PL 2011, c. 218, §§1-4 (AMD). PL 2011, c. 657, Pt. AA, §69 (AMD). PL 2011, c. 657, Pt. O, §§3, 4 (AMD). PL 2015, c. 488, §§4-7 (AMD). PL 2017, c. 87, §§1, 2 (AMD). PL 2017, c. 213, §§5-7 (AMD). PL 2017, c. 243, §3 (AMD). PL 2017, c. 243, §5 (AFF). PL 2017, c. 460, Pt. F, §6 (AMD). PL 2021, c. 161, §§2, 3 (AMD).

§7251. Unlawful acts and penalties

1. Failure to submit information. A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter commits a civil violation for which a fine of $250 per incident, not to exceed $5,000 per calendar year, may be adjudged and is subject to discipline by the Maine Board of Pharmacy pursuant to Title 32, chapter 117, subchapter 4, by the State Board of Veterinary Medicine pursuant to Title 32, chapter 71-A or by the applicable professional licensing entity.

[PL 2017, c. 360, §5 (AMD).]

2. Unlawful disclosure or use of information. A person who intentionally or knowingly uses or discloses prescription monitoring information in violation of this chapter, unless otherwise authorized by law, is guilty of a Class C crime.

[PL 2003, c. 483, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). PL 2011, c. 657, Pt. AA, §70 (AMD). PL 2015, c. 488, §8 (AMD). PL 2017, c. 360, §5 (AMD).

§7252. Rulemaking

The department may adopt rules necessary to implement the provisions of this chapter. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 657, Pt. AA, §71 (AMD).]

SECTION HISTORY

PL 2003, c. 483, §1 (NEW). PL 2011, c. 657, Pt. AA, §71 (AMD).

§7253. Prescribers and dispensers required to check prescription monitoring information

1. Prescribers. On or after January 1, 2017, upon initial prescription of a benzodiazepine or an opioid medication to a person and every 90 days for as long as that prescription is renewed, a prescriber shall check prescription monitoring information for records related to that person.
[PL 2015, c. 488, §9 (NEW).]

2. Dispensers. A dispenser shall check prescription monitoring information prior to dispensing a benzodiazepine or an opioid medication to a person under any of the following circumstances:

A. The person is not a resident of this State; [PL 2015, c. 488, §9 (NEW).]

B. The prescription is from a prescriber with an address outside of this State; [PL 2015, c. 488, §9 (NEW).]

C. The person is paying cash when the person has prescription insurance on file; or [PL 2015, c. 488, §9 (NEW).]

D. According to the pharmacy prescription record, the person has not had a prescription for a benzodiazepine or an opioid medication in the previous 12-month period. [PL 2015, c. 488, §9 (NEW).]

A dispenser shall withhold a prescription until the dispenser is able to contact the prescriber of that prescription if the dispenser has reason to believe that the prescription is fraudulent or duplicative.
[PL 2017, c. 360, §6 (AMD).]

2-A. Dispensers who are veterinarians. Notwithstanding subsection 2, a dispenser who is a veterinarian licensed under Title 32, chapter 71-A shall check prescription monitoring information prior to dispensing a benzodiazepine or an opioid medication for an animal except in circumstances described in subsection 3, paragraph C.
[PL 2017, c. 360, §7 (NEW).]

3. Exceptions. The requirements to check prescription monitoring information established in this section do not apply:

A. When a licensed or certified health care professional directly orders or administers a benzodiazepine or an opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure; [PL 2017, c. 360, §8 (AMD).]

B. When a licensed or certified health care professional directly orders, prescribes or administers a benzodiazepine or an opioid medication to a person suffering from pain associated with end-of-life or hospice care; or [PL 2017, c. 360, §8 (AMD).]

C. When a veterinarian licensed under Title 32, chapter 71-A is providing care to an animal in a mobile or emergency setting or is dispensing a benzodiazepine or an opioid medication in an amount to be used during a period of 48 hours or less after the benzodiazepine or opioid medication is dispensed. [PL 2017, c. 360, §8 (NEW).]
[PL 2017, c. 360, §8 (AMD).]

4. Violation. A person who violates this section commits a civil violation for which a fine of $250 per incident, not to exceed $5,000 per calendar year, may be adjudged.
[PL 2015, c. 488, §9 (NEW).]

5. Rulemaking.
[PL 2017, c. 213, §10 (RP).]

SECTION HISTORY

PL 2015, c. 488, §9 (NEW). PL 2017, c. 122, §1 (AMD). PL 2017, c. 213, §§8-10 (AMD). PL 2017, c. 360, §§6-8 (AMD).

§7254. Exemption from opioid medication limits until January 2017; rulemaking

1. Exemption until January 2017.

[PL 2015, c. 488, §9 (NEW); MRSA T. 22 §7254, sub-§1 (RP).]

2. Rulemaking. Notwithstanding section 7252, no later than January 1, 2017, the department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to establish reasonable exceptions to prescriber limits in Title 32, sections 2210, 2600-C, 3300-F, 3657 and 18308, including for chronic pain and acute pain. The rules must take into account clinically appropriate exceptions and include prescribers in the rule-making process including the drafting of draft rules and changes after the public hearing process to the extent permitted by Title 5, chapter 375. After July 1, 2017, any rules adopted by the department pursuant to this section are governed by section 7252.
[PL 2017, c. 213, §11 (AMD).]

SECTION HISTORY

PL 2015, c. 488, §9 (NEW). PL 2017, c. 213, §11 (AMD).