

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 11-0865.02 Kristen Forrestal

SENATE BILL 11-192

SENATE SPONSORSHIP

Aguilar and Spence, Boyd, Guzman, Jahn, Newell, White, Williams S.

HOUSE SPONSORSHIP

Massey, Casso, Priola, Riesberg, Soper

Senate Committees

Health and Human Services
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE PRESCRIPTION DRUG**
102 **MONITORING PROGRAM, AND, IN CONNECTION THEREWITH,**
103 **REPEALING THE PRESCRIPTION CONTROLLED SUBSTANCE ABUSE**
104 **MONITORING COMMITTEE, AND MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Sections 1 and 2 of the bill continue the electronic prescription drug monitoring program until July 1, 2021. **Sections 3, 4, and 5** of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 20, 2011

bill repeal the prescription controlled substance abuse monitoring advisory committee. **Sections 6, 7, and 8** make conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-34-104 (42) (i) and (52), Colorado Revised
3 Statutes, are amended to read:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (42) The following agencies, functions, or both, shall terminate on July
7 1, 2011:

8 (i) The electronic prescription drug monitoring program, created
9 in part 7 of article 22 of title 12, C.R.S.;

10 (52) The following agencies, functions, or both, shall terminate on
11 July 1, 2021:

12 (a) The workers' compensation classification appeals board,
13 created in article 55 of title 8, C.R.S.

14 (b) THE ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM
15 CREATED IN PART 7 OF ARTICLE 22 OF TITLE 12, C.R.S.

16 **SECTION 2.** 12-22-710, Colorado Revised Statutes, is amended
17 to read:

18 **12-22-710. Repeal of part.** This part 7 is repealed, effective July
19 1, 2011 JULY 1, 2021. Prior to such repeal, the functions under this part
20 7 and the committee shall be reviewed as provided in sections 2-3-1203
21 and SECTION 24-34-104, C.R.S.

22 **SECTION 3. Repeal.** 2-3-1203 (3) (x) (IV), Colorado Revised
23 Statutes, is repealed as follows:

24 **2-3-1203. Sunset review of advisory committees.** (3) The
25 following dates are the dates for which the statutory authorization for the

1 designated advisory committees is scheduled for repeal:

2 (x) July 1, 2011:

3 (IV) The prescription controlled substance abuse monitoring
4 advisory committee created in section 12-22-703, C.R.S.:

5 **SECTION 4.** 12-22-701 (1), Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

7 **12-22-701. Legislative declaration.** (1) The general assembly
8 finds, determines, and declares that:

9 (d) ELECTRONIC MONITORING OF PRESCRIPTIONS FOR CONTROLLED
10 SUBSTANCES PROVIDES A MECHANISM FOR LAW ENFORCEMENT OFFICIALS
11 AND REGULATORY BOARDS TO EFFICIENTLY INVESTIGATE PRESCRIBER
12 BEHAVIOR THAT IS POTENTIALLY HARMFUL TO THE PUBLIC.

13 **SECTION 5. Repeal.** 12-22-702 (2), Colorado Revised Statutes,
14 is repealed as follows:

15 **12-22-702. Definitions.** As used in this part 7, unless the context
16 otherwise requires:

17 (2) "Committee" means the prescription controlled substance
18 abuse monitoring advisory committee.

19 **SECTION 6. Repeal.** 12-22-703, Colorado Revised Statutes, is
20 repealed as follows:

21 **12-22-703. Advisory committee - duties - repeal.** (1) There is
22 hereby created within the division, the prescription controlled substance
23 abuse monitoring advisory committee. The committee shall consist of the
24 following eleven members:

25 (a) The director of the division or his or her designee;

26 (b) A pharmacist appointed by the board;

27 (c) Three physicians appointed by the Colorado medical board;

- 1 one of which is a pain specialist or addiction specialist;
2 (d) A dentist appointed by the state board of dental examiners;
3 (e) A veterinarian appointed by the state board of veterinary
4 medicine;
5 (f) The director of the division of alcohol and drug abuse in the
6 department of human services or his or her designee; and
7 (g) Three persons appointed by the committee, one of which is a
8 representative of law enforcement.
9 (2) The committee shall advise and assist the board with the
10 development, operation, and maintenance of the electronic prescription
11 drug monitoring program; and with the development of access and
12 security protocols for the program. The committee shall advise the board
13 regarding mandatory information to be reported for inclusion in the
14 program.
15 (3) Committee members shall not receive compensation or
16 reimbursement for expenses associated with service on the committee.
17 (4) This section is repealed, effective July 1, 2011. Prior to such
18 repeal, the committee shall be reviewed as provided in section 2-3-1203,
19 C.R.S.

20 **SECTION 7.** The introductory portion to 12-22-704 (1) and
21 12-22-704 (2), Colorado Revised Statutes, are amended, and the said
22 12-22-704 is further amended BY THE ADDITION OF A NEW
23 SUBSECTION, to read:

24 **12-22-704. Prescription drug use monitoring program.**
25 (1) The board shall develop or procure a prescription controlled
26 substance electronic program to track prescriptions written for controlled
27 substances DISPENSED in Colorado. The program shall track information

1 regarding controlled substance prescriptions that includes, but is not
2 limited to, the following:

3 (1.5) EACH PRESCRIBER SHALL ORALLY DISCLOSE TO A PATIENT
4 RECEIVING A CONTROLLED SUBSTANCE, AT THE TIME THE CONTROLLED
5 SUBSTANCE IS FIRST PRESCRIBED, THAT HIS OR HER IDENTIFYING
6 PRESCRIPTION INFORMATION WILL BE ENTERED INTO THE PROGRAM
7 DATABASE AND MAY BE ACCESSED FOR LIMITED PURPOSES BY SPECIFIED
8 INDIVIDUALS.

9 (2) The board and the committee shall establish a method and
10 format for prescription drug outlets to convey the necessary information
11 to the board or its designee. The method shall not require more than a
12 one-time entry of data per patient per prescription by a prescription drug
13 outlet.

14 **SECTION 8.** 12-22-705 (1) and (2), the introductory portion to
15 12-22-705 (3), and 12-22-705 (3) (d) and (3) (e), Colorado Revised
16 Statutes, are amended, and the said 12-22-705 (3) is further amended BY
17 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
18 read:

19 **12-22-705. Program operation - access - rules.** (1) The board
20 shall operate and maintain the program. ~~The committee shall advise and~~
21 ~~assist the board. The committee shall meet at least quarterly during the~~
22 ~~first two years of the program.~~

23 (2) The board shall adopt all rules necessary to implement the
24 program. ~~The committee shall advise the board regarding proposed rules.~~

25 (3) ~~The program shall be~~ IS available for query only to the
26 following persons or groups of persons:

27 (d) Licensed pharmacists with statutory authority to dispense

1 controlled substances to the extent the information requested relates
2 specifically to a current patient to whom the pharmacist is dispensing or
3 considering dispensing a controlled substance OR TO WHOM THE
4 PHARMACIST IS PROVIDING CLINICAL PATIENT CARE SERVICES;

5 (e) Law enforcement officials so long as the information released
6 is specific to an individual PATIENT OR PRESCRIBER and is part of a bona
7 fide investigation and the request for information is accompanied by an
8 official court order or subpoena; and

9 (g) STATE REGULATORY BOARDS WITHIN THE DIVISION AND THE
10 DIRECTOR OF THE DIVISION SO LONG AS THE INFORMATION RELEASED IS
11 SPECIFIC TO AN INDIVIDUAL PRESCRIBER AND IS PART OF A BONA FIDE
12 INVESTIGATION AND THE REQUEST FOR INFORMATION IS ACCOMPANIED BY
13 AN OFFICIAL COURT ORDER OR SUBPOENA; AND

14 (h) A RESIDENT PHYSICIAN WITH AN ACTIVE PHYSICIAN TRAINING
15 LICENSE ISSUED BY THE COLORADO MEDICAL BOARD PURSUANT TO
16 SECTION 12-36-122 AND UNDER THE SUPERVISION OF A LICENSED
17 PHYSICIAN.

18 SECTION 9. 12-22-706 (5), Colorado Revised Statutes, is
19 amended to read:

20 **12-22-706. Prescription drug monitoring fund - creation -**
21 **gifts, grants, and donations - fee.** (5) If, based upon the appropriations
22 for the direct and indirect costs of the program, there are insufficient
23 funds to maintain the program, the ~~board~~ DIVISION may collect a AN
24 ANNUAL fee of no more than ~~seven dollars and fifty cents per year~~
25 TWELVE DOLLARS OR AN AMOUNT THAT REFLECTS THE ACTUAL COSTS OF
26 THE PROGRAM, WHICHEVER IS LESS, from an individual who holds a
27 license from the division that authorizes him or her to prescribe a

1 controlled substance as defined by section 18-18-102, C.R.S. The fee
2 shall be established pursuant to section 24-34-105, C.R.S., and shall be
3 collected in conjunction with the license renewal fees collected pursuant
4 to section 24-34-105, C.R.S. Moneys collected pursuant to this
5 subsection (5) shall be credited to the prescription drug monitoring fund
6 created in subsection (1) of this section.

7 **SECTION 10.** 12-22-707, Colorado Revised Statutes, is amended
8 to read:

9 **12-22-707. Violations - penalties.** A person who knowingly
10 releases, obtains, or attempts to obtain information from the program in
11 violation of this part 7 shall be punished by a civil fine of not less than
12 one thousand dollars and not more than ten thousand dollars for each
13 violation. Fines paid shall be deposited in the ~~prescription drug~~
14 ~~monitoring~~ GENERAL fund.

15 **SECTION 11.** 12-22-709 (2), Colorado Revised Statutes, is
16 amended to read:

17 **12-22-709. Exemption - waiver.** (2) A prescription drug outlet
18 that does not report controlled substance data to the program due to a lack
19 of electronic automation of the outlet's business may apply to the board
20 for a waiver from the reporting requirements. ~~The committee shall~~
21 ~~determine whether a waiver shall be granted.~~

22 **SECTION 12.** 18-4-412 (2) (a), Colorado Revised Statutes, is
23 amended to read:

24 **18-4-412. Theft of medical records or medical information -**
25 **penalty.** (2) As used in this section:

26 (a) "Medical record" means the written or graphic documentation,
27 sound recording, or computer record pertaining to medical, mental health,

1 and health care services which THAT are performed at the direction of a
2 physician or other licensed health care provider on behalf of a patient by
3 physicians, dentists, nurses, technicians, emergency medical technicians,
4 mental health professionals, prehospital providers, or other health care
5 personnel. "Medical record" includes such diagnostic documentation as
6 X rays, electrocardiograms, electroencephalograms, and other test results.
7 "MEDICAL RECORD" INCLUDES DATA ENTERED INTO THE PRESCRIPTION
8 DRUG MONITORING PROGRAM PURSUANT TO SECTION 12-22-704, C.R.S.

9 SECTION 13. 25-1-1202 (1), Colorado Revised Statutes, is
10 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

11 25-1-1202. Index of statutory sections regarding medical
12 record confidentiality and health information. (1) Statutory
13 provisions concerning policies, procedures, and references to the release,
14 sharing, and use of medical records and health information include the
15 following:

16 (nnn) SECTION 12-22-707, C.R.S., CONCERNING INFORMATION
17 ENTERED INTO THE PRESCRIPTION DRUG MONITORING PROGRAM
18 DATABASE.

19 SECTION 14. Appropriation. In addition to any other
20 appropriation, there is hereby appropriated, out of any moneys in the
21 prescription drug monitoring fund created in section 12-22-706 (1),
22 Colorado Revised Statutes, not otherwise appropriated, to the department
23 of regulatory agencies, for allocation to the division of registrations, for
24 personal services and operating expenses, for the fiscal year beginning
25 July 1, 2011, the sum of fifty thousand three hundred twenty-six dollars
26 (\$50,326) cash funds and 1.0 FTE, or so much thereof as may be
27 necessary, for the implementation of this act.

1 **SECTION 15. Effective date - applicability.** This act shall take
2 **effect July 1, 2011, and shall apply to conduct occurring on or after said**
3 **date.**

4 **SECTION 16. Safety clause.** The general assembly hereby finds,
5 **determines, and declares that this act is necessary for the immediate**
6 **preservation of the public peace, health, and safety.**