

SENATE BILL No. 392

By Committee on Judiciary

1-24

1 AN ACT concerning the prescription monitoring program; relating to the
2 attorney general; granting the medicaid inspector general access to the
3 prescription monitoring program database without a warrant; replacing
4 the member of the program advisory committee representing the
5 Kansas bureau of investigation with a member nominated by the office
6 of the attorney general; amending K.S.A. 65-1690 and K.S.A. 2023
7 Supp. 65-1685 and 65-1689 and repealing the existing sections.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 2023 Supp. 65-1685 is hereby amended to read as
11 follows: 65-1685. (a) The program database, all information contained
12 therein and any records maintained by the board, or by any entity
13 contracting with the board, submitted to, maintained or stored as a part of
14 the database, including audit trail information, shall be privileged and
15 confidential, shall not be subject to subpoena or discovery in civil
16 proceedings and may only be used for investigatory or evidentiary
17 purposes related to violations of state or federal law and regulatory
18 activities of entities charged with administrative oversight of those
19 individuals engaged in the prescribing or dispensing of scheduled
20 substances and drugs of concern, shall not be a public record and shall not
21 be subject to the Kansas open records act, K.S.A. 45-215 et seq., and
22 amendments thereto, except as provided in subsections (c) and (d).

23 (b) The board shall maintain procedures to ensure that the privacy
24 and confidentiality of patients and patient information collected, recorded,
25 transmitted and maintained is not disclosed to individuals except as
26 provided in subsections (c) and (d).

27 (c) The board is hereby authorized to provide *program data* ~~in the~~
28 ~~program~~ to the following individuals:

29 (1) Individuals authorized to prescribe or dispense scheduled
30 substances and drugs of concern, for the purpose of providing medical or
31 pharmaceutical care for their patients;

32 (2) an individual who requests the individual's own prescription
33 monitoring information in accordance with procedures established by the
34 board;

35 (3) designated representatives from the professional licensing,
36 certification or regulatory agencies charged with administrative oversight

1 of those individuals engaged in the prescribing or dispensing of scheduled
2 substances and drugs of concern;

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

7 (5) designated representatives from the department of health and
8 environment regarding authorized medicaid program recipients or
9 practitioners;

10 (6) individuals authorized by a grand jury subpoena, inquisition
11 subpoena or court order in a criminal action;

12 (7) personnel of the prescription monitoring program advisory
13 committee for the purpose of operation of the program;

14 (8) personnel of the board for purposes of operation of the program
15 and administration and enforcement of this act or the uniform controlled
16 substances act, K.S.A. 65-4101 et seq., and amendments thereto;

17 (9) individuals authorized to prescribe or dispense scheduled
18 substances and drugs of concern, when an individual is obtaining
19 prescriptions in a manner that appears to be misuse, abuse or diversion of
20 scheduled substances or drugs of concern;

21 (10) medical examiners, coroners or other individuals authorized
22 under law to investigate or determine causes of death;

23 (11) ~~persons~~*individuals* operating a practitioner or pharmacist
24 impaired provider program in accordance with K.S.A. 65-4924, and
25 amendments thereto, for the purpose of reviewing drugs dispensed to a
26 practitioner or pharmacist enrolled in the program;

27 (12) delegates of individuals authorized by paragraphs (1), (9) and
28 (10);

29 (13) individuals or organizations notified by the advisory committee
30 as provided in subsection (g);

31 (14) practitioners or pharmacists conducting research approved by an
32 institutional review board who have obtained patient consent for the
33 release of program data; ~~and~~

34 (15) an overdose fatality review board established by the state of
35 Kansas; *and*

36 (16) *personnel of the office of the medicaid inspector general for the*
37 *purpose of conducting drug-related audits and investigations.*

38 (d) An individual registered for access to the program database shall
39 notify the board in writing within 30 calendar days of any action that
40 would disqualify the individual from being authorized to receive program
41 data as provided in subsection (c).

42 (e) The state board of healing arts, board of nursing, Kansas dental
43 board and board of examiners in optometry shall notify the board in

1 writing within 30 calendar days of any denial, suspension, revocation or
2 other administrative limitation of a practitioner's license or registration that
3 would disqualify the practitioner from being authorized to receive program
4 data as provided in subsection (c).

5 (f) A practitioner or pharmacist shall notify the board in writing
6 within 30 calendar days of any action that would disqualify a delegate
7 from being authorized to receive program data on behalf of the practitioner
8 or pharmacist.

9 (g) The prescription monitoring program advisory committee
10 established pursuant to K.S.A. 65-1689, and amendments thereto, is
11 authorized to review and analyze program data for purposes of identifying
12 patterns and activity of concern.

13 (1) If a review of information appears to indicate an individual may
14 be obtaining prescriptions in a manner that may represent misuse or abuse
15 of scheduled substances and drugs of concern, the advisory committee is
16 authorized to notify the prescribers and dispensers who prescribed or
17 dispensed the prescriptions. If the review does not identify a recent
18 prescriber as a point of contact for potential clinical intervention, the
19 advisory committee is authorized to notify the disability and behavioral
20 health services section of the Kansas department for aging and disability
21 services for the purpose of offering confidential treatment services. Further
22 disclosure of information is prohibited. If the review identifies patterns or
23 other evidence sufficient to create a reasonable suspicion of criminal
24 activity, the advisory committee is authorized to notify the appropriate law
25 enforcement agency.

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

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

41 (B) The peer review committee or committees appointed herein shall
42 have authority to request and receive information in the program database
43 from the director of the program.

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

5 (3) If a review of information appears to indicate that program data
6 has been accessed or used in violation of state or federal law, the advisory
7 committee shall determine whether a report to the professional licensing,
8 certification or regulatory agencies charged with administrative oversight
9 of those individuals engaged in prescribing or dispensing of scheduled
10 substances and drugs of concern is warranted and may make such report.

11 (e) *After removing information that could be used to identify*
12 *individual practitioners, dispensers, patients or individuals who received*
13 *prescriptions from dispensers, the board is hereby authorized to may, in its*
14 *discretion, provide program data to:*

15 (1) Public or private entities for statistical, research or educational
16 purposes ~~after removing information that could be used to identify~~
17 ~~individual practitioners, dispensers, patients or individuals who received~~
18 ~~prescriptions from dispensers.; and~~

19 ~~(f) The board is hereby authorized to provide a (2) medical care~~
20 ~~facility with its program data facilities for statistical, research or education~~
21 ~~purposes after removing information that could be used to identify~~
22 ~~individual practitioners or individuals who received prescriptions from~~
23 ~~dispensers.~~

24 ~~(g)(f)~~ The board may, in its discretion, block any user's access to the
25 program database if the board has reason to believe that access to the data
26 is or may be used by such user in violation of state or federal law.

27 Sec. 2. K.S.A. 2023 Supp. 65-1689 is hereby amended to read as
28 follows: 65-1689. (a) There is hereby created the program advisory
29 committee which, subject to the oversight of the board, shall be
30 responsible for the operation of the program. The advisory committee shall
31 consist of at least 10 members appointed by the board as follows:

32 (1) Two licensed physicians, one nominated by the Kansas medical
33 society and one nominated by the Kansas association of osteopathic
34 medicine;

35 (2) two licensed pharmacists nominated by the Kansas pharmacists
36 association;

37 (3) one person ~~representing the Kansas bureau of investigation~~
38 nominated by the *office of the* attorney general;

39 (4) one person representing the university of Kansas school of
40 medicine nominated by the dean of such school;

41 (5) one person representing the university of Kansas school of
42 pharmacy nominated by the dean of such school;

43 (6) one licensed dentist nominated by the Kansas dental association;

1 (7) one person representing the Kansas hospital association
2 nominated by such association;

3 (8) one licensed advanced practice provider nominated by either the
4 board of nursing or the state board of healing arts; and

5 (9) the board may also appoint other persons authorized to prescribe
6 or dispense scheduled substances and drugs of concern, recognized experts
7 and representatives from law enforcement.

8 (b) The appointments to the advisory committee shall be for terms of
9 three years.

10 (c) The advisory committee shall elect a chairperson from among its
11 members who shall serve a one-year term. The chairperson may serve
12 consecutive terms.

13 (d) The advisory committee, in accordance with K.S.A. 75-4319, and
14 amendments thereto, may recess for a closed or executive meeting when it
15 is considering matters relating to identifiable patients or providers.

16 (e) Upon the expiration of the term of office of any member of the
17 advisory committee on or after the effective date of this act, and in any
18 case of a vacancy existing on or after the effective date of this act, a
19 successor shall be appointed by the board pursuant to this section.

20 (f) All members of the advisory committee shall serve without
21 compensation.

22 Sec. 3. K.S.A. 65-1690 is hereby amended to read as follows: 65-
23 1690. (a) The prescription monitoring program advisory committee shall
24 work with each entity charged with administrative oversight of those
25 persons engaged in the prescribing or dispensing of scheduled substances
26 and drugs of concern to develop a continuing education program for such
27 persons about the purposes and uses of the prescription monitoring
28 program.

29 (b) The advisory committee shall work with the Kansas bar
30 association to develop a continuing education program for attorneys about
31 the purposes and uses of the prescription monitoring program.

32 (c) The advisory committee shall work with the ~~Kansas bureau of~~
33 ~~investigation~~ *office of the attorney general* to develop a continuing
34 education program for law enforcement officers about the purposes and
35 uses of the prescription monitoring program.

36 Sec. 4. K.S.A. 65-1690 and K.S.A. 2023 Supp. 65-1685 and 65-1689
37 are hereby repealed.

38 Sec. 5. This act shall take effect and be in force from and after its
39 publication in the statute book.