ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
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Name of Department Arkansas Department of Health

Agency or Division Name Substance Misuse and Injury Prevention, Center for Health Protection

Other Subdivision or Department, If Applicable

Previous Agency Name, If Applicable

Contact Person Laura Shue, General Counsel

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Contact Phone 501-661-2297

Name of Rule Rules Pertaining to the Arkansas Prescription Drug Monitoring Program

Newspaper Name Arkansas Democrat Gazette

Date of Publishing 10/15/2023

Final Date for Public Comment 11/14/2023

Location and Time of Public Meeting

NOTICE OF PUBLIC COMMENT PERIOD

The Arkansas Department of Health (ADH) is accepting public comments on the Rules Pertaining to Arkansas Prescription Drug Monitoring Program from October 15, 2023 to November 14, 2023. The comment period is provided to allow interested parties and the public to provide any comments. The proposed rule revision with a summary of changes can be viewed online at https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules or you may request a copy from our office at 501-661-2162.

Comments on the proposed changes can also be mailed to Arkansas Department of Health, Comments/Slot 10, 4815 West Markham, Little Rock Arkansas, 72205, or emailed to Jamie.turpin@arkansas.gov.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Arkansas Department of Health
BOARD/COMMISSION Substance Misuse and Injury Prevention, Center for Health Protection
BOARD/COMMISSION DIRECTOR Jamie Turpin, PharmD, PDMP Administrator
CONTACT PERSON Laura Shue, General Counsel
ADDRESS 4815 West Markham Street, Slot 31, Little Rock, AR 72205
PHONE NO. (501) 661-2297 **EMAIL** Laura.Shue@arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Laura Shue, General Counsel; Jamie Turpin, PharmD, PDMP Administrator
PRESENTER EMAIL(S) Laura.Shue@arkansas.gov; jamie.turpin@arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

****

1. What is the official title of this rule?
Rules Pertaining to the Arkansas Prescription Drug Monitoring Program

2. What is the subject of the proposed rule? Administration of the Arkansas Prescription Drug Monitoring Progr

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☑ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire?_____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☑

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☑ No ☐

If yes, please provide the state statute and/or rule citation.

Ark. Code Ann. §20-7-613

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☑

If yes, please list the rules being repealed.
If no, please explain.

The proposed amendments to the rules are to comply with Act 67 of 2023.

8. Is this a new rule? Yes ☐ No ☑

Does this repeal an existing rule? Yes ☐ No ☑
If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☑ No ☐
If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Ark. Code Ann. §20-7-613

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☑ No ☐

If yes, please provide the year of the act(s) and act number(s).

Act 67 of 2023

11. What is the reason for this proposed rule? Why is it necessary?

Act 67 of 2023 revised the law regarding access to the PDMP database by the State Medical Examiner for the stated purpose of investigating causes of deaths pursuant to his or her official duties and responsibilities.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules

13. Will a public hearing be held on this proposed rule? Yes ☐ No ☑

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 11/14/2023

15. What is the proposed effective date for this rule? 1/1/2024

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

None known at this time.

19. Is the rule expected to be controversial? Yes ☐ No ☑

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Health
BOARD/COMMISSION Substance Misuse and Injury Prevention, Center for Health Protection
PERSON COMPLETING THIS STATEMENT Laura Shue, General Counsel
TELEPHONE NO. (501) 661-2297 **EMAIL** Laura.Shue@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Rules Pertaining to the Arkansas Prescription Drug Monitoring Program

1. Does this proposed, amended, or repealed rule have a financial impact?
   Yes ☐ No ☑

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
   Yes ☑ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☑ No ☐

   If no, please explain:

   (a) how the additional benefits of the more costly rule justify its additional cost;

   (b) the reason for adoption of the more costly rule;

   (c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

   (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year	**Next Fiscal Year**
General Revenue_____	General Revenue_____
Federal Funds_____	Federal Funds_____
Cash Funds_____	Cash Funds_____
Special Revenue_____	Special Revenue_____
Other (Identify)_____	Other (Identify)_____
Total $0.00	Total $0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year	**Next Fiscal Year**
General Revenue_____	General Revenue_____
Federal Funds_____	Federal Funds_____
Cash Funds_____	Cash Funds_____
Special Revenue_____	Special Revenue_____
Other (Identify)_____	Other (Identify)_____
Total $0.00	Total $0.00

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year	**Next Fiscal Year**
$_____	$_____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year	**Next Fiscal Year**
$_____	$_____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars ($100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☑

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and
(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
(a) the rule is achieving the statutory objectives;
(b) the benefits of the rule continue to justify its costs; and
(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Sarah Huckabee Sanders

Renee Mallory, RN, BSN, Secretary of Health

Jennifer Dillaha, MD, Director

SUMMARY OF PROPOSED AMENDMENTS TO RULES PERTAINING TO THE ARKANSAS PRESCRIPTION DRUG MONITORING PROGRAM

- Under Section III (19) corrected definition of "Qualified law enforcement agency" to reflect the definition in statute. (Page 6)

- Inserted language under Section IV(g)(5) to allow dispensers to obtain a waiver from reporting for instances where the dispenser does not dispense controlled substances. (Page 10)

- As mandated by Act 67 of 2023, language was added in Section V(c) in added an obstetrician/gynecologist and member of the Arkansas Opioid Recovery Partnership to the PDMP Advisory Committee. (Page 12)

- Under Section VI(b)(2)(F)(ii) corrected statute numbering. (Page 13)

- As mandated by Act 67 of 2023, language was added in Section VI(b)(2) to relocate language for Medical Examiner access removed from Section VII(2)(b)(5) . (Page 13 and Page 16)

- Under Section V(1)(D) added the word "Monitoring". (Page 15)

- As mandated by Act 67 of 2023, language was added in Section VII(2)(b) for data to be released for mortality reviews. (Page 16)

- Under Section VII(2)(d) to add "or" to reflect language in statute. (Page 16)

- As mandated by Act 1208 of 2015, language was added in Section XIV concerning prescriber's with a prescription drug violation. (Page 19)

RULES
PERTAINING TO
ARKANSAS PRESCRIPTION DRUG MONITORING PROGRAM

SUBSTANCE MISUSE AND INJURY PREVENTION BRANCH
CENTER FOR HEALTH PROTECTION

Arkansas Department of Health
Little Rock, Arkansas

Renee Mallory, RN, BSN,
Interim Secretary of Health

Jennifer Dillaha, MD
Director and State Health Officer

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SECTION I - Authority

The following rules have been hereby promulgated pursuant to Arkansas Code ~~Annotated~~ . §20-7-613.

SECTION II - Purpose

(a) The purpose of these rules is to protect the state health system and the citizens of Arkansas by:

(1) enhancing patient care by providing prescription monitoring information that will ensure legitimate use of controlled substances in health care, including palliative care, research, and other medical pharmacological uses;

(2) helping curtail the misuse and abuse of controlled substances;

(3) assisting in combating illegal trade in and diversion of controlled substances; and

(4) enabling access to prescription information by practitioners, law enforcement agents, and other authorized individuals and agencies and to make prescription information available to practitioners, law enforcement agents, and other authorized individuals and agencies in other states.

SECTION III - Definitions

(a) As used in this section:

(1) "Arkansas Medicaid prescription drug program" means:

(A) The prescription drug program that is a portion of the Title XIX Medicaid program for the State of Arkansas;

(B) The Arkansas Medicaid prescription drug program includes any entity contracted with the Arkansas Medicaid prescription drug program and to which the Arkansas Medicaid Program has granted authority.

(2) "Certified law enforcement prescription drug diversion investigator" means a certified law enforcement officer assigned by his or her law enforcement agency to investigate prescription drug diversion and who

(A) has completed a certification course in prescription drug diversion approved by the Arkansas Prescription Drug Monitoring Program Advisory Committee and certified by the Arkansas Commission on Law Enforcement Standards and Training; and

~~(C)~~(B) ~~who~~ may access the Arkansas Prescription Drug Monitoring Program for prescriptions dispensed in Arkansas.

~~(2)~~(3) "Controlled substance" means a drug, substance, or immediate precursor in Schedules II-V;

~~(3)~~(4) "Delegate" means an agent or employee of the prescriber or dispenser to whom the prescriber or dispenser has delegated the task of accessing the data described in this subsection, but only if the agent or employee has been granted access by a delegate account, and for whose actions the authorizing prescriber or dispenser retains accountability.

~~(4)~~(5) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including without limitation, the prescribing, administering, packaging, labeling, or compounding necessary to prepare the controlled substance for that delivery;

~~(5)~~(6) "Dispenser" means:

(A) ~~"Dispenser" means a~~ A practitioner who dispenses.

(B) "Dispenser" does not include:

(i) A licensed hospital pharmacy when it is distributing controlled substances for the purpose of outpatient services, inpatient hospital care, or at the time of discharge from a hospital, except for a pharmacy owned by a hospital that has a retail pharmacy permit when the pharmacy is distributing controlled substances directly to the public;

(ii) A wholesale distributor of Schedule II-Schedule V controlled substances; or

(iii) A practitioner or other authorized person who administers a controlled substance;

~~(6)~~(7) "Drug overdose" means an acute condition resulting from the consumption or use of a controlled substance, or dangerous drug, or combination of a controlled substance and other intoxicants by an individual, causing signs, including without limitation:

(A) ~~(i)~~ Extreme physical illness;

(B) ~~(ii)~~ Decreased level of consciousness;

(C) ~~(iii)~~ Respiratory depression;

(D) ~~(iv)~~ Coma;

(E) ~~(v)~~ Mania; or

(F) ~~(vi)~~ Death.

~~(7)~~(8) "Exchangeability" means the ability of the program to electronically share reported information with another state's prescription monitoring program if the information concerns the dispensing of a controlled substance either:

(A) To a patient who resides in the other state; or

(B) Prescribed by a practitioner whose principal place of business is located in the other state;

(C) To a patient in which the practitioner believes an out of state search is warranted.

(9) "Hospice" or "hospice care" means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and home-like inpatient care for the terminally ill patient and family, employing an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement, with such care being:

(A) ~~a~~Available 24 hours a day, 7 days a week; and

~~(D)~~(B) ~~p~~Provided on the basis of need regardless of ability to pay.

~~(8)~~(10) "Investigation" means an active inquiry that is being conducted with a reasonable, good faith belief that the inquiry:

(A) Could lead to the filing of administrative, civil, or criminal proceedings; or

(B) Is ongoing and continuing and a reasonable, good faith anticipation exists for securing an arrest or prosecution in the foreseeable future;

~~(9)~~(11) "Opioid" means a drug or medication that relieves pain, including without limitation:

(A) Hydrocodone;

(B) Oxycodone;

(C) Morphine

(D) Codeine;

(E) Heroin; and

(F) Fentanyl

~~(10)~~(12) "Palliative care" means patient-centered and family-centered medical care offered throughout the continuum of an illness that optimizes quality of life by anticipating, preventing, and treating the suffering caused by a serious illness to address physical, emotional, social, and spiritual needs and facilitate patient autonomy, access to information, and choice, including without limitation:

(A) Discussion of the patient's goals for treatment;

(B) Discussions of treatment options appropriate to the patient, including hospice care, if needed; and

(C) Comprehensive pain and symptom management

~~(11)~~(13) "Patient" means the person or animal who is the ultimate user of a controlled substance for whom a lawful prescription is issued and for whom a controlled substance is lawfully dispensed;

~~(12)~~(14) "Practitioner" means:

(A) A physician, dentist, veterinarian, advanced practice nurse, physician assistant, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; and

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

~~(13)~~(15) "Prescribe" means to issue a direction or authorization, by prescription, permitting a patient lawfully to obtain a controlled substance;

~~(14)~~(16) "Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance;

~~(15)~~(17) "Prescription" means a controlled substance lawfully prescribed and subsequently dispensed;

~~(16)~~(18) "Prescription drug monitoring program" means a program that collects, manages, analyzes, and provides information regarding Schedule II, III, IV, and V controlled substances as provided under the Uniform Controlled Substances Act, Arkansas Code § 5-64-101 et seq., Arkansas Code §§ 5-64-1101 -- 5-64-1103, the Food, Drug, and Cosmetic Act, Arkansas Code § 20-56-201 et seq., or Arkansas Code §§ 20-64-501 -- 20 64-513;

~~(17)~~(19) "Qualified law enforcement agency" means a law enforcement agency that has a certified law enforcement prescription drug diversion investigator and a chief, sheriff, or law enforcement chief executive officer who ~~have~~ has successfully completed a certification course in prescription drug diversion approved by the commission.

~~(18)~~(20) "Schedule II" means controlled substances that are placed in Schedule II under Arkansas Code § 5-64-205;

~~(19)~~(21) "Schedule III" means controlled substances that are placed in Schedule III under Arkansas Code § 5-64- 207;

~~(20)~~(22) "Schedule IV" means controlled substances that are placed in Schedule IV under Arkansas Code § 5-64- 209;

~~(21)~~(23) "Schedule V" means controlled substances that are placed in Schedule V under Arkansas Code § 5-64-211; and

~~(22)~~(24) "Ultimate user" means a person who lawfully possesses a controlled substance for:

(A) The person's own use;

(B) The use of a member of the person's household; or

(C) Administering to an animal owned by a person or by a member of the person's household.

SECTION IV - Requirements for the Prescription Drug Monitoring Program

(a) The State Board of Health shall create the Prescription Drug Monitoring Program upon the Department of Health's procuring adequate funding to establish the program.

(b) Requirements to submit information for dispensation of controlled substance:

(1) Each dispenser shall submit to the department information regarding each Schedule II, III, IV, or V controlled substance dispensed.

(2) A dispenser located outside Arkansas and licensed and registered by the Arkansas State Board of Pharmacy shall submit to the department information regarding each Schedule II, III, IV, or V controlled substance prescription dispensed to an ultimate user whose address is within Arkansas.

(A) A federal dispenser located in the ~~state~~ State of Arkansas or located outside Arkansas may submit to the department information regarding each Schedule II, III, IV or V controlled substance dispensation to an ultimate user whose address is within Arkansas.

(3) The ~~board~~ State Board of Health shall create a controlled substances database for the Prescription Drug Monitoring Program.

(c) Each dispenser required to report under subsection (b) of this section shall submit to the department by electronic means, or other methods approved by the Prescription Drug Monitoring Program, information that shall include without limitation the following:

(1) The dispenser's identification number;

(2) The date the prescription was filled;

(3) The prescription number;

(4) Whether the prescription is new or is a refill;

(5) The National Drug Code number for the controlled substance that is dispensed;

(6) The quantity of the controlled substance dispensed;

(7) The number of days' supply dispensed;

(8) The number of refills ordered;

(9) ~~(A)~~ A patient identifier;~~.~~

(A) ~~(B)~~ A patient identifier shall not be a social security number or a driver's license number;

(10) The patient's name;

(11) The patient's address;

(12) The patient's date of birth;

(13) The patient's gender;

(14) The prescriber's identification number;

(15) The date the prescription was issued by the prescriber; and

(16) The source of the payment for the prescription.

(d) If the prescription dispensed is for an animal patient, the prescription shall be reported as follows:

(1) The prescription shall be identified as an animal/veterinary patient;

(2) The owner of the animal/veterinary patient shall be reported to the department by first name, last name, and date of birth; and

(3) The animal/veterinary patient shall be reported.

(e) Review of prescription drug monitoring information prior to prescribing or dispensing

(1) Except as required in SECTION IV -(e)(2) of this section, practitioners are encouraged to access or check the information in the controlled substance database created under this section before prescribing, dispensing, providing medication reconciliation, or administering medications.

(2) Mandatory review of prescription drug monitoring information prior to prescribing or dispensing

(A) A prescriber shall check the information in the Prescription Drug Monitoring Program when prescribing:

(i) An opioid from Schedule II or Schedule III for every time prescribing the medication to a patient; and

(ii) A benzodiazepine medication for the first time prescribing the medication to a patient.

(B) A licensing board that licenses practitioners who have the authority to prescribe shall adopt rules requiring the practitioners to check the information in the Prescription Drug Monitoring Program as described in subdivision SECTION IV -(e)(2) of this section.

(C) This subdivision SECTION IV -(e)(2) does not apply to:

(i) A practitioner administering a controlled substance:

a. Immediately before or during surgery;

b. During recovery from a surgery while in a healthcare facility;

c. In a healthcare facility; or

d. Necessary to treat a patient in an emergency situation at the scene of an emergency, in a licensed ground ambulance or air ambulance, or in the intensive care unit of a licensed hospital;

(ii) A practitioner prescribing or administering a controlled substance to:

a. A palliative care or hospice patient; or

b. A resident in a licensed nursing home facility; or

(iii) Situations in which the Prescription Drug Monitoring Program is not accessible due to technological or electrical failure.

(D) The State Board of Health may amend, by rule, the exemptions listed in subdivision SECTION IV -(e)(2)(C) of this section upon a recommendation from the Secretary of the Department of Health and a showing that the exemption or lack or exemption is unnecessarily burdensome or has created a hardship.

(3) A licensed oncologist shall check the Prescription Drug Monitoring Program when prescribing to a patient on an initial malignant episodic diagnosis and every three (3) months following the diagnosis while continuing treatment.

(f) This section does not prohibit licensing boards from requiring practitioners to access or check the information in the controlled substance database as a part of a review of the practitioner's professional practice.

(g) Standard for submitting prescription drug information

(1) Each dispenser shall submit the required information in accordance with the Standard for Prescription Monitoring Programs of the American Society for Automation in Pharmacy (ASAP) Version 4 Release 2 September 2011, incorporated by reference., or other format approved by the Prescription Drug Monitoring Program.

(2) Data shall be submitted via CD-ROM, a secure File Transfer Protocol (FTP), Virtual Private Network (VPN), https: or other methods approved by the Prescription Drug Monitoring Program.

(3) A dispenser shall report the controlled substance dispensing information records required under Arkansas Code Annotated §§ 20-7-601 to -614615 and these rules no later than the next business day after the date of dispensing. Veterinarians shall report dispensing information every thirty days. If controlled substances were not dispensed for the reporting period, the dispenser shall submit a Zero Report in accordance with ASAP Version 4 Release 2 September 2011., or other format approved by the Prescription Drug Monitoring Program.

(4) The department or the department's contractor shall notify a dispenser of an error in data reporting. Upon receiving notification of an error in data reporting, the dispenser shall take appropriate measures to correct the error and transmit the corrected data to the department or the department's contractor within 14 days of being notified of the error.

(5) If a dispenser does not dispense controlled substances, the dispenser may request a reporting exemption waiver from the Prescription Drug Monitoring Program.

(A) The waiver shall be renewed annually.

(A)(B) If a dispenser with a reporting exemption waiver begins to dispense controlled substances in the state, the dispenser shall notify the Prescription Drug Monitoring Program to relinquish the waiver on file prior to dispensing any controlled substances in the state and shall begin reporting dispensations to the Prescription Drug Monitoring Program.

(h) The department's process for patients to address errors, inconsistencies, and other matters in their record as maintained under this section, including in cases of breach of privacy and security shall comply with Sections 261 through 264 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 (the Administrative Simplification provisions) and regulations 45 CFR Parts 160 and 164 ("the HIPAA Security and Privacy Rule") and the HITECH (Health Information Technology for Economic and Clinical Health) Act as enacted by the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B.

(i) The department shall limit access to only those employees whose access is reasonably necessary to carry out this section.

~~(i)~~(1) However, a prescriber may delegate access to the controlled substance database to persons under his or her supervision or employment.

(j) A certified law enforcement prescription drug diversion investigator shall provide to the department the following information in order to be granted access to the Prescription Drug Monitoring Program:

(1) The identification credentials assigned by the department; and

(2) The case number of the investigation submitted on the investigator's law enforcement agency letterhead;~~,~~

(3) The badge number of the investigator;~~,~~ and

(4) A copy of the investigator's certification from the Arkansas Commission of Law Enforcement Standards and Training course in prescription drug diversion.

(k) Annual Reports by Qualified Law Enforcement Agency

(1) A qualified law enforcement agency shall submit to the department an annual report of the data accessed by all certified law enforcement prescription drug diversion investigators in the qualified law enforcement agency, including without limitation:

(A) Written verification that the inquiries were part of a lawful prescription drug diversion investigation as provided to the department through the case number of the investigation; and

(B) The disposition of the investigation.

(2) The department shall:

(A) Create a verification form for use under subdivision SECTION IV -(k)(1) of this section; and

(B) Make the verification form available annually to the qualified law enforcement agency.

(3) Submission of Verification Form

(A) The verification form under subdivision SECTION IV -(k)(1) of this section shall be submitted to the department within thirty (30) days of receipt of the form by the qualified law enforcement agency.

(B) Failure to submit a verification form under subdivision SECTION IV -(k)(3)(A) of this section shall result in the immediate suspension of the access to the database by the qualified law enforcement agency and its certified law enforcement prescription drug diversion investigators until a determination is made by the department to allow continued access.

SECTION V - Prescription Drug Monitoring Program Advisory Committee

(a) The State Board of Health shall create the Prescription Drug Monitoring Program Advisory Committee upon the Department of Health's procuring adequate funding to establish the Prescription Drug Monitoring Program.

(b) The mission of the advisory committee is to consult with and advise the Department of Health on matters related to the establishment, maintenance, operation, and evaluation of the Prescription Drug Monitoring Program.

(c) The committee shall consist of:

(1) One (1) representative designated by each of the following organizations:

(A) The Arkansas Academy of Physician Assistants;

(B) The Arkansas Association of Chiefs of Police;

(C) The Arkansas Drug Director;

(D) The Arkansas Medical Society;

(E) The Arkansas Nurses Association;

(F) The Arkansas Optometric Association;

(G) The Arkansas Osteopathic Medical Association;

(H) The Arkansas Pharmacists Association;

(I) The Arkansas Podiatric Medical Association;

(J) The Arkansas Prosecuting Attorneys Association;

(K) The Arkansas Sheriffs Association;

(L) The Arkansas State Dental Association;

(M) The Arkansas Veterinary Medical Association;

(N) The State Board of Health;

(O) The Arkansas Public Defender Commission; and

(2) One (1) mental health provider or certified drug and alcohol counselor; and

(3) One (1) consumer appointed by the Governor.

(4) One (1) obstetrician and gynecologist licensed by the Arkansas State Medical Board and designated by the Department of Health;

~~(3)~~(5) One (1) member of the Arkansas Opioid Recovery Partnership designated by the Department of Health;

~~(4)~~(6) The ~~chair~~ Chair of the Arkansas State Medical Board or his or her designee who is also a member of the Arkansas State Medical Board; and

~~(5)~~(7) The ~~chair~~ President of the Arkansas State Board of Dental Examiners or his or her designee who is also a member of the Arkansas State Board of Dental Examiners.

SECTION VI - Confidentiality

(a) Prescription information submitted to the Department of Health pursuant to Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~20-7-615 and these rules is confidential and not subject to the Freedom of Information Act of 1967, Arkansas Code § 25-19-101, et seq.

(b) Limitations on Access to Controlled Substances Database

(1) The controlled substances database and all information contained in the controlled substances database and any records maintained by the ~~department~~ Department of Health or by an entity contracting with the ~~department~~ Department that is submitted to, maintained, or stored as a part of the controlled substances database is privileged and confidential, is not a public record, and is not subject to subpoena or discovery in a civil proceeding.

(2) Information in the controlled substances database may be accessed by:

(A) A certified law enforcement officer pursuant to a criminal investigation but only after the law enforcement officer obtains a search warrant signed by a judge that demonstrates probable cause to believe that a violation of federal or state criminal law has occurred, that specified information contained in the database would assist in the investigation of the crime, and that the specified information should be released to the certified law enforcement officer;

(B) A regulatory body engaged in the supervision of activities of licensing or regulatory boards of practitioners authorized to prescribe or dispense controlled substances;

(C) A person or entity investigating a case involving breaches of privacy involving the database or its records.

(D) A certified law enforcement prescription drug diversion investigator of a qualified law enforcement agency; or

(E) A practitioner within the Arkansas Medicaid prescription drug program; or

(F) The Department of Human Services or the Crimes Against Children Division of the ~~Department~~ Division of Arkansas State Police if:

(i) The purpose of the database access is related to an investigation under the Child Maltreatment Act,~~-~~ Arkansas Code §12-18-101 et seq., and not pursuant to a criminal investigation by a certified law enforcement officer; and

(ii) The Department of Human Services has obtained a court order to access the database under § 12-18-~~621~~622.

(G) The Office of Medicaid Inspector General for review and investigation of fraud, waste, and abuse within the Arkansas Medicaid prescription drug program if access is limited to beneficiaries of the Arkansas Medicaid prescription drug program.

~~(G)~~(H) The State Medical Examiner as authorized by law to investigate causes of deaths for cases under investigation pursuant to his or her official duties and responsibilities.

(c) This section does not apply to information, documents, or records created or maintained in the regular course of business of a pharmacy, medical, dental, optometric, or veterinary practitioner, or other entity covered by ~~Arkansas~~ Ark. Code ~~Annotated~~ Ann. §§ 20-7-601 to -~~614~~ 615 and these rules, and all information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil proceeding merely because the information contained in the records was reported to the controlled substances database under ~~Arkansas~~ Ark. Code ~~Annotated~~ Ann. §§ 20-7-601 to -~~614~~ 615 and these rules.

(d) The department shall establish and enforce policies and procedures to ensure that the privacy and confidentiality of patients are maintained and that patient information collected, recorded, transmitted, and stored is protected and not disclosed to persons except as listed in Section VII – Providing Prescription Monitoring Information. The department's policies shall comply with Sections 261 through 264 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 (the Administrative Simplification provisions) and regulations 45 CFR Parts 160 and 164 ("the HIPAA Security and Privacy Rule") and the HITECH (Health Information Technology for Economic and Clinical Health) Act as enacted by the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B.

(e) The Prescription Drug Monitoring Program shall establish and maintain a process for verifying the credentials and authorizing the use of prescription information by individuals and agencies listed in Section VII – Providing Prescription Monitoring Information. The application to access prescription information shall include information as needed by the department to verify the applicant's authority to use prescription information in compliance with Section VII.

SECTION VII - Providing Prescription Monitoring Information

(a) Departmental Review

(1) Departmental Review for Misuse or Abuse

(A) Criteria for Review Established by Department of Health

(i) The Department of Health shall review the Prescription Drug Monitoring Program information, including without limitation a review to identify information that appears to indicate whether a person is obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances based on prescribing criteria determined by the Secretary of the Department of Health upon consultation with the Prescription Drug Monitoring Program Advisory Committee.

(ii) The prescribing criteria shall be posted on the website of the department and be available in print upon request.

(B) If the information appears to indicate misuse or abuse may have occurred, the department shall notify the practitioners and dispensers who have prescribed or dispensed in the following manner:

(i) The department shall provide quarterly reports to the individual practitioners and dispensers; and

(ii) If after twelve (12) months of providing quarterly reports to the practitioners and dispensers, the information appears to indicate misuse or abuse may be continuing, the department shall send a report to the licensing boards of the practitioner or dispenser who prescribed or dispensed the prescription.

(iii) If the department is notified of a drug overdose of an Arkansas resident, the department may notify any practitioner in whose authority any applicable controlled substance prescription (s) was dispensed within an applicable period prior to the overdose as determined by the Secretary of Health, or any practitioner that may prescribe or dispense a controlled substance within one year of drug overdose.

(C) If information of misuse or abuse is identified, the department shall notify the practitioners and dispensers who prescribed or dispensed the prescriptions and the Little Rock, Arkansas Office of Diversion Control of the United States Drug Enforcement Administration.

(D) On or before January 1, 2019, the department shall contract with a vendor to make the Prescription Drug Monitoring Program interactive and to provide same-day reporting in real-time, if funding and technology are available.

(2) Departmental Review of Prescribers or Dispensers

(A) The department may:

(i) Review the Prescription Drug Monitoring Program information, including without limitation a review to identify information that appears to indicate whether a prescriber or dispenser may be prescribing or dispensing prescriptions in a manner that may represent misuse or abuse of a controlled substance.; and

(ii) Require prescribers or dispensers, or both, to provide physical copies of written or electronic prescriptions upon request to validate data submitted to the program in order to evaluate the information reported by the program.

(B) If information of misuse or abuse is identified, the department may notify the professional licensing board of the prescriber or dispenser only after the relevant professional licensing board has provided the department with the parameters for triggering a notification from the department to the professional licensing board.

(C) The department shall develop algorithms within the controlled substance database that would alert a practitioner if his or her patient is being prescribed opioids by more than three (3) physicians within any thirty-day period, if funding is available.

(3) ~~(A)~~ A prescriber who has been found by his or her licensing board to be in violation of a rule or law involving prescription drugs shall be required by the appropriate licensing board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid.

(A) ~~(B)~~ The licensing board, in its discretion, may remove this requirement after a period of time if the board deems removal of the requirement appropriate.

(b) The department shall provide information in the Prescription Drug Monitoring Program upon request and at no cost only to the following persons:

~~(1)~~

~~(2)~~(1) A person authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for his or her patients or for reviewing information regarding prescriptions that are recorded as having been issued or dispensed by the requester;

~~(3)~~(2) A Delegate;

~~(4)~~(3) A patient who requests his or her own prescription monitoring information;

~~(5)~~(4) A parent or legal guardian of a minor child who requests the minor child's Prescription Drug Monitoring Program information;

~~(6)~~(5) ~~(A)~~ A designated representative of a professional licensing board of the professions of the healing arts representing health care disciplines whose licensees are prescribers

pursuant to an investigation of a specific individual, entity, or business licensed or permitted by that board.

(A) ~~(B)~~ Except as permitted by subsection (a)(2) of this section, the department shall provide information under subsection (b)(4)(A) of this section only if the requesting board states in writing that the information is necessary for an investigation;

~~(7)~~(6) ~~The State Medical Examiner as authorized by law to investigate causes of deaths for cases under investigation pursuant to his or her official duties and responsibilities;~~A mortality review recognized by the department;

~~(8)~~(7) Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances required to be submitted under Arkansas Code ~~Annotated~~ §§ 20-7-601 to ~~614~~ 615 and these rules pursuant to the agency's official duties and responsibilities; and

(7) Personnel of the department for purposes of administration and enforcement of ~~Arkansas~~ Ark. Code ~~Annotated~~ Ann. § 20-7-607 and this section.

(c) Information collected under ~~Arkansas~~ Ark. Code ~~Annotated~~ Ann. §§ 20-7-601 to ~~614~~ 615 and these rules shall be maintained for three (3) years.

(d) The department may provide patient, prescriber, or dispenser information to public or private entities for statistical, research, or educational purposes after encrypting or removing any patient's name, street name and number, patient identification number, month and day of birth, and prescriber or dispenser information that could be used to identify individual patients or ~~,~~ persons who received prescriptions.

(e) The department may provide information in the Prescription Drug Monitoring Program to insurance carriers for the purpose of verifying prescriber or dispenser registration for individuals that are part of the health plan’s network of providers.

SECTION VIII - Information Exchange with Other Prescription Drug Monitoring Programs

(a) The Department of Health may provide prescription monitoring information to federal prescription drug monitoring programs or other states' prescription drug monitoring programs, and the information may be used by those programs consistent with Arkansas Code ~~Annotated~~ §§ 20-7-601 to ~~614~~ 615 and these rules.

(b) The department may request and receive prescription monitoring information from federal prescription drug monitoring programs or other states' prescription drug monitoring programs and may use the information pursuant to Arkansas Code ~~Annotated~~ §§ 20-7-601 to ~~614~~ 615 and these rules.

(c) The department may develop the capability to transmit information to other prescription drug monitoring programs and receive information from other prescription drug monitoring programs employing the standards of exchangeability.

(d) The department may enter into written agreements with federal prescription drug monitoring programs or other states' prescription drug monitoring programs for the purpose of describing the terms and conditions for sharing of prescription information consistent with Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 615 and these rules.

SECTION IX - Authority to Contract

(a) The Department of Health may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the Prescription Drug Monitoring Program.

(b) A contractor shall be bound to comply with the provisions regarding confidentiality of prescription information as outlined in Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 615 and these rules and shall be subject to the penalties specified in Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 615 and these rules for unlawful acts.

SECTION X - Authority to Seek Funding

(a) The Department of Health may make application for, receive, and administer grant funding from public or private sources for the development, implementation, or enhancement of the Prescription Drug Monitoring Program.

(b) A fee shall not be levied against practitioners for the purpose of funding or complying with the Prescription Drug Monitoring Program.

SECTION XI - Unlawful Acts and Penalties

(a) Failure to Submit Prescription Drug Monitoring Information

(1) It is unlawful for a dispenser to purposely fail to submit prescription monitoring information as required under Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~615 and these rules.

(2) A violation of subdivision (a) (1) of this section is a Class B misdemeanor.

(b) Purposely Submitting Fraudulent Prescription Information

(1) It is unlawful for a dispenser to purposely submit fraudulent prescription information.

(2) A violation of subdivision (b) (1) of this section is a Class D felony.

(c) Unlawful Disclosure of Prescription Monitoring Information

(1) It is unlawful for a person authorized to receive prescription monitoring information to purposely disclose the information in violation of Arkansas Code ~~Annotated~~ §§ 20 7-601 to -~~614~~615 and these rules.

(2) A violation of subdivision (c) (1) of this section is a Class C felony.

(d) Unlawful Use of Prescription Monitoring Information

(1) It is unlawful for a person authorized to receive prescription drug monitoring program information to use such information in a manner or for a purpose in violation of Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~615 and these rules.

(2) A violation of subsection (d) (1) of this section is a Class C felony.

(e) Unlawful Disclosure by Fraud or Deceit of Prescription Drug Monitoring Information

(1) It is unlawful for a person to knowingly obtain, use, or disclose or attempt to obtain, use, or disclose information by fraud or deceit from the Prescription Drug Monitoring Program or from a person authorized to receive information from the Prescription Drug Monitoring Program under Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 615 and these rules.

(2) A violation of subdivision (e) (1) of this section is a Class C felony.

(f) In addition to the criminal penalties provided in this section, a dispenser or practitioner who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 20-7-615 and these rules may be subject to disciplinary action by the dispenser's or practitioner's licensing board.

(g) In addition to the criminal penalties provided in this section, a law enforcement officer who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 20-7-615 and these rules may be subject to disciplinary action by the law enforcement officer's agency or department.

(h) Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 20-7-615 and these rules do not limit a person whose privacy has been compromised unlawfully under this section from bringing a civil action to address the breach of privacy or to recover all damages to which the person may be entitled per violation, including attorney's fees and costs.

(i) A practitioner who purposely fails to access the Prescription Drug Monitoring Program as required by Arkansas Code § 20-7-604(d) is subject to disciplinary action by the licensing board of the practitioner.

SECTION XII - Privacy Rights Protected

Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~ 20-7-615 and these rules do not give authority to any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly, the courts, or the United States Constitution or the Constitution of the State of Arkansas other than to the extent provided in these rules and Arkansas Code ~~Annotated~~ §§ 20-7-601 to -~~614~~20-7-615.

SECTION XIII - Effective Date

(a) The Prescription Drug Monitoring Program shall become operational March 1, 2013, if full funding is available under Arkansas Code ~~Annotated~~ § 20-7-610 and Section X.

(b) The Secretary of the Department of Health may suspend operation of the program if adequate funding under Arkansas Code ~~Annotated~~ § 20-7-610 and Section X ceases.

SECTION XIV - Prescriber With a Prescription Drug Violation

(a) A prescriber who has been found by his or her licensing board to be in violation of a rule or law involving prescription drugs shall be required by the appropriate licensing board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid.

~~(c)~~(b) The licensing board, in its discretion, may remove this requirement after a period of time if the licensing board deems removal of the requirement appropriate.

~~**SECTION XIV -**~~**SECTION XV - Severability**

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these rules which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared severable.

~~**SECTION XV -**~~**SECTION XVI - Repeal**

All rules and parts of rules in conflict are hereby repealed.

CERTIFICATION

I certify that the foregoing Rules pertaining to the Arkansas Prescription Drug Monitoring Program were adopted by the Arkansas State Board of Health at a regular session in Little Rock, Arkansas, on___ day of _____, 2023.

_____

Jennifer Dillaha, MD
Secretary, Arkansas State Board of Health
Director, Arkansas Department of Health

RULES
PERTAINING TO
ARKANSAS PRESCRIPTION DRUG MONITORING PROGRAM

SUBSTANCE MISUSE AND INJURY PREVENTION BRANCH
CENTER FOR HEALTH PROTECTION

Arkansas Department of Health
Little Rock, Arkansas

Renee Mallory, RN, BSN,
Interim Secretary of Health

Jennifer Dillaha, MD
Director and State Health Officer

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SECTION I - Authority

The following rules have been hereby promulgated pursuant to Arkansas Code . §20-7-613.

SECTION II - Purpose

(a) The purpose of these rules is to protect the state health system and the citizens of Arkansas by:

(1) enhancing patient care by providing prescription monitoring information that will ensure legitimate use of controlled substances in health care, including palliative care, research, and other medical pharmacological uses;

(2) helping curtail the misuse and abuse of controlled substances;

(3) assisting in combating illegal trade in and diversion of controlled substances; and

(4) enabling access to prescription information by practitioners, law enforcement agents, and other authorized individuals and agencies and to make prescription information available to practitioners, law enforcement agents, and other authorized individuals and agencies in other states.

SECTION III - Definitions

(a) As used in this section:

(1) "Arkansas Medicaid prescription drug program" means:

(A) The prescription drug program that is a portion of the Title XIX Medicaid program for the State of Arkansas;

(B) The Arkansas Medicaid prescription drug program includes any entity contracted with the Arkansas Medicaid prescription drug program and to which the Arkansas Medicaid Program has granted authority.

(2) "Certified law enforcement prescription drug diversion investigator" means a certified law enforcement officer assigned by his or her law enforcement agency to investigate prescription drug diversion and who

(A) has completed a certification course in prescription drug diversion approved by the Arkansas Prescription Drug Monitoring Program Advisory Committee and certified by the Arkansas Commission on Law Enforcement Standards and Training; and

(B) may access the Arkansas Prescription Drug Monitoring Program for prescriptions dispensed in Arkansas.

(3) “Controlled substance” means a drug, substance, or immediate precursor in Schedules II-V;

(4) "Delegate" means an agent or employee of the prescriber or dispenser to whom the prescriber or dispenser has delegated the task of accessing the data described in this subsection, but only if the agent or employee has been granted access by a delegate account, and for whose actions the authorizing prescriber or dispenser retains accountability.

(5) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including without limitation, the prescribing, administering, packaging, labeling, or compounding necessary to prepare the controlled substance for that delivery;

(6) "Dispenser" means:

(A) A practitioner who dispenses.

(B) "Dispenser" does not include:

(i) A licensed hospital pharmacy when it is distributing controlled substances for the purpose of outpatient services, inpatient hospital care, or at the time of discharge from a hospital, except for a pharmacy owned by a hospital that has a retail pharmacy permit when the pharmacy is distributing controlled substances directly to the public;

(ii) A wholesale distributor of Schedule II-Schedule V controlled substances; or

(iii) A practitioner or other authorized person who administers a controlled substance;

(7) "Drug overdose" means an acute condition resulting from the consumption or use of a controlled substance, or dangerous drug, or combination of a controlled substance and other intoxicants by an individual, causing signs, including without limitation:

(A) Extreme physical illness;

(B) Decreased level of consciousness;

(C) Respiratory depression;

(D) Coma;

(E) Mania; or

(F) Death.

(8) "Exchangeability" means the ability of the program to electronically share reported information with another state's prescription monitoring program if the information concerns the dispensing of a controlled substance either:

(A) To a patient who resides in the other state; or

(B) Prescribed by a practitioner whose principal place of business is located in the other state;

(C) To a patient in which the practitioner believes an out of state search is warranted.

(9) "Hospice" or "hospice care" means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and home-like inpatient care for the terminally ill patient and family, employing an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement, with such care being:

(A) Available 24 hours a day, 7 days a week; and

(B) Provided on the basis of need regardless of ability to pay.

(10) "Investigation" means an active inquiry that is being conducted with a reasonable, good faith belief that the inquiry:

(A) Could lead to the filing of administrative, civil, or criminal proceedings; or

(B) Is ongoing and continuing and a reasonable, good faith anticipation exists for securing an arrest or prosecution in the foreseeable future;

(11) "Opioid" means a drug or medication that relieves pain, including without limitation:

(A) Hydrocodone;

(B) Oxycodone;

(C) Morphine

(D) Codeine;

(E) Heroin; and

(F) Fentanyl

(12) "Palliative care" means patient-centered and family-centered medical care offered throughout the continuum of an illness that optimizes quality of life by anticipating, preventing, and treating the suffering caused by a serious illness to address physical, emotional, social, and spiritual needs and facilitate patient autonomy, access to information, and choice, including without limitation:

(A) Discussion of the patient's goals for treatment;

(B) Discussions of treatment options appropriate to the patient, including hospice care, if needed; and

(C) Comprehensive pain and symptom management

(13) "Patient" means the person or animal who is the ultimate user of a controlled substance for whom a lawful prescription is issued and for whom a controlled substance is lawfully dispensed;

(14) "Practitioner" means:

(A) A physician, dentist, veterinarian, advanced practice nurse, physician assistant, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; and

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

(15) "Prescribe" means to issue a direction or authorization, by prescription, permitting a patient lawfully to obtain a controlled substance;

(16) "Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance;

(17) "Prescription" means a controlled substance lawfully prescribed and subsequently dispensed;

(18) "Prescription drug monitoring program" means a program that collects, manages, analyzes, and provides information regarding Schedule II, III, IV, and V controlled substances as provided under the Uniform Controlled Substances Act, Arkansas Code § 5-64-101 et seq., Arkansas Code §§ 5-64-1101 -- 5-64-1103, the Food, Drug, and Cosmetic Act, Arkansas Code § 20-56-201 et seq., or Arkansas Code §§ 20-64-501 -- 20 64-513;

(19) "Qualified law enforcement agency" means a law enforcement agency that has a certified law enforcement prescription drug diversion investigator and a chief, sheriff, or law enforcement chief executive officer who has successfully completed a certification course in prescription drug diversion approved by the commission.

(20) "Schedule II" means controlled substances that are placed in Schedule II under Arkansas Code § 5-64-205;

(21) "Schedule III" means controlled substances that are placed in Schedule III under Arkansas Code § 5-64- 207;

(22) "Schedule IV" means controlled substances that are placed in Schedule IV under Arkansas Code § 5-64- 209;

(23) "Schedule V" means controlled substances that are placed in Schedule V under Arkansas Code § 5-64-211; and

(24) "Ultimate user" means a person who lawfully possesses a controlled substance for:

(A) The person's own use;

(B) The use of a member of the person's household; or

(C) Administering to an animal owned by a person or by a member of the person's household.

SECTION IV - Requirements for the Prescription Drug Monitoring Program

(a) The State Board of Health shall create the Prescription Drug Monitoring Program upon the Department of Health's procuring adequate funding to establish the program.

(b) Requirements to submit information for dispensation of controlled substance:

(1) Each dispenser shall submit to the department information regarding each Schedule II, III, IV, or V controlled substance dispensed.

(2) A dispenser located outside Arkansas and licensed and registered by the Arkansas State Board of Pharmacy shall submit to the department information regarding each Schedule II, III, IV, or V controlled substance prescription dispensed to an ultimate user whose address is within Arkansas.

(A) A federal dispenser located in the State of Arkansas or located outside Arkansas may submit to the department information regarding each Schedule II, III, IV or V controlled substance dispensation to an ultimate user whose address is within Arkansas.

(3) The State Board of Health shall create a controlled substances database for the Prescription Drug Monitoring Program.

(c) Each dispenser required to report under subsection (b) of this section shall submit to the department by electronic means, or other methods approved by the Prescription Drug Monitoring Program, information that shall include without limitation the following:

(1) The dispenser's identification number;

(2) The date the prescription was filled;

(3) The prescription number;

(4) Whether the prescription is new or is a refill;

(5) The National Drug Code number for the controlled substance that is dispensed;

(6) The quantity of the controlled substance dispensed;

(7) The number of days' supply dispensed;

(8) The number of refills ordered;

(9) A patient identifier;

(A) A patient identifier shall not be a social security number or a driver's license number;

(10) The patient's name;

(11) The patient's address;

(12) The patient's date of birth;

(13) The patient's gender;

(14) The prescriber's identification number;

(15) The date the prescription was issued by the prescriber; and

(16) The source of the payment for the prescription.

(d) If the prescription dispensed is for an animal patient, the prescription shall be reported as follows:

(1) The prescription shall be identified as an animal/veterinary patient;

(2) The owner of the animal/veterinary patient shall be reported to the department by first name, last name, and date of birth; and

(3) The animal/veterinary patient shall be reported.

(e) Review of prescription drug monitoring information prior to prescribing or dispensing

(1) Except as required in SECTION IV -(e)(2) of this section, practitioners are encouraged to access or check the information in the controlled substance database created under this section before prescribing, dispensing, providing medication reconciliation, or administering medications.

(2) Mandatory review of prescription drug monitoring information prior to prescribing or dispensing

(A) A prescriber shall check the information in the Prescription Drug Monitoring Program when prescribing:

(i) An opioid from Schedule II or Schedule III for every time prescribing the medication to a patient; and

(ii) A benzodiazepine medication for the first time prescribing the medication to a patient.

(B) A licensing board that licenses practitioners who have the authority to prescribe shall adopt rules requiring the practitioners to check the information in the Prescription Drug Monitoring Program as described in subdivision SECTION IV -(e)(2) of this section.

(C) This subdivision SECTION IV -(e)(2) does not apply to:

(i) A practitioner administering a controlled substance:

a. Immediately before or during surgery;

b. During recovery from a surgery while in a healthcare facility;

c. In a healthcare facility; or

d. Necessary to treat a patient in an emergency situation at the scene of an emergency, in a licensed ground ambulance or air ambulance, or in the intensive care unit of a licensed hospital;

(ii) A practitioner prescribing or administering a controlled substance to:

a. A palliative care or hospice patient; or

b. A resident in a licensed nursing home facility; or

(iii) Situations in which the Prescription Drug Monitoring Program is not accessible due to technological or electrical failure.

(D) The State Board of Health may amend, by rule, the exemptions listed in subdivision SECTION IV -(e)(2)(C) of this section upon a recommendation from the Secretary of the Department of Health and a showing that the exemption or lack or exemption is unnecessarily burdensome or has created a hardship.

(3) A licensed oncologist shall check the Prescription Drug Monitoring Program when prescribing to a patient on an initial malignant episodic diagnosis and every three (3) months following the diagnosis while continuing treatment.

(f) This section does not prohibit licensing boards from requiring practitioners to access or check the information in the controlled substance database as a part of a review of the practitioner's professional practice.

(g) Standard for submitting prescription drug information

(1) Each dispenser shall submit the required information in accordance with the Standard for Prescription Monitoring Programs of the American Society for Automation in Pharmacy

(ASAP) Version 4 Release 2 September 2011, incorporated by reference~~.~~, or other format approved by the Prescription Drug Monitoring Program.

(2) Data shall be submitted via CD-ROM, a secure File Transfer Protocol (FTP), Virtual Private Network (VPN), https: or other methods approved by the Prescription Drug Monitoring Program.

(3) A dispenser shall report the controlled substance dispensing information records required under Arkansas Code §§ 20-7-601 to -615 and these rules no later than the next business day after the date of dispensing. Veterinarians shall report dispensing information every thirty days. If controlled substances were not dispensed for the reporting period, the dispenser shall submit a Zero Report in accordance with ASAP Version 4 Release 2 September 2011~~.~~, or other format approved by the Prescription Drug Monitoring Program.

(4) The department or the department's contractor shall notify a dispenser of an error in data reporting. Upon receiving notification of an error in data reporting, the dispenser shall take appropriate measures to correct the error and transmit the corrected data to the department or the department's contractor within 14 days of being notified of the error.

(5) If a dispenser does not dispense controlled substances, the dispenser may request a reporting exemption waiver from the Prescription Drug Monitoring Program.

(A) The waiver shall be renewed annually.

(B) If a dispenser with a reporting exemption waiver begins to dispense controlled substances in the state, the dispenser shall notify the Prescription Drug Monitoring Program to relinquish the waiver on file prior to dispensing any controlled substances in the state and shall begin reporting dispensations to the Prescription Drug Monitoring Program.

(h) The department's process for patients to address errors, inconsistencies, and other matters in their record as maintained under this section, including in cases of breach of privacy and security shall comply with Sections 261 through 264 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 (the Administrative Simplification provisions) and regulations 45 CFR Parts 160 and 164 ("the HIPAA Security and Privacy Rule") and the HITECH (Health Information Technology for Economic and Clinical Health) Act as enacted by the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B.

(i) The department shall limit access to only those employees whose access is reasonably necessary to carry out this section.

(1) However, a prescriber may delegate access to the controlled substance database to persons under his or her supervision or employment.

(j) A certified law enforcement prescription drug diversion investigator shall provide to the department the following information in order to be granted access to the Prescription Drug Monitoring Program:

(1) The identification credentials assigned by the department; and

(2) The case number of the investigation submitted on the investigator's law enforcement agency letterhead;

(3) The badge number of the investigator; and

(4) A copy of the investigator's certification from the Arkansas Commission of Law Enforcement Standards and Training course in prescription drug diversion.

(k) Annual Reports by Qualified Law Enforcement Agency

(1) A qualified law enforcement agency shall submit to the department an annual report of the data accessed by all certified law enforcement prescription drug diversion investigators in the qualified law enforcement agency, including without limitation:

(A) Written verification that the inquiries were part of a lawful prescription drug diversion investigation as provided to the department through the case number of the investigation; and

(B) The disposition of the investigation.

(2) The department shall:

(A) Create a verification form for use under subdivision SECTION IV -(k)(1) of this section; and

(B) Make the verification form available annually to the qualified law enforcement agency.

(3) Submission of Verification Form

(A) The verification form under subdivision SECTION IV -(k)(1) of this section shall be submitted to the department within thirty (30) days of receipt of the form by the qualified law enforcement agency.

(B) Failure to submit a verification form under subdivision SECTION IV -(k)(3)(A) of this section shall result in the immediate suspension of the access to the database by the qualified law enforcement agency and its certified law enforcement prescription drug diversion investigators until a determination is made by the department to allow continued access.

SECTION V - Prescription Drug Monitoring Program Advisory Committee

(a) The State Board of Health shall create the Prescription Drug Monitoring Program Advisory Committee upon the Department of Health's procuring adequate funding to establish the Prescription Drug Monitoring Program.

(b) The mission of the advisory committee is to consult with and advise the Department of Health on matters related to the establishment, maintenance, operation, and evaluation of the Prescription Drug Monitoring Program.

(c) The committee shall consist of:

(1) One (1) representative designated by each of the following organizations:

(A) The Arkansas Academy of Physician Assistants;

(B) The Arkansas Association of Chiefs of Police;

(C) The Arkansas Drug Director;

(D) The Arkansas Medical Society;

(E) The Arkansas Nurses Association;

(F) The Arkansas Optometric Association;

(G) The Arkansas Osteopathic Medical Association;

(H) The Arkansas Pharmacists Association;

(I) The Arkansas Podiatric Medical Association;

(J) The Arkansas Prosecuting Attorneys Association;

(K) The Arkansas Sheriffs Association;

(L) The Arkansas State Dental Association;

(M) The Arkansas Veterinary Medical Association;

(N) The State Board of Health;

(O) The Arkansas Public Defender Commission; and

(2) One (1) mental health provider or certified drug and alcohol counselor; and

(3) One (1) consumer appointed by the Governor.

(4) One (1) obstetrician and gynecologist licensed by the Arkansas State Medical Board and designated by the Department of Health;

(5) One (1) member of the Arkansas Opioid Recovery Partnership designated by the Department of Health;

(6) The Chair of the Arkansas State Medical Board or his or her designee who is also a member of the Arkansas State Medical Board; and

(7) The President of the Arkansas State Board of Dental Examiners or his or her designee who is also a member of the Arkansas State Board of Dental Examiners.

SECTION VI - Confidentiality

(a) Prescription information submitted to the Department of Health pursuant to Arkansas Code §§ 20-7-601 to -20-7-615 and these rules is confidential and not subject to the Freedom of Information Act of 1967, Arkansas Code § 25-19-101, et seq.

(b) Limitations on Access to Controlled Substances Database

(1) The controlled substances database and all information contained in the controlled substances database and any records maintained by the Department of Health or by an entity contracting with the Department that is submitted to, maintained, or stored as a part of the controlled substances database is privileged and confidential, is not a public record, and is not subject to subpoena or discovery in a civil proceeding.

(2) Information in the controlled substances database may be accessed by:

(A) A certified law enforcement officer pursuant to a criminal investigation but only after the law enforcement officer obtains a search warrant signed by a judge that demonstrates probable cause to believe that a violation of federal or state criminal law has occurred, that specified information contained in the database would assist in the investigation of the crime, and that the specified information should be released to the certified law enforcement officer;

(B) A regulatory body engaged in the supervision of activities of licensing or regulatory boards of practitioners authorized to prescribe or dispense controlled substances;

(C) A person or entity investigating a case involving breaches of privacy involving the database or its records.

(D) A certified law enforcement prescription drug diversion investigator of a qualified law enforcement agency; or

(E) A practitioner within the Arkansas Medicaid prescription drug program; or

(F) The Department of Human Services or the Crimes Against Children Division of the Division of Arkansas State Police if:

(i) The purpose of the database access is related to an investigation under the Child Maltreatment Act, Arkansas Code §12-18-101 et seq., and not pursuant to a criminal investigation by a certified law enforcement officer; and

(ii) The Department of Human Services has obtained a court order to access the database under § 12-18-622.

(G) The Office of Medicaid Inspector General for review and investigation of fraud, waste, and abuse within the Arkansas Medicaid prescription drug program if access is limited to beneficiaries of the Arkansas Medicaid prescription drug program.

(H) The State Medical Examiner as authorized by law to investigate causes of deaths for cases under investigation pursuant to his or her official duties and responsibilities.

(c) This section does not apply to information, documents, or records created or maintained in the regular course of business of a pharmacy, medical, dental, optometric, or veterinary practitioner, or other entity covered by Ark. Code Ann. §§ 20-7-601 to -615 and these rules, and all information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil proceeding merely because the information contained in the records was reported to the controlled substances database under Ark. Code Ann. §§ 20-7-601 to -615 and these rules.

(d) The department shall establish and enforce policies and procedures to ensure that the privacy and confidentiality of patients are maintained and that patient information collected, recorded, transmitted, and stored is protected and not disclosed to persons except as listed in Section VII – Providing Prescription Monitoring Information. The department's policies shall comply with Sections 261 through 264 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 (the Administrative Simplification provisions) and regulations 45 CFR Parts 160 and 164 ("the HIPAA Security and Privacy Rule") and the HITECH (Health Information Technology for Economic and Clinical Health) Act as enacted by the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B.

(e) The Prescription Drug Monitoring Program shall establish and maintain a process for verifying the credentials and authorizing the use of prescription information by individuals and agencies listed in Section VII – Providing Prescription Monitoring Information. The application to access prescription information shall include information as needed by the department to verify the applicant's authority to use prescription information in compliance with Section VII.

SECTION VII - Providing Prescription Monitoring Information

(a) Departmental Review

(1) Departmental Review for Misuse or Abuse

(A) Criteria for Review Established by Department of Health

(i) The Department of Health shall review the Prescription Drug Monitoring Program information, including without limitation a review to identify information that appears to indicate whether a person is obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances based on prescribing criteria determined by the Secretary of the Department of Health upon consultation with the Prescription Drug Monitoring Program Advisory Committee.

(ii) The prescribing criteria shall be posted on the website of the department and be available in print upon request.

(B) If the information appears to indicate misuse or abuse may have occurred, the department shall notify the practitioners and dispensers who have prescribed or dispensed in the following manner:

(i) The department shall provide quarterly reports to the individual practitioners and dispensers; and

(ii) If after twelve (12) months of providing quarterly reports to the practitioners and dispensers, the information appears to indicate misuse or abuse may be continuing, the department shall send a report to the licensing boards of the practitioner or dispenser who prescribed or dispensed the prescription.

(iii) If the department is notified of a drug overdose of an Arkansas resident, the department may notify any practitioner in whose authority any applicable controlled substance prescription (s) was dispensed within an applicable period prior to the overdose as determined by the Secretary of Health, or any practitioner that may prescribe or dispense a controlled substance within one year of drug overdose.

(C) If information of misuse or abuse is identified, the department shall notify the practitioners and dispensers who prescribed or dispensed the prescriptions and the Little Rock, Arkansas Office of Diversion Control of the United States Drug Enforcement Administration.

(D) On or before January 1, 2019, the department shall contract with a vendor to make the Prescription Drug Monitoring Program interactive and to provide same-day reporting in real-time, if funding and technology are available.

(2) Departmental Review of Prescribers or Dispensers

(A) The department may:

(i) Review the Prescription Drug Monitoring Program information, including without limitation a review to identify information that appears to indicate whether a prescriber or dispenser may be prescribing or dispensing prescriptions in a manner that may represent misuse or abuse of a controlled substance.; and

(ii) Require prescribers or dispensers, or both, to provide physical copies of written or electronic prescriptions upon request to validate data submitted to the program in order to evaluate the information reported by the program.

(B) If information of misuse or abuse is identified, the department may notify the professional licensing board of the prescriber or dispenser only after the relevant professional licensing board has provided the department with the parameters for triggering a notification from the department to the professional licensing board.

(C) The department shall develop algorithms within the controlled substance database that would alert a practitioner if his or her patient is being prescribed opioids by more than three (3) physicians within any thirty-day period, if funding is available.

(3) A prescriber who has been found by his or her licensing board to be in violation of a rule or law involving prescription drugs shall be required by the appropriate licensing board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid.

(A) The licensing board, in its discretion, may remove this requirement after a period of time if the board deems removal of the requirement appropriate.

(b) The department shall provide information in the Prescription Drug Monitoring Program upon request and at no cost only to the following persons:

(1) A person authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for his or her patients or for reviewing information regarding prescriptions that are recorded as having been issued or dispensed by the requester;

(2) A Delegate;

(3) A patient who requests his or her own prescription monitoring information;

(4) A parent or legal guardian of a minor child who requests the minor child's Prescription Drug Monitoring Program information;

(5) A designated representative of a professional licensing board of the professions of the healing arts representing health care disciplines whose licensees are prescribers pursuant to an investigation of a specific individual, entity, or business licensed or permitted by that board.

(A) Except as permitted by subsection (a)(2) of this section, the department shall provide information under subsection (b)(4)(A) of this section only if the requesting board states in writing that the information is necessary for an investigation;

(6) A mortality review recognized by the department;

(7) Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances required to be submitted under Arkansas Code §§ 20-7-601 to 615 and these rules pursuant to the agency's official duties and responsibilities; and

(7) Personnel of the department for purposes of administration and enforcement of Ark. Code Ann. § 20-7-607 and this section.

(c) Information collected under Ark. Code Ann. §§ 20-7-601 to 615 and these rules shall be maintained for three (3) years.

(d) The department may provide patient, prescriber, or dispenser information to public or private entities for statistical, research, or educational purposes after encrypting or removing any patient's name, street name and number, patient identification number, month and day of birth, and prescriber or dispenser information that could be used to identify individual patients or persons who received prescriptions.

(e) The department may provide information in the Prescription Drug Monitoring Program to insurance carriers for the purpose of verifying prescriber or dispenser registration for individuals that are part of the health plan’s network of providers.

SECTION VIII - Information Exchange with Other Prescription Drug Monitoring Programs

(a) The Department of Health may provide prescription monitoring information to federal prescription drug monitoring programs or other states' prescription drug monitoring programs, and the information may be used by those programs consistent with Arkansas Code §§ 20-7-601 to -615 and these rules.

(b) The department may request and receive prescription monitoring information from federal prescription drug monitoring programs or other states' prescription drug monitoring programs and may use the information pursuant to Arkansas Code §§ 20-7-601 to -615 and these rules.

(c) The department may develop the capability to transmit information to other prescription drug monitoring programs and receive information from other prescription drug monitoring programs employing the standards of exchangeability.

(d) The department may enter into written agreements with federal prescription drug monitoring programs or other states' prescription drug monitoring programs for the purpose of describing the terms and conditions for sharing of prescription information consistent with Arkansas Code §§ 20-7-601 to -615 and these rules.

SECTION IX - Authority to Contract

(a) The Department of Health may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the Prescription Drug Monitoring Program.

(b) A contractor shall be bound to comply with the provisions regarding confidentiality of prescription information as outlined in Arkansas Code §§ 20-7-601 to -615 and these rules and shall be subject to the penalties specified in Arkansas Code §§ 20-7-601 to -615 and these rules for unlawful acts.

SECTION X - Authority to Seek Funding

(a) The Department of Health may make application for, receive, and administer grant funding from public or private sources for the development, implementation, or enhancement of the Prescription Drug Monitoring Program.

(b) A fee shall not be levied against practitioners for the purpose of funding or complying with the Prescription Drug Monitoring Program.

SECTION XI - Unlawful Acts and Penalties

(a) Failure to Submit Prescription Drug Monitoring Information

(1) It is unlawful for a dispenser to purposely fail to submit prescription monitoring information as required under Arkansas Code §§ 20-7-601 to -615 and these rules.

(2) A violation of subdivision (a) (1) of this section is a Class B misdemeanor.

(b) Purposely Submitting Fraudulent Prescription Information

(1) It is unlawful for a dispenser to purposely submit fraudulent prescription information.

(2) A violation of subdivision (b) (1) of this section is a Class D felony.

(c) Unlawful Disclosure of Prescription Monitoring Information

(1) It is unlawful for a person authorized to receive prescription monitoring information to purposely disclose the information in violation of Arkansas Code §§ 20 7-601 to -615 and these rules.

(2) A violation of subdivision (c) (1) of this section is a Class C felony.

(d) Unlawful Use of Prescription Monitoring Information

(1) It is unlawful for a person authorized to receive prescription drug monitoring program information to use such information in a manner or for a purpose in violation of Arkansas Code §§ 20-7-601 to -615 and these rules.

(2) A violation of subsection (d) (1) of this section is a Class C felony.

(e) Unlawful Disclosure by Fraud or Deceit of Prescription Drug Monitoring Information

(1) It is unlawful for a person to knowingly obtain, use, or disclose or attempt to obtain, use, or disclose information by fraud or deceit from the Prescription Drug Monitoring Program

or from a person authorized to receive information from the Prescription Drug Monitoring Program under Arkansas Code §§ 20-7-601 to -615 and these rules.

(2) A violation of subdivision (e) (1) of this section is a Class C felony.

(f) In addition to the criminal penalties provided in this section, a dispenser or practitioner who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of Arkansas Code §§ 20-7-601 to -20-7-615 and these rules may be subject to disciplinary action by the dispenser's or practitioner's licensing board.

(g) In addition to the criminal penalties provided in this section, a law enforcement officer who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of Arkansas Code §§ 20-7-601 to -20-7-615 and these rules may be subject to disciplinary action by the law enforcement officer's agency or department.

(h) Arkansas Code §§ 20-7-601 to -20-7-615 and these rules do not limit a person whose privacy has been compromised unlawfully under this section from bringing a civil action to address the breach of privacy or to recover all damages to which the person may be entitled per violation, including attorney's fees and costs.

(i) A practitioner who purposely fails to access the Prescription Drug Monitoring Program as required by Arkansas Code § 20-7-604(d) is subject to disciplinary action by the licensing board of the practitioner.

SECTION XII - Privacy Rights Protected

Arkansas Code §§ 20-7-601 to -20-7-615 and these rules do not give authority to any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly, the courts, or the United States Constitution or the Constitution of the State of Arkansas other than to the extent provided in these rules and Arkansas Code §§ 20-7-601 to -20-7-615.

SECTION XIII - Effective Date

(a) The Prescription Drug Monitoring Program shall become operational March 1, 2013, if full funding is available under Arkansas Code § 20-7-610 and Section X.

(b) The Secretary of the Department of Health may suspend operation of the program if adequate funding under Arkansas Code § 20-7-610 and Section X ceases.

SECTION XIV - Prescriber With a Prescription Drug Violation

(a) A prescriber who has been found by his or her licensing board to be in violation of a rule or law involving prescription drugs shall be required by the appropriate licensing board to register with the Prescription Drug Monitoring Program and access patient information before writing a prescription for an opioid.

(b) The licensing board, in its discretion, may remove this requirement after a period of time if the licensing board deems removal of the requirement appropriate.

SECTION XV - Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these rules which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared severable.

SECTION XVI - Repeal

All rules and parts of rules in conflict are hereby repealed.

CERTIFICATION

I certify that the foregoing Rules pertaining to the Arkansas Prescription Drug Monitoring Program were adopted by the Arkansas State Board of Health at a regular session in Little Rock, Arkansas, on ___ day of _____, 2023.

_____

Jennifer Dillaha, MD
Secretary, Arkansas State Board of Health
Director, Arkansas Department of Health