Part X-A. Prescription Monitoring Program

*[**Editor's Note**: The Prescription Monitoring Program was created by Act 676 of 2006 Legislature. Subsequent amendments are noted herein.]*

§1001. Short title

This Section shall be known and may be cited as the "Prescription Monitoring Program Act."

§1002. Purpose

The purpose of this Part is to authorize the development, implementation, operation, and evaluation of an electronic system for the monitoring of controlled substances and other drugs of concern that are dispensed in the state or dispensed to an address within the state. The goal of the program is to improve the state's ability to identify and inhibit the diversion of controlled substances and drugs in an efficient and cost-effective manner and in a manner that shall not impede the appropriate utilization of these drugs for legitimate medical purposes.

§1003. Definitions

As used in this Part, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

(1) "Administer" or "administration" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) "Advisory council" means the entity established in R.S. 40:1005.

(3) "Board" means the Louisiana Board of Pharmacy.

(4) "Controlled substance" means any substance or drug defined, enumerated, or included in federal or state statute or rules, 21 CFR 1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute. "Controlled substance" shall not include distilled spirits, wine, malt beverages, or tobacco.

(5) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(6) "Dispenser" means a person authorized by this state to dispense or distribute to the ultimate user any controlled substance or drug monitored by the program, but shall not include any of the following:

(a) A pharmacy permitted by the board as a hospital pharmacy that dispenses or distributes any controlled substance or drug monitored by the program for the purposes of inpatient health care.

(b) A practitioner who dispenses or distributes no more than a single forty-eight hour supply of such controlled substance or drug to a patient prior to, or subsequent to, performing an actual procedure on that patient.

(c) A practitioner or other authorized person who administers such controlled substance or drug upon the lawful order of a practitioner.

(d) A wholesale distributor of such controlled substance or drug that is credentialed by the Louisiana State Board of Wholesale Drug Distributors.

(e) A veterinarian who dispenses negligible amounts of controlled substances or drugs of concern, as identified by rule.

(Amended by Act 144 of 2010 Legislature.)

(7) "Distribute" or "distribution" means the delivery of a drug or device other than by administering or dispensing.

(8) "Drug" means any of the following:

(a) Any substance recognized as a drug in the official compendium, or supplement thereto, designated by the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals.

(b) Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(c) Any substance other than food intended to affect the structure or any function of the body of humans or other animals.

(9) "Drugs of concern" means drugs other than controlled substances as defined by rule which demonstrate a potential for abuse.

(10) "Patient" means the person or animal who is the ultimate user of a controlled substance or drug monitored by the program for whom a prescription is issued and for whom a controlled substance or drug is dispensed.

(11) "Prescriber" means a licensed health care professional with prescriptive authority.
(12) "Prescription monitoring information" means data submitted to and maintained by the prescription monitoring program.
(13) "Prescription Monitoring Program" or "PMP" means the program established in R.S. 40:1004.
(14) "Procedure" means any dental or medical practice or process described in the current year's version of the American Dental Association's *Current Dental Terminology* or the American Medical Association's *Code of Procedural Terminology*.

§1004. Establishment of prescription monitoring program

A. The board shall establish and maintain, in consultation with and upon the recommendation of the advisory council, an electronic system for the monitoring of controlled substances and drugs of concern dispensed in the state or dispensed to an address in the state.
B. In conformity with the Louisiana Public Bid Law, R.S. 38:2211 et seq., the board may contract with a vendor to establish and maintain the electronic monitoring system pursuant to rules promulgated by the board.

§1005. Advisory council

A. The advisory council shall consist of the following members, each of whom may appoint a designee:
    (1) The president of the Louisiana State Board of Medical Examiners.
    (2) The president of the Louisiana State Board of Dentistry.
    (3) The president of the Louisiana State Board of Nursing.
    (4) The president of the Louisiana State Board of Optometry Examiners.
    (5) The president of the Louisiana State Board of Veterinary Medicine.
    (6) The president of the Louisiana Academy of Physicians Assistants.
    (7) The president of the Louisiana Board of Pharmacy.
    (8) The superintendent of the Louisiana State Police.
    (9) The administrator of the United States Drug Enforcement Administration.
    (10) The speaker of the Louisiana House of Representatives.
    (11) The president of the Louisiana Senate.
    (12) The chairman of the House Committee on Health and Welfare.
    (13) The chairman of the Senate Committee on Health and Welfare.
    (14) The secretary of the Department of Health and Hospitals.
    (15) The president of the Louisiana State Medical Society.
    (16) The president of the Louisiana Dental Association.
    (17) The president of the Louisiana Association of Nurse Practitioners.
    (18) The president of the Optometry Association of Louisiana.
    (19) The president of the Louisiana Pharmacists Association.
    (20) The president of the Louisiana Independent Pharmacies Association.
    (21) The president of the National Association of Chain Drug Stores.
    (22) The president of the Louisiana Sheriffs' Association.
    (23) The president of the Louisiana District Attorneys Association.
    (24) The president of the Pharmaceutical Research and Manufacturers of America.
    (25) The president of the Louisiana Academy of Medical Psychologists.
    (26) The president of the Louisiana Veterinary Medical Association.
B. The members of the advisory council shall serve at the pleasure of their respective appointing authorities, eleven of whom shall constitute a quorum for the transaction of all business. The members shall elect a chairman and vice chairman whose duties shall be established by the advisory council. The board shall fix a time and place for regular meetings of the advisory council, which shall meet at least quarterly. The advisory council shall establish policies and procedures necessary to carry out its duties.
C. The board shall seek, and the advisory council shall provide, information and advice regarding the development and operation of the electronic monitoring system, including but not limited to the following:
    (1) Which controlled substances should be monitored.
    (2) Which drugs of concerns demonstrate a potential for abuse and should be monitored.
    (3) Design and implementation of educational courses identified in R.S. 40:1008.
    (4) The methodology to be used for analysis and interpretation of prescription monitoring information.
    (5) Design and implementation of a program evaluation component.
    (6) Identification of potential additional members to the advisory council.

(Amended by Act 144 of 2010 Legislature.)

§1006. Reporting of prescription monitoring information

A. Each dispenser shall submit to the board information regarding each prescription dispensed for a controlled substance or drug monitored by the program. The information submitted for each prescription shall include, at a minimum, data relative to the identification of the following elements of the transaction:
   (1) Prescriber information.
   (2) Patient information.
   (3) Prescription information.
   (4) Controlled substance or drug information.
   (5) Dispenser information.

B. Each dispenser shall submit the required information in accordance with transmission methods and frequency established by the board. Each eligible prescription transaction shall be reported as soon as possible but in no event more than seven days after the date of dispensing.
(Amended by Act 488 of 2010 Legislature, effective June 22, 2010.)

C. The board may issue a waiver to a dispenser who is unable to submit prescription information by electronic means. The waiver shall state the format and frequency with which the dispenser shall submit the required information. The board may issue an exemption from the reporting requirement to a dispenser whose practice activities are inconsistent with the intent of the program. The board may rescind any previously issued exemption without the need for an informal or formal hearing.
(Amended by Act 129 of 2009 Legislature.)

D. Any person or entity required to report information concerning prescriptions to the board or to its designated agent pursuant to the requirements of this Part shall not be liable to any person or entity for any claim of damages as a result of the act of reporting the information and no lawsuit may be predicated thereon. Any person or entity who submits report information in good faith containing prescription information that is not the subject of the PMP shall not be liable to any person or entity for any claim of damages and no lawsuit may be predicated thereon.

E. The Prescription Monitoring Program's agents, a dispenser, or a prescriber may report suspected violations of this Section or violations of any law to any local, state, out-of-state, or federal law enforcement agency, or the appropriate prosecutorial agency for further investigation or prosecution.
(Amended by Act 488 of 2010 Legislature, effective June 22, 2010.)

F. No agent, dispenser, or prescriber who in good faith reports suspected violations as provided for in Subsection E of this Section shall be liable to any person or entity for any claim of damages as a result of the act of reporting the information, and no lawsuit may be predicated thereon.

(Subsections E and F added by Act 314 of 2009 Legislature)

§1007. Access to prescription monitoring information

A. Except as provided in Subsections C, D, E, F, G, H, and I of this Section, prescription monitoring information submitted to the board shall be protected health information, not subject to public or open records law, including but not limited to R.S. 44:1 et seq., and not subject to disclosure. Prescription monitoring information shall not be available for civil subpoena nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Notwithstanding this provision, law enforcement and professional licensing, certification, and regulatory agencies may utilize prescription monitoring information in the course of any investigation and subsequent criminal and administrative proceedings, but only in accordance with federal and state law and the requirements of this Part.
(Amended by Act 352 of 2012 Legislature, effective August 1, 2012)

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons or entities except as in Subsections C, D, E, F, G, H, and I of this Section.
(Amended by Act 352 of 2012 Legislature, effective August 1, 2012)

C. The board shall review the prescription monitoring information. If there is reasonable suspicion to believe a breach of professional or occupational standards may have occurred, the board shall notify the appropriate professional licensing agency with jurisdiction over prescribers or dispensers and shall provide prescription monitoring information required for an investigation.

D. The board shall provide prescription monitoring information to public or private entities, whether located in or outside of the state, for public research, policy, or educational purposes, but only after removing information that identifies or could be reasonably be used to identify prescribers, dispensers, and individual patients or persons who received prescriptions from prescribers.
(Amended by Act 488 of 2010 Legislature, effective June 22, 2010.)

E. The following persons, after successful completion of the educational courses identified in R.S. 40:1008, may access prescription monitoring information at no cost and in the same or similar manner, and for the same or similar purposes, as those persons are authorized to access similar protected health information under federal and state law and regulation:
   (1) Persons authorized to prescribe or dispense controlled substances or drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients, or for verifying their prescriptions records.
   (Amended by Act 488 of 2010 Legislature, effective June 22, 2010.)
   (2) Designated representatives from the professional licensing, certification, or regulatory agencies of this state or another state charged with administrative oversight of those professionals engaged in the prescribing or dispensing of controlled substances or other drugs of concern.
   (Amended by Act 488 of 2010 Legislature, effective June 22, 2010.)
   (3) Designated representatives from the Louisiana Medicaid program regarding Medicaid program recipients.
   (4) Designated representatives of the board and any vendor or contractor establishing or maintaining the prescription monitoring program.

F. The board may provide a report containing prescription monitoring information upon application of local, state, out-of-state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances or other drugs of concern in compliance with and as limited by the relevant requirements of any of the following:
   (1) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer.
   (2) A grand jury subpoena.
   (3) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided by law enforcement to the board, and further, provided all of the following:
      (a) The information sought is relevant and material to a legitimate law enforcement inquiry.
      (b) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.
      (c) De-identified information, or limited information that does not identify or could not reasonably lead to the identification of an individual patient, could not reasonably be used.

(Amended by Act 488 of 2010 Legislature, effective June 22, 2010.)

G. The board may provide prescription monitoring information in response to queries from prescription monitoring programs located in other states, through its participation in a secure interstate data exchange system. However, the board shall not provide prescription monitoring information to prescription monitoring programs located in other states unless the laws of the state receiving the information provide at a minimum both of the following:
   (1) That the prescription monitoring information is protected health information, not subject to the Public Records Law, and not subject to disclosure.
   (2) That the prescription monitoring information shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason.

(Added by Act 352 of 2012 Legislature, effective August 1, 2012)

H. The board may provide prescription monitoring information to authorized users of the prescription monitoring program via a state health information exchange or other third party conduit that has been approved by the board.

(Added by Act 352 of 2012 Legislature, effective August 1, 2012)

I. The board may provide prescription monitoring information to an individual who requests his personal prescription monitoring information in accordance with procedures established by board regulation.

J. The board and advisory council shall be immune from civil liability arising from inaccuracy of any of the information submitted to the board pursuant to this Part.

§1008. Education and treatment

A. The board shall, in consultation with and upon recommendation of the advisory council, implement the following education courses:
   (1) An orientation course during the implementation phase of the prescription monitoring program.
   (2) A course for persons who are authorized to access the prescription monitoring information, but who did not participate in the orientation course.

(3) A course for persons who are authorized to access the prescription monitoring information, but who have violated the laws or breached occupational standards involving the prescribing, dispensing, or use of any controlled substances or drugs monitored by the prescription monitoring program.
(4) A continuing education course for health care providers or professionals on prescribing practices, pharmacology, and the identification, treatment, and referral of a patient addicted to or abusing controlled substances or drugs monitored by the prescription monitoring program.

B. The board shall, in consultation with and upon recommendation of the advisory council, implement an educational program to inform the public about the use, diversion and abuse of, addiction to, and treatment for the addiction to controlled substances or drugs monitored by the prescription monitoring program.

C. The board shall, upon reasonable suspicion, refer potential or alleged impaired prescribers and dispensers to the appropriate professional licensing or certification agency to ensure intervention, treatment, and ongoing monitoring and follow-up.

§1009. Unlawful acts and penalties

A. A dispenser who fails to submit prescription monitoring information to the board as required by this Part shall be referred to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency.

B. A person or entity authorized to possess prescription monitoring information pursuant to this Part who knowingly discloses such information in violation of this Part shall be referred to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency and may, upon criminal conviction, be imprisoned, with or without hard labor, for not more than five years, and in addition, may be fined not more than five thousand dollars.

C. A person or entity authorized to possess prescription monitoring information pursuant to this Part who uses such information in a manner or for a purpose in violation of this Part shall be referred to the appropriate professional licensing, certification, or regulatory agency for administrative sanctions as deemed appropriate by that agency and may, upon criminal conviction, be imprisoned, with or without hard labor, for not more than five years, and in addition, may be fined not more than five thousand dollars.

§1010. Evaluation; data analysis; reporting

A. The board shall, in consultation with and upon recommendation of the advisory council, design and implement an evaluation component to identify cost benefits of the prescription monitoring program and other information relevant to policy, research, and education involving controlled substances and drugs monitored by the prescription monitoring program.

B. The board shall report to the appropriate legislative oversight committees on a periodic basis, but in no case less than annually, the cost benefits and other information contained in Subsection A of this Section.

§1011. Rules and regulations

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the board shall promulgate rules and regulations necessary to implement the provisions of this Part.

§1012. Authority to contract

In accordance with the Public Bid Law, R.S. 38:2211 et seq., the board shall have the authority to contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor shall be bound to comply with provisions regarding confidentiality of prescription information in R.S. 40:1007, and further, shall be subject to the penalties specified in R.S. 40:1009 for unlawful acts.

§1013. Funding authority

A. The board shall have the authority to make application for, receive, and administer grant funding from public or private sources for the development, implementation, or enhancement of the prescription monitoring program.

B. In the event the legislature provides full funding for the prescription monitoring program, no fees shall be levied as provided in this Section.

C. The board shall have the authority to levy and collect an annual fee from each of the following practitioners in possession of authority to prescribe or dispense controlled dangerous substances: physicians, podiatrists, dentists, veterinarians, optometrists, advanced practice registered nurses, physician assistants, medical psychologists, or any other person subsequently authorized by law to prescribe controlled dangerous substances. The board shall also have the authority to levy and collect an annual fee

from each pharmacy licensed by the board. The annual fee levied and collected from each person enumerated in this Subsection and each pharmacy shall not exceed twenty-five dollars.

D. The board shall not be required to fund any aspect of the prescription monitoring program.

(Amended by Act 144 of 2010 Legislature.)

§1014. Severability

If any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

(end of Part X-A of Chapter 4)