

# ASSEMBLY, No. 3129

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MAY 8, 2014

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblyman JOSEPH A. LAGANA**

**District 38 (Bergen and Passaic)**

**Assemblywoman MARY PAT ANGELINI**

**District 11 (Monmouth)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblywoman SHAVONDA E. SUMTER**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

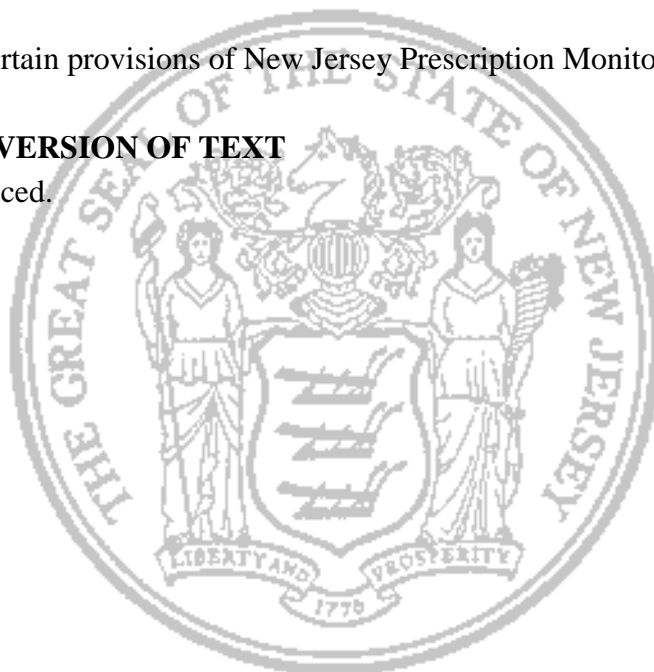
**Assemblywoman Pinkin, Assemblymen O'Scanlon, Johnson, Rible,  
Gusciora, McGuckin, Wolfe and Assemblywoman Vainieri Huttle**

**SYNOPSIS**

Revises certain provisions of New Jersey Prescription Monitoring Program.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/6/2015)**

1 AN ACT concerning the New Jersey Prescription Monitoring  
2 Program, revising various parts of the statutory law, and  
3 supplementing P.L.2007, c.244.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 34 of P.L.1970, c.226 (C.24:21-34) is amended to  
9 read as follows:

10 34. Cooperative arrangements. a. The director may cooperate  
11 with federal and other State agencies in discharging **his** the  
12 director's responsibilities concerning traffic in dangerous  
13 substances and in suppressing the abuse of dangerous substances.  
14 To this end, **he** the director is authorized to:

15 (1) Except as otherwise provided by law, arrange for the  
16 exchange of information between government officials concerning  
17 the use and abuse of dangerous substances; provided, however, that  
18 in no case shall any officer having knowledge by virtue of **his**  
19 that individual's office of any such prescription, order, or record  
20 divulge such knowledge, except in connection with a prosecution or  
21 proceeding in court or before a licensing board or officer to which  
22 prosecution or proceeding the person to whom the records relate, is  
23 a party;

24 (2) Coordinate and cooperate in training programs on dangerous  
25 substances law enforcement at the local and State levels; and

26 (3) Conduct educational programs **of eradication aimed at**  
27 **destroying wild or illicit growth of plant species from which**  
28 **controlled dangerous substances may be extracted** for: members of  
29 the general public; pharmacy permit holders and pharmacists; and  
30 health care professionals, mental health practitioners, and  
31 practitioners as defined in section 24 of P.L.2007, c.244 (C.45:1-  
32 44).

33 b. Results, information, and evidence received from the Drug  
34 Enforcement Administration relating to the regulatory functions of  
35 P.L.1970, c.226 (C.24:21-1 et seq.), as amended and supplemented,  
36 including results of inspections conducted by that agency, may be  
37 relied upon and acted upon by the director in conformance with  
38 **his** the director's regulatory functions under P.L.1970, c.226, as  
39 amended and supplemented.

40 (cf: P.L.2007, c.244, s.18)

41  
42 2. Section 24 of P.L.2007, c.244 (C.45:1-44) is amended to  
43 read as follows:

44 24. Definitions. As used in sections 25 through 30 of P.L.2007,  
45 c.244 (C.45:1-45 through C.45:1-50):

**EXPLANATION** – Matter enclosed in bold-faced brackets **thus** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1       “CDS registration” means registration with the Division of  
2 Consumer Affairs to manufacture, distribute, dispense, or conduct  
3 research with controlled dangerous substances issued pursuant to  
4 section 11 of P.L.1970, c.226 (C.24:21-11).

5       "Controlled dangerous substance" means any substance that is  
6 listed in Schedules II, III, and IV of the schedules provided under  
7 the "New Jersey Controlled Dangerous Substances Act," P.L.1970,  
8 c.226 (C.24:21-1 et seq.). Controlled dangerous substance also  
9 means any substance that is listed in Schedule V under the "New  
10 Jersey Controlled Dangerous Substances Act" when the director has  
11 determined that reporting Schedule V substances is required by  
12 federal law, regulation, or funding eligibility.

13       "Director" means the Director of the Division of Consumer  
14 Affairs in the Department of Law and Public Safety.

15       "Division" means the Division of Consumer Affairs in the  
16 Department of Law and Public Safety.

17       “Licensed health care professional” means a registered nurse,  
18 licensed practical nurse, advanced practice nurse, physician  
19 assistant, or dental hygienist licensed pursuant to Title 45 of the  
20 Revised Statutes.

21       “Licensed pharmacist” means a pharmacist licensed pursuant to  
22 P.L.2003, c.280 (C.45:14-40 et seq.).

23       “Medical resident” means a graduate physician who is authorized  
24 to practice medicine and surgery by means of a valid permit issued  
25 by the State Board of Medical Examiners to a person authorized to  
26 engage in the practice of medicine and surgery while in the second  
27 year or beyond of a graduate medical education program pursuant to  
28 N.J.A.C.13:35-1.5.

29       “Mental health practitioner” means a clinical social worker,  
30 marriage and family therapist, alcohol and drug counselor,  
31 professional counselor, psychologist, or psychoanalyst licensed or  
32 otherwise authorized to practice pursuant to Title 45 of the Revised  
33 Statutes.

34       “Pharmacy permit holder” means an individual or business entity  
35 that holds a permit to operate a pharmacy practice site pursuant to  
36 P.L.2003, c.280 (C.45:14-40 et seq.).

37       "Practitioner" means an individual currently licensed, registered,  
38 or otherwise authorized by this State or another state to prescribe  
39 drugs in the course of professional practice.

40       "Ultimate user" means a person who has obtained from a  
41 dispenser and possesses for **【his】** the person's own use, or for the  
42 use of a member of **【his】** the person's household or an animal  
43 owned by **【his】** the person's or by a member of **【his】** the person's  
44 household, a controlled dangerous substance.

45 (cf: P.L.2007, c.244, s.24)

46

47       3. Section 25 of P.L.2007, c.244 (C.45:1-45) is amended to  
48 read as follows:

1       25. Prescription Monitoring Program; requirements.

2       a. There is established the Prescription Monitoring Program in  
3 the Division of Consumer Affairs in the Department of Law and  
4 Public Safety. The program shall consist of an electronic system  
5 for monitoring controlled dangerous substances that are dispensed  
6 in or into the State by a pharmacist in an outpatient setting.

7       b. Each pharmacy permit holder shall submit, or cause to be  
8 submitted, to the division, by electronic means in a format and at  
9 such intervals as are specified by the director, information about  
10 each prescription for a controlled dangerous substance dispensed by  
11 the pharmacy that includes:

12       (1) The surname, first name, and date of birth of the patient for  
13 whom the medication is intended;

14       (2) The street address and telephone number of the patient;

15       (3) The date that the medication is dispensed;

16       (4) The number or designation identifying the prescription and  
17 the National Drug Code of the drug dispensed;

18       (5) The pharmacy permit number of the dispensing pharmacy;

19       (6) The prescribing practitioner's name and Drug Enforcement  
20 Administration registration number;

21       (7) The name, strength, and quantity of the drug dispensed, the  
22 number of refills ordered, and whether the drug was dispensed as a  
23 refill or a new prescription;

24       (8) The date that the prescription was issued by the practitioner;

25       (9) The source of payment for the drug dispensed; **and**

26       (10) Identifying information for any individual, other than the  
27 patient for whom the prescription was written, who picks up a  
28 prescription; and

29       (11) Such other information, not inconsistent with federal law,  
30 regulation, or funding eligibility requirements, as the director  
31 determines necessary.

32       The pharmacy permit holder shall submit the information to the  
33 division with respect to the prescriptions dispensed during the  
34 reporting period not less frequently than every **30** seven days **,**  
35 or according to a schedule to be determined by the director if  
36 federal law, regulation or funding eligibility otherwise requires**].**

37       c. The division may grant a waiver of electronic submission to  
38 any pharmacy permit holder for good cause, including financial  
39 hardship, as determined by the director. The waiver shall state the  
40 format in which the pharmacy permit holder shall submit the  
41 required information.

42       d. The requirements of this act shall not apply to: the direct  
43 administration of a controlled dangerous substance to the body of  
44 an ultimate user; or the administration or dispensing of a controlled  
45 dangerous substance that is otherwise exempted as determined by  
46 the Secretary of Health and Human Services pursuant to the

1 "National All Schedules Prescription Electronic Reporting Act of  
2 2005," Pub.L.109-60.  
3 (cf: P.L.2007, c.244, s.25)

4  
5 4. Section 26 of P.L.2007, c.244 (C.45:1-46) is amended to  
6 read as follows:

7 26. Access to prescription information.

8 a. The division shall maintain procedures to ensure privacy and  
9 confidentiality of patients and that patient information collected,  
10 recorded, transmitted, and maintained is not disclosed, except as  
11 permitted in this section, including, but not limited to, the use of a  
12 password-protected system for maintaining this information and  
13 permitting access thereto as authorized under sections 25 through  
14 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), and a  
15 requirement that a person as listed in **subsection d.** subsections h.  
16 or i. of this section provide on-line affirmation of the person's intent  
17 to comply with the provisions of sections 25 through 30 of  
18 P.L.2007, c.244 (C.45:1-45 through C.45:1-50) as a condition of  
19 accessing the information.

20 b. The prescription monitoring information submitted to the  
21 division shall be confidential and not be subject to public disclosure  
22 under P.L.1963, c.73 (C.47:1A-1 et seq.), or P.L.2001, c.404  
23 (C.47:1A-5 et al.).

24 c. The division shall review the prescription monitoring  
25 information provided by a pharmacy permit holder pursuant to  
26 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
27 C.45:1-50). The review shall include, but not be limited to:

28 (1) a review to identify whether any person is obtaining a  
29 prescription in a manner that may be indicative of misuse, abuse, or  
30 diversion of a controlled dangerous substance. The director shall  
31 establish guidelines regarding the terms "misuse," "abuse," and  
32 "diversion" for the purposes of this review. When an evaluation of  
33 the information indicates that a person may be obtaining a  
34 prescription for the same or a similar controlled dangerous  
35 substance from multiple practitioners or pharmacists during the  
36 same time period, the division may provide prescription monitoring  
37 information about the person to practitioners and pharmacists; and

38 (2) a review to identify whether a violation of law or regulation  
39 or a breach of the applicable standards of practice by any person  
40 may have occurred, including, but not limited to, diversion of a  
41 controlled dangerous substance. If the division determines that  
42 such a violation **of law or regulations, or a breach of the applicable**  
43 standards of practice, **or breach** may have occurred, the division  
44 shall notify the appropriate law enforcement agency or professional  
45 licensing board, and provide the prescription monitoring  
46 information required for an investigation.

47 d. **The division may provide prescription monitoring**  
48 **information to the following persons:**

1 (1) a practitioner authorized to prescribe, dispense or administer  
2 controlled dangerous substances who certifies that the request is for  
3 the purpose of providing health care to a current patient of the  
4 practitioner. Nothing in sections 25 through 30 of P.L.2007, c.244  
5 (C.45:1-45 through C.45:1-50) shall be construed to require or  
6 obligate a practitioner to access or check the prescription  
7 monitoring information prior to prescribing, dispensing or  
8 administering medications beyond that which may be required as  
9 part of the practitioner's professional practice;

10 (2) a pharmacist authorized to dispense controlled dangerous  
11 substances who certifies that the request is for the purpose of  
12 providing health care to a current patient. Nothing in sections 25  
13 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall  
14 be construed to require or obligate a pharmacist to access or check  
15 the prescription monitoring information prior to dispensing  
16 medications beyond that which may be required as part of the  
17 pharmacist's professional practice;

18 (3) a designated representative of the State Board of Medical  
19 Examiners, New Jersey State Board of Dentistry, New Jersey Board  
20 of Nursing, New Jersey State Board of Optometrists, New Jersey  
21 State Board of Pharmacy, State Board of Veterinary Medical  
22 Examiners, or any other board in this State or another state that  
23 regulates the practice of persons who are authorized to prescribe or  
24 dispense controlled dangerous substances, as applicable, who  
25 certifies that he is engaged in a bona fide specific investigation of a  
26 designated practitioner whose professional practice was or is  
27 regulated by that board;

28 (4) a State, federal or municipal law enforcement officer who is  
29 acting pursuant to a court order and certifies that the officer is  
30 engaged in a bona fide specific investigation of a designated  
31 practitioner or patient;

32 (5) a designated representative of a state Medicaid or other  
33 program who certifies that he is engaged in a bona fide  
34 investigation of a designated practitioner or patient;

35 (6) a properly convened grand jury pursuant to a subpoena  
36 properly issued for the records;

37 (7) authorized personnel of the division or vendor or contractor  
38 responsible for establishing and maintaining the program; and

39 (8) the controlled dangerous substance monitoring program in  
40 another state with which the division has established an  
41 interoperability agreement.】 (Deleted by amendment, P.L. , c. )  
42 (pending before the Legislature as this bill)

43 e. 【A person listed in subsection d. of this section, as a  
44 condition of obtaining prescription monitoring information pursuant  
45 thereto, shall certify, by means of entering an on-line statement in a  
46 form and manner prescribed by regulation of the director, the  
47 reasons for seeking to obtain that information.】 (Deleted by  
48 amendment, P.L. , c. ) (pending before the Legislature as this bill)

1 f. **【**The division shall offer an on-line tutorial for those persons  
2 listed in subsection d. of this section, which shall, at a minimum,  
3 include: how to access prescription monitoring information; the  
4 rights and responsibilities of persons who are the subject of or  
5 access this information and the other provisions of sections 25  
6 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and  
7 the regulations adopted pursuant thereto, regarding the permitted  
8 uses of that information and penalties for violations thereof; and a  
9 summary of the requirements of the federal health privacy rule set  
10 forth at 45 CFR Parts 160 and 164 and a hypertext link to the  
11 federal Department of Health and Human Services website for  
12 further information about the specific provisions of the privacy  
13 rule.】 (Deleted by amendment, P.L. , c. ) (pending before the  
14 Legislature as this bill)

15 g. **【**The director may provide nonidentifying prescription drug  
16 monitoring information to public or private entities for statistical,  
17 research or educational purposes.】 (Deleted by amendment, P.L. ,  
18 c. ) (pending before the Legislature as this bill)

19 h. (1) The division shall register a pharmacist or practitioner to  
20 access prescription monitoring information upon issuance or  
21 renewal of the pharmacist or practitioner's CDS registration.

22 (2) The division shall provide to a pharmacist who has a current  
23 CDS registration online access to prescription monitoring  
24 information for the purpose of providing health care to a current  
25 patient or verifying information with respect to a patient or a  
26 prescriber.

27 (3) The division shall provide to a practitioner who has a current  
28 CDS registration online access to prescription monitoring  
29 information for the purpose of providing health care to a current  
30 patient or verifying information with respect to a patient or a  
31 prescriber. The division shall provide online access to prescription  
32 monitoring information to as many licensed health care  
33 professionals as are authorized by a practitioner to access that  
34 information and for whom the practitioner is responsible for the use  
35 or misuse of that information, subject to a limit on the number of  
36 such health care professionals as deemed appropriate by the  
37 division for that particular type and size of professional practice, in  
38 order to minimize the burden to practitioners to the extent  
39 practicable while protecting the confidentiality of the prescription  
40 monitoring information obtained. The director shall establish, by  
41 regulation, the terms and conditions under which a practitioner may  
42 delegate that authorization, including procedures for authorization  
43 and termination of authorization, provisions for maintaining  
44 confidentiality, duration of a licensed health care professional's  
45 authorization to access prescription monitoring information, and  
46 such other matters as the division may deem appropriate.

1       (4) The division shall provide online access to prescription  
2 monitoring information to as many medical residents as are  
3 authorized by a faculty member of a medical teaching facility to  
4 access that information and for whom the practitioner is responsible  
5 for the use or misuse of that information. The director shall  
6 establish, by regulation, the terms and conditions under which a  
7 faculty member of a medical teaching facility may delegate that  
8 authorization, including procedures for authorization and  
9 termination of authorization, provisions for maintaining  
10 confidentiality, duration of a medical resident's authorization to  
11 access prescription monitoring information, and such other matters  
12 as the division may deem appropriate.

13       (5) As a condition of accessing prescription monitoring  
14 information, a pharmacist, practitioner, other authorized health care  
15 professional, or medical resident shall certify that the request is for  
16 the purpose of providing health care to a current patient or verifying  
17 information with respect to a patient or practitioner.

18       i. The division may provide online access to prescription  
19 monitoring information to the following persons:

20       (1) authorized personnel of the division or a vendor or  
21 contractor responsible for maintaining the Prescription Monitoring  
22 Program;

23       (2) authorized personnel of the division responsible for  
24 administration of the provisions of P.L.1970, c.226 (C.24:21-1 et  
25 seq.);

26       (3) the State Medical Examiner, a county medical examiner, or a  
27 deputy or assistant county medical examiner who certifies that the  
28 request is for the purpose of investigating a death pursuant to  
29 P.L.1967, c.234 (C.52:17B-78 et seq.);

30       (4) a controlled dangerous substance monitoring program in  
31 another state with which the division has established an  
32 interoperability agreement if an interoperability agreement is  
33 required by that state, or which participates with the division in a  
34 system that facilitates the secure sharing of information between  
35 states;

36       (5) a designated representative of the State Board of Medical  
37 Examiners, New Jersey State Board of Dentistry, New Jersey Board  
38 of Nursing, New Jersey State Board of Optometrists, New Jersey  
39 State Board of Pharmacy, State Board of Veterinary Medical  
40 Examiners, or any other board in this State or another state that  
41 regulates the practice of persons who are authorized to prescribe or  
42 dispense controlled dangerous substances, as applicable, who  
43 certifies that the representative is engaged in a bona fide specific  
44 investigation of a designated practitioner whose professional  
45 practice was or is regulated by that board;



1       (6) a State, federal, or municipal law enforcement officer who is  
2 acting pursuant to a court order and certifies that the officer is  
3 engaged in a bona fide specific investigation of a designated  
4 practitioner or patient;

5       (7) a designated representative of a state Medicaid or other  
6 program who certifies that the representative is engaged in a bona  
7 fide investigation of a designated practitioner or patient;

8       (8) a properly convened grand jury pursuant to a subpoena  
9 properly issued for the records; and

10       (9) a licensed mental health practitioner providing treatment for  
11 substance abuse to patients at a residential or outpatient substance  
12 abuse treatment center licensed by the Division of Mental Health  
13 and Addiction Services in the Department of Human Services, who  
14 certifies that the request is for the purpose of providing health care  
15 to a current patient or verifying information with respect to a patient  
16 or practitioner, and who furnishes the division with the written  
17 consent of the patient for the mental health practitioner to obtain  
18 prescription monitoring information about the patient. The director  
19 shall establish, by regulation, the terms and conditions under which  
20 a mental health practitioner may request and receive prescription  
21 monitoring information. Nothing in sections 25 through 30 of  
22 P.L.2007, c.244 (C.45:1-45 through C.45:1-50) shall be construed  
23 to require or obligate a mental health practitioner to access or check  
24 the prescription monitoring information in the course of treatment  
25 beyond that which may be required as part of the mental health  
26 practitioner's professional practice.

27       j. A person listed in subsection h. or i. of this section, as a  
28 condition of obtaining prescription monitoring information pursuant  
29 thereto, shall furnish the required certification by means of an on-  
30 line statement in a form and manner prescribed by regulation of the  
31 director.

32       k. The division shall offer an online tutorial for those persons  
33 listed in subsections h. and i. of this section, which shall, at a  
34 minimum, include: how to access prescription monitoring  
35 information; the rights of persons who are the subject of this  
36 information; the responsibilities of persons who access this  
37 information; a summary of the other provisions of sections 25  
38 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50) and  
39 the regulations adopted pursuant thereto, regarding the permitted  
40 uses of that information and penalties for violations thereof; and a  
41 summary of the requirements of the federal health privacy rule set  
42 forth at 45 CFR Parts 160 and 164 and a hypertext link to the  
43 federal Department of Health and Human Services website for  
44 further information about the specific provisions of the privacy rule.

45       l. The division may request and receive prescription  
46 monitoring information from prescription monitoring programs in  
47 other states and may use that information for the purposes of  
48 sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through

1 C.45:1-50). When sharing data with programs in another state, the  
2 division shall not be required to obtain a memorandum of  
3 understanding unless required by the other state.

4 m. The director may provide nonidentifying prescription drug  
5 monitoring information to public or private entities for statistical,  
6 research, or educational purposes, in accordance with the provisions  
7 of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
8 C.45:1-50).

9 n. Nothing shall be construed to prohibit the division from  
10 obtaining unsolicited automated reports from the program or  
11 disseminating such reports to pharmacists, practitioners, mental  
12 health care practitioners, and other licensed health care  
13 professionals.

14 (cf: P.L.2007, c.244, s.26)

15

16 5. Section 28 of P.L.2007, c.244 (C.45:1-48) is amended to  
17 read as follows:

18 28. Immunity from liability.

19 a. The division shall be immune from civil liability arising  
20 from inaccuracy of any of the information submitted to it pursuant  
21 to sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
22 C.45:1-50).

23 b. A pharmacy permit holder, pharmacist, mental health  
24 practitioner, licensed health care professional, medical resident, or  
25 practitioner shall be immune from civil liability arising from  
26 compliance with sections 25 through 30 of P.L.2007, c.244 (C.45:1-  
27 45 through C.45:1-50).

28 (cf: P.L.2007, c.244, s.28)

29

30 6. Section 29 of P.L.2007, c.244 (C.45:1-49) is amended to  
31 read as follows:

32 29. Penalties.

33 a. A pharmacy permit holder, or a person designated by a  
34 pharmacy permit holder to be responsible for submitting data  
35 required by section 25 of P.L.2007, c.244 (C.45:1-45), who  
36 knowingly fails to submit data as required, shall be subject to  
37 disciplinary action pursuant to section 8 of P.L.1978, c.73 (C.45:1-  
38 21) and may be subject to a civil penalty in an amount not to exceed  
39 \$1,000 for **repeated** failure to comply with sections 25 through 30  
40 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

41 b. (1) A pharmacy permit holder, pharmacist, mental health  
42 practitioner, licensed health care professional, medical resident, or  
43 practitioner, or any other person or entity who knowingly discloses  
44 or uses prescription monitoring information in violation of the  
45 provisions of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45  
46 through C.45:1-50) shall be subject to a civil penalty in an amount  
47 not to exceed \$10,000.

1 (2) A pharmacy permit holder, pharmacist, mental health  
2 practitioner, licensed health care professional, medical resident, or  
3 practitioner who knowingly discloses or uses prescription  
4 monitoring information in violation of the provisions of sections 25  
5 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall  
6 also be subject to disciplinary action pursuant to section 8 of  
7 P.L.1978, c.73 (C.45:1-21).

8 c. A civil penalty imposed under subsections a., b., or d. of this  
9 section shall be collected by the director pursuant to the "Penalty  
10 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

11 d. A person not authorized to obtain prescription monitoring  
12 information from the Prescription Monitoring Program, who  
13 knowingly obtains or attempts to obtain such information in  
14 violation of the provisions of sections 25 through 30 of P.L.2007,  
15 c.244 (C.45:1-45 through C.45:1-50), shall be subject to a civil  
16 penalty in an amount not to exceed \$10,000.

17 e. In addition to any other penalty provided by law, a person  
18 who is authorized to obtain prescription monitoring information  
19 from the Prescription Monitoring Program who knowingly discloses  
20 such information in violation of the provisions of sections 25  
21 through 30 of P.L.2007, c.244 (C.45:1-45 through C.45:1-50), shall  
22 be guilty of a crime of the fourth degree.

23 f. In addition to any other penalty provided by law, a person  
24 who is authorized to obtain prescription monitoring information  
25 from the Prescription Monitoring Program who uses this  
26 information in the course of committing, attempting to commit, or  
27 conspiring to commit any criminal offense shall be guilty of a crime  
28 of the third degree. Notwithstanding the provisions of N.J.S.2C:1-8  
29 or any other provision of law, a conviction under this subsection  
30 shall not merge with a conviction of any other offense, nor shall any  
31 other conviction merge with a conviction under this subsection.  
32 The court shall impose separate sentences upon a conviction under  
33 this subsection and any other criminal offense.

34 g. In addition to any other penalty provided by law, a person  
35 who is not authorized to obtain prescription monitoring information  
36 from the Prescription Monitoring Program who knowingly obtains  
37 or attempts to obtain such information in violation of the provisions  
38 of sections 25 through 30 of P.L.2007, c.244 (C.45:1-45 through  
39 C.45:1-50), shall be guilty of a crime of the third degree.

40 (cf: P.L.2007, c.244, s.29)

41  
42 7. (New section) a. A pharmacist shall not dispense a  
43 prescription to a person other than the patient for whom the  
44 prescription is intended unless the person receiving the prescription  
45 provides personal identification, which the pharmacist shall input  
46 into the Prescription Monitoring Program as required pursuant to  
47 subsection b. of section 25 of P.L.2007, c.244 (C.45:1-45). The  
48 provisions of this section shall not take effect until the director

1 determines that the Prescription Monitoring Program has the  
2 technical capacity to accept such information.

3

4 8. Section 39 of P.L.1970, c.226 (C.24:21-39) is repealed.

5

6 9. The Director of the Division of Consumer Affairs shall  
7 adopt rules and regulations pursuant to the "Administrative  
8 Procedure Act" P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate  
9 the purposes of this act.

10

11 10. This act shall take effect on the first day of the fourth month  
12 next following the date of enactment, but the Director of the  
13 Division of Consumer Affairs may take such anticipatory  
14 administrative action in advance thereof as shall be necessary for  
15 the implementation of this act.

16

17

18

#### STATEMENT

19

20 This bill revises various statutory provisions related to the  
21 Prescription Monitoring Program (PMP), which was established in  
22 the Division of Consumer Affairs in the Department of Law and  
23 Public Safety pursuant to P.L.2007, c.244 (C.45:1-45 et seq.). The  
24 PMP is an electronic system for monitoring controlled dangerous  
25 substances dispensed in or into the State in outpatient settings. The  
26 bill is a companion to Senate Bill No. 1998, but incorporates certain  
27 changes.

28

#### Information Recorded in PMP

29  
30 In addition to the information that pharmacy permit holders must  
31 submit to the PMP under current law, the bill requires them to  
32 submit identifying information for any individual other than the  
33 patient for whom the prescription was written who picks up a  
34 prescription. The bill also requires that pharmacy permit holders  
35 submit prescription monitoring information to the division every  
36 seven days, rather than every 30 days as provided by current statute.

37 The bill adds a provision requiring that the division evaluate  
38 whether any person is obtaining a prescription in a manner  
39 indicative of misuse, abuse, or diversion of a controlled dangerous  
40 substance. If there is indication that a person is obtaining a  
41 prescription for the same or a similar drug from multiple  
42 practitioners or pharmacists during the same time period, the  
43 division may provide prescription monitoring information about  
44 that person to practitioners and pharmacists. In addition, the bill  
45 directs the division to evaluate whether any violation of law or  
46 regulations or a breach of a standard of practice by any person may  
47 have occurred, including possible diversion of controlled dangerous  
48 substances. If the division determines that such a violation or

1 breach may have occurred, the division is to notify the appropriate  
2 law enforcement agency or professional licensing board and provide  
3 relevant information for an investigation.

4

5 Access to PMP Information

6 The bill also revises current provisions that delineate the types of  
7 access to the PMP that are made available to various parties seeking  
8 information. Specifically, the bill would require the division to  
9 automatically register pharmacists and practitioners to participate in  
10 the prescription monitoring program as part of their registration to  
11 dispense controlled dangerous substances. The division must  
12 provide online access to prescription monitoring information to  
13 practitioners and pharmacists for the purpose of providing health  
14 care to their patients or verifying information with respect to a  
15 patient or a prescriber.

16 The division would also grant access to as many licensed health  
17 care professionals as are authorized by a practitioner to access that  
18 information and for whom the practitioner is responsible for the use  
19 or misuse of that information, subject to a limit on the number of  
20 such health care professionals as is deemed appropriate by the  
21 division for that particular type and size of professional practice, in  
22 order to minimize the burden to practitioners to the extent  
23 practicable while protecting the confidentiality of the prescription  
24 monitoring information obtained. The director would establish, by  
25 regulation, the terms and conditions under which a practitioner may  
26 delegate that authorization, including procedures for authorization  
27 and termination of authorization, provisions for maintaining  
28 confidentiality, duration of a licensed health care professional's  
29 authorization to access prescription monitoring information, and  
30 such other matters as the division may deem appropriate.

31 The division would also grant access to as many medical  
32 residents as are authorized by a faculty member of a medical  
33 teaching facility to access that information and for whom the  
34 practitioner is responsible for the use or misuse of that information.  
35 The director would establish, by regulation, the terms and  
36 conditions under which a faculty member of a medical teaching  
37 facility may delegate that authorization, including procedures for  
38 authorization and termination of authorization, provisions for  
39 maintaining confidentiality, duration of a medical resident's  
40 authorization to access prescription monitoring information, and  
41 such other matters as the division may deem appropriate.

42 In addition, the division is permitted to provide online access to  
43 the following:

44 -- authorized personnel of the division, vendors, and  
45 contractors responsible for maintaining the PMP;

46 -- authorized personnel of the division responsible for  
47 administration and enforcement of the "New Jersey Controlled  
48 Dangerous Substances Act";

- 1       -- the State Medical Examiner, a county medical examiner, or a  
2 deputy or assistant county medical examiner investigating a death;
- 3       -- controlled dangerous substance monitoring programs in  
4 other states with which the division has established interoperability  
5 agreements (if required by those states), or which participate with  
6 the division in a system that facilitates secure sharing of  
7 information between states;
- 8       -- a designated representative of any state professional  
9 licensing board that regulates the practice of persons authorized to  
10 prescribe or dispense controlled dangerous substances, for purposes  
11 investigating a specific professional regulated by that board;
- 12       -- a State, federal, or municipal law enforcement officer who is  
13 acting pursuant to a court order and certifies that the officer is  
14 engaged in a bona fide specific investigation of a designated  
15 practitioner or patient;
- 16       -- a designated representative of a state Medicaid or other  
17 program who certifies that he is engaged in a bona fide  
18 investigation of a designated practitioner or patient;
- 19       -- a properly convened grand jury pursuant to a subpoena  
20 properly issued for the records; and
- 21       -- a licensed mental health practitioner providing treatment for  
22 substance abuse to patients at a licensed residential or outpatient  
23 substance abuse treatment center, who certifies that the request is  
24 for the purpose of providing health care to a current patient or  
25 verifying information with respect to a patient or practitioner, and  
26 who furnishes the division with the written consent of the patient  
27 for the mental health practitioner to obtain prescription monitoring  
28 information about the patient. The bill provides that a mental health  
29 practitioner is not required to access or check the prescription  
30 monitoring information in the course of treatment beyond that  
31 which may be required as part of the practitioner's professional  
32 practice.

33       The bill authorizes the division to request and receive  
34 prescription monitoring information from prescription monitoring  
35 programs in other states and to use that information for the purposes  
36 of the PMP. The director is authorized to provide nonidentifying  
37 prescription drug monitoring information to public or private  
38 entities for statistical, research, or educational purposes. The bill  
39 states that nothing is to prohibit the division from obtaining  
40 unsolicited automated reports from the program or disseminating  
41 such reports to pharmacists, practitioners, mental health care  
42 practitioners, and other licensed health care professionals.

43

44       Penalties for Misuse

45       The bill amends the immunity and penalty provisions of the law  
46 governing the PMP to include medical residents, mental health  
47 practitioners (i.e., a clinical social worker, marriage and family  
48 therapist, alcohol and drug counselor, professional counselor,

1 psychologist, or psychoanalyst licensed or otherwise authorized to  
2 practice under State law), and other licensed health care  
3 professionals (i.e., a registered nurse, licensed practical nurse,  
4 advanced practice nurse, physician assistant, or dental hygienist  
5 licensed under State law).

6 The bill expands the penalty provisions of the law governing the  
7 PMP to provide that civil penalties for pharmacy permit holders  
8 who fail to submit information to the program may apply after one  
9 failure, rather than repeated failures. It also provides for a civil  
10 penalty up to \$10,000 for a person not authorized to obtain  
11 prescription monitoring information from the Prescription  
12 Monitoring Program, who knowingly obtains or attempts to obtain  
13 such information. The bill would make it a crime of the fourth  
14 degree (punishable by imprisonment for a term of up to 18 months,  
15 or a fine of up to \$10,000, or both) for a person who is authorized to  
16 obtain prescription monitoring information from the Prescription  
17 Monitoring Program to knowingly disclose such information in  
18 violation of the law. In addition, the bill would make it a crime of  
19 the third degree (punishable by imprisonment for a term of three to  
20 five years, or a fine of up to \$15,000, or both) for a person who is  
21 authorized to obtain prescription monitoring information to use the  
22 information in the furtherance of other crimes, or for a person who  
23 is not authorized to obtain prescription monitoring information from  
24 the Prescription Monitoring Program to knowingly obtain or  
25 attempt to obtain such information in violation of the law.

26

#### 27 Additional Changes

28 Section 1 of the bill authorizes the Director of the Division of  
29 Consumer Affairs to conduct educational programs concerning  
30 controlled dangerous substances (CDS) for the general public and  
31 various health care professionals specified in the bill. The bill  
32 deletes the explicit statutory authority of the director to conduct  
33 programs of eradication aimed at destroying wild or illicit growth of  
34 plant species from which controlled dangerous substances may be  
35 extracted.

36 Section 8 of the bill repeals section 39 of P.L.1970, c.226  
37 (C.24:21-39), which requires that every practitioner, within 24  
38 hours after determining that a person is a drug dependent person by  
39 reason of the use of a controlled dangerous substance for purposes  
40 other than the treatment of sickness or injury prescribed and  
41 administered as authorized by law, report that determination to the  
42 director.