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)

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

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

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

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

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

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

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

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

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

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

24. Definitions. As used in sections 25 through 30 of P.L.2007, 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.

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

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

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

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

"Licensed health care professional" means a registered nurse, licensed practical nurse, advanced practice nurse, physician assistant, or dental hygienist licensed pursuant to Title 45 of the Revised Statutes.

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

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

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

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

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

"Ultimate user" means a person who has obtained from a dispenser and possesses for **[**his**]** the person's own use, or for the use of a member of **[**his**]** the person's household or an animal owned by **[**his**]** the person's or by a member of **[**his**]** the person's household, a controlled dangerous substance.

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

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

25. Prescription Monitoring Program; requirements.

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

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

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

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

(3) The date that the medication is dispensed;

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Access to prescription information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. Immunity from liability.

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

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

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

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

29. Penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

<u>Information Recorded in PMP</u>

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

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

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

Access to PMP Information

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

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

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

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

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

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

-- the State Medical Examiner, a county medical examiner, or a deputy or assistant county medical examiner investigating a death;

-- controlled dangerous substance monitoring programs in other states with which the division has established interoperability agreements (if required by those states), or which participate with the division in a system that facilitates secure sharing of information between states;

-- a designated representative of any state professional licensing board that regulates the practice of persons authorized to prescribe or dispense controlled dangerous substances, for purposes investigating a specific professional regulated by that board;

-- a State, federal, or municipal law enforcement officer who is acting pursuant to a court order and certifies that the officer is engaged in a bona fide specific investigation of a designated practitioner or patient;

-- a designated representative of a state Medicaid or other program who certifies that he is engaged in a bona fide investigation of a designated practitioner or patient;

-- a properly convened grand jury pursuant to a subpoena properly issued for the records; and

-- a licensed mental health practitioner providing treatment for substance abuse to patients at a licensed residential or outpatient substance abuse treatment center, who certifies that the request is for the purpose of providing health care to a current patient or verifying information with respect to a patient or practitioner, and who furnishes the division with the written consent of the patient for the mental health practitioner to obtain prescription monitoring information about the patient. The bill provides that a mental health practitioner is not required to access or check the prescription monitoring information in the course of treatment beyond that which may be required as part of the practitioner's professional practice.

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

<u>Penalties for Misuse</u>

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

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

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

<u>Additional Changes</u>

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

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