

**65-1681. Prescription monitoring program act.**

This act shall be known and may be cited as the prescription monitoring program act.

**History:** L. 2008, ch. 104, § 1; July 1.

**65-1682. Same; definitions.**

As used in this act, unless the context otherwise requires:

(a) "Board" means the state board of pharmacy

(b) "Dispenser" means a practitioner or pharmacist who delivers a scheduled substance or drug of concern to an ultimate user, but does not include:

(1) A licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a medical care facility as defined in K.S.A. 65-425 and amendments thereto, practitioner or other authorized person who administers such a substance;

(3) a registered wholesale distributor of such substances;

(4) a veterinarian licensed by the Kansas board of veterinary examiners who dispenses or prescribes a scheduled substance or drug of concern;

(5) a practitioner who has been exempted from the reporting requirements of this act in rules and regulations promulgated by the board.

(c) "Drug of concern" means any drug that demonstrates a potential for abuse and is designated as a drug of concern in rules and regulations promulgated by the board.

(d) "Patient" means the person who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, or both.

(e) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(f) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, optometrist or other person authorized by law to prescribe or dispense scheduled substances and drugs of concern.

(g) "Scheduled substance" means controlled substances included in schedules II, III, or IV of the schedules designated in K.S.A. 65-4107, 65-4109 and 65-4111, and amendments thereto, respectively, or the federal controlled substances act (21 U.S.C. § 812).

**History:** L. 2008, ch. 104, § 2; July 1.

**65-1683 Same; required information to be submitted by dispenser; rules and regulations; waiver; acceptance of gifts and grants.**

(a) The board shall establish and maintain a prescription drug monitoring program for the monitoring of scheduled substances and drugs of concern dispensed in this state or dispensed to an address in this state.

(b) Each dispenser shall submit to the board by electronic means information required by the board regarding each prescription dispensed for a substance included under subsection (a). The board shall promulgate rules and regulations specifying the nationally recognized telecommunications format to be used for submission of information that each dispenser shall submit to the board. Such information may include, but not be limited to:

(1) The dispenser identification number;

(2) the date the prescription is filled;

(3) the prescription number;

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

- (5) the national drug code for the drug dispensed;
- (6) the quantity dispensed;
- (7) the number of days supply of the drug;
- (8) the patient identification number;
- (9) the patient's name;
- (10) the patient's address;
- (11) the patient's date of birth;
- (12) the prescriber identification number;
- (13) the date the prescription was issued by the prescriber; and
- (14) the source of payment for the prescription.

(c) The board shall promulgate rules and regulations specifying the transmission methods and frequency of the dispenser submissions required under subsection (b).

(d) The board may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided that all information required by rules and regulations is submitted in this alternative format.

(e) The board is hereby authorized to apply for and to accept grants and may accept any donation, gift or bequest made to the board for furthering any phase of the prescription monitoring program.

(f) The board shall remit all moneys received by it under subsection (e) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the non-federal gifts and grants fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.

**History:** L. 2008, ch. 104, § 3; L. 2012, ch 107, § 4; May 17.

**65-1684. Same; charges and fees prohibited.**

The board shall not impose any charge for the establishment or maintenance of the prescription monitoring program database on a registered wholesale distributor, pharmacist, dispenser or other person authorized to prescribe or dispense scheduled substances and drugs of concern. The board shall not charge any fees for the transmission of data to the database or for the receipt of information from the database, except that the board may charge a fee to an individual who requests the individual's own prescription monitoring information in accordance with procedures adopted by the board.

**History:** L. 2008, ch. 104, § 4; July 1.

**65-1685 Same; database information privileged and confidential; persons authorized to receive data; advisory committee review of information.**

(a) The prescription monitoring program database, all information contained therein and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be privileged and confidential, shall not be subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of

entities charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern, shall not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, except as provided in subsections (c) and (d).

(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 except as provided in subsections (c) and (d).

(c) The board is hereby authorized to provide data in the prescription monitoring program to the following persons:

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

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

(3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing of scheduled substances and drugs of concern;

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

(5) designated representatives from the department of health and environment regarding authorized Medicaid program recipients;

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

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

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

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

(10) medical examiners, coroners or other persons authorized under law to investigate or determine causes of death.

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

(1) If a review of information appears to indicate a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances and drugs of concern, the advisory committee is authorized to notify the prescribers and dispensers who prescribed or dispensed the prescriptions. If the review identifies patterns or other evidence sufficient to create a reasonable suspicion of criminal activity, the advisory committee is authorized to notify the appropriate law enforcement agency.

(2) If a review of information appears to indicate that a violation of state or federal law relating to prescribing controlled substances and drugs of concern may have occurred, or that a prescriber or dispenser has knowingly prescribed, dispensed or obtained controlled substances and drugs of concern in a manner that is inconsistent with recognized standards of care for the profession, the advisory committee shall determine whether a report to the professional licensing,

certification or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing of controlled substances and drugs of concern or to the appropriate law enforcement agency is warranted.

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

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

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

(e) The board is hereby authorized to provide data in the prescription monitoring program to public or private entities for statistical, research or educational purposes after removing information that could be used to identify the individual practitioners, dispensers, patients, or persons who received prescriptions from dispensers.

**History:** L. 2008, ch. 104, § 5; L. 2012, ch. 102, § 24; L. 2012, ch 107, § 5; May 17.

**65-1686. Same; another agency as contractor.**

The board is hereby authorized 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 the provisions regarding confidentiality of prescription information in K.S.A. 2014 Supp. 65-1685, and amendments thereto, and shall be subject to the penalties specified in K.S.A. 2014 Supp. 65-1693, and amendments thereto, for unlawful acts.

**History:** L. 2008, ch. 104, § 6; July 1.

**65-1687 Same; maintenance of records.**

All information collected for the prescription monitoring program database and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as part of the database, shall be retained for five years. Such information and records shall then be destroyed unless a law enforcement entity or an entity charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern has submitted a written request to the board for retention of the specific information or records in accordance with procedures adopted by the board.

**History:** L. 2008, ch. 104, § 7; July 1.

**65-1688 Same; act does not create civil liability or duty.**

No person authorized to prescribe or dispense scheduled substances and drugs of concern shall be liable to any person in a civil action for damages or other relief for injury, death or loss to person or property on the basis that such person authorized to prescribe or dispense scheduled substances and drugs of concern did or did not seek or obtain information from the prescription monitoring program prior to prescribing or dispensing scheduled substances and drugs of

concern to a patient. Nothing in this act shall be construed to create a duty or otherwise require a person authorized to prescribe or dispense scheduled substances and drug of concern to obtain information about a patient from the prescription monitoring program prior to prescribing or dispensing scheduled substances and drug of concern to such patient.

**History:** L. 2008, ch. 104, § 8; July 1.

**65-1689 Same; advisory committee created; members; terms.**

(a) There is hereby created the Prescription Monitoring Program Advisory Committee which, subject to the oversight of the Board, shall be responsible for the operation of the Prescription Monitoring Program. The advisory committee shall consist of at least nine members appointed by the board as follows:

- (1) Two licensed physicians, one nominated by the Kansas medical society and one nominated by the Kansas Association of Osteopathic Medicine;
- (2) two licensed pharmacists nominated by the Kansas Pharmacists Association;
- (3) one person representing the Kansas Bureau of Investigation nominated by the Attorney General;
- (4) one person representing the University of Kansas School of Medicine nominated by the dean of such school;
- (5) one person representing the university of Kansas School of Pharmacy nominated by the dean of such school;
- (6) one licensed dentist nominated by the Kansas Dental Association; and
- (7) one person representing the Kansas Hospital Association nominated by such association. The board may also appoint other persons authorized to prescribe or dispense scheduled substances and drugs of concern, recognized experts and representatives from law enforcement.

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

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

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

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

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

**History:** L. 2008, ch. 104, § 9; July 1.

**65-1690 Same; advisory committee in cooperation with other entities.**

(a) The prescription monitoring program advisory committee shall work with each entity charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern to develop a continuing education program for such persons about the purposes and uses of the prescription monitoring program.

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

(c) The advisory committee shall work with the Kansas bureau of investigation to develop a continuing education program for law enforcement officers about the purposes and uses of the prescription monitoring program.

**History:** L. 2008, ch. 104, § 10; July 1.

**65-1691 Same; board consultation with advisory committee; annual report.**

In consultation with and upon recommendation of the prescription monitoring program advisory committee, the board shall review the effectiveness of the prescription monitoring program and submit an annual report to the Senate standing committee on public health and welfare and the House standing committee on health and human services.

**History:** L. 2008, ch. 104, § 11; July 1.

**65-1692 Same; rules and regulations.**

The board is hereby authorized to promulgate rules and regulations necessary to carry out the provisions of this act.

**History:** L. 2008, ch. 104, § 12; July 1.

**65-1693 Same; penalties.**

(a) A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this act or knowingly submits incorrect prescription monitoring information shall be guilty of a severity level 10 non-person felony.

(b) A person authorized to have prescription monitoring information pursuant to this act who knowingly discloses such information in violation of this act shall be guilty of a severity level 10, non-person felony.

(c) A person authorized to have prescription monitoring information pursuant to this act who knowingly uses such information in a manner or for a purpose in violation of this act shall be guilty of a severity level 10 non-person felony.

(d) A person who knowingly, and without authorization, obtains or attempts to obtain prescription monitoring information shall be guilty of a severity level 10, nonperson felony.

(e) It shall not be a violation of this act for a practitioner or dispenser to disclose or use information obtained pursuant to this act when such information is disclosed or used solely in the course of such practitioner's or dispenser's care of the patient who is the subject of the information.

**History:** L. 2008, ch. 104, § 13; L. 2012, ch 107, § 6; May 17.

**65-1694 Same; veterinary prescription monitoring program task force; study; members; report.**

(a) There is hereby established the veterinary prescription monitoring program task force which shall study and determine whether to require veterinarians to report to a prescription monitoring program under this act. Such study shall include appropriate methods and procedures of reporting by the veterinarians with the necessary database field information. The task force shall utilize nationally available resources afforded by the American Association of Veterinary State boards and the American veterinary medical associations department of state legislative and regulatory affairs and development of the plan in consultation with the advisory committee.

(b) The task force shall consist of three members as follows: one member appointed by the prescription monitoring program advisory committee; one member appointed by the Kansas

board of veterinary examiners; and one member nominated by the Kansas veterinary medical association and appointed by the Kansas board of veterinary examiners.

(c) Appointments shall be made within 120 days after the effective date of this act. The initial meeting of the task force shall be convened within 180 days after the effective date of this act. The task force shall elect a chairperson and may elect any additional officers from among its members. All task force members shall serve without compensation.

(d) The task force shall report its findings and progress to the prescription monitoring program advisory committee at least annually or when requested by the advisory committee. The task force shall report its progress to the Senate committee on public health and welfare and the House committee on health and human services, if requested, and report its conclusions and recommendations to such committees within 5 years after the effective date of this act. Based on the recommendation by the task force, this act shall be amended to include the veterinarians as practitioners.

**History:** L. 2008, ch. 104, § 15; July 1.

## **Article 21: Prescription Monitoring Program**

### **68-21-1. Definitions.**

As used in these regulations, the following terms shall have the meanings specified in this regulation:

(a) “Authentication” means the provision of information, an electronic device, or a certificate by the board or its designee to a dispenser or prescriber that allows the dispenser or prescriber to electronically access prescription monitoring information. The authentication may include the provision of a user name, a password, or an electronic identification device or certificate.

(b) “Dispenser identification number” means the drug enforcement administration (DEA) number if available or, if not available, the national provider identifier (NPI).

(c) “Drug enforcement administration number” means a unique registration number issued to an authorized prescriber of controlled substances by the drug enforcement administration, United States department of justice.

(d) “National provider identifier” and “NPI” mean a unique 10-digit number issued by the national provider identifier registry and used to identify each health care provider whose services are authorized by medicaid or medicare.

(e) “Patient identification number” means that patient’s unexpired temporary or permanent driver’s license number or state-issued identification card number. If the patient does not have one of those numbers, the dispenser shall use the patient’s insurance identification number. If the patient does not have an insurance identification number, the dispenser shall use the patient’s first, middle, and last initials, followed by the patient’s eight-digit birth date.

(f) “Prescriber identification number” means the DEA number if available or, if not available, the NPI.

(g) “Program” means the Kansas prescription monitoring program.

(h) “Report” means a compilation of data concerning a dispenser, patient, drug of concern, or scheduled substance as defined in K.S.A. 65-1682(g) and amendments thereto.

- (i) “Stakeholder” means a person, group, or organization that could be affected by the program’s actions, objectives, and policies.
- (j) “Valid photographic identification” means any of the following:
- (1) An unexpired permanent or temporary driver’s license or instruction permit issued by any U.S. state or Canadian province;
  - (2) an unexpired state identification card issued by any U.S. state or Canadian province;
  - (3) an unexpired official passport issued by any nation;
  - (4) an unexpired United States armed forces identification card issued to any active duty, reserve, or retired member and the member’s dependents;
  - (5) an unexpired merchant marine identification card issued by the United States coast guard;
  - (6) an unexpired state liquor control identification card issued by the liquor control authority of any U.S. state or Canadian province; or
  - (7) an unexpired enrollment card issued by the governing authority of a federally recognized Indian tribe located in Kansas, if the enrollment card incorporates security features comparable to those used by the Kansas department of revenue for drivers’ licenses.
- (k) “Zero report” means an electronic data submission reflecting no dispensing activity for a given period.

This regulation shall take effect 90 days after publication in the Kansas register.

(Authorized by K.S.A. 65-1692; implementing K.S.A. 2013 Supp. 65-1682; effective Oct. 15, 2010; amended Aug. 13, 2014.)

#### **68-21-2. Electronic reports.**

- (a)(1) Each dispenser shall file a report with the board for scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, and any drugs of concern dispensed in this state or to an address in this state. This report shall be submitted within 24 hours of the time that the substance is dispensed, unless the board grants an extension as specified in subsection (d).
- (2) Each dispenser that does not dispense scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, or any drugs of concern in this state or to an address in this state during the reporting period specified in paragraph (a)(1) shall file a zero report with the board. Each zero report shall meet the following requirements:
- (A) Cover not more than a seven-day period in which no such drugs were dispensed;
- and
- (B) be filed the day following the end of the period covered by the zero report.
- (b) In addition to the requirements of K.S.A. 65-1683 and amendments thereto, each dispenser shall submit the prescriber’s name, the patient’s telephone number, and the number of refills for the dispensed drug on the report to the board. As an alternative to reporting the dispenser identification number, any dispenser may report the pharmacy DEA number.
- (c) Except as specified in K.A.R. 68-21-3, each report required to be submitted pursuant to subsection (a) shall be submitted by secure file transfer protocol in the electronic format established by the American society for automation in pharmacy, dated no earlier than 2007, version 4, release 1.
- (d) An extension may be granted by the board to a dispenser for the submission of any report required to be submitted pursuant to subsection (a) if both of the following conditions are met:



(1)(A) The dispenser suffers a mechanical or electronic failure; or  
(B) the dispenser cannot meet the deadline established by subsection (a) because of circumstances beyond the dispenser's control.

(2) The dispenser files a written application for extension on a form provided by the board within 24 hours of discovery of the circumstances necessitating the extension request or on the next day the board's administrative office is open for business.

(e) An extension for the filing of a report shall be granted to a dispenser if the board is unable to receive electronic reports submitted by the dispenser.

(f) Each dispenser that is registered or licensed to dispense scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, or any drugs of concern in this state or to an address in this state but does not dispense any of these drugs shall notify the board in writing that the dispenser will not be reporting to the board. If the dispenser begins dispensing scheduled substances, as defined in K.S.A. 65-1682

(g) and amendments thereto, or any drugs of concern in this state or to an address in this state, the dispenser shall notify the board of this fact and shall begin submitting reports to the board pursuant to this regulation.

This regulation shall take effect 90 days after publication in the Kansas register.

(Authorized by K.S.A. 2013 Supp. 65-1683 and 65-1692; implementing K.S.A. 2013 Supp. 65-1683; effective Oct. 15, 2010; amended April 15, 2011; amended Aug. 13, 2014.)

### **68-21-3. Waivers for electronic reports.**

(a) A waiver may be granted by the board to a dispenser who does not have an automated recordkeeping system capable of producing an electronic report as specified in K.A.R. 68-21-2(c) if the following conditions are met:

(1) The dispenser files a written application for a waiver on a form provided by the board.

(2) The dispenser agrees in writing to immediately begin filing a paper report on a form provided by the board for each drug of concern and each schedule II through IV drug dispensed in this state or dispensed to an address in this state.

(b) A waiver may be granted by the board to a dispenser who has an automated recordkeeping system capable of producing an electronic report as specified in K.A.R. 68-21-2(c) if both of the following conditions are met:

(1) The dispenser files a written application for a waiver on a form provided by the board.

(2)(A) A substantial hardship is created by natural disaster or other emergency beyond the dispenser's control; or

(B) the dispenser is dispensing in a controlled research project approved by a regionally accredited institution of higher education.

(c) If a medical care facility dispenses an interim supply of a drug of concern or a schedule II through IV drug to an outpatient on an emergency basis when a prescription cannot be filled as authorized by K.A.R. 68-7-11, that facility shall be exempt from the reporting requirements. The interim quantity shall not exceed a 48-hour supply and, as described in K.A.R. 68-7-11(d)(2)(B), shall be limited to an amount sufficient to supply the outpatient's needs until a prescription can be filled.

(Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1683; effective Oct. 15, 2010.)

#### **68-21-4. Notice of requests for information.**

Each dispenser who may access information maintained by the board on each drug of concern and schedule II through IV drug dispensed to one of the dispenser's patients for the purpose of providing medical or pharmaceutical care shall notify the patient of this access to prescription monitoring information by performing either of the following:

- (a) Posting an easily viewable sign at the place where prescription orders are issued or accepted for dispensing; or
- (b) providing written material about the dispenser's access to prescription monitoring information.

(Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective April 15, 2011.)

#### **68-21-5. Access to information.**

All requests for, uses of, and disclosures of prescription monitoring information by authorized persons shall meet the requirements of K.S.A. 65-1685, and amendments thereto, and this article.

(a) By patients or patient's personal representative.

(1) Any patient or that patient's personal representative may obtain a report listing all program information that pertains to the patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto.

(2) Each patient or the patient's personal representative seeking access to the information described in paragraph (a)(1) shall submit a written request for information in person to the board. The written request shall be in a format established by the board and shall include the following elements:

(A) The patient's name and, if applicable, the full name of the patient's personal representative;

(B) the patient's residential address and, if applicable, the complete residential address of the patient's personal representative;

(C) the patient's telephone number, if any, and, if applicable, the telephone number of the personal representative; and

(D) the time period for which information is being requested.

(3) The patient or the patient's personal representative shall produce two forms of valid photographic identification before obtaining access to the patient's information obtained by the program. The patient or the patient's personal representative shall allow photocopying of the identification.

(4) Before access to the patient's information obtained by the program is given, one of the following shall be produced if the requester is not the patient:

(A) For a personal representative, an official attested copy of the judicial order granting authority to gain access to the health care records of the patient;

(B) for a parent of a minor child, a certified copy of the birth certificate of the minor child or other official documents establishing legal guardianship; or

(C) for a person holding power of attorney, the original document establishing the power of attorney.

(5) The patient's personal representative shall allow the photocopying of the documents described in this subsection.

(6) The patient authorization may be verified by the board by any reasonable means before providing the information to the personal representative.

(b) By dispensers.

(1) Any dispenser may obtain any program information relating to a patient of the dispenser for the purpose of providing pharmaceutical care to that patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile transmission, or telephone.

(2) Each dispenser who seeks access to the information described in paragraph (b)(1) shall submit a written request to the board by mail, hand delivery, or electronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the dispenser shall cause the board to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request. Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

- (A) The patient's name and birth date;
- (B) if known to the dispenser, the patient's address and telephone number;
- (C) the time period for which information is being requested;
- (D) the dispenser's name;
- (E) if applicable, the name and address of the dispenser's pharmacy;
- (F) the dispenser identification number; and
- (G) the dispenser's signature.

(3) The authentication and identity of the dispenser shall be verified by the board before allowing access to any prescription monitoring information.

(c) By prescribers.

(1) Any prescriber or health care practitioner authorized by a prescriber may obtain any program information relating to a patient under the prescriber's care, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each prescriber or health care practitioner authorized by a prescriber who seeks access to program information shall submit a written request to the board by mail, hand delivery, or electronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the prescriber shall cause the board to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request.

Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

- (A) The patient's name and birth date;
- (B) if known to the prescriber, the patient's address and telephone number;
- (C) the time period for which information is being requested;
- (D) the prescriber's name;
- (E) the name and address of the prescriber's medical practice;
- (F) the prescriber identification number; and
- (G) the prescriber's signature.

(3) The authentication and identity of the dispenser shall be verified before allowing access to any program information.

(d) By director or board investigator of a health professional licensing, certification, or regulatory agency or entity.

(1) Any director or board investigator of a health professional licensing, certification, or regulatory agency or entity may obtain any program information needed in carrying out that individual's business, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each director or board investigator of a licensing board with jurisdiction over a dispenser or prescriber who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to a location specified by the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request.

(e) By local, state, and federal law enforcement or prosecutorial officials.

(1) Any local, state, or federal law enforcement officer or prosecutorial official may obtain any program information as required for an ongoing case, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each local, state, or federal law enforcement officer or prosecutorial official who seeks access to program information shall register with the board. Once registration is approved, the requester may submit a written request by mail, facsimile, or electronic means to the board. All requests for, uses of, and disclosures of prescription monitoring information by authorized persons under this subsection shall meet the requirements of K.S.A. 65-1685 (c)(4), and amendments thereto.

(f) By the Kansas health policy authority for purposes of the Kansas medicaid and state children's health insurance program (SCHIP).

(1) An authorized representative of the Kansas health policy authority may obtain any program information regarding medicaid or SCHIP program recipients, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board.

(2) Each authorized representative of the Kansas health policy authority seeking program information regarding medicaid or SCHIP program recipients who seeks access to program information shall submit a request to the board.

(g) By any other state's prescription monitoring program.

(1) Any authorized representative from any other state's prescription monitoring program may obtain any program information for requests from within that state that do not violate the authentication and security provisions of the prescription monitoring program act, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Any authorized representative from another state's prescription monitoring program seeking access to program information shall first establish a data-sharing agreement with the board in which the states agree to share prescription monitoring information with one another. The agreement shall specify what information will be made available and to whom, how requests will be made, how quickly requests will be processed, and in which format the information will be provided.

(h) By public or private entities for statistical, research, or educational purposes.

(1) Any public or private entity may obtain program information, in accordance with this regulation and K.S.A. 65-1685(d) and amendments thereto. The information shall be provided in a format established by the board.

(2) Each public or private entity who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request.

(Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective April 15, 2011.)

**68-21-6. Reciprocal agreements with other states to share information.**

(a) Reciprocal agreements with one or more states in the United States may be entered into by the board to share program information if the other state's prescription monitoring program is compatible with the program. If the board elects to evaluate the prescription monitoring program of another state, priority shall be given to a state that is contiguous to Kansas.

(b) In determining the compatibility of the other state's prescription monitoring program, the following may be considered by the board:

(1) The safeguards for privacy of patient records and the other state's success in protecting patient privacy;

(2) the persons authorized in the other state to view the data collected by the program;

(3) the schedules of controlled substances monitored in the other state;

(4) the data required by the other state to be submitted on each prescription; and

(5) the costs and benefits to the board of mutually sharing information with the other

state.

(c) Each reciprocal agreement shall be reviewed annually by the board to determine its continued compatibility with the program.

(Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective April 15, 2011.)

**68-21-7. Drugs of concern.** (a) Each of the following shall be classified as a drug of concern:

(1) Any product containing all three of these drugs: butalbital, acetaminophen, and caffeine;

(2) any compound, mixture, or preparation that contains any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers and is exempt from being reported to the statewide electronic logging system for the sale of methamphetamine precursors;

(3) any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers and is exempt from being reported to the statewide electronic logging system for the sale of methamphetamine precursors; and

(4) promethazine with codeine.

(b) Any individual who wants to have a drug added to the program for monitoring may submit a written request to the board.

This regulation shall take effect 90 days after publication in the Kansas register.

(Authorized by K.S.A. 2013 Supp. 65-1692; implementing K.S.A. 2013 Supp. 65-1682; effective Oct. 15, 2010; amended Feb. 4, 2015.)