

CHAPTER 68**(SB 40)**

AN ACT relating to prescriptions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 218A.202 is amended to read as follows:

- (1) The Cabinet for Health Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy licensed by the Kentucky Board of Pharmacy.
- (2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.
- (3) Every dispenser within the Commonwealth or who is licensed by the Kentucky Board of Pharmacy shall report to the Cabinet for Health Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:
 - (a) A drug administered directly to a patient; or
 - (b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.
- (4) Data for each controlled substance that is dispensed shall include but not be limited to the following:
 - (a) Patient identifier;
 - (b) Drug dispensed;
 - (c) Date of dispensing;
 - (d) Quantity dispensed;
 - (e) Prescriber; and
 - (f) Dispenser.
- (5) The data shall be provided in the electronic format specified by the Cabinet for Health Services unless a waiver has been granted by the cabinet to an individual dispenser.
- (6) The Cabinet for Health Services shall be authorized to provide data to:
 - (a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;
 - (b) A state, federal, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;
 - (c) A state-operated Medicaid program;
 - (d) A properly convened grand jury pursuant to a subpoena properly issued for the records; *or*

- (e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.
- (7) *The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.* ~~}
or }~~
- (8)~~(4)~~ A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction, *except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.*
- (9)~~(7)~~ The Cabinet for Health Services, all law enforcement officers, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.
- (10)~~(8)~~ The data and any report obtained therefrom shall not be a public record, *except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.*
- (11)~~(9)~~ Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor.
- (12)~~(10)~~ Knowing disclosure of transmitted data to a person not authorized by subsection (6) *to subsection (8)* of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony.
- (13)~~(11)~~ The Governor's Office for Technology, in consultation with the Cabinet for Health Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:
- (a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and
 - (b) Study the use of an interactive system that includes a relational data base with query capability.
- (14)~~(12)~~ Provisions in subsections (1) to (12)~~(10)~~ of this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13)~~(11)~~ of this section.

Section 2. KRS 218A.240 is amended to read as follows:

- (1) All police officers and deputy sheriffs directly employed full-time by state, county, city, or urban-county governments, the State Police, the Cabinet for Health Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators,~~and~~ to expend funds for the purpose of obtaining evidence, ***and to use data obtained under subsection (7) of Section 1 of this Act in any administrative proceeding before the cabinet.***
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health Services.
- (4) Designated agents of the Cabinet for Health Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
 - (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
 - (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
 - (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his costs, including a reasonable attorney's fee.
 - (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) The Cabinet for Health Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.

Approved April 7, 2004