

AN ACT relating to the medical use of cannabis.

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

➔Section 1. Sections 2 to 10 of this Act may be cited as the "Gatewood Galbraith Medical Cannabis Act".

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

*For the purposes of Sections 2 to 10 of this Act:*

*(1) "Cannabis" means all parts of any plant of the cannabis genus of plants, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, salt, derivative, mixture, or preparation of the plant and its seeds or resin. The term "cannabis" includes "marijuana" and "synthetic cannabinoid" as defined in KRS 218A.010;*

*(2) "Cardholder" means a patient or visiting patient who has been issued and possesses a valid registry identification card;*

*(3) "Debilitating medical condition" means:*

*(a) Cachexia or wasting syndrome;*

*(b) Severe or chronic pain;*

*(c) Severe nausea;*

*(d) Seizures;*

*(e) Severe and persistent muscle spasms;*

*(f) Cancer;*

*(g) Glaucoma;*

*(h) Positive status for human immunodeficiency virus;*

*(i) Acquired immune deficiency syndrome;*

*(j) Hepatitis C for which a patient is currently receiving antiviral treatment;*

*(k) Amyotrophic lateral sclerosis;*

*(l) Muscular dystrophy;*

- (m) Crohn's disease;
- (n) Agitation of Alzheimer's disease;
- (o) Multiple sclerosis;
- (p) Chronic pancreatitis;
- (q) Post traumatic stress disorder;
- (r) Spinal cord injury or disease;
- (s) Drug addiction, if a patient meets criteria established by the department pursuant to Section 9 of this Act;
- (t) Traumatic brain injury;
- (u) One (1) or more injuries that severally interferes with daily activities as documented by the patient's provider; and
- (v) Any medical condition determined by the department, on a case-by-case basis, to be debilitating or terminal following a written appeal by a physician;
- (4) "Department" means the Department for Public Health or its successor agency;
- (5) "Dispensary" means a state-registered facility that acquires, possesses, delivers, prepares, transfers, transports, sells, supplies, and dispenses, but does not cultivate, cannabis, and related supplies and educational materials, to patients;
- (6) (a) "Medical use" includes the acquisition, administration, delivery, possession, preparation, transfer, and transportation, of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with a patient's debilitating medical condition. It does not include cultivation by a patient or visiting patient.
- (b) "Medical use" of cannabis excludes the smoking of cannabis, but shall include the following delivery methods:

  - 1. Liquid, including but not limited to oil;

2. Pill;
  3. Vaporized delivery method where combustion of the cannabis does not occur; and
  4. Any other delivery method approved by the commissioner, excluding smoking;
- (7) "Patient" means an individual who has been diagnosed by a physician as having a debilitating medical condition, and who possesses a valid registry identification card; and
- (8) "Registry identification card" means a document issued by the department that identifies a person as a registered patient, visiting patient, or a registered designated caretaker.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) Within ninety (90) days of the effective date of this Act, the department shall operate the medical cannabis program established in Sections 2 to 10 of this Act for individuals with a debilitating medical condition that has been diagnosed by a physician.
- (2) The department shall operate a secure registry database and shall query the database established in KRS 218A.202 to assist with tracking a patient's medical history and usage of cannabis and other controlled substances.
- (3) To qualify for the medical cannabis program, a prospective patient shall:
  - (a) Have a diagnosis from a physician that he or she suffers from a debilitating medical condition;
  - (b) Have a certification from the diagnosing physician that medical cannabis may assist with the management of his or her debilitating medical condition. This certification shall be forwarded to the cabinet by the physician pursuant to Section 11 of this Act;

- (c) Complete an application for a registry identification card issued by the department;
- (d) Acquire the registry identification card; and
- (e) Present the registry identification card and a medical order from the physician at a dispensary before purchase of medical cannabis.
- (4) The department shall establish and annually update a list of varieties of cannabis that possess a low level of tetrahydrocannabinol by comparing percentages of chemical compounds within a given variety against other varieties of cannabis. For the purposes of this list, hemp or industrial hemp, as defined by KRS 260.850, shall not be classified as the only variety of cannabis with a low level of tetrahydrocannabinol.
- (5) (a) The department shall prioritize the development, sale, and manufacture of cannabis products with a low level of tetrahydrocannabinol as defined by the department pursuant to subsection (4) of this section.
- (b) The department shall grant priority access to cannabis varieties containing low levels of tetrahydrocannabinol for individuals younger than eighteen (18) and patients suffering from conditions which would most benefit from cannabis varieties containing lower levels of tetrahydrocannabinol.
- (6) (a) A patient younger than eighteen (18) shall only be dispensed a variety of cannabis that contains a low level of tetrahydrocannabinol as listed by the department pursuant to subsection (4) of this section.
- (b) Access to higher-tetrahydrocannabinol containing varieties of cannabis may be granted by the department on a case-by-case basis if a physician submits documentation to the department that his or her patient who is younger than eighteen (18) suffers from a debilitating medical condition and may benefit from a variety of cannabis that contains a higher level of tetrahydrocannabinol.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) The department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with the department's administrative regulations:

(a) A written certification issued by a physician within ninety (90) days immediately preceding the date of an application;

(b) The application or renewal fee;

(c) The name, address, and date of birth of the patient, except that if the patient is homeless, no address is required;

(d) The name, address, and telephone number of the patient's physician; and

(e) A statement, signed by the patient, pledging not to divert cannabis to anyone who is not allowed to possess cannabis pursuant to Sections 2 to 10 of this Act.

(2) The application for a qualifying patient's registry identification card shall ask whether the patient would like the department to notify him or her of any clinical studies needing human subjects for research on the medical use of cannabis. The department shall notify an interested patient if it is notified of studies that will be conducted in the United States.

(3) Except as provided in subsection (4) of this section, the department shall:

(a) Verify the information contained in an application or renewal, and approve or deny an application or renewal, within fifteen (15) days of receiving a completed application or renewal application;

(b) Issue a registry identification cards to a patient within five (5) days of approving the application or renewal; and

(c) Enter the registry identification number of the dispensary the patient designates into the system established in KRS 218A.202.

(4) The department shall not issue a registry identification card to a patient who is younger than eighteen (18) years of age unless:

(a) The qualifying patient's physician has explained the potential risks and benefits of the medical use of cannabis to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

1. Allow the qualifying patient's medical use of cannabis;

2. Serve as the qualifying patient's designated caretaker, if legally permitted; and

3. Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the patient.

(5) The department may deny an application or renewal of a patient's registry identification card only if the applicant:

(a) Did not provide the required information or materials;

(b) Previously had a registry identification card revoked; or

(c) Provided false or falsified information.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) (a) In no case shall a patient possess more than a sixty (60) day supply of medical cannabis.

(b) In no case shall a dispensary dispense to a patient more than sixty (60) day supply of medical cannabis.

(2) Notwithstanding any provision of state or local law to the contrary, including the provisions contained in KRS 217.065, 218A.050(3), 218A.1421, and 218A.1416, a patient shall not be subject to arrest by state or local law enforcement,

prosecution or penalty under state or municipal law, or denied any right or privilege for the medical use of cannabis in accordance with this chapter, if the patient is a cardholder and possesses an amount of cannabis that does not exceed the amount listed on the medical order.

(3) (a) A patient is presumed to be lawfully engaged in the medical use of cannabis in accordance with this chapter if the patient possesses a valid registry identification card and possesses an amount of cannabis that does not exceed the amount allowed under this chapter.

(b) The presumption made in paragraph (a) of this subsection may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating the qualifying patient's qualifying medical condition or symptoms or effects of the treatment associated with the qualifying medical condition, in accordance with Sections 2 to 10 of this Act.

(4) A valid registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows, in the jurisdiction of issuance, a visiting patient to possess cannabis for medical use shall have the same force and effect as a valid registry identification card issued by the department in this state, provided that the visiting patient shall also produce a statement from his or her health care provider stating that the visiting patient has a debilitating medical condition.

(5) A cardholder otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied such a right solely for conduct allowed under Sections 2 to 10 of this Act, and there shall be no presumption of neglect or child endangerment.

(6) For the purposes of medical care, a patient's authorized medical use of cannabis in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and

shall not constitute the use of a controlled substance under this chapter.

- (7) A physician shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by any occupational or professional licensing entity, solely for providing a medical order for the use of cannabis; except that nothing shall prevent a professional licensing entity from sanctioning a provider for failing to properly evaluate a patient's medical condition or otherwise violating KRS 311.550 to 311.620.
- (8) A dispensary shall not be subject to prosecution under state or municipal law or to search or inspection, except as provided by the department by administrative regulation, for acting pursuant to Sections 2 to 10 of this Act to deliver, transfer, supply, sell, or dispense cannabis and related supplies and educational materials to patients who have designated the dispensary to provide for them or to other dispensaries.
- (9) A dispensary employee or agent shall not be subject to arrest by state or local law enforcement, prosecution or penalty in any manner under state or municipal law, search, or denied any right or privilege for working for a dispensary pursuant to Sections 2 to 10 of this Act, to engage in any of the permissible actions listed in this section.
- (10) This section shall not apply in cases where the state or local law enforcement agency has probable cause to believe that a person is distributing cannabis to a person who is not allowed to possess it under Sections 2 to 10 of this Act. Any seizure of cannabis by law enforcement officers for a violation of this chapter shall be limited to the amount of cannabis in excess of the quantities permitted under this chapter and any such cannabis seized shall not be returned.
- (11) A person who ceases to be a patient shall have ten (10) days after notification by the department to dispose of cannabis by:



- (a) Notifying local law enforcement and requesting that they dispose of the cannabis; or
- (b) Disposing of the cannabis in a manner described by the department in an administrative regulation.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) Any local or statewide smoking ban shall be binding on all use of smoked, nebulized, or vaporized medical cannabis, except that use of medical cannabis shall only be allowed in any indoor or partially enclosed designated smoking areas if a prominent sign explicitly permits such use. However, the department may permit the use of vaporizing or nebulizing devices for medical cannabis within medical or research facilities.
- (2) A patient may use cannabis on privately owned real property only with written permission of the property owner or, in the case of leased property, with the permission of the tenant in possession of the property. However, a tenant may permit a patient to use cannabis on leased property by ingestion or inhalation through vaporization or nebulization.
- (3) Nothing in Sections 2 to 10 of this Act authorizes any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:
  - (a) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;
  - (b) Possessing cannabis, or otherwise engaging in the medical use of cannabis:
    - 1. In a school bus;
    - 2. On the grounds of any preschool or primary or secondary school; or
    - 3. In any correctional facility;
  - (c) Vaporizing cannabis;

1. On any form of public transportation; or
2. In any public place;
- (d) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat or personal watercraft while under the influence of cannabis, except that a registered patient or visiting patient shall not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment; or
- (e) Using cannabis, if that person does not have a debilitating medical condition.
- (4) Nothing in this chapter shall be construed to require:
  - (a) Any health insurance provider, health care plan, or medical assistance program to be liable for any claim for reimbursement for the medical use of cannabis; or
  - (b) Any individual or entity in lawful possession of property to allow a guest, client, customer, or other visitor to use cannabis on or in that property; or
  - (c) Any accommodation of the medical use of cannabis on the property or premises of any place of employment or on the property or premises of any jail, correctional facility, or other type of penal institution where prisoners reside or persons under arrest are detained. This chapter shall in no way limit an employer's ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.
- (5) Any person who makes a fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution shall be guilty of a violation and may be fined five hundred dollars (\$500), which shall be in addition to any other penalties that may apply for making a false statement to a law enforcement officer or for the use of cannabis

other than use undertaken pursuant to Sections 2 to 10 of this Act.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) Within ninety (90) days of the effective date of this Act, the department shall operate or license the operation of at least one (1) dispensary in each area development district of the Commonwealth.

(2) Within ninety (90) days of the effective date of this Act, the department shall forward medical order information to the database established in KRS 218A.202 and maintain that information in a secure database that shall be accessible to queries by dispensary agents and law enforcement agents.

(3) Within ninety (90) days of the effective date of this Act, the department shall begin to process all licensure applications within the timelines described in Section 4 of this Act.

(4) The department may charge an application fee and an annual fee to:

(a) A producer;

(b) A dispensary that is not operated by the department;

(c) All agents or employees of a dispensary; and

(d) A cardholder.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A patient who is found to be in possession of cannabis outside of his or her home who is not in possession of his or her registry identification card may be subject to a fine of up to one hundred dollars (\$100).

(2) The department may revoke the registry identification card of a patient for violation of administrative regulations promulgated by the department or for violation of any other provision of this chapter, and the patient shall be subject to any other penalties established in law for the violation.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) The department shall promulgate administrative regulations to govern the treatment of drug addiction via use of medical cannabis, and may establish an accreditation program for any facilities that offer this service.

(2) A person shall not be admitted to or retained in a medical cannabis program for drug addiction treatment without the following:

(a) An assessment by qualified personnel that utilize accepted medical criteria, such as the most current version of the Diagnostic and Statistical Manual for Mental Disorders to determine that an individual is currently addicted to a drug and can benefit from treatment by medical cannabis;

(b) An assessment that the person became addicted to the drug at least one (1) year prior to admission for treatment in the program;

(c) A requirement that each patient voluntarily choose treatment with medical cannabis;

(d) A complete physical examination of every new patient; and

(e) A periodic assessment to update the patient's continued need for medical cannabis;

(3) Any provider of medical cannabis for drug addiction treatment shall keep adequate records to document and monitor patient care.

(4) The department may promulgate administrative regulations to allow a medical director of a medical cannabis program for drug treatment to permit certain patients to take a supply of medical cannabis for home use. Such a supply shall not exceed the amounts permitted under Section 5 of this Act.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

There is hereby created a Task Force on Risk Evaluation and Mitigation Strategies for

Medical Cannabis. The task force shall study any dangers or complications caused by different varieties of medical cannabis and assist in establishing reasonable procedures for minimizing risks to patients, physicians, and the Commonwealth's citizens. Risk minimization may include but is not limited to restricting certain varieties of cannabis to specific debilitating medical conditions and restricting administration and delivery methods for specified varieties of cannabis. The task force shall be chaired by the commissioner of the department, and shall contain a reasonable number of members to be appointed by the Governor. The task force shall hold its first meeting no later than September 1, 2015, and shall meet at least twice per year. The task force shall publish a list of annual findings and forward it to the Legislative Research Commission.

➔SECTION 11. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED TO READ AS FOLLOWS:

- (1) Within ninety (90) days of the effective date of this Act, the board shall establish, implement, and begin to issue certificates to physicians that elect to prescribe medical cannabis pursuant to this section and Sections 2 to 10 of this Act.
- (2) To obtain and maintain a certificate in good standing a physician shall:
  - (a) Not be subject to any licensing sanctions;
  - (b) Have remained in good standing with the board for the previous five (5) years;
  - (c) Comply with any administrative regulations promulgated by the board pursuant to this section and any administrative regulations promulgated by the Department for Public Health pursuant to sections 2 to 10 of this Act;
  - (d) Complete the training component established in subsection (7) of this section; and
  - (e) Complete any continuing education requirement established pursuant to subsection (7) of this section.

- (3) A physician that complies with the administrative regulations promulgated pursuant to this section who requests a certificate pursuant to this section shall be issued a medical cannabis certificate. If a physician fails to follow the administrative regulations promulgated pursuant to this section or Sections 2 to 10 of this Act his, or her certificate to prescribe medical cannabis shall be revoked following a hearing consistent with KRS Chapter 13B. A certificate shall last for two (2) years and shall be reissued upon the election of the physician if he or she remains in good standing. The board shall not charge more than five hundred dollars (\$500) per two (2) year period for any certificate issued or reissued under this section.
- (4) Within ninety (90) days of the effective date of this Act, the board shall promulgated administrative regulations establishing standards for generating orders for medical cannabis. These standards shall follow any recommendations established by the department pursuant to Section 3 of this Act, and may not limit generating an order for medical cannabis to only hemp or industrial hemp as defined by KRS 260.850. The board shall periodically review and amend the standards as necessary.
- (5) Within ninety (90) days of the effective date of this Act, the board shall promulgate administrative regulations for physicians generating medical orders for cannabis pursuant to Sections 2 to 10 of this Act.
- (6) Administrative regulations promulgated pursuant to this section shall include but are not limited to the following:
- (a) Requiring a physician to conduct a medical assessment of any prospective patient that includes the individual's medical history and current medical condition;
- (b) Requiring that a physician certify that a patient could benefit from medical cannabis and forwarding that diagnosis to the department so that a registry

- identification card can be created for the patient;
- (c) Requiring a continuing patient-physician relationship in order for a medical order for cannabis to remain valid;
- (d) Requiring that a physician periodically reevaluate a patient's need for medical cannabis and specify time periods for reevaluation of need that are consistent with reevaluation for controlled substances for pain medication;
- (e) Requiring informed consent;
- (f) Requiring that a physician establish a treatment plan that tailors the therapeutic use of cannabis to a patient's individual needs;
- (g) Requiring that a physician keep accurate and complete records for each patient;
- (h) Requiring a physician to exchange information with any secure databases established by the department to administer Sections 2 through 10 of this Act and the database established in KRS 218A.202; and
- (i) Requiring a physician to conduct an examination and assessment at least once per year to determine if medical cannabis continues to be an effective and appropriate treatment for a patient.
- (7) On or by the effective date of this Act, the board shall make a two (2) hour training component available on an in-person or Web-based format to educate physicians applying for a certificate to generate orders for the use of medical cannabis. Any training offered under this section shall educate physicians on any regulations promulgated pursuant to this section and any administrative regulations promulgated by the department pursuant to Sections 2 to 10 of this Act. Any training offered pursuant to this subsection shall be periodically updated and may be offered as a continuing medical education credit. Any continuing training requirement established under this section shall not require more than one (1) hour per year of continuing training for physicians generating

**medical orders for cannabis.**

➔Section 12. KRS 218A.202 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V **or cannabis pursuant to Sections 2 to 10 of this Act** controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy. The cabinet may contract for the design, upgrade, or operation of this system if the contract preserves all of the rights, privileges, and protections guaranteed to Kentucky citizens under this chapter and the contract requires that all other aspects of the system be operated in conformity with the requirements of this or any other applicable state or federal law.
- (2) A practitioner or a pharmacist authorized to prescribe or dispense controlled substances to humans shall register with the cabinet to use the system provided for in this section and shall maintain such registration continuously during the practitioner's or pharmacist's term of licensure and shall not have to pay a fee or tax specifically dedicated to the operation of the system.
- (3) Every dispenser within the Commonwealth who is licensed, permitted, or otherwise authorized to prescribe or dispense a controlled substance **or cannabis pursuant to Sections 2 to 10 of this Act** to a person in Kentucky shall report to the Cabinet for Health and Family Services the data required by this section, except that reporting shall not be required for:
  - (a) A drug administered directly to a patient in a hospital, a resident of a health care facility licensed under KRS Chapter 216B, a resident of a child-caring facility as defined by KRS 199.011, or an individual in a jail, correctional facility, or juvenile detention facility;
  - (b) A drug, other than any Schedule II controlled substance or a Schedule III



controlled substance containing hydrocodone, 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; or

- (c) A drug administered or dispensed to a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections, where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.
- (4) **(a)** Data for each controlled substance that is dispensed shall include but not be limited to the following:
- 1.**~~[(a)]~~ Patient identifier;
  - 2.**~~[(b)]~~ National drug code of the drug dispensed;
  - 3.**~~[(c)]~~ Date of dispensing;
  - 4.**~~[(d)]~~ Quantity dispensed;
  - 5.**~~[(e)]~~ Prescriber; and
  - 6.**~~[(f)]~~ Dispenser.

**(b) Data for cannabis recommended by a physician pursuant to Sections 2 to 10 of this Act shall include but not be limited to the following:**

- 1. Patient identifier;**
- 2. Cardholder number;**
- 3. Cardholder number of caregiver, if applicable;**
- 4. Date of dispensing;**
- 5. Quantity dispensed;**
- 6. Recommending physician; and**

7. *Dispensary.*

- (5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.
- (6) The Cabinet for Health and Family Services shall only disclose data to persons and entities authorized to receive that data under this section. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The Cabinet for Health and Family 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) Employees of the Office of the Inspector General of the Cabinet for Health and Family Services who have successfully completed training for the electronic system and who have been approved to use the system, Kentucky Commonwealth's attorneys and assistant Commonwealth's attorneys, county attorneys and assistant county attorneys, a peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of 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 in conformity with subsection (7) of this section;
- (d) A properly convened grand jury pursuant to a subpoena properly issued for the records;
- (e) A practitioner or pharmacist, or employee of the practitioner's or pharmacist's practice acting under the specific direction of the practitioner or pharmacist, who requests information and certifies that the requested information is for the purpose of:
  - 1. Providing medical or pharmaceutical treatment to a bona fide current or prospective patient; or
  - 2. Reviewing and assessing the individual prescribing or dispensing patterns of the practitioner or pharmacist or to determine the accuracy and completeness of information contained in the monitoring system;
- (f) The chief medical officer of a hospital or long-term-care facility, an employee of the hospital or long-term-care facility as designated by the chief medical officer and who is working under his or her specific direction, or a physician designee if the hospital or facility has no chief medical officer, if the officer, employee, or designee certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current or prospective patient or resident in the hospital or facility;
- (g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:
  - 1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing or dispensing practices;
  - 2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing or dispensing may

- be occurring; or
3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring in that area;
- (h) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced practice registered nurse who is:
1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing or dispensing practices;
  2. Associated in a partnership or other business entity with an advanced practice registered nurse who is already under investigation by the Board of Nursing for improper prescribing practices;
  3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring; or
  4. In a designated geographic area for which a report on a physician or another advanced practice registered nurse in that area indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring in that area;
- (i) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program; or
- (j) A medical examiner engaged in a death investigation pursuant to KRS 72.026.
- (7) The Department for Medicaid Services shall use any data or reports from the system

for the purpose of identifying Medicaid providers or recipients whose prescribing, dispensing, or usage of controlled substances may be:

- (a) Appropriately managed by a single outpatient pharmacy or primary care physician; or
  - (b) Indicative of improper, inappropriate, or illegal prescribing or dispensing practices by a practitioner or drug seeking by a Medicaid recipient.
- (8) 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 as provided in this section, in another statute, or by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:
- (a) A person specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with any other persons specified in subsection (6)(b) of this section authorized to receive data or a report if the persons specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each agency engaged in the investigation;
  - (b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(b) of this section;
  - (c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B;
  - (d) If a state licensing board as defined in KRS 218A.205 initiates formal

disciplinary proceedings against a licensee, and data obtained by the board is relevant to the charges, the board may provide the data to the licensee and his or her counsel, as part of the notice process required by KRS 13B.050, and admit the data as evidence in an administrative hearing conducted pursuant to KRS Chapter 13B, with the board and licensee taking all necessary steps to prevent further disclosure of the data; and

- (e) A practitioner, pharmacist, or employee who obtains data under subsection (6)(e) of this section may share the report with the patient or person authorized to act on the patient's behalf and place the report in the patient's medical record, with that individual report then being deemed a medical record subject to disclosure on the same terms and conditions as an ordinary medical record in lieu of the disclosure restrictions otherwise imposed by this section.
- (9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, 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) 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) Intentional 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 B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.
- (12) Intentional 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 B misdemeanor for the first offense and a Class A misdemeanor for each

subsequent offense.

- (13) (a) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, may submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot or continuing project to study, create, or maintain a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances.
- (b) The pilot project shall:
1. 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
  2. Study the use of an interactive system that includes a relational data base with query capability.
- (c) Funding to create or maintain a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances may be sought for a statewide system or for a system covering any geographic portion or portions of the state.
- (14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.
- (15) The Cabinet for Health and Family Services may, by promulgating an administrative regulation, limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.
- (16) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners,

pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.

- (b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.
  - (c) The cabinet shall work with the Justice and Public Safety Cabinet for the development of a continuing education program for law enforcement officers about the purposes and uses of the electronic system for monitoring established in this section.
- (17) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with this section, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser. The licensing board shall treat the notification as a complaint against the licensee.
- (18) The cabinet shall promulgate administrative regulations to implement the provisions of this section. Included in these administrative regulations shall be:
- (a) An error resolution process allowing a patient to whom a report had been disclosed under subsection (8) of this section to request the correction of inaccurate information contained in the system relating to that patient; and
  - (b) Beginning July 1, 2013, a requirement that data be reported to the system under subsection (3) of this section within one (1) day of dispensing.