

1 AN ACT relating to the electronic system for monitoring scheduled drug  
2 prescriptions.

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

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

5 (1) The Cabinet for Health and Family Services shall establish and maintain an  
6 electronic system for monitoring Schedules II, III, IV, and V controlled substances.  
7 The cabinet may contract for the design, upgrade, or operation of this system if the  
8 contract preserves all of the rights, privileges, and protections guaranteed to  
9 Kentucky citizens under this chapter and the contract requires that all other aspects  
10 of the system be operated in conformity with the requirements of this or any other  
11 applicable state or federal law.

12 (2) A practitioner or a pharmacist authorized to prescribe or dispense controlled  
13 substances to humans shall register with the cabinet to use the system provided for  
14 in this section and shall maintain such registration continuously during the  
15 practitioner's or pharmacist's term of licensure and shall not have to pay a fee or tax  
16 specifically dedicated to the operation of the system.

17 (3) Every practitioner or pharmacy which dispenses a controlled substance to a person  
18 in Kentucky, or to a person at an address in Kentucky, shall report to the Cabinet for  
19 Health and Family Services the data required by this section, which includes the  
20 reporting of any Schedule II controlled substance dispensed at a facility licensed by  
21 the cabinet and a Schedule II through Schedule V controlled substance regardless of  
22 dosage when dispensed by the emergency department of a hospital to an emergency  
23 department patient. Reporting shall not be required for:

24 (a) A drug administered directly to a patient in a hospital, a resident of a health  
25 care facility licensed under KRS Chapter 216B, a resident of a child-caring  
26 facility as defined by KRS 199.011, or an individual in a jail, correctional  
27 facility, or juvenile detention facility;

- 1 (b) A Schedule III through Schedule V controlled substance dispensed by a  
2 facility licensed by the cabinet provided that the quantity dispensed is limited  
3 to an amount adequate to treat the patient for a maximum of forty-eight (48)  
4 hours and is not dispensed by the emergency department of a hospital; or
- 5 (c) A drug administered or dispensed to a research subject enrolled in a research  
6 protocol approved by an institutional review board that has an active  
7 federalwide assurance number from the United States Department of Health  
8 and Human Services, Office for Human Research Protections, where the  
9 research involves single, double, or triple blind drug administration or is  
10 additionally covered by a certificate of confidentiality from the National  
11 Institutes of Health.
- 12 (4) In addition to the data required by subsection (5) of this section, a Kentucky-  
13 licensed acute care hospital or critical access hospital shall report to the cabinet all  
14 positive toxicology screens that were performed by the hospital's emergency  
15 department to evaluate the patient's suspected drug overdose.
- 16 (5) Data for each controlled substance that is reported shall include but not be limited  
17 to the following:
- 18 (a) Patient identifier;  
19 (b) National drug code of the drug dispensed;  
20 (c) Date of dispensing;  
21 (d) Quantity dispensed;  
22 (e) Prescriber; and  
23 (f) Dispenser.
- 24 (6) The data shall be provided in the electronic format specified by the Cabinet for  
25 Health and Family Services unless a waiver has been granted by the cabinet to an  
26 individual dispenser. The cabinet shall establish acceptable error tolerance rates for  
27 data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or

1 inaccurate data shall be corrected upon notification by the cabinet if the dispenser  
2 exceeds these error tolerance rates.

3 (7) The Cabinet for Health and Family Services shall only disclose data to persons and  
4 entities authorized to receive that data under this section. Disclosure to any other  
5 person or entity, including disclosure in the context of a civil action where the  
6 disclosure is sought either for the purpose of discovery or for evidence, is prohibited  
7 unless specifically authorized by this section. The Cabinet for Health and Family  
8 Services shall be authorized to provide data to:

9 (a) A designated representative of a board responsible for the licensure,  
10 regulation, or discipline of practitioners, pharmacists, or other person who is  
11 authorized to prescribe, administer, or dispense controlled substances and who  
12 is involved in a bona fide specific investigation involving a designated person;

13 (b) Employees of the Office of the Inspector General of the Cabinet for Health  
14 and Family Services who have successfully completed training for the  
15 electronic system and who have been approved to use the system, federal  
16 prosecutors, Kentucky Commonwealth's attorneys and assistant  
17 Commonwealth's attorneys, county attorneys and assistant county attorneys, a  
18 peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-  
19 time peace officer of another state, or a federal agent whose duty is to enforce  
20 the laws of this Commonwealth, of another state, or of the United States  
21 relating to drugs and who is engaged in a bona fide specific investigation  
22 involving a designated person;

23 (c) A state-operated Medicaid program in conformity with subsection (8) of this  
24 section;

25 (d) A properly convened grand jury pursuant to a subpoena properly issued for the  
26 records;

27 (e) A practitioner or pharmacist, or employee of the practitioner's or pharmacist's

1 practice acting under the specific direction of the practitioner or pharmacist,  
2 who certifies that the requested information is for the purpose of:

- 3 1. Providing medical or pharmaceutical treatment to a bona fide current or  
4 prospective patient;
- 5 2. Reviewing data on controlled substances that have been reported for the  
6 birth mother of an infant who is currently being treated by the  
7 practitioner for neonatal abstinence syndrome, or has symptoms that  
8 suggest prenatal drug exposure; or
- 9 3. Reviewing and assessing the individual prescribing or dispensing  
10 patterns of the practitioner or pharmacist or to determine the accuracy  
11 and completeness of information contained in the monitoring system;

12 (f) The chief medical officer of a hospital or long-term-care facility, an employee  
13 of the hospital or long-term-care facility as designated by the chief medical  
14 officer and who is working under his or her specific direction, or a physician  
15 designee if the hospital or facility has no chief medical officer, if the officer,  
16 employee, or designee certifies that the requested information is for the  
17 purpose of providing medical or pharmaceutical treatment to a bona fide  
18 current or prospective patient or resident in the hospital or facility;

19 (g) In addition to the purposes authorized under paragraph (a) of this subsection,  
20 the Kentucky Board of Medical Licensure, for any physician who is:

- 21 1. Associated in a partnership or other business entity with a physician who  
22 is already under investigation by the Board of Medical Licensure for  
23 improper prescribing or dispensing practices;
- 24 2. In a designated geographic area for which a trend report indicates a  
25 substantial likelihood that inappropriate prescribing or dispensing may  
26 be occurring; or
- 27 3. In a designated geographic area for which a report on another physician

1           in that area indicates a substantial likelihood that inappropriate  
2           prescribing or dispensing may be occurring in that area;

3       (h) In addition to the purposes authorized under paragraph (a) of this subsection,  
4       the Kentucky Board of Nursing, for any advanced practice registered nurse  
5       who is:

- 6           1. Associated in a partnership or other business entity with a physician who  
7           is already under investigation by the Kentucky Board of Medical  
8           Licensure for improper prescribing or dispensing practices;
- 9           2. Associated in a partnership or other business entity with an advanced  
10          practice registered nurse who is already under investigation by the Board  
11          of Nursing for improper prescribing practices;
- 12          3. In a designated geographic area for which a trend report indicates a  
13          substantial likelihood that inappropriate prescribing or dispensing may  
14          be occurring; or
- 15          4. In a designated geographic area for which a report on a physician or  
16          another advanced practice registered nurse in that area indicates a  
17          substantial likelihood that inappropriate prescribing or dispensing may  
18          be occurring in that area;

19       (i) A judge or a probation or parole officer administering a diversion or probation  
20       program of a criminal defendant arising out of a violation of this chapter or of  
21       a criminal defendant who is documented by the court as a substance abuser  
22       who is eligible to participate in a court-ordered drug diversion or probation  
23       program;~~[-or]~~

24       (j) A medical examiner engaged in a death investigation pursuant to KRS 72.026;  
25       or

26       (k) An employer of a practitioner, pharmacist, or other person who is  
27       authorized to prescribe, administer, or dispense controlled substances if the

1           *employer is conducting a bona fide specific investigation of the prescribing*  
2           *or dispensing practices of a designated employee who is authorized to*  
3           *prescribe, administer, or dispense controlled substances.*

- 4 (8) The Department for Medicaid Services shall use any data or reports from the system  
5 for the purpose of identifying Medicaid providers or recipients whose prescribing,  
6 dispensing, or usage of controlled substances may be:
- 7 (a) Appropriately managed by a single outpatient pharmacy or primary care  
8 physician; or
- 9 (b) Indicative of improper, inappropriate, or illegal prescribing or dispensing  
10 practices by a practitioner or drug seeking by a Medicaid recipient.
- 11 (9) A person who receives data or any report of the system from the cabinet shall not  
12 provide it to any other person or entity except as provided in this section, in another  
13 statute, or by order of a court of competent jurisdiction and only to a person or  
14 entity authorized to receive the data or the report under this section, except that:
- 15 (a) A person specified in subsection (7)(b) of this section who is authorized to  
16 receive data or a report may share that information with any other persons  
17 specified in subsection (7)(b) of this section authorized to receive data or a  
18 report if the persons specified in subsection (7)(b) of this section are working  
19 on a bona fide specific investigation involving a designated person. Both the  
20 person providing and the person receiving the data or report under this  
21 paragraph shall document in writing each person to whom the data or report  
22 has been given or received and the day, month, and year that the data or report  
23 has been given or received. This document shall be maintained in a file by  
24 each agency engaged in the investigation;
- 25 (b) A representative of the Department for Medicaid Services may share data or  
26 reports regarding overutilization by Medicaid recipients with a board  
27 designated in subsection (7)(a) of this section, or with a law enforcement

- 1 officer designated in subsection (7)(b) of this section;
- 2 (c) The Department for Medicaid Services may submit the data as evidence in an  
3 administrative hearing held in accordance with KRS Chapter 13B;
- 4 (d) If a state licensing board as defined in KRS 218A.205 initiates formal  
5 disciplinary proceedings against a licensee, and data obtained by the board is  
6 relevant to the charges, the board may provide the data to the licensee and his  
7 or her counsel, as part of the notice process required by KRS 13B.050, and  
8 admit the data as evidence in an administrative hearing conducted pursuant to  
9 KRS Chapter 13B, with the board and licensee taking all necessary steps to  
10 prevent further disclosure of the data; and
- 11 (e) A practitioner, pharmacist, or employee who obtains data under subsection  
12 (7)(e) of this section may share the report with the patient or person authorized  
13 to act on the patient's behalf. Any practitioner, pharmacist, or employee who  
14 obtains data under subsection (7)(e) of this section may place the report in the  
15 patient's medical record, in which case the individual report shall then be  
16 deemed a medical record subject to disclosure on the same terms and  
17 conditions as an ordinary medical record in lieu of the disclosure restrictions  
18 otherwise imposed by this section.
- 19 (10) The Cabinet for Health and Family Services, all peace officers specified in  
20 subsection (7)(b) of this section, all officers of the court, and all regulatory agencies  
21 and officers, in using the data for investigative or prosecution purposes, shall  
22 consider the nature of the prescriber's and dispenser's practice and the condition for  
23 which the patient is being treated.
- 24 (11) The data and any report obtained therefrom shall not be a public record, except that  
25 the Department for Medicaid Services may submit the data as evidence in an  
26 administrative hearing held in accordance with KRS Chapter 13B.
- 27 (12) Intentional failure to comply with the reporting requirements of this section shall be

1 a Class B misdemeanor for the first offense and a Class A misdemeanor for each  
2 subsequent offense.

3 (13) Intentional disclosure of transmitted data to a person not authorized by subsections  
4 (7) to (9) of this section or authorized by KRS 315.121, or obtaining information  
5 under this section not relating to a bona fide current or prospective patient or a bona  
6 fide specific investigation, shall be a Class B misdemeanor for the first offense and  
7 a Class A misdemeanor for each subsequent offense.

8 (14) The Cabinet for Health and Family Services may, by promulgating an  
9 administrative regulation, limit the length of time that data remain in the electronic  
10 system. Any data removed from the system shall be archived and subject to retrieval  
11 within a reasonable time after a request from a person authorized to review data  
12 under this section.

13 (15) (a) The Cabinet for Health and Family Services shall work with each board  
14 responsible for the licensure, regulation, or discipline of practitioners,  
15 pharmacists, or other persons who are authorized to prescribe, administer, or  
16 dispense controlled substances for the development of a continuing education  
17 program about the purposes and uses of the electronic system for monitoring  
18 established in this section.

19 (b) The cabinet shall work with the Kentucky Bar Association for the  
20 development of a continuing education program for attorneys about the  
21 purposes and uses of the electronic system for monitoring established in this  
22 section.

23 (c) The cabinet shall work with the Justice and Public Safety Cabinet for the  
24 development of a continuing education program for law enforcement officers  
25 about the purposes and uses of the electronic system for monitoring  
26 established in this section.

27 (16) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with



1           this section, the cabinet shall notify the licensing board or agency responsible for  
2           licensing the prescriber or dispenser. The licensing board shall treat the notification  
3           as a complaint against the licensee.

4   (17) The Cabinet for Health and Family Services, Office of Inspector General, shall  
5           conduct quarterly reviews to identify patterns of potential improper, inappropriate,  
6           or illegal prescribing or dispensing of a controlled substance. The Office of  
7           Inspector General may independently investigate and submit findings and  
8           recommendations to the appropriate boards of licensure or other reporting agencies.

9   (18) The cabinet shall promulgate administrative regulations to implement the provisions  
10          of this section. Included in these administrative regulations shall be:

11          (a) An error resolution process allowing a patient to whom a report had been  
12               disclosed under subsection (9) of this section to request the correction of  
13               inaccurate information contained in the system relating to that patient; and

14          (b) A requirement that data be reported to the system under subsection (3) of this  
15               section within one (1) day of dispensing.

16   (19) Before July 1, 2018, the Administrative Office of the Courts shall forward data  
17          regarding any felony or Class A misdemeanor conviction that involves the  
18          trafficking or possession of a controlled substance or other prohibited acts under  
19          KRS Chapter 218A for the previous five (5) calendar years to the cabinet for  
20          inclusion in the electronic monitoring system established under this section. On or  
21          after July 1, 2018 such data shall be forwarded by the Administrative Office of the  
22          Courts to the cabinet on a continuing basis. The cabinet shall incorporate the data  
23          received into the system so that a query by patient name indicates any prior drug  
24          conviction.