

1 AN ACT relating to controlled substances.

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

3 ➔Section 1. KRS 205.529 is amended to read as follows:

- 4 (1) The Department for Medicaid Services or a managed care organization contracted
5 to provide services pursuant to this chapter shall provide a program for
6 synchronization of medications when it is agreed among the member, a provider,
7 and a pharmacist that synchronization of multiple prescriptions for the treatment of
8 a chronic illness is in the best interest of the patient for the management or
9 treatment of a chronic illness provided that the medications:
- 10 (a) Are covered by the Department for Medicaid Services or a managed care
11 organization contracted to provide services pursuant to this chapter;
- 12 (b) Are used for treatment and management of chronic conditions that are subject
13 to refills;
- 14 (c) Are not a Schedule II controlled substance~~[or a Schedule III controlled~~
15 ~~substance containing hydrocodone]~~;
- 16 (d) Meet all prior authorization criteria specific to the medications at the time of
17 the synchronization request;
- 18 (e) Are of a formulation that can be effectively split over required short fill
19 periods to achieve synchronization; and
- 20 (f) Do not have quantity limits or dose optimization criteria or requirements that
21 would be violated in fulfilling synchronization.
- 22 (2) When applicable to permit synchronization, the Department for Medicaid Services
23 or a managed care organization contracted to provide services pursuant to this
24 chapter shall apply a prorated daily cost-sharing rate to any medication dispensed
25 by a network pharmacy pursuant to this section.
- 26 (3) Any dispensing fee shall not be prorated and shall be based on an individual
27 prescription filled or refilled.

1 ➔Section 2. KRS 218A.172 is amended to read as follows:

- 2 (1) Administrative regulations promulgated under KRS 218A.205(3) shall require that,
3 prior to the initial prescribing or dispensing of any Schedule II controlled substance
4 ~~for a Schedule III controlled substance containing hydrocodone~~ to a human patient,
5 a practitioner shall:
- 6 (a) Obtain a medical history and conduct a physical or mental health examination
7 of the patient, as appropriate to the patient's medical complaint, and document
8 the information in the patient's medical record;
 - 9 (b) Query the electronic monitoring system established in KRS 218A.202 for all
10 available data on the patient for the twelve (12) month period immediately
11 preceding the patient encounter and appropriately utilize that data in the
12 evaluation and treatment of the patient;
 - 13 (c) Make a written plan stating the objectives of the treatment and further
14 diagnostic examinations required;
 - 15 (d) Discuss the risks and benefits of the use of controlled substances with the
16 patient, the patient's parent if the patient is an unemancipated minor child, or
17 the patient's legal guardian or health care surrogate, including the risk of
18 tolerance and drug dependence; and
 - 19 (e) Obtain written consent for the treatment.
- 20 (2) (a) Administrative regulations promulgated under KRS 218A.205(3) shall require
21 that a practitioner prescribing or dispensing additional amounts of Schedule II
22 controlled substances ~~for Schedule III controlled substances containing~~
23 ~~hydrocodone~~ for the same medical complaint and related symptoms shall:
- 24 1. Review, at reasonable intervals based on the patient's individual
25 circumstances and course of treatment, the plan of care;
 - 26 2. Provide to the patient any new information about the treatment; and
 - 27 3. Modify or terminate the treatment as appropriate.

- 1 (b) If the course of treatment extends beyond three (3) months, the administrative
2 regulations shall also require that the practitioner:
- 3 1. Query the electronic monitoring system established in KRS 218A.202
4 no less than once every three (3) months for all available data on the
5 patient for the twelve (12) month period immediately preceding the
6 query; and
- 7 2. Review that data before issuing any new prescription or refills for the
8 patient for any Schedule II controlled substance~~[or a Schedule III~~
9 ~~controlled substance containing hydrocodone]~~.
- 10 (3) Administrative regulations promulgated under KRS 218A.205(3) shall require that,
11 for each patient for whom a practitioner prescribes any Schedule II controlled
12 substance~~[or a Schedule III controlled substance containing hydrocodone]~~, the
13 practitioner shall keep accurate, readily accessible, and complete medical records
14 which include, as appropriate:
- 15 (a) Medical history and physical or mental health examination;
- 16 (b) Diagnostic, therapeutic, and laboratory results;
- 17 (c) Evaluations and consultations;
- 18 (d) Treatment objectives;
- 19 (e) Discussion of risk, benefits, and limitations of treatments;
- 20 (f) Treatments;
- 21 (g) Medications, including date, type, dosage, and quantity prescribed or
22 dispensed;
- 23 (h) Instructions and agreements; and
- 24 (i) Periodic reviews of the patient's file.
- 25 (4) Administrative regulations promulgated under KRS 218A.205(3) may exempt, in
26 whole or in part, compliance with the mandatory diagnostic, treatment, review, and
27 other protocols and standards established in this section for:

- 1 (a) A licensee prescribing or administering a controlled substance immediately
2 prior to, during, or within the fourteen (14) days following an operative or
3 invasive procedure or a delivery if the prescribing or administering is
4 medically related to the operative or invasive procedure or the delivery and
5 the medication usage does not extend beyond the fourteen (14) days;
- 6 (b) A licensee prescribing or administering a controlled substance necessary to
7 treat a patient in an emergency situation;
- 8 (c) A licensed pharmacist or other person licensed by the Kentucky Board of
9 Pharmacy to dispense drugs or a licensed pharmacy;
- 10 (d) A licensee prescribing or dispensing a controlled substance:
- 11 1. For administration in a hospital or long-term ~~h~~care facility if the
12 hospital or long-term ~~h~~care facility with an institutional account, or a
13 practitioner in those hospitals or facilities where no institutional account
14 exists, queries the electronic monitoring system established in KRS
15 218A.202 for all available data on the patient or resident for the twelve
16 (12) month period immediately preceding the query within twelve (12)
17 hours of the patient's or resident's admission and places a copy of the
18 query in the patient's or resident's medical records during the duration of
19 the patient's stay at the facility;
- 20 2. As part of the patient's hospice or end-of-life treatment;
- 21 3. For the treatment of pain associated with cancer or with the treatment of
22 cancer;
- 23 4. In a single dose to relieve the anxiety, pain, or discomfort experienced
24 by a patient submitting to a diagnostic test or procedure;
- 25 5. Within seven (7) days of an initial prescribing or dispensing under
26 subsection (1) of this section if the prescribing or dispensing:
- 27 a. Is done as a substitute for the initial prescribing or dispensing;

- 1 b. Cancels any refills for the initial prescription; and
- 2 c. Requires the patient to dispose of any remaining unconsumed
- 3 medication;
- 4 6. Within ninety (90) days of an initial prescribing or dispensing under
- 5 subsection (1) of this section if the prescribing or dispensing is done by
- 6 another practitioner in the same practice or in an existing coverage
- 7 arrangement, if done for the same patient for the same medical
- 8 condition; or
- 9 7. To a research subject enrolled in a research protocol approved by an
- 10 institutional review board that has an active federalwide assurance
- 11 number from the United States Department of Health and Human
- 12 Services, Office for Human Research Protections, where the research
- 13 involves single, double, or triple blind drug administration or is
- 14 additionally covered by a certificate of confidentiality from the National
- 15 Institutes of Health;
- 16 (e) The prescribing of a Schedule III, IV, or V controlled substance by a licensed
- 17 optometrist to a patient in accordance with the provisions of KRS 320.240; or
- 18 (f) The prescribing of a three (3) day supply of a Schedule III controlled
- 19 substance following the performance of oral surgery by a dentist licensed
- 20 pursuant to KRS Chapter 313.
- 21 (5) (a) A state licensing board promulgating administrative regulations under KRS
- 22 218A.205(3) may promulgate an administrative regulation authorizing
- 23 exemptions supplemental or in addition to those specified in subsection (4) of
- 24 this section. Prior to exercising this authority, the board shall:
- 25 1. Notify the Kentucky Office of Drug Control Policy that it is considering
- 26 a proposal to promulgate an administrative regulation authorizing
- 27 exemptions supplemental or in addition to those specified in subsection

- 1 (4) of this section and invite the office to participate in the board
2 meeting at which the proposal will be considered;
- 3 2. Make a factual finding based on expert testimony as well as evidence or
4 research submitted to the board that the exemption demonstrates a low
5 risk of diversion or abuse and is supported by the dictates of good
6 medical practice; and
- 7 3. Submit a report to the Governor and the Legislative Research
8 Commission of its actions, including a detailed explanation of the
9 factual and policy basis underlying the board's action. A copy of this
10 report shall be provided to the regulations compiler.
- 11 (b) Within one (1) working day of promulgating an administrative regulation
12 authorizing an exemption under this section, the promulgating board shall e-
13 mail to the Kentucky Office of Drug Control Policy:
- 14 1. A copy of the administrative regulation as filed, and all attachments
15 required by KRS 13A.230(1); and
- 16 2. A request from the board that the office review the administrative
17 regulation in the same manner as would the Commission on Small
18 Business Innovation and Advocacy under KRS 11.202(1)(e), and submit
19 its report or comments in accordance with the deadline established in
20 KRS 13A.270(1)(c). A copy of the report or comments shall be filed
21 with the regulations compiler.
- 22 ➔Section 3. KRS 218A.182 is amended to read as follows:
- 23 (1) Notwithstanding KRS 218A.180 or any other state law to the contrary, beginning
24 January 1, 2021, no practitioner shall issue any prescription for a controlled
25 substance unless the prescription is made by electronic prescription from the
26 practitioner issuing the prescription to a pharmacy, except for prescriptions issued:
- 27 (a) By veterinarians;

- 1 (b) In circumstances where electronic prescribing is not available due to
2 temporary technological or electrical failure;
- 3 (c) By a practitioner to be dispensed by a pharmacy located outside the state;
- 4 (d) When the prescriber and dispenser are the same entity;
- 5 (e) That include elements that are not supported by the most recently
6 implemented version of the National Council for Prescription Drug Programs
7 Prescriber/Pharmacist Interface SCRIPT Standard;
- 8 (f) By a practitioner for a drug that contains certain elements that cannot be
9 incorporated as required by the United States Food and Drug Administration
10 with electronic prescribing, including extemporaneous compounding;
- 11 (g) By a practitioner allowing for the dispensing of a nonpatient specific
12 prescription under a standing order, approved protocol for drug therapy, or
13 collaborative drug management or comprehensive medication management, in
14 response to a public health emergency;
- 15 (h) By a practitioner prescribing a drug under a research protocol;
- 16 (i) By practitioners who have received a waiver or a renewal thereof, from the
17 requirement to use electronic prescribing due to economic hardship,
18 technological limitations that are not reasonably within the control of the
19 practitioner, or other exceptional circumstance demonstrated by the
20 practitioner. The initial waiver and each subsequent waiver renewal shall not
21 exceed one (1) year per waiver or waiver renewal;
- 22 (j) By a practitioner under circumstances where, notwithstanding the
23 practitioner's present ability to make an electronic prescription as required by
24 this subsection, the practitioner reasonably determines that it would be
25 impractical for the patient to obtain substances prescribed by electronic
26 prescription in a timely manner, and delay would adversely impact the
27 patient's medical condition;

- 1 (k) By a practitioner for an individual who receives hospice care;~~[-or]~~
 2 (l) By a practitioner for an individual who is a resident of a nursing facility;or
 3 (m) By a practitioner who is issuing a prescription as part of providing
 4 charitable health care services pursuant to the Kentucky Charitable Health
 5 Care Services Act, KRS 216.940 to 216.945.

6 (2) A pharmacist who receives a written, oral, or faxed prescription for a controlled
 7 substance shall not be required to verify that the prescription properly falls under
 8 one (1) of the exceptions from the requirement to electronically prescribe.
 9 Pharmacists may continue to dispense medications from otherwise valid written,
 10 oral, or fax prescriptions that are consistent with current laws and administrative
 11 regulations.

12 (3) The cabinet shall promulgate administrative regulations to implement this section
 13 including enforcement mechanisms, waivers of requirements, and appropriate
 14 penalties for violations.

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

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

23 (2) A practitioner or a pharmacist authorized to prescribe or dispense controlled
 24 substances to humans shall register with the cabinet to use the system provided for
 25 in this section and shall maintain an active account with the electronic monitoring
 26 system~~[such registration]~~ continuously during the practitioner's or pharmacist's term
 27 of licensure and shall not have to pay a fee or tax specifically dedicated to the

1 operation of the system.

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

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

13 (b) A Schedule III through Schedule V controlled substance dispensed by a
14 facility licensed by the cabinet provided that the quantity dispensed is limited
15 to an amount adequate to treat the patient for a maximum of forty-eight (48)
16 hours and is not dispensed by the emergency department of a hospital; or

17 (c) A drug administered or dispensed to a research subject enrolled in a research
18 protocol approved by an institutional review board that has an active
19 federalwide assurance number from the United States Department of Health
20 and Human Services, Office for Human Research Protections, where the
21 research involves single, double, or triple blind drug administration or is
22 additionally covered by a certificate of confidentiality from the National
23 Institutes of Health.

24 (4) In addition to the data required by subsection (5) of this section, a Kentucky-
25 licensed acute care hospital or critical access hospital shall report to the cabinet all
26 positive toxicology screens that were performed by the hospital's emergency
27 department to evaluate the patient's suspected drug overdose.

- 1 (5) Data for each controlled substance that is reported shall include but not be limited
2 to the following:
- 3 (a) Patient identifier;
 - 4 (b) National drug code of the drug dispensed;
 - 5 (c) Date of dispensing;
 - 6 (d) Quantity dispensed;
 - 7 (e) Prescriber; and
 - 8 (f) Dispenser.
- 9 (6) The data shall be provided in the electronic format specified by the Cabinet for
10 Health and Family Services unless a waiver has been granted by the cabinet to an
11 individual dispenser. The cabinet shall establish acceptable error tolerance rates for
12 data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or
13 inaccurate data shall be corrected upon notification by the cabinet if the dispenser
14 exceeds these error tolerance rates.
- 15 (7) The Cabinet for Health and Family Services shall only disclose data to persons and
16 entities authorized to receive that data under this section. Disclosure to any other
17 person or entity, including disclosure in the context of a civil action where the
18 disclosure is sought either for the purpose of discovery or for evidence, is
19 prohibited unless specifically authorized by this section. The Cabinet for Health and
20 Family Services shall be authorized to provide data to:
- 21 (a) A designated representative of a board responsible for the licensure,
22 regulation, or discipline of practitioners, pharmacists, or other person who is
23 authorized to prescribe, administer, or dispense controlled substances and who
24 is involved in a bona fide specific investigation involving a designated person;
 - 25 (b) Employees of the Office of the Inspector General of the Cabinet for Health
26 and Family Services who have successfully completed training for the
27 electronic system and who have been approved to use the system, federal

- 1 prosecutors, Kentucky Commonwealth's attorneys and assistant
2 Commonwealth's attorneys, county attorneys and assistant county attorneys, a
3 peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-
4 time peace officer of another state, or a federal agent whose duty is to enforce
5 the laws of this Commonwealth, of another state, or of the United States
6 relating to drugs and who is engaged in a bona fide specific investigation
7 involving a designated person;
- 8 (c) A state-operated Medicaid program in conformity with subsection (8) of this
9 section;
- 10 (d) A properly convened grand jury pursuant to a subpoena properly issued for
11 the records;
- 12 (e) A practitioner or pharmacist, or employee of the practitioner's or pharmacist's
13 practice acting under the specific direction of the practitioner or pharmacist,
14 who certifies that the requested information is for the purpose of:
- 15 1. Providing medical or pharmaceutical treatment to a bona fide current or
16 prospective patient;
 - 17 2. Reviewing data on controlled substances that have been reported for the
18 birth mother of an infant who is currently being treated by the
19 practitioner for neonatal abstinence syndrome, or has symptoms that
20 suggest prenatal drug exposure; or
 - 21 3. Reviewing and assessing the individual prescribing or dispensing
22 patterns of the practitioner or pharmacist or to determine the accuracy
23 and completeness of information contained in the monitoring system;
- 24 (f) The chief medical officer of a hospital or long-term ~~h~~care facility, an
25 employee of the hospital or long-term ~~h~~care facility as designated by the
26 chief medical officer and who is working under his or her specific direction,
27 or a physician designee if the hospital or facility has no chief medical officer,

1 if the officer, employee, or designee certifies that the requested information is
2 for the purpose of providing medical or pharmaceutical treatment to a bona
3 fide current or prospective patient or resident in the hospital or facility;

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

6 1. Associated in a partnership or other business entity with a physician
7 who is already under investigation by the Board of Medical Licensure
8 for improper prescribing or dispensing practices;

9 2. In a designated geographic area for which a trend report indicates a
10 substantial likelihood that inappropriate prescribing or dispensing may
11 be occurring; or

12 3. In a designated geographic area for which a report on another physician
13 in that area indicates a substantial likelihood that inappropriate
14 prescribing or dispensing may be occurring in that area;

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

18 1. Associated in a partnership or other business entity with a physician
19 who is already under investigation by the Kentucky Board of Medical
20 Licensure for improper prescribing or dispensing practices;

21 2. Associated in a partnership or other business entity with an advanced
22 practice registered nurse who is already under investigation by the
23 Board of Nursing for improper prescribing practices;

24 3. 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 4. In a designated geographic area for which a report on a physician or

1 another advanced practice registered nurse in that area indicates a
2 substantial likelihood that inappropriate prescribing or dispensing may
3 be occurring in that area;

4 (i) A judge or a probation or parole officer administering a diversion or probation
5 program of a criminal defendant arising out of a violation of this chapter or of
6 a criminal defendant who is documented by the court as a substance abuser
7 who is eligible to participate in a court-ordered drug diversion or probation
8 program; or

9 (j) A medical examiner engaged in a death investigation pursuant to KRS 72.026.

10 (8) The Department for Medicaid Services shall use any data or reports from the
11 system for the purpose of identifying Medicaid providers or recipients whose
12 prescribing, dispensing, or usage of controlled substances may be:

13 (a) Appropriately managed by a single outpatient pharmacy or primary care
14 physician; or

15 (b) Indicative of improper, inappropriate, or illegal prescribing or dispensing
16 practices by a practitioner or drug seeking by a Medicaid recipient.

17 (9) A person who receives data or any report of the system from the cabinet shall not
18 provide it to any other person or entity except as provided in this section, in another
19 statute, or by order of a court of competent jurisdiction and only to a person or
20 entity authorized to receive the data or the report under this section, except that:

21 (a) A person specified in subsection (7)(b) of this section who is authorized to
22 receive data or a report may share that information with any other persons
23 specified in subsection (7)(b) of this section authorized to receive data or a
24 report if the persons specified in subsection (7)(b) of this section are working
25 on a bona fide specific investigation involving a designated person. Both the
26 person providing and the person receiving the data or report under this
27 paragraph shall document in writing each person to whom the data or report

- 1 has been given or received and the day, month, and year that the data or report
2 has been given or received. This document shall be maintained in a file by
3 each agency engaged in the investigation;
- 4 (b) A representative of the Department for Medicaid Services may share data or
5 reports regarding overutilization by Medicaid recipients with a board
6 designated in subsection (7)(a) of this section, or with a law enforcement
7 officer designated in subsection (7)(b) of this section;
- 8 (c) The Department for Medicaid Services may submit the data as evidence in an
9 administrative hearing held in accordance with KRS Chapter 13B;
- 10 (d) If a state licensing board as defined in KRS 218A.205 initiates formal
11 disciplinary proceedings against a licensee, and data obtained by the board is
12 relevant to the charges, the board may provide the data to the licensee and his
13 or her counsel, as part of the notice process required by KRS 13B.050, and
14 admit the data as evidence in an administrative hearing conducted pursuant to
15 KRS Chapter 13B, with the board and licensee taking all necessary steps to
16 prevent further disclosure of the data; and
- 17 (e) A practitioner, pharmacist, or employee who obtains data under subsection
18 (7)(e) of this section may share the report with the patient or person
19 authorized to act on the patient's behalf. Any practitioner, pharmacist, or
20 employee who obtains data under subsection (7)(e) of this section may place
21 the report in the patient's medical record, in which case the individual report
22 shall then be deemed a medical record subject to disclosure on the same terms
23 and conditions as an ordinary medical record in lieu of the disclosure
24 restrictions otherwise imposed by this section.
- 25 (10) The Cabinet for Health and Family Services, all peace officers specified in
26 subsection (7)(b) of this section, all officers of the court, and all regulatory agencies
27 and officers, in using the data for investigative or prosecution purposes, shall

1 consider the nature of the prescriber's and dispenser's practice and the condition for
2 which the patient is being treated.

3 (11) The data and any report obtained therefrom shall not be a public record, except that
4 the Department for Medicaid Services may submit the data as evidence in an
5 administrative hearing held in accordance with KRS Chapter 13B.

6 (12) Intentional failure to comply with the reporting requirements of this section shall be
7 a Class B misdemeanor for the first offense and a Class A misdemeanor for each
8 subsequent offense.

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

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

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

25 (b) The cabinet shall work with the Kentucky Bar Association for the
26 development of a continuing education program for attorneys about the
27 purposes and uses of the electronic system for monitoring established in this

1 section.

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

6 (16) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with
7 this section, the cabinet shall notify the licensing board or agency responsible for
8 licensing the prescriber or dispenser. The licensing board shall treat the notification
9 as a complaint against the licensee.

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

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

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

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

22 (19) Before July 1, 2018, the Administrative Office of the Courts shall forward data
23 regarding any felony or Class A misdemeanor conviction that involves the
24 trafficking or possession of a controlled substance or other prohibited acts under
25 KRS Chapter 218A for the previous five (5) calendar years to the cabinet for
26 inclusion in the electronic monitoring system established under this section. On or
27 after July 1, 2018 such data shall be forwarded by the Administrative Office of the

1 Courts to the cabinet on a continuing basis. The cabinet shall incorporate the data
2 received into the system so that a query by patient name indicates any prior drug
3 conviction.

4 ➔Section 5. KRS 218A.205 is amended to read as follows:

5 (1) As used in this section:

6 (a) "Reporting agency" includes:

- 7 1. The Department of Kentucky State Police;
- 8 2. The Office of the Attorney General;
- 9 3. The Cabinet for Health and Family Services; and
- 10 4. The applicable state licensing board; and

11 (b) "State licensing board" means:

- 12 1. The Kentucky Board of Medical Licensure;
- 13 2. The Kentucky Board of Nursing;
- 14 3. The Kentucky Board of Dentistry;
- 15 4. The Kentucky Board of Optometric Examiners;
- 16 5. The State Board of Podiatry; and
- 17 6. Any other board that licenses or regulates a person who is entitled to
18 prescribe or dispense controlled substances to humans.

19 (2) (a) When a reporting agency or a law enforcement agency receives a report of
20 improper, inappropriate, or illegal prescribing or dispensing of a controlled
21 substance it may, to the extent otherwise allowed by law, send a copy of the
22 report within three (3) business days to every other reporting agency.

23 (b) A county attorney or Commonwealth's attorney shall notify the Office of the
24 Attorney General and the appropriate state licensing board within three (3)
25 business days of an indictment or a waiver of indictment becoming public in
26 his or her jurisdiction charging a licensed person with a felony offense
27 relating to the manufacture of, trafficking in, prescribing, dispensing, or

1 possession of a controlled substance.

2 (3) Each state licensing board shall, in consultation with the Kentucky Office of Drug
3 Control Policy, establish the following by administrative regulation for those
4 licensees authorized to prescribe or dispense controlled substances:

5 (a) Mandatory prescribing and dispensing standards related to controlled
6 substances, the requirements of which shall include the diagnostic, treatment,
7 review, and other protocols and standards established for Schedule II
8 controlled substances~~[and Schedule III controlled substances containing~~
9 ~~hydrocodone]~~ under KRS 218A.172 and which may include the exemptions
10 authorized by KRS 218A.172(4);

11 (b) In accord with the CDC Guideline for Prescribing Opioids for Chronic Pain
12 published in 2016, a prohibition on a practitioner issuing a prescription for a
13 Schedule II controlled substance for more than a three (3) day supply of a
14 Schedule II controlled substance if the prescription is intended to treat pain as
15 an acute medical condition, with the following exceptions:

16 1. The practitioner, in his or her professional judgment, believes that more
17 than a three (3) day supply of a Schedule II controlled substance is
18 medically necessary to treat the patient's pain as an acute medical
19 condition and the practitioner adequately documents the acute medical
20 condition and lack of alternative treatment options which justifies
21 deviation from the three (3) day supply limit established in this
22 subsection in the patient's medical records;

23 2. The prescription for a Schedule II controlled substance is prescribed to
24 treat chronic pain;

25 3. The prescription for a Schedule II controlled substance is prescribed to
26 treat pain associated with a valid cancer diagnosis;

27 4. The prescription for a Schedule II controlled substance is prescribed to

1 treat pain while the patient is receiving hospice or end-of-life treatment
2 or is receiving care from a certified community based palliative care
3 program;

4 5. The prescription for a Schedule II controlled substance is prescribed as
5 part of a narcotic treatment program licensed by the Cabinet for Health
6 and Family Services;

7 6. The prescription for a Schedule II controlled substance is prescribed to
8 treat pain following a major surgery or the treatment of significant
9 trauma, as defined by the state licensing board in consultation with the
10 Kentucky Office of Drug Control Policy;

11 7. The Schedule II controlled substance is dispensed or administered
12 directly to an ultimate user in an inpatient setting; or

13 8. Any additional treatment scenario deemed medically necessary by the
14 state licensing board in consultation with the Kentucky Office of Drug
15 Control Policy.

16 Nothing in this paragraph shall authorize a state licensing board to promulgate
17 regulations which expand any practitioner's prescriptive authority beyond that
18 which existed prior to June 29, 2017;

19 (c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour
20 supply of any Schedule II controlled substance ~~or a Schedule III controlled~~
21 ~~substance containing hydrocodone~~ unless the dispensing is done as part of a
22 narcotic treatment program licensed by the Cabinet for Health and Family
23 Services;

24 (d) A procedure for temporarily suspending, limiting, or restricting a license held
25 by a named licensee where a substantial likelihood exists to believe that the
26 continued unrestricted practice by the named licensee would constitute a
27 danger to the health, welfare, or safety of the licensee's patients or of the

1 general public;

2 (e) A procedure for the expedited review of complaints filed against their
3 licensees pertaining to the improper, inappropriate, or illegal prescribing or
4 dispensing of controlled substances that is designed to commence an
5 investigation within seven (7) days of a complaint being filed and produce a
6 charging decision by the board on the complaint within one hundred twenty
7 (120) days of the receipt of the complaint, unless an extension for a definite
8 period of time is requested by a law enforcement agency due to an ongoing
9 criminal investigation;

10 (f) The establishment and enforcement of licensure standards that conform to the
11 following:

12 1. A permanent ban on licensees and applicants convicted after July 20,
13 2012, in this state or any other state of any felony offense relating to
14 controlled substances from prescribing or dispensing a controlled
15 substance;

16 2. Restrictions short of a permanent ban on licensees and applicants
17 convicted in this state or any other state of any misdemeanor offense
18 relating to prescribing or dispensing a controlled substance;

19 3. Restrictions mirroring in time and scope any disciplinary limitation
20 placed on a licensee or applicant by a licensing board of another state if
21 the disciplinary action results from improper, inappropriate, or illegal
22 prescribing or dispensing of controlled substances; and

23 4. A requirement that licensees and applicants report to the board any
24 conviction or disciplinary action covered by this subsection with
25 appropriate sanctions for any failure to make this required report;

26 (g) A procedure for the continuous submission of all disciplinary and other
27 reportable information to the National Practitioner Data Bank of the United

- 1 States Department of Health and Human Services;
- 2 (h) If not otherwise required by other law, a process for submitting a query on
3 each applicant for licensure to the National Practitioner Data Bank of the
4 United States Department of Health and Human Services to retrieve any
5 relevant data on the applicant; and
- 6 (i) Continuing education requirements beginning with the first full educational
7 year occurring after July 1, 2012, that specify that at least seven and one-half
8 percent (7.5%) of the continuing education required of the licensed
9 practitioner relate to the use of the electronic monitoring system established in
10 KRS 218A.202, pain management, or addiction disorders.
- 11 (4) For the purposes of pharmacy dispensing, the medical necessity for a Schedule II
12 controlled substance as documented by the practitioner in the patient's medical
13 record and the prescription for more than a three (3) day supply of that controlled
14 substance are presumed to be valid.
- 15 (5) A state licensing board shall employ or obtain the services of a specialist in the
16 treatment of pain and a specialist in drug addiction to evaluate information received
17 regarding a licensee's prescribing or dispensing practices related to controlled
18 substances if the board or its staff does not possess such expertise, to ascertain if the
19 licensee under investigation is engaging in improper, inappropriate, or illegal
20 practices.
- 21 (6) Any statute to the contrary notwithstanding, no state licensing board shall require
22 that a grievance or complaint against a licensee relating to controlled substances be
23 sworn to or notarized, but the grievance or complaint shall identify the name and
24 address of the grievant or complainant, unless the board by administrative
25 regulation authorizes the filing of anonymous complaints. Any such authorizing
26 administrative regulation shall require that an anonymous complaint or grievance be
27 accompanied by sufficient corroborating evidence as would allow the board to

1 believe, based upon a totality of the circumstances, that a reasonable probability
2 exists that the complaint or grievance is meritorious.

3 (7) Every state licensing board shall cooperate to the maximum extent permitted by law
4 with all state, local, and federal law enforcement agencies, and all professional
5 licensing boards and agencies, state and federal, in the United States or its
6 territories in the coordination of actions to deter the improper, inappropriate, or
7 illegal prescribing or dispensing of a controlled substance.

8 (8) Each state licensing board shall require a fingerprint-supported criminal record
9 check by the Department of Kentucky State Police and the Federal Bureau of
10 Investigation of any applicant for initial licensure to practice any profession
11 authorized to prescribe or dispense controlled substances.

12 ➔Section 6. KRS 218A.245 is amended to read as follows:

13 (1) The secretary of the Cabinet for Health and Family Services may enter into
14 reciprocal agreements or a contract, either directly with any federal agency of the
15 United States or its territories, any other state or states of the United States or any
16 jurisdiction, county, or political subdivision thereof, or with an organization
17 administering the exchange of interstate data on behalf of the prescription
18 monitoring program of one (1) or more states or jurisdictions, to share prescription
19 drug monitoring information if the other prescription drug monitoring program or
20 data exchange program is compatible with the program in Kentucky. If the
21 secretary elects to evaluate the prescription drug monitoring program of another
22 state, jurisdiction, or organization as authorized by this section, priority shall be
23 given to a state or jurisdiction that is contiguous with the borders of the
24 Commonwealth or an organization that offers connectivity with a contiguous state
25 or jurisdiction.

26 (2) In determining compatibility, the secretary shall consider:

27 (a) The essential purposes of the program and the success of the program in

- 1 fulfilling those purposes;
- 2 (b) The safeguards for privacy of patient records and its success in protecting
- 3 patient privacy;
- 4 (c) The persons authorized to view the data collected by the program;
- 5 (d) The schedules of controlled substances monitored;
- 6 (e) The data required to be submitted on each prescription or dispensing;
- 7 (f) Any implementation criteria deemed essential for a thorough comparison; and
- 8 (g) The costs and benefits to the Commonwealth in mutually sharing particular
- 9 information available in the Commonwealth's database with the program
- 10 under consideration.
- 11 (3) The secretary shall review any agreement on an annual basis to determine its
- 12 continued compatibility with the Kentucky prescription drug monitoring program.
- 13 (4) Any agreement between the cabinet and another state, jurisdiction, or organization
- 14 shall prohibit the sharing of information about a Kentucky resident, practitioner,
- 15 pharmacist, or other prescriber or dispenser for any purpose not otherwise
- 16 authorized by this section or KRS 218A.202.
- 17 ➔Section 7. KRS 304.17A-165 is amended to read as follows:
- 18 (1) Any health benefit plan that provides benefits for prescription drugs shall include an
- 19 exceptions policy or an override policy that provides coverage for the refill of a
- 20 covered drug dispensed prior to the expiration of the insured's supply of the drug.
- 21 The insurer shall provide notice in existing written or electronic communications to
- 22 pharmacies doing business with the insurer, the pharmacy benefit manager if
- 23 applicable, and to the insured regarding the exceptions policy or override policy.
- 24 This subsection shall not apply to controlled substances as classified by KRS
- 25 Chapter 218A.
- 26 (2) Nothing in this section shall prohibit an insurer from limiting payment to no more
- 27 than three (3) refills of a covered drug in a ninety (90) day period.

- 1 (3) Any individual or group health benefit plan that provides benefits for prescription
2 drugs shall provide a program for synchronization of medications when it is agreed
3 among the insured, a provider, and a pharmacist that synchronization of multiple
4 prescriptions for the treatment of a chronic illness is in the best interest of the
5 patient for the management or treatment of a chronic illness provided that the
6 medications:
- 7 (a) Are covered by the individual or group health benefit plan;
 - 8 (b) Are used for treatment and management of chronic conditions that are subject
9 to refills;
 - 10 (c) Are not a Schedule II controlled substance~~[or a Schedule III controlled~~
11 ~~substance containing hydrocodone]~~;
 - 12 (d) Meet all prior authorization criteria specific to the medications at the time of
13 the synchronization request;
 - 14 (e) Are of a formulation that can be effectively split over required short fill
15 periods to achieve synchronization; and
 - 16 (f) Do not have quantity limits or dose optimization criteria or requirements that
17 would be violated in fulfilling synchronization.
- 18 (4) To permit synchronization, an individual or group health benefit plan shall apply a
19 prorated daily cost-sharing rate to any medication dispensed by a network
20 pharmacy pursuant to this section.
- 21 (5) Any dispensing fee shall not be prorated and shall be based on an individual
22 prescription filled or refilled.