

**NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

SENATE BILL 11-192

BY SENATOR(S) Aguilar and Spence, Boyd, Guzman, Jahn, Newell, Nicholson, White, Williams S., Bacon, Foster, Giron, Heath, Hodge, Johnston, King S., Morse, Schwartz, Tochtrop;  
also REPRESENTATIVE(S) Massey, Casso, Priola, Riesberg, Soper, Conti, Court, Fields, Fischer, Hamner, Joshi, Kefalas, Kerr J., Labuda, Levy, Miklosi, Pace, Schafer S., Summers, Todd, Vigil, Wilson.

CONCERNING THE CONTINUATION OF THE PRESCRIPTION DRUG MONITORING PROGRAM, AND, IN CONNECTION THEREWITH, REPEALING THE PRESCRIPTION CONTROLLED SUBSTANCE ABUSE MONITORING COMMITTEE, AND MAKING AN APPROPRIATION.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 24-34-104 (42) (i) and (52), Colorado Revised Statutes, are amended to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(i) ~~The electronic prescription drug monitoring program, created in part 7 of article 22 of title 12, C.R.S.;~~

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(52) The following agencies, functions, or both, shall terminate on July 1, 2021:

(a) The workers' compensation classification appeals board, created in article 55 of title 8, C.R.S.

(b) THE ELECTRONIC PRESCRIPTION DRUG MONITORING PROGRAM CREATED IN PART 7 OF ARTICLE 22 OF TITLE 12, C.R.S.

**SECTION 2.** 12-22-710, Colorado Revised Statutes, is amended to read:

**12-22-710. Repeal of part.** This part 7 is repealed, effective ~~July 1, 2011~~ JULY 1, 2021. Prior to such repeal, the functions under this part 7 ~~and the committee~~ shall be reviewed as provided in ~~sections 2-3-1203 and~~ SECTION 24-34-104, C.R.S.

**SECTION 3. Repeal.** 2-3-1203 (3) (x) (IV), Colorado Revised Statutes, is repealed as follows:

**2-3-1203. Sunset review of advisory committees.** (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(x) July 1, 2011:

(IV) ~~The prescription controlled substance abuse monitoring advisory committee created in section 12-22-703, C.R.S.;~~

**SECTION 4.** 12-22-701 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**12-22-701. Legislative declaration.** (1) The general assembly finds, determines, and declares that:

(d) ELECTRONIC MONITORING OF PRESCRIPTIONS FOR CONTROLLED SUBSTANCES PROVIDES A MECHANISM FOR LAW ENFORCEMENT OFFICIALS AND REGULATORY BOARDS TO EFFICIENTLY INVESTIGATE PRESCRIBER BEHAVIOR THAT IS POTENTIALLY HARMFUL TO THE PUBLIC.

**SECTION 5. Repeal.** 12-22-702 (2), Colorado Revised Statutes, is repealed as follows:

**12-22-702. Definitions.** As used in this part 7, unless the context otherwise requires:

(2) "Committee" means the prescription controlled substance abuse monitoring advisory committee.

**SECTION 6. Repeal.** 12-22-703, Colorado Revised Statutes, is repealed as follows:

**12-22-703. Advisory committee - duties - repeal.** ~~(1) There is hereby created within the division, the prescription controlled substance abuse monitoring advisory committee. The committee shall consist of the following eleven members:~~

~~(a) The director of the division or his or her designee;~~

~~(b) A pharmacist appointed by the board;~~

~~(c) Three physicians appointed by the Colorado medical board, one of which is a pain specialist or addiction specialist;~~

~~(d) A dentist appointed by the state board of dental examiners;~~

~~(e) A veterinarian appointed by the state board of veterinary medicine;~~

~~(f) The director of the division of alcohol and drug abuse in the department of human services or his or her designee; and~~

~~(g) Three persons appointed by the committee, one of which is a representative of law enforcement.~~

~~(2) The committee shall advise and assist the board with the development, operation, and maintenance of the electronic prescription drug monitoring program; and with the development of access and security protocols for the program. The committee shall advise the board regarding mandatory information to be reported for inclusion in the program.~~

~~(3) Committee members shall not receive compensation or reimbursement for expenses associated with service on the committee.~~

~~(4) This section is repealed, effective July 1, 2011. Prior to such repeal, the committee shall be reviewed as provided in section 2-3-1203, C.R.S.~~

**SECTION 7.** The introductory portion to 12-22-704 (1) and 12-22-704 (2), Colorado Revised Statutes, are amended, and the said 12-22-704 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**12-22-704. Prescription drug use monitoring program.** (1) The board shall develop or procure a prescription controlled substance electronic program to track prescriptions written for controlled substances DISPENSED in Colorado. The program shall track information regarding controlled substance prescriptions that includes, but is not limited to, the following:

(1.5) EACH PRESCRIBER AND EACH DISPENSING PHARMACY SHALL DISCLOSE TO A PATIENT RECEIVING A CONTROLLED SUBSTANCE THAT HIS OR HER IDENTIFYING PRESCRIPTION INFORMATION WILL BE ENTERED INTO THE PROGRAM DATABASE AND MAY BE ACCESSED FOR LIMITED PURPOSES BY SPECIFIED INDIVIDUALS.

(2) The board ~~and the committee~~ shall establish a method and format for prescription drug outlets to convey the necessary information to the board or its designee. The method shall not require more than a one-time entry of data per patient per prescription by a prescription drug outlet.

**SECTION 8.** 12-22-705 (1) and (2), the introductory portion to 12-22-705 (3), and 12-22-705 (3) (d) and (3) (e), Colorado Revised Statutes, are amended, and the said 12-22-705 (3) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

**12-22-705. Program operation - access - rules.** (1) The board shall operate and maintain the program. ~~The committee shall advise and assist the board. The committee shall meet at least quarterly during the first two years of the program.~~

(2) The board shall adopt all rules necessary to implement the

program. ~~The committee shall advise the board regarding proposed rules.~~

(3) The program ~~shall be~~ IS available for query only to the following persons or groups of persons:

(d) Licensed pharmacists with statutory authority to dispense controlled substances to the extent the information requested relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance OR TO WHOM THE PHARMACIST IS PROVIDING CLINICAL PATIENT CARE SERVICES;

(e) Law enforcement officials so long as the information released is specific to an individual PATIENT OR PRESCRIBER and is part of a bona fide investigation and the request for information is accompanied by an official court order or subpoena; ~~and~~

(g) STATE REGULATORY BOARDS WITHIN THE DIVISION AND THE DIRECTOR OF THE DIVISION SO LONG AS THE INFORMATION RELEASED IS SPECIFIC TO AN INDIVIDUAL PRESCRIBER AND IS PART OF A BONA FIDE INVESTIGATION AND THE REQUEST FOR INFORMATION IS ACCOMPANIED BY AN OFFICIAL COURT ORDER OR SUBPOENA; AND

(h) A RESIDENT PHYSICIAN WITH AN ACTIVE PHYSICIAN TRAINING LICENSE ISSUED BY THE COLORADO MEDICAL BOARD PURSUANT TO SECTION 12-36-122 AND UNDER THE SUPERVISION OF A LICENSED PHYSICIAN.

**SECTION 9.** 12-22-706 (5), Colorado Revised Statutes, is amended to read:

**12-22-706. Prescription drug monitoring fund - creation - gifts, grants, and donations - fee.** (5) If, based upon the appropriations for the direct and indirect costs of the program, there are insufficient funds to maintain the program, the ~~board~~ DIVISION may collect a AN ANNUAL fee of no more than ~~seven dollars and fifty cents per year~~ SEVENTEEN DOLLARS AND FIFTY CENTS FOR THE FISCAL YEARS 2011-2012 AND 2012-2013, TWENTY DOLLARS FOR THE FISCAL YEARS 2013-2014 AND 2014-2015, AND TWENTY-FIVE DOLLARS FOR EACH FISCAL YEAR THEREAFTER, from an individual who holds a license from the division that authorizes him or her to prescribe a controlled substance as defined by section 18-18-102, C.R.S. The fee shall be established pursuant to section 24-34-105, C.R.S., and shall

be collected in conjunction with the license renewal fees collected pursuant to section 24-34-105, C.R.S. Moneys collected pursuant to this subsection (5) shall be credited to the prescription drug monitoring fund created in subsection (1) of this section.

**SECTION 10.** 12-22-707, Colorado Revised Statutes, is amended to read:

**12-22-707. Violations - penalties.** A person who knowingly releases, obtains, or attempts to obtain information from the program in violation of this part 7 shall be punished by a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each violation. Fines paid shall be deposited in the ~~prescription drug monitoring~~ GENERAL fund.

**SECTION 11.** 12-22-709 (2), Colorado Revised Statutes, is amended to read:

**12-22-709. Exemption - waiver.** (2) A prescription drug outlet that does not report controlled substance data to the program due to a lack of electronic automation of the outlet's business may apply to the board for a waiver from the reporting requirements. ~~The committee shall determine whether a waiver shall be granted.~~

**SECTION 12.** 18-4-412 (2) (a), Colorado Revised Statutes, is amended to read:

**18-4-412. Theft of medical records or medical information - penalty.** (2) As used in this section:

(a) "Medical record" means the written or graphic documentation, sound recording, or computer record pertaining to medical, mental health, and health care services ~~which~~ THAT are performed at the direction of a physician or other licensed health care provider on behalf of a patient by physicians, dentists, nurses, technicians, emergency medical technicians, mental health professionals, prehospital providers, or other health care personnel. "Medical record" includes such diagnostic documentation as X rays, electrocardiograms, electroencephalograms, and other test results. "MEDICAL RECORD" INCLUDES DATA ENTERED INTO THE PRESCRIPTION DRUG MONITORING PROGRAM PURSUANT TO SECTION 12-22-704, C.R.S.

**SECTION 13.** 25-1-1202 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**25-1-1202. Index of statutory sections regarding medical record confidentiality and health information.** (1) Statutory provisions concerning policies, procedures, and references to the release, sharing, and use of medical records and health information include the following:

(nnn) SECTION 12-22-707, C.R.S., CONCERNING INFORMATION ENTERED INTO THE PRESCRIPTION DRUG MONITORING PROGRAM DATABASE.

**SECTION 14. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the prescription drug monitoring fund created in section 12-22-706 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for personal services and operating expenses, for the fiscal year beginning July 1, 2011, the sum of fifty thousand three hundred twenty-six dollars (\$50,326) cash funds and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 15. Effective date - applicability.** This act shall take effect July 1, 2011, and shall apply to conduct occurring on or after said date.

**SECTION 16. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Frank McNulty  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO