

SENATE BILL NO. 96

BY SENATORS JOHNS AND THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

AN ACT

To amend and reenact R.S. 40:1007(A), (B), the introductory paragraph of (E), the introductory paragraph of (F), (I), and (J), 1008(A), and 1009(A) and (B) and to enact R.S. 40:1003(15) and 1007(E)(5), (6), and (7), and (K), relative to the prescription monitoring program; to provide for definitions; to provide for access to prescription monitoring information; to provide for immunity; to provide for education and training; to provide for penalties; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1007(A), (B), the introductory paragraph of (E), the introductory paragraph of (F), (I), and (J), 1008(A), and 1009(A) and (B) are hereby amended and reenacted and R.S. 40:1003(15) and 1007(E)(5), (6), and (7), and (K) are hereby enacted to read as follows:

§1003. Definitions

As used in this Part, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

\* \* \*

1           (15)(a) "Audit trail information" means information submitted or  
 2           produced regarding requests for prescription monitoring program data that the  
 3           board or other individual as specified by this Part uses to help monitor  
 4           compliance with this Part and other applicable statutes, rules, or regulations.

5           (b) "Audit trail information" shall not include any information  
 6           produced or requested by the Louisiana legislative auditor.

7   \*       \*       \*

8           §1007. Access to prescription monitoring information **and audit trail information**

9           A. Except as provided in Subsections C, D, E, F, G, H, and I of this Section,  
 10          prescription monitoring information submitted to the board **and audit trail**  
 11          **information** shall be protected health information, not subject to public or open  
 12          records law, including but not limited to R.S. 44:1 et seq., and not subject to  
 13          disclosure. Prescription monitoring information **and audit trail information** shall  
 14          not be available for civil subpoena from the board nor shall such information be  
 15          disclosed, discoverable, or compelled to be produced in any civil proceeding nor  
 16          shall such records be deemed admissible as evidence in any civil proceeding for any  
 17          reason. Notwithstanding this provision, law enforcement and professional licensing,  
 18          certification, or regulatory agencies may utilize prescription monitoring information  
 19          **and audit trail information** in the course of any investigation and subsequent  
 20          criminal and administrative proceedings, but only in accordance with federal and  
 21          state law and the requirements of this Part.

22          B. The board shall maintain procedures to ensure that the privacy and  
 23          confidentiality of patients and patient information collected, recorded, transmitted,  
 24          and maintained, **as well as audit trail information,** is not disclosed to persons or  
 25          entities except as in Subsections C, D, E, F, G, H, **and I, and J** of this Section.

26   \*       \*       \*

27          E. The following persons, ~~after successful completion of the educational~~  
 28          ~~courses identified in R.S. 40:1008,~~ may access prescription monitoring information  
 29          at no cost and in the same or similar manner, and for the same or similar purposes,  
 30          as those persons are authorized to access similar protected health information under

federal and state law and regulation:

\* \* \*

**(5) A medical examiner or coroner, or a delegate thereof, for the purpose of investigating an individual's death.**

**(6) A licensed substance abuse addiction counselor providing services as part of a state-licensed substance abuse or addiction treatment program.**

**(7) A probation or parole officer for the purpose of monitoring an offender's compliance with participation in a drug diversion program or with other conditions of probation or parole related to monitored drugs.**

F. The board may provide a report containing prescription monitoring information upon application of local, state, out-of-state, and federal law enforcement or prosecutorial officials, **including judicially supervised specialty courts within the criminal justice system that are authorized by the Louisiana Supreme Court**, engaged in the administration, investigation, or enforcement of the laws governing controlled substances or other drugs of concern in compliance with and as limited by the relevant requirements of any of the following:

\* \* \*

I. The board may provide prescription monitoring information to ~~an individual who requests his personal prescription monitoring information in accordance with procedures established by board regulation.~~ **the following in accordance with procedures established by board regulation:**

**(1) An individual who requests his personal prescription monitoring information.**

**(2) A parent, legal guardian, or legal healthcare agent, for the purpose of reviewing the history of monitored drugs dispensed to a child or an individual for whom the agent makes healthcare decisions, to the extent consistent with federal and state confidentiality laws and regulations.**

**(3) An executor of a will, or a court-appointed succession representative of an estate, for the purpose of reviewing the history of monitored drugs dispensed to a deceased individual.**

1 J. ~~The board and the advisory council shall be immune from civil liability~~  
2 ~~arising from inaccuracy of any of the information submitted to the board pursuant~~  
3 ~~to this Part.~~ The board may disclose audit trail information to individuals  
4 identified in Paragraph (E)(2) and Subsections F and I of this Section for use in  
5 an active investigation of an individual who submitted requests for prescription  
6 monitoring information.

7 K.(1) The board and advisory council shall not be subject to civil  
8 liability, administrative action, or other legal or equitable relief for any of the  
9 following:

10 (a) Failure to possess prescription monitoring information that was not  
11 reported to the board.

12 (b) Release of prescription monitoring information or audit trail  
13 information that was factually incorrect.

14 (c) Release of prescription monitoring information or audit trail  
15 information to the wrong person or entity.

16 (d) Unlawful access to prescription monitoring information by an  
17 individual, or unlawful disclosure or use of prescription monitoring information  
18 by an individual who requested and received prescription monitoring  
19 information pursuant to this Section.

20 (2) A dispenser or reporting agent shall not be subject to civil liability,  
21 administrative action, or other legal or equitable relief for reporting  
22 prescription monitoring information to the board.

23 (3) A prescriber, dispenser, or other individual, agency, or entity in  
24 proper possession of prescription monitoring information or audit trail  
25 information pursuant to this Part shall not be subject to civil liability,  
26 administrative action, or other legal or equitable relief for accessing, using, or  
27 disclosing prescription monitoring information or audit trail information  
28 pursuant to the provisions of this Section.

29 §1008. Education and treatment

30 A. The board shall, in consultation with and upon the recommendation of the

1 advisory council, implement the following education courses:

2 (1) ~~An orientation course during the implementation phase of the prescription~~  
3 ~~monitoring program.~~

4 (2) ~~A course for persons who are authorized to access the prescription~~  
5 ~~monitoring information, but who did not participate in the orientation course.~~

6 (3) A course for persons who are authorized to access the prescription  
7 monitoring information, but who have violated the laws or breached occupational  
8 standards involving the prescribing, dispensing, or use of any controlled substances  
9 or drugs monitored by the prescription monitoring program.

10 (4)(2) A continuing education course for ~~health care~~ **healthcare** providers or  
11 professionals on prescribing practices, pharmacology, and the identification,  
12 treatment, and referral of a patient addicted to or abusing controlled substances or  
13 drugs monitored by the prescription monitoring program.

14 \* \* \*

15 §1009. Unlawful acts and penalties

16 A. A dispenser who fails to submit prescription monitoring information to the  
17 board as required by this Part, **or who fails to correct or amend data after**  
18 **notification by the board**, shall be referred to the appropriate professional licensing,  
19 certification, or regulatory agency for administrative sanctions as deemed  
20 appropriate by that agency.

21 B. A person or entity authorized to possess prescription monitoring  
22 information pursuant to this Part who knowingly **accesses or** discloses such  
23 information in violation of this Part shall be referred to the appropriate professional  
24 licensing, certification, or regulatory agency for administrative sanctions as deemed  
25 appropriate by that agency and may, upon criminal conviction, be imprisoned, with  
26 or without hard labor, for not more than five years, and in addition, may be fined not  
27 more than five thousand dollars.

28 \* \* \*

29 Section 2. This Act shall become effective upon signature by the governor or, if not  
30 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
3 effective on the day following such approval.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_