



2019 Legislation Impacting Prescription Drug Monitoring Programs (PDMPs)

This project was supported by Grant No. 2017-AR-BX-K003 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the U.S. Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART). Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.



Summary of 2019 Bills and Regulations

2019 saw the introduction of almost 200 state and federal bills related to prescription drug monitoring programs (PDMPs) and the proposal of 85 regulations including topics ranging from mandatory query provisions to the inclusion of opioid antagonist and medical marijuana dispensing in PDMP databases. Of the bills and regulations introduced, 60 state bills were enacted, and 53 state regulations were adopted.

Proposed Federal Legislative and Regulatory Changes

Eight bills were introduced and one regulation proposed at the federal level, all of which are still pending. HR 2062, the Overdose Prevention and Patient Safety Act; its Senate counterpart, SB 1012, the Protecting Jessica Grubb's Legacy Act; and 84 FR 44568-01 seek to amend patient privacy provisions related to substance use disorder treatment records. If passed, HR 2062 and SB 1012 would allow substance use disorder treatment records to be disclosed without patient consent to a covered entity or program relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, so long as such disclosure is made consistent with the HIPAA privacy regulation. It would also allow the disclosure of de-identified patient information to a public health authority. In addition, it would prohibit the use of any patient treatment records from being used, without patient consent, in any investigation of, or criminal, civil, or administrative proceeding against, a patient. Such information could not be entered into evidence, form a part of the record for decision or otherwise be taken into account, be used by any law enforcement agency for a law enforcement purpose or to conduct any investigation, or be used in any application for a search warrant. Finally, HR 2062 and SB 1012 state, "It is the sense of Congress that any person treating a patient through a program or activity with respect to which the confidentiality requirements of [42 U.S.C. 290dd-2] apply should access the applicable state-based prescription drug monitoring program as a precaution against substance use disorder."

Similarly, 84 FR 44568-01 seeks to amend the patient privacy protections in 42 CFR Part 2. The relevant provisions as the relate PDMPs provide that Part 2 treatment programs should be allowed, with patient consent, to report all substance use disorder treatment medications dispensed to a patient to the state PDMP. At the time of this writing, HR 2062 is in committee, SB 1012 has been introduced in the Senate, and 84 FR 44568-01 is awaiting publication of the final rule.

Of note among the remaining six pending federal bills is HR 3927, the PDMPs Help Patients Act of 2019, which would award grant funds to no more than five states to implement a pilot program to integrate a substance use disorder and behavioral health treatment locator tool into the PDMP. Eligible states must demonstrate that the state is making progress in integrating the state's PDMP with electronic health records and health information technology structures.

Two other remaining federal bills, HR 3974 and identical Senate bill 516, address funding opportunities for state PDMPs meeting certain requirements, namely that the states have a mandatory query requirement, send proactive notifications to practitioners, and require reporting of dispensing information within 24 hours, and that the PDMP provide quarterly de-identified data sets and an annual report for public and private use.

State Legislative and Regulatory Changes—Mandatory Query and Registration Requirements

At the end of 2018, 45 states had mandatory query requirements in place for prescribers and/or dispensers. 2019 saw the addition of Montana and Wyoming, bringing the total number of states with mandatory query requirements to 47. In 2019, nearly 10 percent of the bills enacted and 35 percent of the adopted regulations touched on mandatory query requirements in some way. A large number of those bills and regulations made minor amendments or changes to the state’s mandatory query requirements (for example, changing “an opioid drug which is a prescription drug” to “a Schedule II opioid” throughout the body of the statute), while others amended the listed exceptions to the query requirement (adding patients receiving hospice care, for example).

Four states—Georgia, Massachusetts, Virginia, and West Virginia—added requirements for practitioners and/or pharmacists to query the PDMP prior to recommending or dispensing THC oil, cannabidiol oil, or medical marijuana. In addition, Maine, Ohio, and Washington added requirements for practitioners providing opioid treatment or medication-assisted treatment to query the PDMP periodically for patients receiving such treatment.

Finally, eight states—Alabama, Arkansas, Iowa, Mississippi, New Mexico, Texas, Virginia, and Washington—included additional types of practitioners, such as dentists, nurse practitioners, and certified nurse midwives, in their mandatory query requirements.

Comparatively, only seven states—Alaska, California, Iowa, Mississippi, Montana, New Jersey, and New Mexico—and the District of Columbia enacted bills or regulations related to mandatory registration. The District of Columbia enacted legislation that requires prescribers licensed in the District to prescribe a controlled substance to register with the PDMP, and Montana now requires both prescribers and dispensers to register with the state PDMP, bringing the total number of states and territories with mandatory registration requirements to 44. The other states mentioned above added additional types of practitioners to their mandatory registration requirements, including advanced practice registered nurses and dentists.

PDMP Data Sharing and Integration

This year, Montana joined the 43 other states that allow PDMP data to be integrated into a health information system such as an electronic health records system (EHRs) or health information exchange (HIEs). Louisiana amended its statutes to allow PDMP data to be shared with PDMPs, electronic health information systems, and pharmacy information systems (PDS) located in other states, territories, federal districts, and federal jurisdictions through its participation in a secure data exchange system. Nebraska also amended its law to allow PDMP information to be shared with other state PDMPs, state and regional HIEs, organizations that facilitate the interoperability and mutual exchange of information among state PDMPs or state or regional health information exchanges, and EHRs or PDS for the purpose of integrating prescription drug information into a patient’s medical record.

Iowa adopted a new regulation providing that a practitioner or health care system may integrate its electronic health record system or a pharmacy may integrate its automated data processing system

with the PDMP using an application programming interface. Massachusetts also amended its PDMP regulations to provide that prescribers may access PDMP data directly through a secure electronic medical record or other secure electronic system. In addition, New Jersey updated its regulations to provide that PDMP information may be made available on electronic systems that collect and display health information. Minnesota and Washington also passed legislation related to electronic health record integration with PDMPs.

Last year saw the passage of U.S. HR 5515 which created the Military Health System PDMP. In response, several states, including Arkansas, Florida, Kansas, and Ohio, amended their PDMP laws to allow the state PDMP to share data with federal PDMPs and/or entities, including, in some cases, with the U.S. Department of Veterans Affairs, the U.S. Department of Defense, and Indian Health Services.

Miscellaneous Provisions

Twenty-one states enacted legislation or adopted regulations that modified their provisions related to who may have access to PDMP information, such as pharmacy technicians and Medicaid representatives. Colorado and Michigan enacted new provisions requiring PDMP-related education for certain health practitioners, and Delaware, Minnesota, and New Hampshire enacted new funding provisions. Seven states—Georgia, Florida, Mississippi, Oklahoma, Oregon, Texas, and Virginia—and the District of Columbia also enacted new penalty provisions for offenses related to failure to register with or query the PDMP as required or misuse of PDMP data. In addition, the District of Columbia, Maryland, South Carolina, and Utah modified their provisions related to the provision of unsolicited or proactive reports.

Of particular note, California modified its data collection frequency from weekly to within one working day, bringing the number of jurisdictions that require dispensing data to be reported within three days or less to 51. Hawaii (seven days) and Guam (14 days) are the two remaining jurisdictions with a data collection frequency of greater than three days.

Finally, Colorado and Indiana moved their PDMP statutes to new sections. The Colorado statutes moved from §§ 12-42.5-401 through 12-42.5-409 to §§ 112-280-401 through 12-280-409. The Indiana statutes moved from § 35-48-7, *et seq.*, to § 25-26-24, *et seq.* In addition, Iowa repealed and reenacted its PDMP regulations and added rules related to the submission of opioid antagonist administration by first responders to the PDMP, as well as provisions related to practitioner report cards.

Resources

Additional information regarding all legislation and regulations introduced and enacted in 2019 can be found at <http://www.pdmpassist.org/content/statutes-and-regulations>. PDMP issue-specific maps and charts can be found on the PDMP Training and Technical Assistance website located at <http://www.pdmpassist.org/content/pdmp-maps-and-tables>.