PRESCRIPTION DRUG MONITORING PROGRAM ACT

48-853.01. Definitions

For the purposes of this chapter, the term:

(1) "Administer" shall have the same meaning as provided in § 48-901.02(1).

(2) "Controlled substance" shall have the same meaning as provided in § 48-901.02(4).

(3) "Controlled Substances Act" means Unit A of Chapter 9 of this title.

(4) "Covered substance" means all controlled substances included in the schedules set forth in §§ 48-902.06, 48-902.08, 48-902.10, and 48-902.12, in schedules II through V of section 202(c) of Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, approved October 27, 1970 (84 Stat. 1247; 21 U.S.C. § 812), and any other drug, as specified by rulemaking, that is required to be reported to the Prescription Drug Monitoring Program pursuant to this chapter.

(5) "Department" means the Department of Health.

(6) "Director" means the Director of the Department of Health.

(7) "Dispense" shall have the same meaning as provided in § 48-901.02(7).

(8) "Dispenser" means a practitioner who dispenses a covered substance to the ultimate user, or his or her agent, but shall not include:

(A) A licensed hospital or institutional facility pharmacy that distributes covered substances for the purpose of inpatient hospital care or the dispensing of prescriptions for controlled substances at the time of discharge from such a facility;

(B) A practitioner or other authorized person who administers a covered substance;

(C) A wholesale distributor of a covered substance; or

(D) A clinical researcher providing a covered substance to research subjects as part of a research study approved by a hospital-based institutional review board or an institutional review board accredited by the association for the accreditation of human research protections programs.

(9) "Drug" means:

(A) Any substance recognized as a drug, medicine, or medicinal chemical in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, or official Veterinary Medicine Compendium or other official drug compendium or any supplement to any of them;

(B) Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal;

(C) Any chemical substance, other than food, intended to affect the structure or any function of the body of man or other animal; and

(D) Any substance intended for use as a component of any items specified in subparagraph (A), (B), or (C) of this paragraph, but does not include medical devices or their components, parts, or accessories.

(10) "Health occupations board" means a board that, pursuant to § 3-1204.08, licenses and regulates health professionals with the authority to prescribe or dispense covered substances.

(11) "Interoperability" means, with respect to a District of Columbia or state prescription drug monitoring program, the ability of that program to share electronically reported prescription information with another state, district, or territory of the United States' prescription drug monitoring program or a third party, approved by the Director, that operates interstate prescription drug monitoring exchanges.

(12) “Patient” means the person or animal who is the ultimate user of a controlled substance or other drug required to be submitted under this chapter for whom a lawful prescription is issued or for whom a controlled substance or such other drug is lawfully dispensed.
(13) “Practitioner” shall have the same meaning as provided in § 48-901.02(20).
(14) “Prescriber” means a practitioner or other authorized person who prescribes a controlled substance or other covered substance in the course of his or her professional practice.
(15) “Prescription drug monitoring program” means a program that collects, manages, analyzes, and provides information regarding covered substances or other drugs required to be submitted under this chapter or a program established by a similar act in another state, district, or territory of the United States.
(16) “Program” means the Prescription Drug Monitoring Program established by § 48-853.02.
(17) “Ultimate user” shall have the same meaning as provided in § 48-901.02(23).

48-853.02. Program establishment; Director's authority.
(a) There is established the Prescription Drug Monitoring Program within the Department. The Program shall:
(1) Establish, maintain, and administer an electronic system to monitor the dispensing of covered substances;
(2) Provide dispensers with a basic file layout to enable electronic transmission of the information required under this chapter; and
(3) Establish and maintain a process for verifying the credentials of and authorizing the use of prescription information by those individuals and agencies listed in § 48-853.05(b) and (c).
(b) The Director may contract with another District agency or a private vendor as may be necessary for the implementation and maintenance of the Program. Any such contractor shall be bound to comply with the provisions regarding confidentiality of data in this chapter and shall be subject to the penalties specified in this chapter.
(c) The Director shall also establish a multi-discipline advisory committee, which shall function under the Department to assist in the implementation and evaluation of the Program.

48-853.03b. Registration requirement for practitioners and dispensers.
(a) Any practitioner who is licensed, registered, or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, or to administer a controlled substance or other covered substance in the course of his or her professional practice, and any dispenser who is licensed in the District of Columbia to dispense a controlled substance or other covered substance to an ultimate user, the user's agent, or owner in the case of animals, shall be registered with the Program.
(b) Beginning 90 days after June 24, 2020, each practitioner or dispenser who is required to be registered with the Program, pursuant to subsection (a) of this section, shall register with the Program within 90 days of obtaining a new health professional license or before renewing an existing health professional license, whichever occurs first.
(c) The Health Occupations Boards shall not approve a practitioner or dispenser, who is required to be registered with the Program pursuant to subsection (a) of this section, for reinstatement, reactivation, or renewal of licensure without proof that the practitioner or dispenser has registered with the Program as required.

(d) Failure to timely register with the Program shall constitute grounds for disciplinary action by the relevant health occupations board pursuant to § 3-1205.14(c), and the imposition of civil fines pursuant to § 2-1801.04.

48-853.03c. Database Query requirement for prescribers and dispensers.

(a)(1) Except as provided in subsection (c) of this section, a prescriber who is licensed, registered, or otherwise permitted to prescribe a controlled substance or other covered substance in the course of his or her professional practice in the District of Columbia, or the prescriber's authorized delegee, shall query the District of Columbia prescription drug monitoring database before initiating a new course of treatment or therapy for a patient in the District of Columbia that includes prescribing an opioid or benzodiazepine for more than 7 consecutive days, and every 90 days thereafter while the course of treatment or therapy continues.

(2) Nothing in this subsection shall prohibit a prescriber from making additional periodic queries of the prescription drug monitoring program database as may be required by routine prescribing practices.

(b)(1) Except as provided in subsection (c) of this section, a dispenser who is licensed, registered, or otherwise permitted to dispense a controlled substance or other covered substance in the course of his or her professional practice in the District of Columbia, or the dispenser's authorized delegee, shall query the District of Columbia prescription drug monitoring database before dispensing an opioid or benzodiazepine for a course of treatment that is anticipated to last for more than 7 consecutive days, and before dispensing a refill for an opioid or benzodiazepine more than 90 days after the initial fill or previous refill date.

(2) Nothing in this section shall prohibit a dispenser from making additional periodic queries of the prescription drug monitoring program database as may be required by routine prescribing practices.

(c) A prescriber or dispenser shall not be required to meet the provisions of subsection (a) or (b) of this section if the:

(1) Controlled substance or other covered substance is prescribed or otherwise provided to a patient currently receiving hospice or palliative care;

(2) Controlled substance or other covered substance is prescribed or otherwise provided to a patient during an inpatient hospital admission or at discharge;

(3) Controlled substance or other covered substance is prescribed or otherwise provided to a patient in a nursing home or residential care facility that uses a sole source pharmacy;

(4) Prescription drug monitoring program database is not operational or available due to a temporary technological or electrical failure or natural disaster; or

(5) Prescriber or dispenser is unable to access the prescription drug monitoring program database due to an emergency or a disaster and documents the circumstances in the patient's medical record.

(d) Failure to comply with the provisions of this section shall constitute grounds for disciplinary action by the relevant health occupations board pursuant to § 3-1205.14(c), and the imposition of civil fines pursuant to § 2-1801.04.

48-853.04. Authority to access database.

(a) A prescriber or dispenser authorized to access the information in the possession of the Program pursuant to this chapter may delegate, pursuant to regulations promulgated by the

Director to implement the provisions of this section, such authority to up to 2 health care professionals who are:
(1) Licensed, registered, or certified by a health occupations board; and
(2) Employed at the same facility and under the direct supervision of the prescriber or dispenser.
(b) No prescriber or dispenser shall provide false or misleading information to the Department with the intent to obtain unauthorized access to, or alter the information in the possession of the Program.
(c) A violation of subsection (b) of this section shall constitute grounds for:
(1) The revocation, suspension, or denial of a District controlled substances registration;
(2) Disciplinary action by the relevant health occupations board pursuant to § 3-1205.14(c); and
(3) The imposition of civil fines pursuant to § 2-1801.04.

48-853.05. Confidentiality of data; disclosure of information; discretionary authority of the Director.
(a) All data, records, and reports relating to the prescribing and dispensing of covered substances to patients and any abstracts from such data, records, and reports that are in the possession of the Program pursuant to this chapter and any materials relating to the operation or safety of the Program shall be confidential and shall be exempt from disclosure based on requests made pursuant to subchapter II of Chapter 5 of Title 2. Information obtained pursuant to the Program may only be disclosed as provided in this chapter.
(b) Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable District and federal laws and regulations, the Director shall disclose information relevant to:
(1) A specific investigation of a specific patient or of a specific dispenser or prescriber to an agent designated by the Chief of the Metropolitan Police Department to conduct drug diversion investigations;
(2) An investigation or inspection of or allegation of misconduct by a specific person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health occupations board or the Department;
(3) A disciplinary proceeding before a health occupations board or in any subsequent hearing, trial, or appeal of an action or board order to designated employees of the Department;
(4) The proceedings of any grand jury or additional grand jury that has been properly impaneled in accordance with § 11-1916; and
(5) A specific investigation of a specific patient or of a specific dispenser or prescriber to an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.
(c)(1) In accordance with the Department's regulations and applicable federal law and regulations, the Director may, at the Director's discretion, disclose:
(A) Information in the possession of the Program concerning a patient who is over the age of 18 years to that patient, or to the parent or legal guardian of a child aged 18 years or under, unless otherwise prohibited by District or federal law;
(B) Information on a specific patient to a prescriber for the purpose of establishing the treatment history of the specific patient when the patient is either under care and treatment by the prescriber or the prescriber is initiating treatment of the patient;

(C) Information on a specific patient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in determining the validity of a prescription when the patient is seeking a covered substance from the dispenser or the facility in which the dispenser practices;
(D) Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting, or denying licenses, certificates, or registrations to practice a health profession when the regulatory authority licenses the dispenser or prescriber, or the dispenser or prescriber is seeking licensure by a regulatory authority;
(E) Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the District Medicaid program, DC Health Care Alliance, or any other public health care program; information relating to an investigation relating to a specific patient who is currently eligible for and receiving, or who has been eligible for and has received medical assistance services; information relevant to the Medicaid Fraud Control Unit of the Office of the Inspector General, or to designated employees of the Department of Health Care Finance, as appropriate;
(F) Information relevant to the determination of the cause of death of a specific patient to the designated employees of the Office of the Chief Medical Examiner; and
(G) Information for the purpose of bona fide research or education to qualified personnel; provided, that:
(i) Data elements that would reasonably identify a specific patient, prescriber, or dispenser shall be deleted or redacted from the information before disclosure; and
(ii) Release of the information shall only be made pursuant to a written agreement between qualified personnel and the Director to ensure compliance with this chapter.
(2) For the purposes of a disclosure under paragraph (1)(B) or (C) of this subsection:
(A) The request shall be made and the information shall be provided in the manner specified by the Director through rulemaking; and
(B) Notice shall be given to patients that the information described in paragraph (1)(B) or (C) of this subsection, as applicable, may be requested by a prescriber or dispenser participating with the Program.
(d) Confidential information that has been received, maintained, or developed by a health occupations board or disclosed by the health occupations board pursuant to this chapter shall not be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services; provided, that this section shall not be construed to inhibit any investigation or prosecution conducted pursuant to this chapter.

48-853.06. Interoperability; Information exchange with other prescription drug monitoring programs.
(a) The Director may enter into written agreements with other prescription drug monitoring programs, or a third party, approved by the Director, that operates an interstate prescription drug monitoring exchange, for the purpose of interoperability and the mutual exchange of information among prescription drug monitoring programs, and describing the terms and conditions for the sharing of prescription information under this section.
(b) The Director may provide prescription monitoring information pursuant to such agreements, which shall only use the information for the purposes allowed by this chapter.

(c) The Director may request and receive prescription drug monitoring information from other states' prescription drug monitoring programs and may use the information under the provisions of this chapter.

48-853.07. Criteria for indicators of misuse; Director's authority to disclose information; intervention.

(a) The Director may establish through rulemaking:
(1) Criteria for indicators of misuse or abuse of covered substances; and
(2) A method for analysis of data collected by the Program using the criteria for indicators of misuse or abuse of covered substances.
(3) Criteria for indications of a possible violation of law or a possible breach of professional standards by a prescriber or dispenser; and
(4) A method for analysis of data collected by the Program using the criteria for indications of a possible violation of law or a possible breach of professional standards by a prescriber or dispenser.
(b)(1) Upon the development of the criteria and data analysis, the Program may review prescription monitoring program data for indications of:
(A) Possible misuse or abuse of a covered prescription drug; and
(B) A possible violation of law or possible breach of professional standards by a prescriber or a dispenser.
(2) If the Program's review of prescription monitoring data indicates a possible violation of paragraph (1) of this subsection, the Director may, in addition to any discretionary disclosure of information pursuant to this chapter:
(A) Report the possible misuse or abuse by a patient to the specific prescriber or dispenser of the covered prescription drug for the purpose of intervention to prevent such misuse or abuse;
(B) Notify the prescriber or dispenser of the possible violation of law or possible breach of professional standards; and
(C) Provide education to the prescriber or dispenser.

48-853.08. Immunity from liability.

(a) The Director and the employees of the Department shall not be liable for any civil damages resulting from the accuracy or inaccuracy of any information reported, compiled, or maintained by the Program pursuant to this chapter.
(b) The Director and the employees of the Department shall not be liable for any civil damages resulting from the disclosure of or failure to disclose any information in compliance with this chapter and the Department's regulations.
(c) In the absence of gross negligence or willful misconduct, prescribers or dispensers complying in good faith with the reporting requirements of this chapter shall not be liable for any civil damages for any act or omission resulting from the submission of such required reports.

48-853.09. Unlawful disclosure of information and acts; disciplinary action authorized; penalties.

(a) It shall be unlawful for any person having access to the confidential information in possession of the Program or any data or reports produced by the Program to disclose the confidential information except as provided in this chapter. Any person who discloses this confidential

information in violation of the provisions of this chapter shall be guilty of a misdemeanor upon conviction.
(b) It shall be unlawful for any person who lawfully receives confidential information from the Program to redisclose or use the confidential information in any way other than the authorized purpose for which the request was made. Any person who discloses confidential information in violation of this chapter shall be guilty of a misdemeanor upon conviction.
(c) Nothing in this section shall prohibit a person who prescribes or dispenses a covered substance required to be reported to the program from redisclosing information obtained from the Program to another prescriber or dispenser who has prescribed or dispensed a covered substance to the same patient.
(d) Unauthorized use or disclosure of confidential information received from the Program shall also be grounds for disciplinary action by the relevant health occupations board.

§ 48-853.10. Rules.
The Director, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter, including the establishment of criteria for granting waivers to the reporting requirements set forth in this chapter.