

1 State of Arkansas *As Engrossed: S2/20/17 S3/9/17 S3/13/17 S3/14/17 S3/15/17*

2 91st General Assembly

# A Bill

3 Regular Session, 2017

SENATE BILL 339

5 By: Senator J. Hutchinson

6 By: Representative Hammer

## For An Act To Be Entitled

9 AN ACT TO AMEND THE PRESCRIPTION DRUG MONITORING  
10 PROGRAM TO MANDATE PRESCRIBERS CHECK THE PRESCRIPTION  
11 DRUG MONITORING PROGRAM WHEN PRESCRIBING CERTAIN  
12 MEDICATIONS; AND FOR OTHER PURPOSES.

## Subtitle

16 TO AMEND THE PRESCRIPTION DRUG MONITORING  
17 PROGRAM TO MANDATE PRESCRIBERS CHECK THE  
18 PRESCRIPTION DRUG MONITORING PROGRAM WHEN  
19 PRESCRIBING CERTAIN MEDICATIONS.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24 SECTION 1. Arkansas Code § 20-7-604(d), concerning the requirements  
25 for the Prescription Drug Monitoring Program, is amended to read as follows:

26 (d)(1) Practitioners Except as required in subdivision (d)(2) of this  
27 section, practitioners are encouraged to access or check the information in  
28 the controlled substance database created under this subchapter before  
29 prescribing, dispensing, or administering medications.

30 (2)(A) A prescriber shall check the information in the  
31 Prescription Drug Monitoring Program when prescribing:

32 (i) An opioid from Schedule II or Schedule III for  
33 every time prescribing the medication to a patient; and

34 (ii) A benzodiazepine medication for the first time  
35 prescribing the medication to a patient.

36 (B) A licensing board that licenses practitioners who have



1 the authority to prescribe shall adopt rules requiring the practitioners to  
 2 check the information in the Prescription Drug Monitoring Program as  
 3 described in subdivision (d)(2) of this section.

4 (C) This subdivision (d)(2) does not apply to:

5 (i) A practitioner administering a controlled  
 6 substance:

7 (a) Immediately before or during surgery;

8 (b) During recovery from a surgery while in a  
 9 healthcare facility;

10 (c) In a healthcare facility; or

11 (d) Necessary to treat a patient in an  
 12 emergency situation at the scene of an emergency, in a licensed ground  
 13 ambulance or air ambulance, or in the intensive care unit of a licensed  
 14 hospital;

15 (ii) A practitioner prescribing or administering a  
 16 controlled substance to:

17 (a) A palliative care or hospice patient; or

18 (b) A resident in a licensed nursing home  
 19 facility; or

20 (iii) Situations in which the Prescription Drug  
 21 Monitoring Program is not accessible due to technological or electrical  
 22 failure.

23 (D) The State Board of Health may amend, by rule, the  
 24 exemptions listed in subdivision (d)(2)(C) of this section upon a  
 25 recommendation from the Director of the Department of Health and a showing  
 26 that the exemption or lack of exemption is unnecessarily burdensome or has  
 27 created a hardship.

28 (3) A licensed oncologist shall check the Prescription Drug  
 29 Monitoring Program when prescribing to a patient on an initial malignant  
 30 episodic diagnosis and every three (3) months following the diagnosis while  
 31 continuing treatment.

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 33 SECTION 2. Arkansas Code § 20-7-607(a)(1), concerning providing  
 34 prescription monitoring information to the Prescription Drug Monitoring  
 35 Program, is amended to read as follows:

36 (a)(1)(A)(i) The Department of Health ~~may~~ shall review the

1 Prescription Drug Monitoring Program information, including without  
2 limitation a review to identify information that appears to indicate whether  
3 a person ~~may be~~ is obtaining prescriptions in a manner that may represent  
4 misuse or abuse of controlled substances based on prescribing criteria  
5 determined by the Director of the Department of Health upon consultation with  
6 the Prescription Drug Monitoring Program Advisory Committee.

7 (ii) The prescribing criteria shall be posted on the  
8 website of the department and be available in print upon request.

9 (B) If the information appears to indicate misuse or abuse  
10 may have occurred, the department shall notify the practitioners and  
11 dispensers who have prescribed or dispensed in the following manner:

12 (i) The department shall provide quarterly reports  
13 to the individual practitioners and dispensers; and

14 (ii) If after twelve (12) months of providing  
15 quarterly reports to the practitioners and dispensers, the information  
16 appears to indicate misuse or abuse may be continuing, the department shall  
17 send a report to the licensing boards of the practitioner or dispenser who  
18 prescribed or dispensed the prescription.

19 (C) If information of misuse or abuse is identified, the  
20 department shall notify the practitioners and dispensers who prescribed or  
21 dispensed the prescriptions and the Office of Diversion Control of the United  
22 States Drug Enforcement Administration.

23 (D) On or before January 1, 2019, the department shall  
24 contract with a vendor to make the Prescription Drug Monitoring Program  
25 interactive and to provide same-day reporting in real-time, if funding and  
26 technology are available.

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28 SECTION 3. Arkansas Code § 20-7-611, concerning unlawful acts and  
29 penalties regarding the Prescription Drug Monitoring Program, is amended to  
30 add an additional subsection to read as follows:

31 (i) A practitioner who purposely fails to access the Prescription Drug  
32 Monitoring Program as required by § 20-7-604(d) is subject to disciplinary  
33 action by the licensing board of the practitioner.

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35 SECTION 4. Arkansas Code § 20-7-605(c), concerning the membership of  
36 the Prescription Drug Monitoring Program Advisory Committee, is amended to

1 read as follows:

2 (c) The committee shall consist of:

3 (1) One (1) representative designated by each of the following  
4 organizations:

5 (A) The Arkansas Academy of Physician Assistants;

6 (B) The Arkansas Association of Chiefs of Police;

7 (C) The Arkansas Drug Director;

8 (D) The Arkansas Medical Society;

9 (E) The Arkansas Nurses Association;

10 (F) The Arkansas Optometric Association;

11 (G) The Arkansas Osteopathic Medical Association;

12 (H) The Arkansas Pharmacists Association;

13 (I) The Arkansas Podiatric Medical Association;

14 (J) The Arkansas Prosecuting Attorneys Association;

15 (K) The Arkansas Sheriffs' Association;

16 (L) The Arkansas State Dental Association;

17 (M) The Arkansas Veterinary Medical Association;

18 (N) The State Board of Health; and

19 (O) The Arkansas Public Defender Commission;

20 (2) One (1) mental health provider or certified drug and alcohol  
21 counselor; ~~and~~

22 (3) One (1) consumer appointed by the Governor;

23 (4) The chair of the Arkansas State Medical Board or his or her  
24 designee who is also a member of the Arkansas State Medical Board; and

25 (5) The chair of the Arkansas State Board of Dental Examiners or  
26 his or her designee who is also a member of the Arkansas State Board of  
27 Dental Examiners.

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29 SECTION 5. Arkansas Code § 17-95-303, concerning the powers and duties  
30 of the Arkansas State Medical Board, is amended to add an additional  
31 subdivision to read as follows:

32 (11) Promulgate rules limiting the amount of Schedule II  
33 narcotics that may be dispensed by licensees of the board.

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35 SECTION 6. Arkansas Code § 10-3-309(c), concerning the review and  
36 approval of proposed state agency rules by the Legislative Council, is

1 amended to read as follows:

2 (c)(1) A state agency shall file a proposed rule with the Legislative  
3 Council at least thirty (30) days before the expiration of the period for  
4 public comment on the rule under the Arkansas Administrative Procedure Act, §  
5 25-15-201 et seq., or other laws or policies pertaining to the rulemaking  
6 authority of that state agency.

7 (2) The Legislative Council shall assign proposed rules to the  
8 Administrative Rules and Regulations Subcommittee of the Legislative Council.

9 (3)(A)(i) The proposed rule shall be reviewed by the  
10 Administrative Rules and Regulations Subcommittee of the Legislative Council.

11 (ii) When reviewing a rule under subdivision  
12 (c)(3)(A)(i) of this section, the Administrative Rules and Regulations  
13 Subcommittee of the Legislative Council shall allow members of the public a  
14 reasonable opportunity to comment on the proposed rule.

15 (B)(i)(a) Except as set forth in subdivision (c)(3)(B)(ii)  
16 of this subsection, Upon upon conclusion of the review of the proposed rule  
17 by the Administrative Rules and Regulations Subcommittee of the Legislative  
18 Council, the proposed rule shall be considered approved unless a majority of  
19 a quorum present request that the Administrative Rules and Regulations  
20 Subcommittee of the Legislative Council vote on the issue of approving the  
21 proposed rule.

22 ~~(ii)(b)~~ If the Administrative Rules and Regulations  
23 Subcommittee of the Legislative Council votes on the issue of approving the  
24 proposed rule, the proposed rule shall be approved unless a majority of a  
25 quorum present vote for the proposed rule to not be approved.

26 (ii) A proposed rule submitted by the State Board of  
27 Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from  
28 the requirements of the Prescription Drug Monitoring Program, shall be  
29 considered reviewed and approved by the subcommittee upon an affirmative vote  
30 of three-fourths (3/4) of the members present when a quorum is present.

31 (4)(A)(i) Except as set forth in subdivision (c)(4)(B) of this  
32 subsection, A a proposed rule approved by the Administrative Rules and  
33 Regulations Subcommittee of the Legislative Council shall be considered  
34 approved by the Legislative Council unless a majority of a quorum present  
35 request that the Legislative Council vote on the issue of approving the  
36 proposed rule.

1                   ~~(B)(ii)~~ *If the Legislative Council votes on the issue of*  
2 *approving the proposed rule, the proposed rule shall be approved unless a*  
3 *majority of a quorum present vote for the proposed rule to not be approved.*

4                   *(B) A proposed rule submitted by the State Board of Health*  
5 *under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the*  
6 *requirements of the Prescription Drug Monitoring Program, shall be considered*  
7 *reviewed and approved by the Legislative Council upon an affirmative vote of*  
8 *three-fourths (3/4) of the members present when a quorum is present.*

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11           *SECTION 7. Arkansas Code § 10-3-309(f), concerning a vote not to*  
12 *approve a state agency rule, is amended to read as follows:*

13           *(f)(1) A committee or subcommittee under this section may vote to not*  
14 *approve a rule under this section only if the rule is inconsistent with:*

15                   *(A) State or federal law; or*

16                   *(B) Legislative intent.*

17           *(2) A committee or subcommittee under this section voting not to*  
18 *approve a rule under this section shall state the grounds under subdivision*  
19 *(f)(1) of this section when not approving a rule.*

20           *(3) A committee or subcommittee under this section considering a*  
21 *rule submitted in accordance with Arkansas Code § 20-7-604(d)(2)(D),*  
22 *concerning exemptions from the Prescription Drug Monitoring Program, is not*  
23 *required to state the grounds required under subdivision (f)(1) when not*  
24 *approving a rule.*

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26           *SECTION 8. Arkansas Code § 17-82-208, concerning the rules and*  
27 *regulations of the Arkansas State Board of Dental Examiners, is amended to*  
28 *add an additional subsection to read as follows:*

29           *(e) The board shall promulgate rules limiting the amount of Schedule*  
30 *II narcotics that may be dispensed by licensees of the board.*

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32           *SECTION 9. Arkansas Code § 17-87-203, concerning the powers and duties*  
33 *of the Arkansas State Board of Nursing, is amended to add an additional*  
34 *subdivision to read as follows:*

35           *(21) Promulgate rules limiting the amount of Schedule II*  
36 *narcotics that may be dispensed by licensees of the board.*

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*SECTION 10. Arkansas Code § 17-90-204, concerning the powers and duties of the State Board of Optometry, is amended to add an additional subdivision to read as follows:*

*(8) Promulgate rules limiting the amount of Schedule II narcotics that may be dispensed by licensees of the board.*

*SECTION 11. Arkansas Code § 17-92-205, concerning the rules and regulations of the Arkansas State Board of Pharmacy, is amended to add an additional subsection to read as follows:*

*(d) The board shall promulgate rules limiting the amount of Schedule II narcotics that may be dispensed by licensees of the board.*

*SECTION 12. Arkansas Code § 17-101-203, concerning the powers and duties of the Veterinary Medical Examining Board, is amended to add an additional subdivision to read as follows:*

*(12) Promulgate rules limiting the amount of Schedule II narcotics that may be dispensed by licensees of the board.*

*/s/J. Hutchinson*