WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2009 Wisconsin Act 362 **[2009 Assembly Bill 227]**	**Prescription Drug Monitoring**

2009 Wisconsin Act 362 requires the Pharmacy Examining Board (PEB) to establish by rule a program for monitoring the dispensing of prescription drugs. For purposes of the Act, the term "prescription drug" is defined as a Schedule II or Schedule III controlled substance or a drug identified by the PEB by rule as having a substantial potential for abuse.

The Act requires the prescription drug monitoring program to do all of the following:

- Require a pharmacist or prescriber to generate a record documenting each dispensing of a prescription drug and to deliver the record to the PEB. However, the program may not require the generation of a record when a drug is administered directly to a patient.

- Identify specific data elements to be contained in a record documenting the dispensing of a prescription drug. In identifying these elements, the PEB is required to consider data elements identified by similar programs in other states and to ensure, to the extent possible, that records generated by the program are easily shared with other states.

- Specify the persons to whom a record may be disclosed and the circumstances under which the disclosure may occur. The rule must permit the PEB to share a record generated by the program with relevant agencies of other states.

- Specify a secure electronic format for delivery of a record generated under the program and authorize the PEB to grant a pharmacist or prescriber a waiver of the specified format.

- Specify a deadline for the delivery of a record to the PEB.

- Specify a penalty for failure to comply with the rules promulgated by the PEB.

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- Maximize the potential for funding the operation of the program with available federal funding sources.

- Ensure that the program complies with state law on confidentiality of patient health care records and federal privacy regulations promulgated under the authority of the Health Insurance Portability and Accountability Act (HIPAA).

The Act further provides that a pharmacist or prescriber is immune from civil or criminal liability or professional discipline arising from his or her compliance in good faith with the Act or rules promulgated under the Act. In addition, nothing in the new statute created by the Act may be construed to require a pharmacist or prescriber to obtain, before prescribing or dispensing, information about the patient that has been collected pursuant to the prescription drug monitoring program. Also, records generated under the program are not subject to inspection or copying under the Open Records Law.

The Act requires the Department of Regulation and Licensing (DRL) to submit a timely application for a federal grant under two specified federal programs to fund the establishment and operation of the prescription drug monitoring program. If DRL fails to obtain federal funding before January 1, 2015, the section of the statutes creating the prescription drug monitoring program is void.

Effective date: The Act takes effect on June 2, 2010. However, the portion of the Act that requires the PEB to establish a prescription drug monitoring program takes effect on the first day after DRL receives federal funding for that purpose.

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