

By Senator Fasano

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1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 400.9905, F.S.; redefining the terms "clinic" and
4 "portable equipment provider" within the Health Care
5 Clinic Act; amending s. 456.013, F.S.; authorizing
6 certain health care practitioners to complete a
7 continuing education course relating to the
8 prescription drug monitoring program; providing
9 requirements for the course; requiring the Department
10 of Health or a board that is authorized to exercise
11 regulatory or rulemaking functions within the
12 department to approve the course offered through a
13 facility licensed under ch. 395, F.S., under certain
14 circumstances; providing application of the course
15 requirements; requiring a board or the Department of
16 Health to adopt rules; amending s. 458.305, F.S.;
17 defining the term "dispensing physician" as it relates
18 to the practice of medicine in this state; prohibiting
19 certain persons from using titles or displaying signs
20 that would lead the public to believe that they engage
21 in the dispensing of controlled substances;
22 prohibiting certain persons, firms, or corporations
23 from using a trade name, sign, letter, or
24 advertisement that implies that the persons, firms, or
25 corporations are licensed or registered to dispense
26 prescription drugs; prohibiting certain persons,
27 firms, or corporations from holding themselves out to
28 the public as licensed or registered to dispense
29 controlled substances; prohibiting certain persons

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30 from performing the functions of a dispensing
31 physician; providing penalties; amending s. 458.3191,
32 F.S.; revising the information in the physician survey
33 that is submitted by persons who apply for licensure
34 renewal as a physician under ch. 458 or ch. 459, F.S.;
35 amending s. 458.3192, F.S.; requiring the Department
36 of Health to provide nonidentifying information to the
37 prescription drug monitoring program's Implementation
38 and Oversight Task Force regarding the number of
39 physicians that are registered with the prescription
40 drug monitoring program and that use the database from
41 the program in their practice; amending s. 458.3265,
42 F.S.; requiring a physician who works in a pain-
43 management clinic to document the reason a
44 prescription for a certain dosage of a controlled
45 substance is within the proper standard of care;
46 creating a felony of the third-degree for a licensee
47 or other person who serves as the designated physician
48 of a pain-management clinic to register a pain-
49 management clinic through misrepresentation or fraud;
50 amending s. 458.327, F.S.; providing additional
51 penalties; amending s. 458.331, F.S.; providing
52 additional grounds for disciplinary action by the
53 Board of Medicine; amending s. 459.003, F.S.; defining
54 the term "dispensing physician" as it relates to the
55 practice of osteopathic medicine in this state;
56 amending s. 459.013, F.S.; providing additional
57 penalties; amending s. 459.0137, F.S.; requiring an
58 osteopathic physician who works in a pain-management

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59 clinic to document the reason a prescription for a
60 certain dosage of a controlled substance is within the
61 proper standard of care; creating a felony of the
62 third-degree for a licensee or other person who serves
63 as the designated physician of a pain-management
64 clinic to register a pain-management clinic through
65 misrepresentation or fraud; amending s. 459.015, F.S.;
66 providing additional grounds for disciplinary action
67 by the Board of Osteopathic Medicine; amending s.
68 465.015, F.S.; prohibiting certain persons from
69 knowingly failing to report to the local county
70 sheriff's office and the Department of Law Enforcement
71 the commission of a felony involving a person who
72 acquires or obtains possession of a controlled
73 substance by misrepresentation, fraud, forgery,
74 deception, or subterfuge under certain conditions;
75 providing penalties; providing requirements for
76 reporting the commission of the felony that involves a
77 person who acquires or obtains possession of a
78 controlled substance by misrepresentation, fraud,
79 forgery, deception, or subterfuge; amending s.
80 465.0276, F.S.; requiring a practitioner to register
81 as a dispensing practitioner in order to dispense
82 controlled substances; amending s. 766.101, F.S.;
83 conforming a cross-reference; amending s. 810.02,
84 F.S.; redefining the offense of burglary to include
85 the theft of a controlled substance within a dwelling,
86 structure, or conveyance; amending s. 812.014, F.S.;
87 redefining the offense of theft to include the theft

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88 of a controlled substance; creating s. 893.021, F.S.;

89 providing conditions in which a drug is considered

90 adulterated; providing that a physician is not

91 prevented from directing or prescribing a change to

92 the recognized manufactured recommendations for use of

93 any controlled substance in a patient under certain

94 circumstances; requiring a prescribing physician to

95 indicate any deviation of the recognized

96 manufacturer's recommended use of a controlled

97 substance on the original prescription; requiring a

98 pharmacist or physician to indicate such deviation on

99 the label of the prescription upon dispensing;

100 amending s. 893.04, F.S.; revising the required

101 information that must appear on the face of a

102 prescription or written record of a controlled

103 substance before it is dispensed by a pharmacist;

104 amending s. 893.055, F.S.; requiring that the

105 prescription drug monitoring program comply with the

106 minimum requirements of the National All Schedules

107 Prescription Electronic Reporting Act; requiring the

108 Department of Health to establish a method to allow

109 corrections to the database of the prescription drug

110 monitoring program; requiring the number of refills

111 ordered and whether the drug was dispensed as a refill

112 or a first-time request to be included in the database

113 of the prescription drug monitoring program; revising

114 the number of days in which a dispensed controlled

115 substance must be reported to the department through

116 the prescription drug monitoring program; revising the

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117 list of acts of dispensing or administering which are
118 exempt from reporting; requiring a pharmacy,
119 prescriber, practitioner, or dispenser to register
120 with the department by submitting a registering
121 document in order to have access to certain
122 information in the prescription drug monitoring
123 program's database; requiring the department to
124 approve the registering document before granting
125 access to information in the prescription drug
126 monitoring program's database; requiring criminal
127 background screening for those persons who have direct
128 access to the prescription drug monitoring program's
129 database; authorizing the Attorney General to obtain
130 confidential and exempt information for Medicaid fraud
131 cases and Medicaid investigations; requiring certain
132 documentation to be provided to the program manager in
133 order to release confidential and exempt information
134 from the prescription drug monitoring program's
135 database to a patient, legal guardian, or a designated
136 health care surrogate; authorizing the Agency for
137 Health Care Administration to obtain confidential and
138 exempt information from the prescription drug
139 monitoring program's database for Medicaid fraud cases
140 and Medicaid investigations involving controlled
141 substances; deleting the provision that administrative
142 costs of the prescription drug monitoring program are
143 funded through federal grants and private sources;
144 requiring the State Surgeon General to enter into
145 reciprocal agreements for the sharing of information

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146 in the prescription drug monitoring program with other
147 states that have a similar prescription drug
148 monitoring program; requiring the State Surgeon
149 General to annually review a reciprocal agreement to
150 determine its compatibility; providing requirements
151 for compatibility; prohibiting the sharing of certain
152 information; amending s. 893.0551, F.S.; authorizing
153 the Department of Health to disclose certain
154 confidential and exempt information in the
155 prescription drug monitoring program's database under
156 certain circumstances involving reciprocal agreements
157 with other states; prohibiting the sharing of
158 information from the prescription drug monitoring
159 program's database which is not for the purpose that
160 is statutorily authorized or according to the State
161 Surgeon General's determination of compatibility;
162 amending s. 893.07, F.S.; requiring that a person
163 report to the Department of Law Enforcement and the
164 local sheriff's office the theft or loss of a
165 controlled substance within a specified time;
166 providing penalties; providing legislative intent;
167 amending s. 893.13, F.S.; prohibiting a person from
168 obtaining or attempting to obtain from a practitioner
169 a controlled substance or a prescription for a
170 controlled substance by misrepresentation, fraud,
171 forgery, deception, subterfuge, or concealment of a
172 material fact; prohibiting a health care provider from
173 providing a controlled substance or a prescription for
174 a controlled substance by misrepresentation, fraud,

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175 forgery, deception, subterfuge, or concealment of a
176 material fact; prohibiting a person from adulterating
177 a controlled substance for certain use without
178 authorization by a prescribing physician; authorizing
179 a law enforcement officer to seize as evidence the
180 adulteration or off-label use of a prescribed
181 controlled substance; providing that such adulterated
182 or off-label use of the controlled substance may be
183 returned to its owner only under certain conditions;
184 providing penalties; prohibiting a prescribing
185 practitioner from writing a prescription for a
186 controlled substance and authorizing or directing the
187 adulteration of the dispensed form of the controlled
188 substance for the purpose of ingestion by means that
189 is not medically necessary; amending s. 893.138, F.S.;
190 providing circumstances in which a pain-management
191 clinic may be declared a public nuisance; providing an
192 effective date.

193

194 Be It Enacted by the Legislature of the State of Florida:

195

196 Section 1. Subsections (4) and (7) of section 400.9905,
197 Florida Statutes, are amended to read:

198 400.9905 Definitions.—

199 (4) "Clinic" means an entity at which health care services
200 are provided to individuals and which tenders charges for
201 payment ~~reimbursement~~ for such services, including a mobile
202 clinic and a portable equipment provider. For purposes of this
203 part, the term does not include and the licensure requirements

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204 of this part do not apply to:

205 (a) Entities licensed or registered by the state under
206 chapter 395; or entities licensed or registered by the state and
207 providing only health care services within the scope of services
208 authorized under their respective licenses granted under ss.
209 383.30-383.335, chapter 390, chapter 394, chapter 397, this
210 chapter except part X, chapter 429, chapter 463, chapter 465,
211 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
212 chapter 651; end-stage renal disease providers authorized under
213 42 C.F.R. part 405, subpart U; or providers certified under 42
214 C.F.R. part 485, subpart B or subpart H; or any entity that
215 provides neonatal or pediatric hospital-based health care
216 services or other health care services by licensed practitioners
217 solely within a hospital licensed under chapter 395.

218 (b) Entities that own, directly or indirectly, entities
219 licensed or registered by the state pursuant to chapter 395; or
220 entities that own, directly or indirectly, entities licensed or
221 registered by the state and providing only health care services
222 within the scope of services authorized pursuant to their
223 respective licenses granted under ss. 383.30-383.335, chapter
224 390, chapter 394, chapter 397, this chapter except part X,
225 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
226 part I of chapter 483, chapter 484, chapter 651; end-stage renal
227 disease providers authorized under 42 C.F.R. part 405, subpart
228 U; or providers certified under 42 C.F.R. part 485, subpart B or
229 subpart H; or any entity that provides neonatal or pediatric
230 hospital-based health care services by licensed practitioners
231 solely within a hospital licensed under chapter 395.

232 (c) Entities that are owned, directly or indirectly, by an

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233 entity licensed or registered by the state pursuant to chapter
234 395; or entities that are owned, directly or indirectly, by an
235 entity licensed or registered by the state and providing only
236 health care services within the scope of services authorized
237 pursuant to their respective licenses granted under ss. 383.30-
238 383.335, chapter 390, chapter 394, chapter 397, this chapter
239 except part X, chapter 429, chapter 463, chapter 465, chapter
240 466, chapter 478, part I of chapter 483, chapter 484, or chapter
241 651; end-stage renal disease providers authorized under 42
242 C.F.R. part 405, subpart U; or providers certified under 42
243 C.F.R. part 485, subpart B or subpart H; or any entity that
244 provides neonatal or pediatric hospital-based health care
245 services by licensed practitioners solely within a hospital
246 under chapter 395.

247 (d) Entities that are under common ownership, directly or
248 indirectly, with an entity licensed or registered by the state
249 pursuant to chapter 395; or entities that are under common
250 ownership, directly or indirectly, with an entity licensed or
251 registered by the state and providing only health care services
252 within the scope of services authorized pursuant to their
253 respective licenses granted under ss. 383.30-383.335, chapter
254 390, chapter 394, chapter 397, this chapter except part X,
255 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
256 part I of chapter 483, chapter 484, or chapter 651; end-stage
257 renal disease providers authorized under 42 C.F.R. part 405,
258 subpart U; or providers certified under 42 C.F.R. part 485,
259 subpart B or subpart H; or any entity that provides neonatal or
260 pediatric hospital-based health care services by licensed
261 practitioners solely within a hospital licensed under chapter

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262 395.

263 (e) An entity that is exempt from federal taxation under 26
264 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
265 under 26 U.S.C. s. 409 that has a board of trustees not less
266 than two-thirds of which are Florida-licensed health care
267 practitioners and provides only physical therapy services under
268 physician orders, any community college or university clinic,
269 and any entity owned or operated by the federal or state
270 government, including agencies, subdivisions, or municipalities
271 thereof.

272 (f) A sole proprietorship, group practice, partnership, or
273 corporation that provides health care services by physicians
274 covered by s. 627.419, that is directly supervised by one or
275 more of such physicians, and that is wholly owned by one or more
276 of those physicians or by a physician and the spouse, parent,
277 child, or sibling of that physician.

278 (g) A sole proprietorship, group practice, partnership, or
279 corporation that provides health care services by licensed
280 health care practitioners under chapter 457, chapter 458,
281 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
282 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
283 chapter 490, chapter 491, or part I, part III, part X, part
284 XIII, or part XIV of chapter 468, or s. 464.012, which are
285 wholly owned by one or more licensed health care practitioners,
286 or the licensed health care practitioners set forth in this
287 paragraph and the spouse, parent, child, or sibling of a
288 licensed health care practitioner, so long as one of the owners
289 who is a licensed health care practitioner is supervising the
290 business activities and is legally responsible for the entity's

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291 compliance with all federal and state laws. However, a health
292 care practitioner may not supervise services beyond the scope of
293 the practitioner's license, except that, for the purposes of
294 this part, a clinic owned by a licensee in s. 456.053(3)(b) that
295 provides only services authorized pursuant to s. 456.053(3)(b)
296 may be supervised by a licensee specified in s. 456.053(3)(b).

297 (h) Clinical facilities affiliated with an accredited
298 medical school at which training is provided for medical
299 students, residents, or fellows.

300 (i) Entities that provide only oncology or radiation
301 therapy services by physicians licensed under chapter 458 or
302 chapter 459 or entities that provide oncology or radiation
303 therapy services by physicians licensed under chapter 458 or
304 chapter 459 which are owned by a corporation whose shares are
305 publicly traded on a recognized stock exchange.

306 (j) Clinical facilities affiliated with a college of
307 chiropractic accredited by the Council on Chiropractic Education
308 at which training is provided for chiropractic students.

309 (k) Entities that provide licensed practitioners to staff
310 emergency departments or to deliver anesthesia services in
311 facilities licensed under chapter 395 and that derive at least
312 90 percent of their gross annual revenues from the provision of
313 such services. Entities claiming an exemption from licensure
314 under this paragraph must provide documentation demonstrating
315 compliance.

316 (l) Orthotic or prosthetic clinical facilities that are a
317 publicly traded corporation or that are wholly owned, directly
318 or indirectly, by a publicly traded corporation. As used in this
319 paragraph, a publicly traded corporation is a corporation that

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320 issues securities traded on an exchange registered with the
321 United States Securities and Exchange Commission as a national
322 securities exchange.

323 (7) "Portable equipment provider" means an entity that
324 contracts with or employs persons to provide portable equipment
325 to multiple locations performing treatment or diagnostic testing
326 of individuals, ~~that bills third-party payors for those~~
327 ~~services,~~ and that otherwise meets the definition of a clinic in
328 subsection (4).

329 Section 2. Subsection (7) of section 456.013, Florida
330 Statutes, is amended to read:

331 456.013 Department; general licensing provisions.—

332 (7) (a) The boards, or the department when there is no
333 board, shall require the completion of a 2-hour course relating
334 to prevention of medical errors as part of the licensure and
335 renewal process. The 2-hour course counts ~~shall count~~ towards
336 the total number of continuing education hours required for the
337 profession. The board or department shall approve the course
338 ~~shall be approved by the board or department,~~ as appropriate,
339 which must and shall include a study of root-cause analysis,
340 error reduction and prevention, and patient safety. In addition,
341 the course approved by the Board of Medicine and the Board of
342 Osteopathic Medicine must ~~shall~~ include information relating to
343 the five most misdiagnosed conditions during the previous
344 biennium, as determined by the board. If the course is being
345 offered by a facility licensed under ~~pursuant to~~ chapter 395 for
346 its employees, the board may approve up to 1 hour of the 2-hour
347 course to be specifically related to error reduction and
348 prevention methods used in that facility.

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349 (b) As a condition of initial licensure and at each
350 subsequent license renewal, the boards, or the department if
351 there is no board, shall allow each practitioner licensed under
352 chapter 458, chapter 459, chapter 461, chapter 465, or chapter
353 466 whose lawful scope of practice authorizes the practitioner
354 to prescribe, administer, or dispense controlled substances to
355 complete a 3-hour continuing education course relating to the
356 prescription drug monitoring program. The course must include,
357 but need not be limited to:

358 1. The purpose of the prescription drug monitoring program.

359 2. The practitioners' capabilities for improving the
360 standard of care for patients by using the prescription drug
361 monitoring program.

362 3. How the prescription drug monitoring program can help
363 practitioners detect doctor shopping.

364 4. The involvement of law enforcement personnel, the
365 Attorney General's Medicaid Fraud Unit, and medical regulatory
366 investigators with the prescription drug monitoring program.

367 5. The procedures for registering for access to the
368 prescription drug monitoring program.

369
370 The course hours may be included in the total number of hours of
371 continuing education required by the profession and must be
372 approved by the board or by the department if there is no board.
373 The boards, or the department if there is no board, shall
374 approve the course offered through a facility licensed under
375 chapter 395 for its employees if the course is at least 3 hours
376 and covers the education requirements.

377 (c) The course requirements in paragraph (b) apply to each

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378 licensee renewing his or her license on or after July 1, 2012,
379 and to each applicant approved for licensure on or after January
380 1, 2013.

381 (d) By October 1, 2011, the boards, or the department if
382 there is no board, shall adopt rules as necessary to administer
383 this subsection.

384 Section 3. Section 458.305, Florida Statutes, is amended to
385 read:

386 458.305 Definitions.—As used in this chapter:

387 (1) "Board" means the Board of Medicine.

388 (2) "Department" means the Department of Health.

389 (3) "Dispensing physician" means a physician who is
390 registered as a dispensing practitioner under s. 465.0276.

391 (4)~~(3)~~ "Practice of medicine" means the diagnosis,
392 treatment, operation, or prescription for any human disease,
393 pain, injury, deformity, or other physical or mental condition.

394 (5)~~(4)~~ "Physician" means a person who is licensed to
395 practice medicine in this state.

396 Section 4. Advertising of controlled substances by a
397 dispensing physician.—

398 (1) (a) A person, other than a dispensing physician licensed
399 under chapter 458 or chapter 459, Florida Statutes, may not use
400 the title "dispensing physician" or "dispenser" or otherwise
401 lead the public to believe that he or she is engaged in the
402 dispensing of controlled substances.

403 (b) A person, other than an owner of a:

404 1. Pain-management clinic registered under chapter 458 or
405 chapter 459, Florida Statutes; or

406 2. Health clinic licensed under chapter 400, Florida

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407 Statutes,

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409 may not display any sign or take any other action that would
410 lead the public to believe that such person is engaged in the
411 business of dispensing a controlled substance. Any advertisement
412 that states "dispensing onsite" or "onsite pharmacy" violates
413 this paragraph. This paragraph does not preclude a person who is
414 not licensed as a medical practitioner from owning a pain-
415 management clinic.

416 (c) A person, firm, or corporation that is not licensed or
417 registered under chapter 458 or chapter 459, Florida Statutes,
418 may not:

419 1. Use in a trade name, sign, letter, or advertisement any
420 term, including "drug," "pharmacy," "onsite pharmacy,"
421 "dispensing," "dispensing onsite," "prescription drugs," "Rx,"
422 or "apothecary," which implies that the person, firm, or
423 corporation is licensed or registered to dispense prescription
424 drugs in this state.

425 2. Hold himself or herself out to the public as a person,
426 firm, or corporation that is licensed or registered to dispense
427 controlled substances in this state.

428 (2) A person who is not a dispensing physician under
429 chapter 458 or chapter 459, Florida Statutes, or who is not
430 otherwise exempt from the requirement to register as a
431 dispensing practitioner, may not perform the functions of a
432 dispensing physician.

433 (3) A person who violates paragraph (1)(a), paragraph
434 (1)(b), or subsection (2) commits a misdemeanor of the first
435 degree, punishable as provided in s. 775.082 or s. 775.083,

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436 Florida Statutes. A person who violates paragraph (1)(c) commits
437 a felony of the third degree, punishable as provided in s.
438 775.082, s. 775.083, or s. 775.084, Florida Statutes. In any
439 warrant, information, or indictment, it is not necessary to
440 negate any exceptions, and the burden of any exception is upon
441 the defendant.

442 Section 5. Paragraph (a) of subsection (1) of section
443 458.3191, Florida Statutes, is amended to read:

444 458.3191 Physician survey.—

445 (1) Each person who applies for licensure renewal as a
446 physician under this chapter or chapter 459 must, in conjunction
447 with the renewal of such license under procedures adopted by the
448 Department of Health and in addition to any other information
449 that may be required from the applicant, furnish the following
450 to the Department of Health in a physician survey:

451 (a) Licensee information, including, but not limited to:

452 1. Frequency and geographic location of practice within the
453 state.

454 2. Practice setting.

455 3. Percentage of time spent in direct patient care.

456 4. Anticipated change to license or practice status.

457 5. Areas of specialty or certification.

458 6. Whether the department has ever approved or denied the
459 physician's registration for access to a patient's information
460 in the prescription drug monitoring program's database.

461 7. Whether the physician uses the prescription drug
462 monitoring program with patients in his or her medical practice.

463 Section 6. Subsection (3) is added to section 458.3192,
464 Florida Statutes, to read:

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465 458.3192 Analysis of survey results; report.—

466 (3) By November 1 each year, the Department of Health shall
467 provide nonidentifying information to the prescription drug
468 monitoring program's Implementation and Oversight Task Force
469 regarding the number of physicians who are registered with the
470 prescription drug monitoring program and who also use the
471 database from the prescription drug monitoring program for their
472 patients in their medical practice.

473 Section 7. Paragraph (c) of subsection (2) of section
474 458.3265, Florida Statutes, is amended, and paragraph (f) is
475 added to subsection (5) of that section, to read:

476 458.3265 Pain-management clinics.—

477 (2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
478 apply to any physician who provides professional services in a
479 pain-management clinic that is required to be registered in
480 subsection (1).

481 (c) A physician must perform a physical examination of a
482 patient on the same day that he or she dispenses or prescribes a
483 controlled substance to a patient at a pain-management clinic.
484 If the physician prescribes or dispenses more than a 72-hour
485 dose of controlled substances for the treatment of chronic
486 nonmalignant pain, the physician must document in the patient's
487 record the reason such dosage is within the standard of care ~~for~~
488 ~~prescribing or dispensing that quantity.~~

489 (5) PENALTIES; ENFORCEMENT.—

490 (f) A licensee or other person who serves as the designated
491 physician of a pain-management clinic as defined in this section
492 or s. 459.0137 and registers a pain-management clinic through
493 misrepresentation or fraud or procures or attempts to procure

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494 the registration of a pain-management clinic for any other
495 person by making or causing to be made any false or fraudulent
496 representation commits a felony of the third degree, punishable
497 as provided in s. 775.082, s. 775.083, or s. 775.084.

498 Section 8. Paragraphs (f) and (g) are added to subsection
499 (1), paragraphs (g) and (h) are added to subsection (2), and
500 subsection (3) is added to section 458.327, Florida Statutes, to
501 read:

502 458.327 Penalty for violations.—

503 (1) Each of the following acts constitutes a felony of the
504 third degree, punishable as provided in s. 775.082, s. 775.083,
505 or s. 775.084:

506 (f) Failing to perform a physical examination of a patient
507 on the same day that the treating physician dispenses or
508 prescribes a controlled substance to the patient at a pain-
509 management clinic occurring three or more times within a 6-month
510 period, or failing to perform a physical examination on three or
511 more different patients on the same day that the treating
512 physician dispenses or prescribes a controlled substance to each
513 patient at a pain-management clinic within a 6-month period.

514 (g) Prescribing or dispensing in excess of a 72-hour dose
515 of controlled substances for the treatment of chronic
516 nonmalignant pain of a patient occurring three or more times
517 within a 6-month period without documenting in the patient's
518 record the reason that such dosage is within the standard of
519 care.

520 (2) Each of the following acts constitutes a misdemeanor of
521 the first degree, punishable as provided in s. 775.082 or s.
522 775.083:

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523 (g) Failing to perform a physical examination of a patient
524 on the same day that the treating physician dispenses or
525 prescribes a controlled substance to the patient at a pain-
526 management clinic two or more times in a 6-month period, or
527 failing to perform a physical examination on two or more
528 different patients on the same day that the treating physician
529 dispenses or prescribes a controlled substance to each patient
530 at a pain-management clinic within a 6-month period.

531 (h) Prescribing or dispensing in excess of a 72-hour dose
532 of controlled substances for the treatment of chronic
533 nonmalignant pain of a patient occurring two or more times
534 within a 6-month period without documenting in the patient's
535 record the reason that such dosage is within the standard of
536 care.

537 (3) Each of the following acts constitutes a misdemeanor of
538 the second degree, punishable as provided in s. 775.082 or s.
539 775.083:

540 (a) A first offense of failing to perform a physical
541 examination of a patient on the same day that the treating
542 physician dispenses or prescribes a controlled substance to the
543 patient at a pain-management clinic.

544 (b) A first offense of failing to document in a patient's
545 record the reason that such dosage is within the standard of
546 care for prescribing or dispensing in excess of a 72-hour dose
547 of controlled substances for the treatment of chronic
548 nonmalignant pain.

549 Section 9. Subsection (11) is added to section 458.331,
550 Florida Statutes, to read:

551 458.331 Grounds for disciplinary action; action by the

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552 board and department.—

553 (11) Notwithstanding subsection (2), upon finding that a
554 physician has prescribed or dispensed, or caused to be
555 prescribed or dispensed, a controlled substance in a pain-
556 management clinic in a manner that violates the standard of
557 practice as set forth in chapter 458 or rules adopted pursuant
558 to chapter 458, the board shall, at a minimum, suspend the
559 physician's license for at least 6 months and impose a fine of
560 at least \$10,000 per count. Repeated violations shall result in
561 increased penalties.

562 Section 10. Present subsections (3), (4), and (5) of
563 section 459.003, Florida Statutes, are redesignated as
564 subsections (4), (5), and (6), respectively, and a new
565 subsection (3) is added to that section, to read:

566 459.003 Definitions.—As used in this chapter:

567 (3) "Dispensing physician" means an osteopathic physician
568 who is registered as a dispensing practitioner under s.
569 465.0276.

570 Section 11. Paragraphs (f) and (g) are added to subsection
571 (1), paragraphs (e) and (f) are added to subsection (2), and
572 paragraphs (d) and (e) are added to subsection (3) of section
573 459.013, Florida Statutes, to read:

574 459.013 Penalty for violations.—

575 (1) Each of the following acts constitutes a felony of the
576 third degree, punishable as provided in s. 775.082, s. 775.083,
577 or s. 775.084:

578 (f) Failing to perform a physical examination of a patient
579 on the same day that the osteopathic physician dispenses or
580 prescribes a controlled substance to the patient at a pain-

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581 management clinic occurring three or more times within a 6-month
582 period, or failing to perform a physical examination on three or
583 more different patients on the same day that the osteopathic
584 physician dispenses or prescribes a controlled substance to each
585 patient at a pain-management clinic within a 6-month period.

586 (g) Prescribing or dispensing in excess of a 72-hour dose
587 of controlled substances for the treatment of chronic
588 nonmalignant pain of a patient occurring three or more times
589 within a 6-month period without documenting in the patient's
590 record the reason that such dosage is within the standard of
591 care.

592 (2) Each of the following acts constitutes a misdemeanor of
593 the first degree, punishable as provided in s. 775.082 or s.
594 775.083:

595 (e) Failing to perform a physical examination of a patient
596 on the same day that the osteopathic physician dispenses or
597 prescribes a controlled substance to the patient at a pain-
598 management clinic occurring two or more times within a 6-month
599 period, or failing to perform a physical examination on two or
600 more different patients on the same day that the osteopathic
601 physician dispenses or prescribes a controlled substance to each
602 patient at a pain-management clinic within a 6-month period.

603 (f) Prescribing or dispensing in excess of a 72-hour dose
604 of controlled substances for the treatment of chronic
605 nonmalignant pain of a patient occurring two or more times
606 within a 6-month period without documenting in the patient's
607 record the reason that such dosage is within the standard of
608 care.

609 (3) Each of the following constitutes a misdemeanor of the

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610 second degree, punishable as provided in s. 775.082 or s.
611 775.083:

612 (d) A first offense of failing to perform a physical
613 examination of a patient on the same day that the osteopathic
614 physician dispenses or prescribes a controlled substance to the
615 patient at a pain-management clinic.

616 (e) A first offense of failing to document in a patient's
617 record the reason that such dosage is within the standard of
618 care for prescribing or dispensing in excess of a 72-hour dose
619 of controlled substances for the treatment of chronic
620 nonmalignant pain.

621 Section 12. Paragraph (c) of subsection (2) of section
622 459.0137, Florida Statutes, is amended, and a new paragraph (f)
623 is added to subsection (5) of that section, to read:

624 459.0137 Pain-management clinics.—

625 (2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
626 apply to any osteopathic physician who provides professional
627 services in a pain-management clinic that is required to be
628 registered in subsection (1).

629 (c) An osteopathic physician must perform a physical
630 examination of a patient on the same day that he or she
631 dispenses or prescribes a controlled substance to a patient at a
632 pain-management clinic. If the osteopathic physician prescribes
633 or dispenses more than a 72-hour dose of controlled substances
634 for the treatment of chronic nonmalignant pain, the osteopathic
635 physician must document in the patient's record the reason such
636 dosage is within the standard of care ~~for prescribing or~~
637 ~~dispensing that quantity.~~

638 (5) PENALTIES; ENFORCEMENT.—

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639 (f) A licensee or other person who serves as the designated
640 physician of a pain-management clinic as defined in s. 458.3265
641 or s. 459.0137 and registers a pain-management clinic through
642 misrepresentation or fraud or procures or attempts to procure
643 the registration of a pain-management clinic for any other
644 person by making or causing to be made any false or fraudulent
645 representation commits a felony of the third degree, punishable
646 as provided in s. 775.082, s. 775.083, or s. 775.084.

647 Section 13. Subsection (11) is added to section 459.015,
648 Florida Statutes, to read:

649 459.015 Grounds for disciplinary action; action by the
650 board and department.—

651 (11) Notwithstanding subsection (2), upon finding that an
652 osteopathic physician has prescribed or dispensed, or caused to
653 be prescribed or dispensed, a controlled substance in a pain-
654 management clinic in a manner that violates the standard of
655 practice as set forth in chapter 459 or rules adopted pursuant
656 to chapter 459, the board shall, at a minimum, suspend the
657 osteopathic physician's license for at least 6 months and impose
658 a fine of at least \$10,000 per count. Repeated violations shall
659 result in increased penalties.

660 Section 14. Subsection (5) is added to section 465.015,
661 Florida Statutes, to read:

662 465.015 Violations and penalties.—

663 (5)1. A licensed pharmacist, pharmacy technician, or any
664 person working under the direction or supervision of a
665 pharmacist or pharmacy technician, may not knowingly fail to
666 timely report to the Department of Law Enforcement and the local
667 county sheriff's office the name of any person who obtains or

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668 attempts to obtain a substance controlled by s. 893.03 which the
669 pharmacist, pharmacy intern, or other person employed by or at a
670 pharmacy knows or reasonably should have known was obtained or
671 attempted to be obtained from the pharmacy through any
672 fraudulent method or representation. A pharmacist, pharmacy
673 intern, or other person employed by or at a pharmacy who fails
674 to make such a report within 24 hours after learning of the
675 fraud or attempted fraud commits a misdemeanor of the first
676 degree, punishable as provided in s. 775.082 or s. 775.083.

677 2. A sufficient report of the fraudulent obtaining of or
678 attempt to obtain a controlled substance under this section must
679 contain, at a minimum, a copy of the prescription used or
680 presented and a narrative, including all information available
681 to the pharmacy regarding:

682 a. The transaction, such as the name and telephone number
683 of the prescribing physician;

684 b. The name, description, and any personal identification
685 information pertaining to the person presenting the
686 prescription; and

687 c. All other material information, such as photographic or
688 video surveillance of the transaction.

689 Section 15. Subsection (6) is added to section 465.0276,
690 Florida Statutes, to read:

691 465.0276 Dispensing practitioner.—

692 (6) In order to dispense a controlled substance listed in
693 Schedule II, Schedule III, Schedule IV, or Schedule V in s.
694 893.03, a practitioner authorized by law to prescribe a
695 controlled substance shall register with the Board of Pharmacy
696 as a dispensing practitioner who dispenses controlled substances

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697 and pay a fee not to exceed \$100. The department shall adopt
698 rules establishing procedures for renewal of the registration
699 every 4 years.

700 Section 16. Paragraph (a) of subsection (1) of section
701 766.101, Florida Statutes, is amended to read:

702 766.101 Medical review committee, immunity from liability.—

703 (1) As used in this section:

704 (a) The term "medical review committee" or "committee"
705 means:

706 1.a. A committee of a hospital or ambulatory surgical
707 center licensed under chapter 395 or a health maintenance
708 organization certificated under part I of chapter 641,

709 b. A committee of a physician-hospital organization, a
710 provider-sponsored organization, or an integrated delivery
711 system,

712 c. A committee of a state or local professional society of
713 health care providers,

714 d. A committee of a medical staff of a licensed hospital or
715 nursing home, provided the medical staff operates pursuant to
716 written bylaws that have been approved by the governing board of
717 the hospital or nursing home,

718 e. A committee of the Department of Corrections or the
719 Correctional Medical Authority as created under s. 945.602, or
720 employees, agents, or consultants of either the department or
721 the authority or both,

722 f. A committee of a professional service corporation formed
723 under chapter 621 or a corporation organized under chapter 607
724 or chapter 617, which is formed and operated for the practice of
725 medicine as defined in s. 458.305(4) ~~s. 458.305(3)~~, and which

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726 has at least 25 health care providers who routinely provide
727 health care services directly to patients,

728 g. A committee of the Department of Children and Family
729 Services which includes employees, agents, or consultants to the
730 department as deemed necessary to provide peer review,
731 utilization review, and mortality review of treatment services
732 provided pursuant to chapters 394, 397, and 916,

733 h. A committee of a mental health treatment facility
734 licensed under chapter 394 or a community mental health center
735 as defined in s. 394.907, provided the quality assurance program
736 operates pursuant to the guidelines which have been approved by
737 the governing board of the agency,

738 i. A committee of a substance abuse treatment and education
739 prevention program licensed under chapter 397 provided the
740 quality assurance program operates pursuant to the guidelines
741 which have been approved by the governing board of the agency,

742 j. A peer review or utilization review committee organized
743 under chapter 440,

744 k. A committee of the Department of Health, a county health
745 department, healthy start coalition, or certified rural health
746 network, when reviewing quality of care, or employees of these
747 entities when reviewing mortality records, or

748 l. A continuous quality improvement committee of a pharmacy
749 licensed pursuant to chapter 465,

750

751 which committee is formed to evaluate and improve the quality of
752 health care rendered by providers of health service, to
753 determine that health services rendered were professionally
754 indicated or were performed in compliance with the applicable

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755 standard of care, or that the cost of health care rendered was
 756 considered reasonable by the providers of professional health
 757 services in the area; or

758 2. A committee of an insurer, self-insurer, or joint
 759 underwriting association of medical malpractice insurance, or
 760 other persons conducting review under s. 766.106.

761 Section 17. Subsection (3) of section 810.02, Florida
 762 Statutes, is amended to read:

763 810.02 Burglary.—

764 (3) Burglary is a felony of the second degree, punishable
 765 as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the
 766 course of committing the offense, the offender does not make an
 767 assault or battery and is not and does not become armed with a
 768 dangerous weapon or explosive, and the offender enters or
 769 remains in a:

770 (a) Dwelling, and there is another person in the dwelling
 771 at the time the offender enters or remains;

772 (b) Dwelling, and there is not another person in the
 773 dwelling at the time the offender enters or remains;

774 (c) Structure, and there is another person in the structure
 775 at the time the offender enters or remains;

776 (d) Conveyance, and there is another person in the
 777 conveyance at the time the offender enters or remains; ~~or~~

778 (e) Authorized emergency vehicle, as defined in s. 316.003;
 779 or—

780 (f) Dwelling, structure, or conveyance when the offense
 781 intended to be committed is theft of a substance controlled by
 782 s. 893.03. Notwithstanding any contrary provisions of law,
 783 separate judgments and sentences for burglary with the intent to

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784 commit theft of a controlled substance under this paragraph and
785 for any applicable offense for possession of a controlled
786 substance under s. 893.13, or an offense for trafficking in a
787 controlled substance under s. 893.135, may be imposed if all
788 such offenses involve the same amount or amounts of a controlled
789 substance.

790
791 However, if the burglary is committed within a county that is
792 subject to a state of emergency declared by the Governor under
793 chapter 252 after the declaration of emergency is made and the
794 perpetration of the burglary is facilitated by conditions
795 arising from the emergency, the burglary is a felony of the
796 first degree, punishable as provided in s. 775.082, s. 775.083,
797 or s. 775.084. As used in this subsection, the term "conditions
798 arising from the emergency" means civil unrest, power outages,
799 curfews, voluntary or mandatory evacuations, or a reduction in
800 the presence of or response time for first responders or
801 homeland security personnel. A person arrested for committing a
802 burglary within a county that is subject to such a state of
803 emergency may not be released until the person appears before a
804 committing magistrate at a first appearance hearing. For
805 purposes of sentencing under chapter 921, a felony offense that
806 is reclassified under this subsection is ranked one level above
807 the ranking under s. 921.0022 or s. 921.0023 of the offense
808 committed.

809 Section 18. Paragraph (c) of subsection (2) of section
810 812.014, Florida Statutes, is amended to read:

811 812.014 Theft.—

812 (2)

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813 (c) It is grand theft of the third degree and a felony of
814 the third degree, punishable as provided in s. 775.082, s.
815 775.083, or s. 775.084, if the property stolen is:

- 816 1. Valued at \$300 or more, but less than \$5,000.
- 817 2. Valued at \$5,000 or more, but less than \$10,000.
- 818 3. Valued at \$10,000 or more, but less than \$20,000.
- 819 4. A will, codicil, or other testamentary instrument.
- 820 5. A firearm.
- 821 6. A motor vehicle, except as provided in paragraph (a).
- 822 7. Any commercially farmed animal, including any animal of
823 the equine, bovine, or swine class, or other grazing animal, and
824 including aquaculture species raised at a certified aquaculture
825 facility. If the property stolen is aquaculture species raised
826 at a certified aquaculture facility, then a \$10,000 fine shall
827 be imposed.
- 828 8. Any fire extinguisher.
- 829 9. Any amount of citrus fruit consisting of 2,000 or more
830 individual pieces of fruit.
- 831 10. Taken from a designated construction site identified by
832 the posting of a sign as provided for in s. 810.09(2)(d).
- 833 11. Any stop sign.
- 834 12. Anhydrous ammonia.
- 835 13. Any amount of a substance controlled by s. 893.03.

836 Notwithstanding any contrary provisions of law, separate
837 judgments and sentences for theft of a controlled substance
838 under this subparagraph, and for any applicable offense for
839 possession of a controlled substance under s. 893.13, or an
840 offense for trafficking in a controlled substance under s.
841 893.135 may be imposed if all such offenses involve the same

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842 amount or amounts of controlled substance.

843

844 However, if the property is stolen within a county that is
845 subject to a state of emergency declared by the Governor under
846 chapter 252, the property is stolen after the declaration of
847 emergency is made, and the perpetration of the theft is
848 facilitated by conditions arising from the emergency, the
849 offender commits a felony of the second degree, punishable as
850 provided in s. 775.082, s. 775.083, or s. 775.084, if the
851 property is valued at \$5,000 or more, but less than \$10,000, as
852 provided under subparagraph 2., or if the property is valued at
853 \$10,000 or more, but less than \$20,000, as provided under
854 subparagraph 3. As used in this paragraph, the term "conditions
855 arising from the emergency" means civil unrest, power outages,
856 curfews, voluntary or mandatory evacuations, or a reduction in
857 the presence of or the response time for first responders or
858 homeland security personnel. For purposes of sentencing under
859 chapter 921, a felony offense that is reclassified under this
860 paragraph is ranked one level above the ranking under s.
861 921.0022 or s. 921.0023 of the offense committed.

862 Section 19. Section 893.021, Florida Statutes, is created
863 to read:

864 893.021 Adulterated drug.—As used in this chapter, a drug
865 is adulterated if:

866 (1) It is a controlled substance approved by the Federal
867 Drug Administration, or on the list of controlled substances
868 pursuant to s. 893.03, and its manufactured form has been
869 altered by breaking, crushing, dissolving, or combining with an
870 additive substance that may cause a difference in the strength,

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871 quality, or purity of the drug which could render the substance
872 injurious to a person's health.

873 (2) It is a controlled substance that:

874 (a) Has been produced, prepared, packed, and marketed for
875 oral consumption by the manufacturer; and

876 (b) Has had any change to its integrity or composition for
877 off-label use by means of inhalation, injection, or any other
878 form of ingestion not in accordance with the manufacturer's
879 recommended use, and such off-label use has not been previously
880 directed and approved by the prescribing physician.

881
882 A physician is not prevented from directing or prescribing a
883 change to the recognized manufactured recommendations for use in
884 a patient who presents a medical need for such a requirement
885 change of any controlled substance. The prescribing physician
886 shall clearly indicate any deviation of the recognized
887 manufacturer's recommended use of a controlled substance on the
888 original prescription, and the licensed pharmacist shall clearly
889 indicate such deviation on the label of the prescription upon
890 dispensing the controlled substance.

891 Section 20. Paragraphs (c), (d), and (e) of subsection (1)
892 of section 893.04, Florida Statutes, are amended to read:

893 893.04 Pharmacist and practitioner.—

894 (1) A pharmacist, in good faith and in the course of
895 professional practice only, may dispense controlled substances
896 upon a written or oral prescription of a practitioner, under the
897 following conditions:

898 (c) The following information must ~~There shall~~ appear on
899 the face of the prescription or written record of a thereof ~~for~~

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900 ~~the controlled substance the following information:~~

901 1. The full name and address of the person for whom, or the
902 owner of the animal for which, the controlled substance is
903 dispensed.

904 2. The full name and address of the prescribing
905 practitioner and the practitioner's federal controlled substance
906 registry number shall be printed thereon.

907 3. If the prescription is for an animal, the species of
908 animal for which the controlled substance is prescribed.

909 4. The name of the controlled substance prescribed and the
910 strength, quantity, and directions for use thereof. The
911 directions for use must specify the authorization by the
912 physician, any instructions requiring the adulteration of the
913 dispensed form of the medication, and the medical necessity for
914 the adulteration in accordance with s. 893.021.

915 5. The number of the prescription, as recorded in the
916 prescription files of the pharmacy in which it is filled.

917 6. The initials of the pharmacist filling the prescription
918 and the date filled.

919 (d) The prescription must ~~shall~~ be retained on file by the
920 proprietor of the pharmacy in which it is filled for a period of
921 2 years.

922 (e) A label bearing the following information must be
923 affixed to the original container in which a controlled
924 substance is delivered as upon a prescription or authorized
925 refill thereof, as hereinafter provided, there shall be a label
926 bearing the following information:

927 1. The name and address of the pharmacy from which such
928 controlled substance was dispensed.

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929 2. The date on which the prescription for such controlled
930 substance was filled.

931 3. The number of such prescription, as recorded in the
932 prescription files of the pharmacy in which it is filled.

933 4. The name of the prescribing practitioner.

934 5. The name of the patient for whom, or of the owner and
935 species of the animal for which, the controlled substance is
936 prescribed.

937 6. The directions for the use of the controlled substance
938 prescribed in the prescription.

939 7. A clear, concise warning that it is a crime to transfer
940 the controlled substance to any person other than the patient
941 for whom prescribed.

942 Section 21. Section 893.055, Florida Statutes, is amended
943 to read:

944 893.055 Prescription drug monitoring program.—

945 (1) As used in this section, the term:

946 (a) "Patient advisory report" or "advisory report" means
947 information provided by the department in writing, or as
948 determined by the department, to a prescriber, dispenser,
949 pharmacy, or patient concerning the dispensing of controlled
950 substances. All advisory reports are for informational purposes
951 only and impose no obligations of any nature or any legal duty
952 on a prescriber, dispenser, pharmacy, or patient. The patient
953 advisory report shall be provided in accordance with s.

954 893.13(7)(a)8. The advisory reports issued by the department are
955 not subject to discovery or introduction into evidence in any
956 civil or administrative action against a prescriber, dispenser,
957 pharmacy, or patient arising out of matters that are the subject

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958 of the report; and a person who participates in preparing,
959 reviewing, issuing, or any other activity related to an advisory
960 report may not be permitted or required to testify in any such
961 civil action as to any findings, recommendations, evaluations,
962 opinions, or other actions taken in connection with preparing,
963 reviewing, or issuing such a report.

964 (b) "Controlled substance" means a controlled substance
965 listed in Schedule II, Schedule III, or Schedule IV in s.
966 893.03.

967 (c) "Dispenser" means a pharmacy, dispensing pharmacist, or
968 dispensing health care practitioner.

969 (d) "Health care practitioner" or "practitioner" means any
970 practitioner who is subject to licensure or regulation by the
971 department under chapter 458, chapter 459, chapter 461, chapter
972 462, chapter 464, chapter 465, or chapter 466.

973 (e) "Health care regulatory board" means any board for a
974 practitioner or health care practitioner who is licensed or
975 regulated by the department.

976 (f) "Pharmacy" means any pharmacy that is subject to
977 licensure or regulation by the department under chapter 465 and
978 that dispenses or delivers a controlled substance to an
979 individual or address in this state.

980 (g) "Prescriber" means a prescribing physician, prescribing
981 practitioner, or other prescribing health care practitioner.

982 (h) "Active investigation" means an investigation that is
983 being conducted with a reasonable, good faith belief that it
984 could lead to the filing of administrative, civil, or criminal
985 proceedings, or that is ongoing and continuing and for which
986 there is a reasonable, good faith anticipation of securing an

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987 arrest or prosecution in the foreseeable future.

988 (i) "Law enforcement agency" means the Department of Law
989 Enforcement, a Florida sheriff's department, a Florida police
990 department, or a law enforcement agency of the Federal
991 Government which enforces the laws of this state or the United
992 States relating to controlled substances, and which its agents
993 and officers are empowered by law to conduct criminal
994 investigations and make arrests.

995 (j) "Program manager" means an employee of or a person
996 contracted by the Department of Health who is designated to
997 ensure the integrity of the prescription drug monitoring program
998 in accordance with the requirements established in paragraphs
999 (2) (a) and (b).

1000 (2) (a) By December 1, 2010, the department shall design and
1001 establish a comprehensive electronic database system that has
1002 controlled substance prescriptions provided to it and that
1003 provides prescription information to a patient's health care
1004 practitioner and pharmacist who inform the department that they
1005 wish the patient advisory report provided to them. Otherwise,
1006 the patient advisory report will not be sent to the
1007 practitioner, pharmacy, or pharmacist. The system shall be
1008 designed to provide information regarding dispensed
1009 prescriptions of controlled substances and shall not infringe
1010 upon the legitimate prescribing or dispensing of a controlled
1011 substance by a prescriber or dispenser acting in good faith and
1012 in the course of professional practice. The system shall be
1013 consistent with standards of the American Society for Automation
1014 in Pharmacy (ASAP). The electronic system shall also comply with
1015 the Health Insurance Portability and Accountability Act (HIPAA)

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1016 as it pertains to protected health information (PHI), electronic
1017 protected health information (EPHI), the National All Schedules
1018 Prescription Electronic Reporting (NASPER) Act's minimum
1019 requirements for authentication of a practitioner who requests
1020 information in the prescription drug monitoring program database
1021 and certification of the purpose for which information is
1022 requested, and all other relevant state and federal privacy and
1023 security laws and regulations. The department shall establish
1024 policies and procedures as appropriate regarding the reporting,
1025 accessing the database, evaluation, management, development,
1026 implementation, operation, storage, and security of information
1027 within the system. The reporting of prescribed controlled
1028 substances shall include a dispensing transaction with a
1029 dispenser pursuant to chapter 465 or through a dispensing
1030 transaction to an individual or address in this state with a
1031 pharmacy that is not located in this state but that is otherwise
1032 subject to the jurisdiction of this state as to that dispensing
1033 transaction. The reporting of patient advisory reports refers
1034 only to reports to patients, pharmacies, and practitioners.
1035 Separate reports that contain patient prescription history
1036 information and that are not patient advisory reports are
1037 provided to persons and entities as authorized in paragraphs
1038 (7) (b) and (c) and s. 893.0551.

1039 (b) The department, when the direct support organization
1040 receives at least \$20,000 in nonstate moneys or the state
1041 receives at least \$20,000 in federal grants for the prescription
1042 drug monitoring program, and in consultation with the Office of
1043 Drug Control, shall adopt rules as necessary concerning the
1044 reporting, accessing the database, evaluation, management,

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1045 development, implementation, operation, security, and storage of
1046 information within the system, including rules for when patient
1047 advisory reports are provided to pharmacies and prescribers. The
1048 patient advisory report shall be provided in accordance with s.
1049 893.13(7)(a)8. The department shall work with the professional
1050 health care licensure boards, such as the Board of Medicine, the
1051 Board of Osteopathic Medicine, and the Board of Pharmacy; other
1052 appropriate organizations, such as the Florida Pharmacy
1053 Association, the Office of Drug Control, the Florida Medical
1054 Association, the Florida Retail Federation, and the Florida
1055 Osteopathic Medical Association, including those relating to
1056 pain management; and the Attorney General, the Department of Law
1057 Enforcement, and the Agency for Health Care Administration to
1058 develop rules appropriate for the prescription drug monitoring
1059 program.

1060 (c) All dispensers and prescribers subject to these
1061 reporting requirements shall be notified by the department of
1062 the implementation date for such reporting requirements.

1063 (d) The program manager shall work with professional health
1064 care licensure boards and the stakeholders listed in paragraph
1065 (b) to develop rules appropriate for identifying indicators of
1066 controlled substance abuse.

1067 (e) The department shall establish a method to allow
1068 corrections to the database when notified by a health care
1069 practitioner or pharmacist.

1070 (3) The pharmacy dispensing the controlled substance and
1071 each prescriber who directly dispenses a controlled substance
1072 shall submit to the electronic system, by a procedure and in a
1073 format established by the department and consistent with an

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1074 ASAP-approved format, the following information for inclusion in
1075 the database:

1076 (a) The name of the prescribing practitioner, the
1077 practitioner's federal Drug Enforcement Administration
1078 registration number, the practitioner's National Provider
1079 Identification (NPI) or other appropriate identifier, and the
1080 date of the prescription.

1081 (b) The date the prescription was filled and the method of
1082 payment, such as cash by an individual, insurance coverage
1083 through a third party, or Medicaid payment. This paragraph does
1084 not authorize the department to include individual credit card
1085 numbers or other account numbers in the database.

1086 (c) The full name, address, and date of birth of the person
1087 for whom the prescription was written.

1088 (d) The name, national drug code, quantity, and strength of
1089 the controlled substance dispensed.

1090 (e) The full name, federal Drug Enforcement Administration
1091 registration number, and address of the pharmacy or other
1092 location from which the controlled substance was dispensed. If
1093 the controlled substance was dispensed by a practitioner other
1094 than a pharmacist, the practitioner's full name, federal Drug
1095 Enforcement Administration registration number, and address.

1096 (f) The name of the pharmacy or practitioner, other than a
1097 pharmacist, dispensing the controlled substance and the
1098 practitioner's National Provider Identification (NPI).

1099 (g) Other appropriate identifying information as determined
1100 by department rule.

1101 (h) The number of refills ordered and whether the drug was
1102 dispensed as a refill of a prescription or was a first-time

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1103 request.

1104 (4) Each time a controlled substance is dispensed to an
1105 individual, the controlled substance shall be reported to the
1106 department through the system as soon thereafter as possible,
1107 but not more than 7 ~~15~~ days after the date the controlled
1108 substance is dispensed unless an extension is approved by the
1109 department for cause as determined by rule. A dispenser must
1110 meet the reporting requirements of this section by providing the
1111 required information concerning each controlled substance that
1112 it dispensed in a department-approved, secure methodology and
1113 format. Such approved formats may include, but are not limited
1114 to, submission via the Internet, on a disc, or by use of regular
1115 mail.

1116 (5) When the following acts of dispensing or administering
1117 occur, the following are exempt from reporting under this
1118 section for that specific act of dispensing or administration:

1119 (a) A health care practitioner when administering a
1120 controlled substance directly to a patient if the amount of the
1121 controlled substance is adequate to treat the patient during
1122 that particular treatment session.

1123 (b) A pharmacist or health care practitioner when
1124 administering a controlled substance to a patient or resident
1125 receiving care as a patient at a hospital, nursing home,
1126 ambulatory surgical center, hospice, or intermediate care
1127 facility for the developmentally disabled which is licensed in
1128 this state.

1129 ~~(c) A practitioner when administering or dispensing a~~
1130 ~~controlled substance in the health care system of the Department~~
1131 ~~of Corrections.~~

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1132 (c)~~(d)~~ A practitioner when administering a controlled
1133 substance in the emergency room of a licensed hospital.

1134 (d)~~(e)~~ A health care practitioner when administering or
1135 dispensing a controlled substance to a person under the age of
1136 16 if the amount of the controlled substance is adequate to
1137 treat the patient during that particular treatment session.

1138 (e)~~(f)~~ A pharmacist or a dispensing practitioner when
1139 dispensing a one-time, 48-hour ~~72-hour~~ emergency resupply of a
1140 controlled substance to a patient.

1141 (6) The department may establish when to suspend and when
1142 to resume reporting information during a state-declared or
1143 nationally declared disaster.

1144 (7) (a) A practitioner or pharmacist who dispenses a
1145 controlled substance must submit the information required by
1146 this section in an electronic or other method in an ASAP format
1147 approved by rule of the department unless otherwise provided in
1148 this section. The cost to the dispenser in submitting the
1149 information required by this section may not be material or
1150 extraordinary. Costs not considered to be material or
1151 extraordinary include, but are not limited to, regular postage,
1152 electronic media, regular electronic mail, and facsimile
1153 charges.

1154 (b) 1. In order for a pharmacy, prescriber, practitioner, or
1155 dispenser to ~~shall~~ have access to information in the
1156 prescription drug monitoring program's database which relates to
1157 a patient of that pharmacy, prescriber, practitioner, or
1158 dispenser, the pharmacy, prescriber, practitioner, or dispenser
1159 shall register with the department by submitting a registering
1160 document provided by the department. The document and validation

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1161 of that document shall be determined by the department. Before a
1162 pharmacy, prescriber, practitioner, or dispenser is granted
1163 access to information in the database from the prescription drug
1164 monitoring program, the department shall approve the submitted
1165 document. Upon approval, the department shall grant the
1166 registrant access to the appropriate information in the
1167 prescription drug monitoring program's database ~~in a manner~~
1168 ~~established by the department as needed for the purpose of~~
1169 ~~reviewing the patient's controlled substance prescription~~
1170 ~~history.~~

1171 2. Other access to the program's database shall be limited
1172 to the program's manager and to the designated program and
1173 support staff, who may act only at the direction of the program
1174 manager or, in the absence of the program manager, as
1175 authorized. Access by the program manager or such designated
1176 staff is for prescription drug program management only or for
1177 management of the program's database and its system in support
1178 of the requirements of this section and in furtherance of the
1179 prescription drug monitoring program. Confidential and exempt
1180 information in the database shall be released only as provided
1181 in paragraph (c) and s. 893.0551. The program manager,
1182 designated program and support staff who act at the direction of
1183 or in the absence of the program manager, and any individual who
1184 has similar access regarding the management of the database from
1185 the prescription drug monitoring program shall submit
1186 fingerprints to the department for background screening. The
1187 department shall follow the procedure established by the
1188 Department of Law Enforcement to request a statewide criminal
1189 history record check and to request that the Department of Law

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1190 Enforcement forward the fingerprints to the Federal Bureau of
1191 Investigation for a national criminal history record check.

1192 (c) The following entities may ~~shall~~ not have ~~be allowed~~
1193 direct access to information in the prescription drug monitoring
1194 program database but may request from the program manager and,
1195 when authorized by the program manager, the program manager's
1196 program and support staff, information that is confidential and
1197 exempt under s. 893.0551. Prior to release, the request shall be
1198 verified as authentic and authorized with the requesting
1199 organization by the program manager, the program manager's
1200 program and support staff, or as determined in rules by the
1201 department as being authentic and as having been authorized by
1202 the requesting entity:

1203 1. The department or its relevant health care regulatory
1204 boards responsible for the licensure, regulation, or discipline
1205 of practitioners, pharmacists, or other persons who are
1206 authorized to prescribe, administer, or dispense controlled
1207 substances and who are involved in a specific controlled
1208 substance investigation involving a designated person for one or
1209 more prescribed controlled substances.

1210 2. The Attorney General for Medicaid fraud cases or
1211 Medicaid investigations involving prescribed controlled
1212 substances.

1213 3. A law enforcement agency during active investigations
1214 regarding potential criminal activity, fraud, or theft regarding
1215 prescribed controlled substances.

1216 4. A patient or the legal guardian or designated health
1217 care surrogate of an incapacitated patient as described in s.
1218 893.0551 who, for the purpose of verifying the accuracy of the

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1219 database information, submits a written and notarized request
1220 that includes the patient's full name, address, and date of
1221 birth, and includes the same information if the legal guardian
1222 or health care surrogate submits the request. The patient's
1223 phone number and a copy of a government-issued photo
1224 identification must be provided in person to the program manager
1225 along with the notarized request. The request shall be validated
1226 by the department to verify the identity of the patient and the
1227 legal guardian or health care surrogate, if the patient's legal
1228 guardian or health care surrogate is the requestor. Such
1229 verification is also required for any request to change a
1230 patient's prescription history or other information related to
1231 his or her information in the electronic database.

1232 5. The Agency for Health Care Administration for Medicaid
1233 fraud cases or Medicaid investigations involving prescribed
1234 controlled substances.

1235
1236 Information in the database for the electronic prescription drug
1237 monitoring system is not discoverable or admissible in any civil
1238 or administrative action, except in an investigation and
1239 disciplinary proceeding by the department or the appropriate
1240 regulatory board.

1241 (d) The following entities may ~~shall~~ not have ~~be allowed~~
1242 direct access to information in the prescription drug monitoring
1243 program database but may request from the program manager and,
1244 when authorized by the program manager, the program manager's
1245 program and support staff, information that contains no
1246 identifying information of any patient, physician, health care
1247 practitioner, prescriber, or dispenser and that is not

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1248 confidential and exempt:

1249 1. Department staff for the purpose of calculating
1250 performance measures pursuant to subsection (8).

1251 2. The Program Implementation and Oversight Task Force for
1252 its reporting to the Governor, the President of the Senate, and
1253 the Speaker of the House of Representatives regarding the
1254 prescription drug monitoring program. This subparagraph expires
1255 July 1, 2012.

1256 (e) All transmissions of data required by this section must
1257 comply with relevant state and federal privacy and security laws
1258 and regulations. However, any authorized agency or person under
1259 s. 893.0551 receiving such information as allowed by s. 893.0551
1260 may maintain the information received for up to 24 months before
1261 purging it from his or her records or maintain it for longer
1262 than 24 months if the information is pertinent to ongoing health
1263 care or an active law enforcement investigation or prosecution.

1264 (f) The program manager, upon determining a pattern
1265 consistent with the rules established under paragraph (2) (d) and
1266 having cause to believe a violation of s. 893.13(7) (a) 8.,
1267 (8) (a), or (8) (b) has occurred, may provide relevant information
1268 to the applicable law enforcement agency.

1269 (8) To assist in fulfilling program responsibilities,
1270 performance measures shall be reported annually to the Governor,
1271 the President of the Senate, and the Speaker of the House of
1272 Representatives by the department each December 1, beginning in
1273 2011. Data that does not contain patient, physician, health care
1274 practitioner, prescriber, or dispenser identifying information
1275 may be requested during the year by department employees so that
1276 the department may undertake public health care and safety

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1277 initiatives that take advantage of observed trends. Performance
1278 measures may include, but are not limited to, efforts to achieve
1279 the following outcomes:

1280 (a) Reduction of the rate of inappropriate use of
1281 prescription drugs through department education and safety
1282 efforts.

1283 (b) Reduction of the quantity of pharmaceutical controlled
1284 substances obtained by individuals attempting to engage in fraud
1285 and deceit.

1286 (c) Increased coordination among partners participating in
1287 the prescription drug monitoring program.

1288 (d) Involvement of stakeholders in achieving improved
1289 patient health care and safety and reduction of prescription
1290 drug abuse and prescription drug diversion.

1291 (9) Any person who willfully and knowingly fails to report
1292 the dispensing of a controlled substance as required by this
1293 section commits a misdemeanor of the first degree, punishable as
1294 provided in s. 775.082 or s. 775.083.

1295 ~~(10) All costs incurred by the department in administering~~
1296 ~~the prescription drug monitoring program shall be funded through~~
1297 ~~federal grants or private funding applied for or received by the~~
1298 ~~state. The department may not commit funds for the monitoring~~
1299 ~~program without ensuring funding is available. The prescription~~
1300 ~~drug monitoring program and the implementation thereof are~~
1301 ~~contingent upon receipt of the nonstate funding.~~ The department
1302 and state government shall cooperate with the direct-support
1303 organization established pursuant to subsection (11) in seeking
1304 federal grant funds, other nonstate grant funds, gifts,
1305 donations, or other private moneys for the department so long as

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1306 the costs of doing so are not considered material. Nonmaterial
1307 costs for this purpose include, but are not limited to, the
1308 costs of mailing and personnel assigned to research or apply for
1309 a grant. Notwithstanding the exemptions to competitive-
1310 solicitation requirements under s. 287.057(3)(f), the department
1311 shall comply with the competitive-solicitation requirements
1312 under s. 287.057 for the procurement of any goods or services
1313 required by this section.

1314 (11) The Office of Drug Control, in coordination with the
1315 department, may establish a direct-support organization that has
1316 a board consisting of at least five members to provide
1317 assistance, funding, and promotional support for the activities
1318 authorized for the prescription drug monitoring program.

1319 (a) As used in this subsection, the term "direct-support
1320 organization" means an organization that is:

1321 1. A Florida corporation not for profit incorporated under
1322 chapter 617, exempted from filing fees, and approved by the
1323 Department of State.

1324 2. Organized and operated to conduct programs and
1325 activities; raise funds; request and receive grants, gifts, and
1326 bequests of money; acquire, receive, hold, and invest, in its
1327 own name, securities, funds, objects of value, or other
1328 property, either real or personal; and make expenditures or
1329 provide funding to or for the direct or indirect benefit of the
1330 department in the furtherance of the prescription drug
1331 monitoring program.

1332 (b) The direct-support organization is not considered a
1333 lobbying firm within the meaning of s. 11.045.

1334 (c) The director of the Office of Drug Control shall

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1335 appoint a board of directors for the direct-support
1336 organization. The director may designate employees of the Office
1337 of Drug Control, state employees other than state employees from
1338 the department, and any other nonstate employees as appropriate,
1339 to serve on the board. Members of the board shall serve at the
1340 pleasure of the director of the Office of Drug Control. The
1341 director shall provide guidance to members of the board to
1342 ensure that moneys received by the direct-support organization
1343 are not received from inappropriate sources. Inappropriate
1344 sources include, but are not limited to, donors, grantors,
1345 persons, or organizations that may monetarily or substantively
1346 benefit from the purchase of goods or services by the department
1347 in furtherance of the prescription drug monitoring program.

1348 (d) The direct-support organization shall operate under
1349 written contract with the Office of Drug Control. The contract
1350 must, at a minimum, provide for:

1351 1. Approval of the articles of incorporation and bylaws of
1352 the direct-support organization by the Office of Drug Control.

1353 2. Submission of an annual budget for the approval of the
1354 Office of Drug Control.

1355 3. Certification by the Office of Drug Control in
1356 consultation with the department that the direct-support
1357 organization is complying with the terms of the contract in a
1358 manner consistent with and in furtherance of the goals and
1359 purposes of the prescription drug monitoring program and in the
1360 best interests of the state. Such certification must be made
1361 annually and reported in the official minutes of a meeting of
1362 the direct-support organization.

1363 4. The reversion, without penalty, to the Office of Drug

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1364 Control, or to the state if the Office of Drug Control ceases to
1365 exist, of all moneys and property held in trust by the direct-
1366 support organization for the benefit of the prescription drug
1367 monitoring program if the direct-support organization ceases to
1368 exist or if the contract is terminated.

1369 5. The fiscal year of the direct-support organization,
1370 which must begin July 1 of each year and end June 30 of the
1371 following year.

1372 6. The disclosure of the material provisions of the
1373 contract to donors of gifts, contributions, or bequests,
1374 including such disclosure on all promotional and fundraising
1375 publications, and an explanation to such donors of the
1376 distinction between the Office of Drug Control and the direct-
1377 support organization.

1378 7. The direct-support organization's collecting, expending,
1379 and providing of funds to the department for the development,
1380 implementation, and operation of the prescription drug
1381 monitoring program as described in this section and s. 2,
1382 chapter 2009-198, Laws of Florida, as long as the task force is
1383 authorized. The direct-support organization may collect and
1384 expend funds to be used for the functions of the direct-support
1385 organization's board of directors, as necessary and approved by
1386 the director of the Office of Drug Control. In addition, the
1387 direct-support organization may collect and provide funding to
1388 the department in furtherance of the prescription drug
1389 monitoring program by:

1390 a. Establishing and administering the prescription drug
1391 monitoring program's electronic database, including hardware and
1392 software.

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1393 b. Conducting studies on the efficiency and effectiveness
1394 of the program to include feasibility studies as described in
1395 subsection (13).

1396 c. Providing funds for future enhancements of the program
1397 within the intent of this section.

1398 d. Providing user training of the prescription drug
1399 monitoring program, including distribution of materials to
1400 promote public awareness and education and conducting workshops
1401 or other meetings, for health care practitioners, pharmacists,
1402 and others as appropriate.

1403 e. Providing funds for travel expenses.

1404 f. Providing funds for administrative costs, including
1405 personnel, audits, facilities, and equipment.

1406 g. Fulfilling all other requirements necessary to implement
1407 and operate the program as outlined in this section.

1408 (e) The activities of the direct-support organization must
1409 be consistent with the goals and mission of the Office of Drug
1410 Control, as determined by the office in consultation with the
1411 department, and in the best interests of the state. The direct-
1412 support organization must obtain a written approval from the
1413 director of the Office of Drug Control for any activities in
1414 support of the prescription drug monitoring program before
1415 undertaking those activities.

1416 (f) The Office of Drug Control, in consultation with the
1417 department, may permit, without charge, appropriate use of
1418 administrative services, property, and facilities of the Office
1419 of Drug Control and the department by the direct-support
1420 organization, subject to this section. The use must be directly
1421 in keeping with the approved purposes of the direct-support

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1422 organization and may not be made at times or places that would
1423 unreasonably interfere with opportunities for the public to use
1424 such facilities for established purposes. Any moneys received
1425 from rentals of facilities and properties managed by the Office
1426 of Drug Control and the department may be held by the Office of
1427 Drug Control or in a separate depository account in the name of
1428 the direct-support organization and subject to the provisions of
1429 the letter of agreement with the Office of Drug Control. The
1430 letter of agreement must provide that any funds held in the
1431 separate depository account in the name of the direct-support
1432 organization must revert to the Office of Drug Control if the
1433 direct-support organization is no longer approved by the Office
1434 of Drug Control to operate in the best interests of the state.

1435 (g) The Office of Drug Control, in consultation with the
1436 department, may adopt rules under s. 120.54 to govern the use of
1437 administrative services, property, or facilities of the
1438 department or office by the direct-support organization.

1439 (h) The Office of Drug Control may not permit the use of
1440 any administrative services, property, or facilities of the
1441 state by a direct-support organization if that organization does
1442 not provide equal membership and employment opportunities to all
1443 persons regardless of race, color, religion, gender, age, or
1444 national origin.

1445 (i) The direct-support organization shall provide for an
1446 independent annual financial audit in accordance with s.
1447 215.981. Copies of the audit shall be provided to the Office of
1448 Drug Control and the Office of Policy and Budget in the
1449 Executive Office of the Governor.

1450 (j) The direct-support organization may not exercise any

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1451 power under s. 617.0302(12) or (16).

1452 (12) A prescriber or dispenser may have access to the
1453 information under this section which relates to a patient of
1454 that prescriber or dispenser as needed for the purpose of
1455 reviewing the patient's controlled drug prescription history. A
1456 prescriber or dispenser acting in good faith is immune from any
1457 civil, criminal, or administrative liability that might
1458 otherwise be incurred or imposed for receiving or using
1459 information from the prescription drug monitoring program. This
1460 subsection does not create a private cause of action, and a
1461 person may not recover damages against a prescriber or dispenser
1462 authorized to access information under this subsection for
1463 accessing or failing to access such information.

1464 (13) To the extent that funding is provided for such
1465 purpose through federal or private grants or gifts and other
1466 types of available moneys, the department, in collaboration with
1467 the Office of Drug Control, shall study the feasibility of
1468 enhancing the prescription drug monitoring program for the
1469 purposes of public health initiatives and statistical reporting
1470 that respects the privacy of the patient, the prescriber, and
1471 the dispenser. Such a study shall be conducted in order to
1472 further improve the quality of health care services and safety
1473 by improving the prescribing and dispensing practices for
1474 prescription drugs, taking advantage of advances in technology,
1475 reducing duplicative prescriptions and the overprescribing of
1476 prescription drugs, and reducing drug abuse. The requirements of
1477 the National All Schedules Prescription Electronic Reporting
1478 (NASPER) Act are authorized in order to apply for federal NASPER
1479 funding. In addition, the direct-support organization shall

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1480 provide funding for the department, in collaboration with the
1481 Office of Drug Control, to conduct training for health care
1482 practitioners and other appropriate persons in using the
1483 monitoring program to support the program enhancements.

1484 (14) A pharmacist, pharmacy, or dispensing health care
1485 practitioner or his or her agent, before releasing a controlled
1486 substance to any person not known to such dispenser, shall
1487 require the person purchasing, receiving, or otherwise acquiring
1488 the controlled substance to present valid photographic
1489 identification or other verification of his or her identity to
1490 the dispenser. If the person does not have proper
1491 identification, the dispenser may verify the validity of the
1492 prescription and the identity of the patient with the prescriber
1493 or his or her authorized agent. Verification of health plan
1494 eligibility through a real-time inquiry or adjudication system
1495 will be considered to be proper identification. This subsection
1496 does not apply in an institutional setting or to a long-term
1497 care facility, including, but not limited to, an assisted living
1498 facility or a hospital to which patients are admitted. As used
1499 in this subsection, the term "proper identification" means an
1500 identification that is issued by a state or the Federal
1501 Government containing the person's photograph, printed name, and
1502 signature or a document considered acceptable under 8 C.F.R. s.
1503 274a.2(b)(1)(v)(A) and (B).

1504 (15) The Agency for Health Care Administration shall
1505 continue the promotion of electronic prescribing by health care
1506 practitioners, health care facilities, and pharmacies under s.
1507 408.0611.

1508 (16) By October 1, 2010, the department shall adopt rules

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1509 pursuant to ss. 120.536(1) and 120.54 to administer the
1510 provisions of this section, which shall include as necessary the
1511 reporting, accessing, evaluation, management, development,
1512 implementation, operation, and storage of information within the
1513 monitoring program's system.

1514 (17) After the prescription drug monitoring program has
1515 been operational for 12 months, the State Surgeon General shall
1516 enter into reciprocal agreements for the sharing of prescription
1517 drug monitoring information with any other state that has a
1518 compatible prescription drug monitoring program. If the State
1519 Surgeon General evaluates the prescription drug monitoring
1520 program of another state as authorized in this subsection,
1521 priority shall be given to a state that is contiguous with the
1522 borders of this state.

1523 (a) In determining compatibility, the State Surgeon General
1524 shall consider:

1525 1. The essential purposes of the program and the success of
1526 the program in fulfilling those purposes.

1527 2. The safeguards for privacy of patient records and the
1528 success of the program in protecting patient privacy.

1529 3. The persons authorized to view the data collected by the
1530 program. Comparable organizations and professions for
1531 practitioners in other states, law enforcement agencies, the
1532 Attorney General's Medicaid Fraud Unit, medical regulatory
1533 boards, and, as needed, management staff who have similar duties
1534 as management staff who work with the prescription drug
1535 monitoring program as authorized in s. 893.0551 are authorized
1536 access upon approval by the State Surgeon General.

1537 4. The schedules of the controlled substances that are

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1538 monitored.

1539 5. The data required to be submitted for each prescription.

1540 6. Any implementing criteria deemed essential for a
1541 thorough comparison.

1542 (b) The State Surgeon General shall annually review any
1543 agreement to determine its continued compatibility with the
1544 prescription drug monitoring program in this state.

1545 (c) Any agreement between the State Surgeon General and
1546 another state shall prohibit the sharing of information
1547 concerning a resident of this state or a practitioner,
1548 pharmacist, or other prescriber for any purpose that is not
1549 otherwise authorized by this section or s. 893.0551.

1550 Section 22. Present subsections (4), (5), (6), and (7) of
1551 section 893.0551, Florida Statutes, are redesignated as
1552 subsections (5), (6), (7), and (8), respectively, and a new
1553 subsection (4) is added to that section, to read:

1554 893.0551 Public records exemption for the prescription drug
1555 monitoring program.—

1556 (4) The department may disclose confidential and exempt
1557 information contained in records held by the department under s.
1558 893.055 if the State Surgeon General has entered into a
1559 reciprocal agreement for the sharing of prescription drug
1560 monitoring information with any other state that has a
1561 compatible prescription drug monitoring program.

1562 (a) The reciprocal agreement may allow the following
1563 persons from another state to receive information from the
1564 prescription drug monitoring program if approved by the State
1565 Surgeon General:

1566 1. A designated representative of a state professional

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1567 licensing, certification, or regulatory agency charged with
1568 oversight of those persons authorized to prescribe or dispense
1569 controlled substances for the purpose of a bona fide, specific
1570 investigation of a prescription of a controlled substance which
1571 involves a designated person. As required in s. 893.055, this
1572 authorization does not preclude the requirement for the program
1573 manager to review the request for information and validate it.

1574 2. A health care practitioner or pharmacist licensed in the
1575 state from which the request originates. Such health care
1576 practitioner or pharmacist shall certify that the requested
1577 information is for the purpose of providing medical or
1578 pharmaceutical treatment to a bona fide, current patient. The
1579 health care practitioner or pharmacist shall follow all the
1580 procedures required in s. 893.055 and rules established by the
1581 department for a health care practitioner or pharmacist to
1582 request information from the database.

1583 3. A law enforcement officer from another state:

1584 a. Who is a member of a sheriff's department or a police
1585 department;

1586 b. Who is authorized by law to conduct criminal
1587 investigations and make arrests;

1588 c. Whose duty it is to enforce the laws of his or her state
1589 relating to controlled substances; and

1590 d. Who is engaged in a bona fide specific, active
1591 investigation involving a designated person regarding
1592 prescriptions for controlled substances.

1593
1594 As required in s. 893.055, this authorization does not preclude
1595 the requirement for the program manager to review the request

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1596 for information and validate it. This authorization also does
1597 not preclude the ability to provide a report to a law
1598 enforcement agency in another state under s. 893.055(7) or this
1599 subsection.

1600 (b) Any agreement between the State Surgeon General and
1601 another state shall prohibit the sharing of information
1602 concerning a resident of this state, a patient whose information
1603 is in the program's database, or a practitioner, pharmacy,
1604 pharmacist, health care practitioner, or other prescriber for
1605 any purpose that is not otherwise authorized by this section or
1606 s. 893.055, and the information must be provided according to
1607 the State Surgeon General's determination of compatibility as
1608 described in s. 893.055(17).

1609 Section 23. Subsections (1), (4), and (5) of section
1610 893.07, Florida Statutes, are amended, and a new subsection (6)
1611 is added to that section to read:

1612 893.07 Records.—

1613 (1) Notwithstanding any other provision of law and in
1614 consonance with the authority of *State v. Carter*, 23 So. 3d 798
1615 (Fla. 1st DCA 2009) and *State v. Tamulonis*, 39 So. 3d 524 (Fla.
1616 2nd DCA 2010), every person who engages in the manufacture,
1617 compounding, mixing, cultivating, growing, or by any other
1618 process producing or preparing, or in the dispensing,
1619 importation, or, as a wholesaler, distribution, of controlled
1620 substances shall:

1621 (a) On January 1, 1974, or as soon thereafter as any person
1622 first engages in such activity, and every second year
1623 thereafter, make a complete and accurate record of all stocks of
1624 controlled substances on hand. The inventory may be prepared on

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1625 the regular physical inventory date which is nearest to, and
1626 does not vary by more than 6 months from, the biennial date that
1627 would otherwise apply. As additional substances are designated
1628 for control under this chapter, they shall be inventoried as
1629 provided for in this subsection.

1630 (b) On and after January 1, 1974, maintain, on a current
1631 basis, a complete and accurate record of each substance
1632 manufactured, received, sold, delivered, or otherwise disposed
1633 of by him or her, except that this subsection shall not require
1634 the maintenance of a perpetual inventory.

1635
1636 Compliance with the provisions of federal law pertaining to the
1637 keeping of records of controlled substances shall be deemed a
1638 compliance with the requirements of this subsection.

1639 (4) Every inventory or record required by this chapter,
1640 including prescription records, shall be maintained:

1641 (a) Separately from all other records of the registrant, or

1642 (b) Alternatively, in the case of Schedule III, IV, or V
1643 controlled substances, in such form that information required by
1644 this chapter is readily retrievable from the ordinary business
1645 records of the registrant.

1646
1647 In either case, such records described in this subsection shall
1648 be kept and made available for a period of at least 2 years for
1649 inspection and copying by law enforcement officers whose duty it
1650 is to enforce the laws of this state relating to controlled
1651 substances.

1652 (5) Each person shall maintain a record that contains ~~which~~
1653 ~~shall contain~~ a detailed list of controlled substances lost,

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1654 destroyed, or stolen, if any; the kind and quantity of such
1655 controlled substances; and the date of the discovering of such
1656 loss, destruction, or theft. If a person discovers the theft or
1657 loss of a controlled substance, such person shall report the
1658 theft or loss to a local county sheriff's office and the
1659 Department of Law Enforcement within 48 hours after the
1660 discovery of such theft or loss. A person who fails to report
1661 the theft or loss of a controlled substance under this
1662 subsection is subject to an administrative fine:

1663 (a) Not to exceed \$100 per incident; or

1664 (b) Not to exceed \$500 per incident if it is a theft or
1665 loss of a controlled substance listed under Schedule II.

1666 (6) The Legislature finds that the opinions rendered in
1667 State v. Carter, 23 So. 3d 798 (Fla. 1st DCA 2009), and State v.
1668 Tamulonis, 39 So. 3d 524 (Fla. 2nd DCA 2010), correctly construe
1669 this Legislature's intent that the inspection powers previously
1670 conferred upon law enforcement officers which allow such
1671 officers to access and review pharmacy records concerning
1672 controlled substances are to be exercised properly by such law
1673 enforcement officers without the requirement of a subpoena or
1674 search warrant being sought or issued to examine and copy such
1675 records, and without the requirement that those persons to whom
1676 particular pharmacy records refer be given notice of the
1677 records' examination and copying under this section.

1678 Section 24. Subsections (7) and (8) of section 893.13,
1679 Florida Statutes, are amended to read:

1680 893.13 Prohibited acts; penalties.—

1681 (7) (a) ~~A~~ It is unlawful for any person may not:

1682 1. ~~To~~ Distribute or dispense a controlled substance in

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1683 violation of this chapter.

1684 2. ~~To~~ Refuse or fail to make, keep, or furnish any record,
1685 notification, order form, statement, invoice, or information
1686 required under this chapter.

1687 3. ~~To~~ Refuse ~~an~~ entry into any premises for any inspection
1688 or ~~to~~ refuse to allow any inspection authorized by this chapter.

1689 4. ~~To~~ Distribute a controlled substance named or described
1690 in s. 893.03(1) or (2) except pursuant to an order form as
1691 required by s. 893.06.

1692 5. ~~To~~ Keep or maintain any store, shop, warehouse,
1693 dwelling, building, vehicle, boat, aircraft, or other structure
1694 or place which is resorted to by persons using controlled
1695 substances in violation of this chapter for the purpose of using
1696 these substances, or which is used for keeping or selling them
1697 in violation of this chapter.

1698 6. ~~To~~ Use to his or her own personal advantage, or ~~to~~
1699 reveal, any information obtained in enforcement of this chapter
1700 except in a prosecution or administrative hearing for a
1701 violation of this chapter.

1702 7. ~~To~~ Possess a prescription form which has not been
1703 completed and signed by the practitioner whose name appears
1704 printed thereon, unless the person is that practitioner, is an
1705 agent or employee of that practitioner, is a pharmacist, or is a
1706 supplier of prescription forms who is authorized by that
1707 practitioner to possess those forms.

1708 8. ~~To~~ Withhold information from a practitioner from whom
1709 the person seeks to obtain a controlled substance or a
1710 prescription for a controlled substance that the person making
1711 the request has received a controlled substance or a

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1712 prescription for a controlled substance of like therapeutic use
1713 from another practitioner within the previous 30 days.

1714 9. ~~To~~ Acquire or obtain, or attempt to acquire or obtain,
1715 possession of a controlled substance by misrepresentation,
1716 fraud, forgery, deception, or subterfuge.

1717 10. ~~To~~ Affix any false or forged label to a package or
1718 receptacle containing a controlled substance.

1719 11. ~~To~~ Furnish false or fraudulent material information in,
1720 or omit any material information from, any report or other
1721 document required to be kept or filed under this chapter or any
1722 record required to be kept by this chapter.

1723 12. ~~To~~ Store anhydrous ammonia in a container that is not
1724 approved by the United States Department of Transportation to
1725 hold anhydrous ammonia or is not constructed in accordance with
1726 sound engineering, agricultural, or commercial practices.

1727 13. With the intent to obtain a controlled substance or
1728 combination of controlled substances that are not medically
1729 necessary for the person or an amount of a controlled substance
1730 or substances that are not medically necessary for the person,
1731 obtain or attempt to obtain from a practitioner a controlled
1732 substance or a prescription for a controlled substance by
1733 misrepresentation, fraud, forgery, deception, subterfuge, or
1734 concealment of a material fact. For purposes of this
1735 subparagraph, a material fact includes whether the person has an
1736 existing prescription for a controlled substance issued for the
1737 same period of time by another practitioner or as described in
1738 subparagraph 8.

1739 (b) A health care practitioner, with the intent to provide
1740 a controlled substance or combination of controlled substances

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1741 that are not medically necessary to his or her patient or an
1742 amount of controlled substances that are not medically necessary
1743 for his or her patient, may not provide a controlled substance
1744 or a prescription for a controlled substance by
1745 misrepresentation, fraud, forgery, deception, subterfuge, or
1746 concealment of a material fact. For purposes of this paragraph,
1747 a material fact includes whether the patient has an existing
1748 prescription for a controlled substance issued for the same
1749 period of time by another practitioner or as described in
1750 subparagraph (a)8.

1751 (c) Any person who adulterates a controlled substance for
1752 directed off-label use without authorization by a prescribing
1753 physician violates the provisions of subparagraph (a)1. and
1754 causes the issuance of the entire prescription for the
1755 controlled substance to become invalid. A law enforcement
1756 officer in the performance of his or her official duties may
1757 seize the adulterated or off-label prescribed controlled
1758 substance as evidence. The controlled substance may be returned
1759 to the owner only with a notarized affidavit from the original
1760 prescribing practitioner who has knowledge and gave
1761 authorization and explicit directions for the adulteration or
1762 off-label use of the controlled substance.

1763 (d) ~~(b)~~ Any person who violates the provisions of
1764 subparagraphs (a)1.-7. commits a misdemeanor of the first
1765 degree, punishable as provided in s. 775.082 or s. 775.083;
1766 except that, upon a second or subsequent violation, the person
1767 commits a felony of the third degree, punishable as provided in
1768 s. 775.082, s. 775.083, or s. 775.084.

1769 (e) ~~(e)~~ Any person who violates the provisions of

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1770 subparagraphs (a)8.-12. commits a felony of the third degree,
1771 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1772 (f) A person or health care practitioner who violates the
1773 provisions of paragraph (b) or subparagraph (a)13. commits:

1774 1. A felony of the third degree, punishable as provided in
1775 s. 775.082, s. 775.083, or s. 775.084, if any controlled
1776 substance that is the subject of the offense is listed in
1777 Schedule II, Schedule III, or Schedule IV.

1778 2. A misdemeanor of the first degree, punishable as
1779 provided in s. 775.082 or s. 775.083, if any controlled
1780 substance that is the subject of the offense is listed in
1781 Schedule V.

1782 (8) (a) Notwithstanding subsection (9), a prescribing
1783 practitioner may not:

1784 1. Knowingly assist a patient, other person, or the owner
1785 of an animal in obtaining a controlled substance through
1786 deceptive, untrue, or fraudulent representations in or related
1787 to the practice of the prescribing practitioner's professional
1788 practice;

1789 2. Employ a trick or scheme in the practice of the
1790 prescribing practitioner's professional practice to assist a
1791 patient, other person, or the owner of an animal in obtaining a
1792 controlled substance;

1793 3. Knowingly write a prescription for a controlled
1794 substance for a fictitious person; ~~or~~

1795 4. Write a prescription for a controlled substance for a
1796 patient, other person, or an animal if the sole purpose of
1797 writing such prescription is to provide a monetary benefit to,
1798 or obtain a monetary benefit for, the prescribing practitioner;

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1799 ~~or-~~

1800 5. Write a prescription for a controlled substance for a
1801 patient, other person, or an animal and authorize or direct the
1802 adulteration of the dispensed form of the controlled substance
1803 for the purpose of ingestion by means of inhalation, injection,
1804 or any other means that is not medically necessary for the
1805 treatment of the patient.

1806 (b) If the prescribing practitioner wrote a prescription or
1807 multiple prescriptions for a controlled substance for the
1808 patient, other person, or animal for which there was no medical
1809 necessity, or which was in excess of what was medically
1810 necessary to treat the patient, other person, or animal, that
1811 fact does not give rise to any presumption that the prescribing
1812 practitioner violated subparagraph (a)1., but may be considered
1813 with other competent evidence in determining whether the
1814 prescribing practitioner knowingly assisted a patient, other
1815 person, or the owner of an animal to obtain a controlled
1816 substance in violation of subparagraph (a)1.

1817 (c) A person who violates paragraph (a) commits a felony of
1818 the third degree, punishable as provided in s. 775.082, s.
1819 775.083, or s. 775.084.

1820 (d) Notwithstanding paragraph (c), if a prescribing
1821 practitioner has violated paragraph (a) and received \$1,000 or
1822 more in payment for writing one or more prescriptions or, in the
1823 case of a prescription written for a controlled substance
1824 described in s. 893.135, has written one or more prescriptions
1825 for a quantity of a controlled substance which, individually or
1826 in the aggregate, meets the threshold for the offense of
1827 trafficking in a controlled substance under s. 893.15, the

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1828 violation is reclassified as a felony of the second degree and
1829 ranked in level 4 of the Criminal Punishment Code.

1830 Section 25. Present subsections (3) through (10) of section
1831 893.138, Florida Statutes, are redesignated as subsections (4)
1832 through (11), respectively, and a new subsection (3) is added to
1833 that section, to read:

1834 893.138 Local administrative action to abate drug-related,
1835 prostitution-related, or stolen-property-related public
1836 nuisances and criminal gang activity.—

1837 (3) Any pain-management clinic, as described in s. 458.3265
1838 or s. 459.0137, which has been used on more than two occasions
1839 within a 6-month period as the site of a violation of:

1840 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
1841 relating to assault and battery;

1842 (b) Section 810.02, relating to burglary;

1843 (c) Section 812.014, relating to dealing in theft;

1844 (d) Section 812.131, relating to robbery by sudden
1845 snatching; or

1846 (e) Section 893.13, relating to the unlawful distribution
1847 of controlled substances,

1848
1849 may be declared to be a public nuisance, and such nuisance may
1850 be abated pursuant to the procedures provided in this section.

1851 Section 26. This act shall take effect October 1, 2011.