

LEGISLATIVE COMMITTEE MINUTES

SB45

Bill as Introduced

SB 45 - AS INTRODUCED

2021 SESSION

21-0834
10/05

SENATE BILL

45

AN ACT

relative to the controlled drug prescription health and safety program.

SPONSORS:

Sen. Giuda, Dist 2; Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Sen. Prentiss, Dist 5; Rep. M. Pearson, Rock. 34; Rep. Marsh, Carr. 8; Rep. Merchant, Sull. 4

COMMITTEE:

Health and Human Services

ANALYSIS

This bill authorizes the department of health and human services to access certain data and information from the controlled drug prescription health and safety program under certain circumstances.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the controlled drug prescription health and safety program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Statement of Intent. The purpose and intent of this legislation is to improve the health and
2 wellbeing of New Hampshire citizens by authorizing meaningful access by the department of health
3 and human services to data, including identifiable patient-level data or information, from the office
4 of professional licensure and certification, controlled drug prescription health and safety program,
5 for public health purposes including, but not limited to, public health evaluation, coordination of
6 health care, and for the delivery of critical services to address substance use disorders.

7 2 New Section; Department of Health and Human Services; Controlled Drug Prescription
8 Health and Safety Program Information; Confidentiality. Amend RSA 126-A by inserting after
9 section 5-e the following new section:

10 126-A:5-f Controlled Drug Prescription Health and Safety Program; Confidentiality.

11 I. In this section "office" means the office of professional licensure and certification,
12 established in RSA 310-A.

13 II. Information and data obtained by the department from the office, including identifiable
14 patient-level data or information, pursuant to RSA 318-B:34, is confidential, is not a public record or
15 otherwise subject to disclosure under RSA 91-A, is not subject to discovery, subpoena, or other
16 means of legal compulsion for release and shall not be shared with an agency or institution, except
17 as provided in RSA 318-B:34, or under this section.

18 III. The department, in consultation with the office, may release reports for analysis and
19 evaluation, statistical analysis, public research, public policy, and educational purposes, provided
20 that the information and the data within the reports is aggregated or otherwise de-identified. No
21 individual whose identifiable patient-level data or information was provided by the office to the
22 department shall be contacted, or subject to any action, by the department, directly or indirectly, on
23 the basis of such data or information.

24 IV.(a) The department shall enter into one or more reciprocal data sharing agreements with
25 the office to share prescription drug monitoring information for public health purposes including, but
26 not limited to, public health evaluation, coordination of health care, and for the delivery of critical
27 services to address substance use disorders. The office shall receive any final analyses or reports
28 made with shared data. Any proposed data sharing agreement between the office and the
29 department shall be reviewed by the advisory council for the controlled drug prescription health and
30 safety program, established under RSA 318-B:38, which may make recommendations to the office.
31 The department may release studies with de-identified data, provided the release is authorized by

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1 the data sharing agreement. The data sharing agreements shall include:

- 2 (1) The specific purpose of sharing data;
- 3 (2) A detailed description of the data sets that will be included;
- 4 (3) The criteria and procedures for the development of data sets;
- 5 (4) The criteria and procedures to ensure data security and destruction; and
- 6 (5) A proposed time frame in which the data will be used.

7 (b) Under no circumstances shall the data or information received by the department
8 pursuant to this section be copied or released by the department to any other person or entity, unless
9 the data or information is aggregated or otherwise de-identified.

10 3 Controlled Drug Prescription Health and Safety Program; Definitions. Amend RSA 318-B:31,
11 IV to read as follows:

12 IV. "Dispenser" means a person or entity who is lawfully authorized to deliver a schedule II-
13 IV controlled substance, **and conduct medication reconciliation**, but does not include:

14 (a) A licensed hospital pharmacy **under RSA 318** that dispenses less than a 48-hour
15 supply of a schedule II-IV controlled substance from a hospital emergency department or that
16 dispenses for administration in the hospital;

17 (b) A practitioner, or other authorized person who administers such a substance;

18 (c) A wholesale distributor of a schedule II-IV controlled substance or its analog;

19 (d) A prescriber who dispenses less than a 48-hour supply of a schedule II-IV controlled
20 substance from a hospital emergency department to a patient; [or]

21 (e) A veterinarian who dispenses less than a 48-hour supply of a schedule II-IV
22 controlled substance to a patient; **or**

23 (f) **A practitioner who neither prescribes nor dispenses and who is not actively**
24 **working as a pharmacist within a New Hampshire licensed pharmacy licensed under RSA**
25 **318 or New Hampshire health care facility licensed under RSA 151.**

26 4 Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 318-
27 B:35, I(a)(2) and (3) to read as follows:

28 (2) For reviewing information regarding prescriptions issued or dispensed by the
29 requester; [or]

30 (3) For the purpose of investigating the death of an individual; **or**

31 (4) **For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA**
32 **329:13-b, and other participating health professional boards.**

33 5 New Paragraphs; Controlled Drug Prescription Health and Safety Program; Confidentiality.
34 Amend RSA 318-B:34 by inserting after paragraph III the following new paragraphs:

35 IV. The office may release identifiable patient-level data or information to the department of
36 health and human services for public health purposes if the office authorizes the release of such data
37 or information pursuant to a data sharing agreement between the office and the department. Any

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1 such data sharing agreement shall be reviewed by the advisory council for the controlled drug
2 prescription health and safety program established in RSA 318-B:38, which may make
3 recommendations to the office. The department may release studies with de-identified data,
4 provided the release is authorized by the data sharing agreement. The data sharing agreement shall
5 include:

- 6 (a) The specific purpose of sharing data;
- 7 (b) A detailed description of the data sets that will be included;
- 8 (c) The criteria and procedures for the development of data sets;
- 9 (d) The criteria and procedures to ensure data security and destruction; and
- 10 (e) A proposed time frame in which the data will be used. Under no circumstances shall
11 the data or information released to the department pursuant to this section be copied or released by
12 the department to any other person or entity, unless the data or information is aggregated or
13 otherwise de-identified.

14 V. The department of health and human services shall comply with RSA 318-B:32, III with
15 respect to data or information received pursuant to paragraph IV.

16 6 Repeal. RSA 318-B:35, I(b)(5), relative to a practitioner or consultant retained by the office of
17 professional licensure and certification to review certain information, is repealed.

18 7 Effective Date. This act shall take effect upon its passage.

SB 45 - AS AMENDED BY THE SENATE

02/11/2021 0167s

2021 SESSION

21-0834
10/05

SENATE BILL **45**

AN ACT relative to the controlled drug prescription health and safety program.

SPONSORS: Sen. Giuda, Dist 2; Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Sen. Prentiss, Dist 5; Rep. M. Pearson, Rock. 34; Rep. Marsh, Carr. 8; Rep. Merchant, Sull. 4

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill modifies the administration of the controlled drug prescription health and safety program administered by the office of professional licensure and certification

Explanation: Matter added to current law appears in ***bold italics***.
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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the controlled drug prescription health and safety program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Controlled Drug Prescription Health and Safety Program; Definitions. Amend RSA 318-B:31,
2 IV to read as follows:

3 IV. "Dispenser" means a person or entity who is lawfully authorized to deliver a schedule II-
4 IV controlled substance, **and conduct medication reconciliation**, but does not include:

5 (a) A licensed hospital pharmacy **under RSA 318** that dispenses less than a 48-hour
6 supply of a schedule II-IV controlled substance from a hospital emergency department or that
7 dispenses for administration in the hospital;

8 (b) A practitioner, or other authorized person who administers such a substance;

9 (c) A wholesale distributor of a schedule II-IV controlled substance or its analog;

10 (d) A prescriber who dispenses less than a 48-hour supply of a schedule II-IV controlled
11 substance from a hospital emergency department to a patient; ~~or~~

12 (e) A veterinarian who dispenses less than a 48-hour supply of a schedule II-IV
13 controlled substance to a patient; **or**

14 (f) **A practitioner who neither prescribes nor dispenses and who is not actively**
15 **working as a pharmacist within a New Hampshire licensed pharmacy licensed under RSA**
16 **318 or New Hampshire health care facility licensed under RSA 151.**

17 2 New Paragraph; Controlled Drug Prescription Health and Safety Program Established.
18 Amend RSA 318-B:32 by inserting after paragraph I the following new paragraph:

19 I-a. The office may enter into agreements or contracts to facilitate the confidential sharing of
20 information relating to the prescribing and dispensing of schedule II-IV controlled substances, by
21 practitioners within the state and to establish secure connections between the program and a
22 practitioner's electronic health record keeping system. The electronic health record keeping system
23 may allow for the query and retrieval of program information for display and retention in the
24 patient's medical information; provided that nothing in this section shall allow the electronic health
25 record keeping system owner or license holder to perform data queries unrelated to individuals
26 under the practitioner's care. The electronic health record keeping system owner or license holder
27 shall be responsible for ensuring that only authorized individuals have access to program
28 information.

29 3 New Paragraph; Controlled Drug Prescription Health and Safety Program; Confidentiality.
30 Amend RSA 318-B:34 by inserting after paragraph II the following new paragraph:

31 II-a. A practitioner who intends to request and use information from the program about a

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1 patient shall post a sign that can be easily viewed by the public that discloses to the public that the
2 practitioner may access and use information contained in the program. In lieu of posting a sign, the
3 practitioner may provide such notice in written material provided to the patient.

4 4 Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 318-
5 B:35, I(a)(2) and (3) to read as follows:

6 (2) For reviewing information regarding prescriptions issued or dispensed by the
7 requester; ~~or~~

8 (3) For the purpose of investigating the death of an individual; *or*

9 (4) *For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA*
10 *329:13-b, and other participating health professional boards.*

11 5 Repeal. RSA 318-B:35, I(b)(5), relative to a practitioner or consultant retained by the office of
12 professional licensure and certification to review certain information, is repealed.

13 6 Effective Date. This act shall take effect upon its passage.

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SENATE BILL **45**

AN ACT relative to the controlled drug prescription health and safety program.

SPONSORS: Sen. Giuda, Dist 2; Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Sen. Prentiss, Dist 5; Rep. M. Pearson, Rock. 34; Rep. Marsh, Carr. 8; Rep. Merchant, Sull. 4

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill modifies requirements for participation in and sharing of information from the controlled drug prescription health and safety program.

Explanation: Matter added to current law appears in *bold italics*.
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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the controlled drug prescription health and safety program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Controlled Drug Prescription Health and Safety Program; Definitions. Amend RSA 318-B:31,
2 IV to read as follows:

3 IV. "Dispenser" means a person or entity who is lawfully authorized to deliver a schedule II-
4 IV controlled substance, but does not include:

5 (a) A licensed hospital pharmacy *under RSA 318* that dispenses less than a 48-hour
6 supply of a schedule II-IV controlled substance from a hospital emergency department or that
7 dispenses for administration in the hospital;

8 (b) A practitioner, or other authorized person who administers such a substance;

9 (c) A wholesale distributor of a schedule II-IV controlled substance or its analog;

10 (d) A prescriber who dispenses less than a 48-hour supply of a schedule II-IV controlled
11 substance from a hospital emergency department to a patient; ~~or~~

12 (e) A veterinarian who dispenses less than a 48-hour supply of a schedule II-IV
13 controlled substance to a patient; *or*

14 (f) *A practitioner who does not hold or operate under an active Drug*
15 *Enforcement Agency registration number to prescribe or dispense controlled substances.*

16 2 New Paragraph; Controlled Drug Prescription Health and Safety Program; Information.
17 Amend RSA 318-B:32 by inserting after paragraph I the following new paragraph:

18 I-a. The office may enter into agreements or contracts to facilitate the confidential sharing of
19 information relating to the prescribing and dispensing of schedule II-IV controlled substances, by
20 practitioners within the state and to establish secure connections between the program and a
21 practitioner's electronic health record keeping system. An electronic health record keeping system
22 may allow for the query and retrieval of the provider specified, individual's program information for
23 display and retention in the patient's medical information; provided that nothing in this section shall
24 allow the electronic health record keeping system owner or license holder to perform data queries
25 unrelated to individuals under the practitioner's care. The electronic health record keeping system
26 owner or license holder shall be responsible for ensuring that only authorized individuals have
27 access to program information. The program shall record and retain in its database what
28 information was transferred and the identity of the organization who received the information. The
29 program shall include this information when a patient requests a report pursuant to RSA 318-B:35,
30 I(b)(1).

1 3 New Paragraph; Controlled Drug Prescription Health and Safety Program; Confidentiality.
2 Amend RSA 318-B:34 by inserting after paragraph II the following new paragraph:

3 II-a. A practitioner who intends to request and use information from the program about a
4 patient shall post a sign that can be easily viewed by the public that discloses to the public that the
5 practitioner may access and use information contained in the program. In lieu of posting a sign, the
6 practitioner may provide such notice in written material provided to the patient.

7 4 Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 318-
8 B:35, I(a)(2) and (3) to read as follows:

9 (2) For reviewing information regarding prescriptions issued or dispensed *or for*
10 *conducting medication reconciliation* by the requester; [~~or~~]

11 (3) For the purpose of investigating the death of an individual; *or*

12 (4) *For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA*
13 *329:13-b, and other participating health professional boards.*

14 5 Repeal. RSA 318-B:35, I(b)(5), relative to a practitioner or consultant retained by the office of
15 professional licensure and certification to review certain information, is repealed.

16 6 Contingent Version; Controlled Drug Prescription Health and Safety Program; Definitions.
17 Amend RSA 126-A:89, VI to read as follows:

18 VI. "Dispenser" means a person or entity who is lawfully authorized to deliver a schedule II-
19 IV controlled substance, but does not include:

20 (a) A licensed hospital pharmacy *under RSA 318* that dispenses less than a 48-hour
21 supply of a schedule II-IV controlled substance from a hospital emergency department or that
22 dispenses for administration in the hospital;

23 (b) A practitioner, or other authorized person who administers such a substance;

24 (c) A wholesale distributor of a schedule II-IV controlled substance or its analog;

25 (d) A prescriber who dispenses less than a 48-hour supply of a schedule II-IV controlled
26 substance from a hospital emergency department to a patient; [~~or~~]

27 (e) A veterinarian who dispenses less than a 48-hour supply of a schedule II-IV
28 controlled substance to a patient; *or*

29 (f) *A practitioner who does not hold or operate under an active Drug*
30 *Enforcement Agency registration number to prescribe or dispense controlled substances.*

31 7 Contingent Version; New Paragraph; Controlled Drug Prescription Health and Safety
32 Program; Information. Amend RSA 126-A:90 by inserting after paragraph I the following new
33 paragraph:

34 I-a. The department may enter into agreements or contracts to facilitate the confidential
35 sharing of information relating to the prescribing and dispensing of schedule II-IV controlled
36 substances, by practitioners within the state and to establish secure connections between the
37 program and a practitioner's electronic health record keeping system. An electronic health record

1 keeping system may allow for the query and retrieval of the provider specified, individual's program
 2 information for display and retention in the patient's medical information; provided that nothing in
 3 this section shall allow the electronic health record keeping system owner or license holder to
 4 perform data queries unrelated to individuals under the practitioner's care. The electronic health
 5 record keeping system owner or license holder shall be responsible for ensuring that only authorized
 6 individuals have access to program information. The program shall record and retain in its database
 7 what information was transferred and the identity of the organization who received the information.
 8 The program shall include this information when a patient requests a report pursuant to RSA 126-
 9 A:93, I(b)(1).

10 8 Contingent Version; New Paragraph; Controlled Drug Prescription Health and Safety
 11 Program; Confidentiality. Amend RSA 126-A:92 by inserting after paragraph II the following new
 12 paragraph:

13 II-a. A practitioner who intends to request and use information from the program about a
 14 patient shall post a sign that can be easily viewed by the public that discloses to the public that the
 15 practitioner may access and use information contained in the program. In lieu of posting a sign, the
 16 practitioner may provide such notice in written material provided to the patient.

17 9 Contingent Version; Providing Controlled Drug Prescription Health and Safety Information.
 18 Amend RSA 126-A:93, I(a)(2) and (3) to read as follows:

19 (2) For reviewing information regarding prescriptions issued or dispensed *or for*
 20 *conducting medication reconciliation* by the requester; ~~or~~

21 (3) For the purpose of investigating the death of an individual; *or*

22 (4) *For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA*
 23 *329:13-b, and other participating health professional boards.*

24 10 Contingent Version; Repeal. RSA 126-A:93, I(b)(4), relative to a practitioner or consultant
 25 retained by the department of health and human services to review certain information, is repealed.

26 11 Contingency.

27 I. If HB 2-FN-A-L of the 2021 legislative session becomes law and contains provisions
 28 transferring the administration of the controlled drug prescription health and safety program from
 29 the office of professional licensure and certification under RSA 318-B to the department of health
 30 and human services under RSA 126-A, then sections 1-5 of this act shall take effect upon its passage
 31 and until July 1, 2021 and then sections 6-10 of this act shall take effect July 1, 2021 at 12:01 a.m.

32 II. If HB 2-FN-A-L of the 2021 legislative session becomes law and does not contain
 33 provisions transferring the administration of the controlled drug prescription health and safety
 34 program from the office of professional licensure and certification under RSA 318-B to the
 35 department of health and human services under RSA 126-A, or if HB 2 FN-A-L does not become law,
 36 then sections 6-10 of this act shall not take effect and sections 1-5 of this act shall take effect upon
 37 its passage.

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1 12 Effective Date.

2 I. Sections 1-10 of this act shall take effect as provided in section 11 of this act.

3 II. The remainder of this act shall take effect upon its passage.

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3Jun2021... 1253h

2021 SESSION

21-0834
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SENATE BILL **45**

AN ACT relative to the controlled drug prescription health and safety program.

SPONSORS: Sen. Giuda, Dist 2; Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Sen. Prentiss, Dist 5; Rep. M. Pearson, Rock. 34; Rep. Marsh, Carr. 8; Rep. Merchant, Sull. 4

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill modifies requirements for participation in and sharing of information from the controlled drug prescription health and safety program.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 148
SB 45 - FINAL VERSION

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3Jun2021... 1253h

21-0834
10/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the controlled drug prescription health and safety program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 148:1 Controlled Drug Prescription Health and Safety Program; Definitions. Amend RSA 318-
2 B:31, IV to read as follows:

3 IV. "Dispenser" means a person or entity who is lawfully authorized to deliver a schedule II-
4 IV controlled substance, but does not include:

5 (a) A licensed hospital pharmacy *under RSA 318* that dispenses less than a 48-hour
6 supply of a schedule II-IV controlled substance from a hospital emergency department or that
7 dispenses for administration in the hospital;

8 (b) A practitioner, or other authorized person who administers such a substance;

9 (c) A wholesale distributor of a schedule II-IV controlled substance or its analog;

10 (d) A prescriber who dispenses less than a 48-hour supply of a schedule II-IV controlled
11 substance from a hospital emergency department to a patient; ~~or~~

12 (e) A veterinarian who dispenses less than a 48-hour supply of a schedule II-IV
13 controlled substance to a patient; *or*

14 (f) *A practitioner who does not hold or operate under an active Drug*
15 *Enforcement Agency registration number to prescribe or dispense controlled substances.*

16 148:2 New Paragraph; Controlled Drug Prescription Health and Safety Program; Information.
17 Amend RSA 318-B:32 by inserting after paragraph I the following new paragraph:

18 I-a. The office may enter into agreements or contracts to facilitate the confidential sharing of
19 information relating to the prescribing and dispensing of schedule II-IV controlled substances, by
20 practitioners within the state and to establish secure connections between the program and a
21 practitioner's electronic health record keeping system. An electronic health record keeping system
22 may allow for the query and retrieval of the provider specified, individual's program information for
23 display and retention in the patient's medical information; provided that nothing in this section shall
24 allow the electronic health record keeping system owner or license holder to perform data queries
25 unrelated to individuals under the practitioner's care. The electronic health record keeping system
26 owner or license holder shall be responsible for ensuring that only authorized individuals have
27 access to program information. The program shall record and retain in its database what
28 information was transferred and the identity of the organization who received the information. The
29 program shall include this information when a patient requests a report pursuant to RSA 318-B:35,
30 I(b)(1).

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1 148:3 New Paragraph; Controlled Drug Prescription Health and Safety Program;
2 Confidentiality. Amend RSA 318-B:34 by inserting after paragraph II the following new paragraph:

3 II-a. A practitioner who intends to request and use information from the program about a
4 patient shall post a sign that can be easily viewed by the public that discloses to the public that the
5 practitioner may access and use information contained in the program. In lieu of posting a sign, the
6 practitioner may provide such notice in written material provided to the patient.

7 148:4 Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 318-
8 B:35, I(a)(2) and (3) to read as follows:

9 (2) For reviewing information regarding prescriptions issued or dispensed *or for*
10 *conducting medication reconciliation* by the requester; [Ø]

11 (3) For the purpose of investigating the death of an individual; *or*

12 (4) *For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA*
13 *329:13-b, and other participating health professional boards.*

14 148:5 Repeal. RSA 318-B:35, I(b)(5), relative to a practitioner or consultant retained by the
15 office of professional licensure and certification to review certain information, is repealed.

16 148:6 Contingent Version; Controlled Drug Prescription Health and Safety Program;
17 Definitions. Amend RSA 126-A:89, VI to read as follows:

18 VI. "Dispenser" means a person or entity who is lawfully authorized to deliver a schedule II-
19 IV controlled substance, but does not include:

20 (a) A licensed hospital pharmacy *under RSA 318* that dispenses less than a 48-hour
21 supply of a schedule II-IV controlled substance from a hospital emergency department or that
22 dispenses for administration in the hospital;

23 (b) A practitioner, or other authorized person who administers such a substance;

24 (c) A wholesale distributor of a schedule II-IV controlled substance or its analog;

25 (d) A prescriber who dispenses less than a 48-hour supply of a schedule II-IV controlled
26 substance from a hospital emergency department to a patient; [Ø]

27 (e) A veterinarian who dispenses less than a 48-hour supply of a schedule II-IV
28 controlled substance to a patient; *or*

29 (f) *A practitioner who does not hold or operate under an active Drug*
30 *Enforcement Agency registration number to prescribe or dispense controlled substances.*

31 148:7 Contingent Version; New Paragraph; Controlled Drug Prescription Health and Safety
32 Program; Information. Amend RSA 126-A:90 by inserting after paragraph I the following new
33 paragraph:

34 I-a. The department may enter into agreements or contracts to facilitate the confidential
35 sharing of information relating to the prescribing and dispensing of schedule II-IV controlled
36 substances, by practitioners within the state and to establish secure connections between the
37 program and a practitioner's electronic health record keeping system. An electronic health record

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1 keeping system may allow for the query and retrieval of the provider specified, individual's program
2 information for display and retention in the patient's medical information; provided that nothing in
3 this section shall allow the electronic health record keeping system owner or license holder to
4 perform data queries unrelated to individuals under the practitioner's care. The electronic health
5 record keeping system owner or license holder shall be responsible for ensuring that only authorized
6 individuals have access to program information. The program shall record and retain in its database
7 what information was transferred and the identity of the organization who received the information.
8 The program shall include this information when a patient requests a report pursuant to RSA 126-
9 A:93, I(b)(1).

10 148:8 Contingent Version; New Paragraph; Controlled Drug Prescription Health and Safety
11 Program; Confidentiality. Amend RSA 126-A:92 by inserting after paragraph II the following new
12 paragraph:

13 II-a. A practitioner who intends to request and use information from the program about a
14 patient shall post a sign that can be easily viewed by the public that discloses to the public that the
15 practitioner may access and use information contained in the program. In lieu of posting a sign, the
16 practitioner may provide such notice in written material provided to the patient.

17 148:9 Contingent Version; Providing Controlled Drug Prescription Health and Safety
18 Information. Amend RSA 126-A:93, I(a)(2) and (3) to read as follows:

19 (2) For reviewing information regarding prescriptions issued or dispensed *or for*
20 *conducting medication reconciliation* by the requester; [~~or~~]

21 (3) For the purpose of investigating the death of an individual; *or*

22 (4) *For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA*
23 *329:13-b, and other participating health professional boards.*

24 148:10 Contingent Version; Repeal. RSA 126-A:93, I(b)(4), relative to a practitioner or
25 consultant retained by the department of health and human services to review certain information,
26 is repealed.

27 148:11 Contingency.

28 I. If HB 2-FN-A-L of the 2021 legislative session becomes law and contains provisions
29 transferring the administration of the controlled drug prescription health and safety program from
30 the office of professional licensure and certification under RSA 318-B to the department of health
31 and human services under RSA 126-A, then sections 1-5 of this act shall take effect upon its passage
32 and until July 1, 2021 and then sections 6-10 of this act shall take effect July 1, 2021 at 12:01 a.m.

33 II. If HB 2-FN-A-L of the 2021 legislative session becomes law and does not contain
34 provisions transferring the administration of the controlled drug prescription health and safety
35 program from the office of professional licensure and certification under RSA 318-B to the
36 department of health and human services under RSA 126-A, or if HB 2 FN-A-L does not become law,
37 then sections 6-10 of this act shall not take effect and sections 1-5 of this act shall take effect upon

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1 its passage.

2 148:12 Effective Date.

3 I. Sections 1-10 of this act shall take effect as provided in section 11 of this act.

II. The remainder of this act shall take effect upon its passage.

Approved: July 23, 2021

Effective Date:

I. Sections 1-10 shall take effect as provided in section 11.

II. Remainder shall take effect July 23, 2021.

Amendments

Sen. Giuda, Dist 2
Sen. Sherman, Dist 24
Sen. Rosenwald, Dist 13
January 19, 2021
2021-0028s
10/05

Amendment to SB 45

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Controlled Drug Prescription Health and Safety Program; Definitions. Amend RSA 318-B:31,
4 IV to read as follows:

5 IV. "Dispenser" means a person or entity who is lawfully authorized to deliver a schedule II-
6 IV controlled substance, **and conduct medication reconciliation**, but does not include:

7 (a) A licensed hospital pharmacy ~~under RSA 318~~ that dispenses less than a 48-hour
8 supply of a schedule II-IV controlled substance from a hospital emergency department or that
9 dispenses for administration in the hospital;

10 (b) A practitioner, or other authorized person who administers such a substance;

11 (c) A wholesale distributor of a schedule II-IV controlled substance or its analog;

12 (d) A prescriber who dispenses less than a 48-hour supply of a schedule II-IV controlled
13 substance from a hospital emergency department to a patient; [ex]

14 (e) A veterinarian who dispenses less than a 48-hour supply of a schedule II-IV
15 controlled substance to a patient; or

16 (f) **A practitioner who neither prescribes nor dispenses and who is not actively**
17 **working as a pharmacist within a New Hampshire licensed pharmacy licensed under RSA**
18 **318 or New Hampshire health care facility licensed under RSA 151.**

19 2 New Paragraph: Controlled Drug Prescription Health and Safety Program Established.
20 Amend RSA 318-B:32 by inserting after paragraph I the following new paragraph:

21 I-a. The office may enter into agreements or contracts to facilitate the confidential sharing of
22 information relating to the prescribing and dispensing of schedule II-IV controlled substances, by
23 practitioners within the state and to establish secure connections between the program and a
24 practitioner's electronic health record keeping system. The electronic health record keeping system
25 may allow for the query and retrieval of program information for display and retention in the
26 patient's medical information; provided that nothing in this section shall allow the electronic health
27 record keeping system owner or license holder to perform data queries unrelated to individuals
28 under the practitioner's care. The electronic health record keeping system owner or license holder
29 shall be responsible for ensuring that only authorized individuals have access to program
30 information.

1 3 New Paragraph; Controlled Drug Prescription Health and Safety Program; Confidentiality.
2 Amend RSA 318-B:34 by inserting after paragraph II the following new paragraph:

3 II-a. A practitioner who intends to request and use information from the program about a
4 patient shall post a sign that can be easily viewed by the public that discloses to the public that the
5 practitioner may access and use information contained in the program. In lieu of posting a sign, the
6 practitioner may provide such notice in written material provided to the patient.

7 4 Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 318-
8 B:35, I(a)(2) and (3) to read as follows:

9 (2) For reviewing information regarding prescriptions issued or dispensed by the
10 requester; [~~or~~]

11 (3) For the purpose of investigating the death of an individual; ~~or~~

12 (4) *For the purpose of administering RSA 318:29-a, VI, RSA 326-B:36-a, RSA*
13 *329:13-b, and other participating health professional boards.*

14 5 Repeal. RSA 318-B:35, I(b)(5), relative to a practitioner or consultant retained by the office of
15 professional licensure and certification to review certain information, is repealed.

16 6 Effective Date. This act shall take effect upon its passage.

UNAPPROVED

2021-0028s

AMENDED ANALYSIS

This bill modifies the administration of the controlled drug prescription health and safety program administered by the office of professional licensure and certification

UNAPPROVED

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Amendment to SB 45

- Page 2 -

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13 professional licensure and certification to review certain information, is repealed.

14 6 Effective Date. This act shall take effect upon its passage.

2021-0167s

AMENDED ANALYSIS

This bill modifies the administration of the controlled drug prescription health and safety program administered by the office of professional licensure and certification

Committee Minutes

SENATE CALENDAR NOTICE

Health and Human Services

Sen Jeb Bradley, Chair
 Sen James Gray, Vice Chair
 Sen Kevin Avar, Member
 Sen Tom Sherman, Member
 Sen Rebecca Whitley, Member

Date: January 13, 2021

HEARINGS

Wednesday	01/20/2021
(Day)	(Date)
Health and Human Services	<div style="display: flex; justify-content: space-between;"> REMOTE 000 1:00 p.m. </div>
(Name of Committee)	<div style="display: flex; justify-content: space-between;"> (Place) (Time) </div>
1:00 p.m. SB 34-FN	relative to the definition of a controlled drug analog and prohibiting the sale or possession of synthetic urine and urine additives.
1:15 p.m. SB 45	relative to the controlled drug prescription health and safety program.
1:30 p.m. SB 29	relative to the health risks associated with dispensing high-concentration marijuana in alternative treatment centers.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://zoom.us/j/99071603325>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: +13017158592,,99071603325# or +13126266799,,99071603325#
4. Webinar ID: 990 7160 3325
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 34-FN

Sen. D'Allesandro

Sen. Rosenwald

Sen. Giuda

Sen. Cavanaugh

SB 45

Sen. Giuda

Sen. Soucy

Sen. Carson

Sen. Prentiss

Rep. M. Pearson

SB 29

Sen. Giuda

Rep. Marsh

Sen. Carson

Rep. Merchant

Rep. M. Pearson

Rep. Weyler

Griffin Roberge 271-3042

Jeb Bradley
Chairman

Senate Health and Human Services Committee
Griffin Roberge 271-3042

SB 45, relative to the controlled drug prescription health and safety program.

Hearing Date: January 20, 2021.

Time Opened: 1:26 p.m.

Time Closed: 2:30 p.m.

Members of the Committee Present: Senators Bradley, Gray, Avard, Sherman and Whitley.

Members of the Committee Absent: None.

Bill Analysis: This bill authorizes the department of health and human services to access certain data and information from the controlled drug prescription health and safety program under certain circumstances.

Sponsors:

Sen. Giuda

Sen. Soucy

Sen. Carson

Sen. Prentiss

Rep. M. Pearson

Rep. Marsh

Rep. Merchant

Who supports the bill: Senator Bob Giuda, NH Senate District 2; Senator Sharon Carson, NH Senate District 14; John Williams, Patricia Tilley & Jonathan Ballard, NH Department of Health & Human Services; Lindsey Courtney, NH Office of Professional Licensure and Certification; fmr. Representative Neal Kurk, Weare, NH; Representative William Marsh, Carroll - District 8.

Who opposes the bill: Senator Cindy Rosenwald, NH Senate District 13; David Strang.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Senator Bob Giuda

NH Senate District 2

- Introduced amendment 2021-0028s as a replacement for SB 45.
- The Prescription Drug Monitoring Program (PDMP) started out under the NH Board of Pharmacy, which was then in the purview of the Office of Professional Licensure and Certification (OPLC). The PDMP was then moved to the OPLC's Executive Director for management. While responsibly managed, the PDMP does not belong within the OPLC as the OPLC has no use for the data collected by the PDMP. Governor Sununu has proposed moving the PDMP into the NH Department of Health and Human Services (DHHS) in his upcoming budget proposal.
- Over the past few years, Senator Giuda has sought to establish privacy protections for patients and their medical data that is recorded in NH's Prescription Drug Monitoring Program (PDMP), while allowing state agencies access to that information under very limited and controlled circumstances. These privacy protections remained and continues to be a legislative priority, which is why Senator Giuda organized and presided over a working group of individuals and state agencies during the summer of 2019.
- SB 45 addresses the use of data within the PDMP. SB 45 as introduced had provisions that would permit DHHS, with permission of the OPLC, to utilize PDMP data in a de-identified capacity. Senator Giuda is

concerned that DHHS has a mixed record in protecting an individual's private data. Therefore, Senator Giuda sponsored amendment 2021-0028s, with the support of Senators Cindy Rosenwald and Tom Sherman, to remove DHHS's ability to access PDMP data under SB 45 as introduced. Senator Giuda argued that it would be better to move at a gradual pace to first move the PDMP to DHHS, which Senator Giuda supported. After that move, the Legislature could then establish privacy guidelines for DHHS to use PDMP data.

- Senator Giuda introduced another bill that has not yet been assigned a number - LSR 2021-0833 - which will make PDMP data available to the electronic health records system for doctors, providers, and dispensers. This LSR will protect federal funding for DHHS. Without that LSR, the State would lose federal funding.
- Senator Giuda understands DHHS's desire to access the PDMP to stem the state's opioid crisis but has described a 60% decrease in opioid death over the past two years. The current structure of the PDMP is working. Given the intended transfer of PDMP to DHHS and DHHS's past temptations to access the PDMP, a set of protocols for DHHS accessing PDMP data should be established after the PDMP is moved to DHHS. Both should not be done at the same time.
- Senator Bradley said it was his understanding that amendment 2021-0028s does not move the PDMP to DHHS, but merely addressed privacy protection within the PDMP.
 - Senator Giuda said Senator Bradley was correct. Senator Giuda reiterated that the PDMP will likely be moved to the PDMP under Governor Sununu's budget proposal. The PDMP should be moved to DHHS. Discussions could then take place on how and when DHHS is able to utilize PDMP data.

*John Williams - provided written testimony
Legislative Director, DHHS*

- Thanked Senators Giuda, Rosenwald, and Sherman for their work on the PDMP and protecting private information. Explained that Patricia Tilley could not testify as she had to take part in another committee hearing.
- DHHS is working with Governor Sununu's office to transfer the PDMP from the OPLC into DHHS through his budget proposal, but this proposal is not a given - the must still work through the legislative process and things can change. SB 45 as introduced gives DHHS a backup in case the PDMP is not moved in the budget.
- SB 45 as introduced is the result of Senator Giuda's working group that included the OPLC, DHHS, and the NH PDMP Advisory Council, as well as former Representative Neal Kurk. SB 45 as introduced was worked on more than once and was agreed upon by all parties to ensure privacy protections.
- In reviewing SB 45 as introduced, Section 1 outlines a Statement of Intent that stresses the need for DHHS to have meaningful access to the PDMP for public health purposes. Section 2 allows for DHHS to receive information from the PDMP. Page 1, lines 13 to 23 outline limits on how DHHS can access and use the information it receives from the PDMP. Page 1, line 24 to page 2, line 9 outline how the data sharing agreements between DHHS and the OPLC can be constructed to further ensure the protection of privacy. While DHHS appreciates the concerns for privacy, Section 2 was written in a way that recognizes those concerns and creates guidelines for the OPLC and DHHS in using PDMP data.
- Removing Sections 1 and 2 from SB 45 as introduced removes key portions of the underlying bill. DHHS stressed the importance of having access to the PDMP to protect public health and save lives. Accessing PDMP information can help promote good education for those who have co-occurring or mental health disorders.

*Jonathan Ballard
Chief Medical Officer, DHHS*

- The purpose of the PDMP is to save lives. Allowing DHHS access to PDMP data will better help the State in combating public health crises like the state's opioid epidemic. There are over 200 people who died in NH in the past year based on fatal drug overdoses. Using identifiable data will help the State understand the factors that led to opioid abuse or overdose. Without such access, DHHS is handicapped and is unable to understand trends from PDMP identifiable data.
- Senator Sherman said he worried about "mission creep" in DHHS accessing PDMP data. He said he wanted to get an understanding of how DHHS would use individual, identifiable information from the PDMP. He wondered if DHHS would query the PDMP to collect information on an overdose victim, or if DHHS would use aggregated information based on different geographic regions. Senator Sherman explained his reluctance to open the PDMP to the DHHS stems from the PDMP's original intent. He wanted to be sure that any additional access has a clear and definable purpose. He asked for a specific example of how DHHS would use individual, identifiable information from the PDMP.

- o Dr. Ballard said the State has an interest in wanting to know how young people develop into having an opioid addiction. Does the abuse stem from ADHD medications at a teenage level? Are there patterns in NH in particular localities that could be addressed by public outreach or educational programs? It is impossible to answer these questions with de-identifiable information initially. Within the scope of SB 45 as introduced, the State could answer those questions and work with Governor Sununu's office and the Governor's Commission on Alcohol and Other Drugs to develop targeted programs to interdict and stop the progression of concerning trends.
- Senator Whitley said it was her understanding that DHHS's need for identifiable data from the PDMP is driven by the need to identify patterns in geographic areas and what specific trends lead individuals to develop addictions. Senator Whitley said she would benefit from additional examples from DHHS of what those drivers of addiction are and why those drivers can only be identified using individual, identifiable data from the PDMP.
 - o Dr. Ballard said DHHS would be happy to follow up with the committee with additional examples. DHHS has several data sets that show a variety of risk factors for opioid abuse, but DHHS cannot relate those variables with PDMP information. SB 45 as introduced would allow DHHS to find those risk factors. DHHS could also use data sets around Medicaid and teen smoking to see if they have any relation with opioid abuse. These data sets alone cannot demonstrate any connection to opioid abuse, but access to the PDMP could help explain any relation. SB 45 as introduced creates guidelines in the use of that data.
- Senator Bradley said he did not see any penalty to DHHS in using PDMP data that should not be revealed. He asked if any penalty exists.
 - o Dr. Ballard said he would defer to other DHHS staff to answer, but that DHHS has an obligation to the federal government if there was ever a Health Insurance Portability and Accountability Act (HIPAA) breach. DHHS must follow a certain process if there is a HIPAA breach. If those violations persisted, DHHS would face penalties from the federal government. DHHS is currently responsible for the data of 500,000 COVID-19 test results and the sexual health data of those who have HIV and Hepatitis C.
- Senator Bradley said he wanted to understand why DHHS needed identifiable data from the PDMP. He asked how using that data would affect the individual and if DHHS would intervene with that individual and their family. He said he was having a hard time understanding why DHHS needed identifiable information on an individual if there was not going to be some type of intervention.
 - o Dr. Ballard said DHHS had no plans to intervene in an individual's life using data from the PDMP. The purpose is to understand trends to help policymakers determine if additional policies are warranted and how to direct State dollars to addiction/educational programs.
- Senator Bradley reiterated that DHHS is currently unable to uncover trends without identifiable data.
 - o Dr. Ballard said that Senator Bradley was correct.
- Senator Bradley asked if SB 45 as introduced could be amended to restrict the sharing of information for illegal drugs as opposed to legal prescriptions.
 - o Dr. Ballard said the PDMP includes drugs that are legally prescribed. They may be illicitly used. DHHS does not believe amending SB 45 as introduced would change DHHS's ability to understand the relationship between legally prescribed drugs and illicitly used drugs.
- Senator Bradley said Representative Kurk recommended the use of a random number generator. He asked if DHHS has considered a generator.
 - o Dr. Ballard said DHHS had considered it in conversations, but the only way it would work is if DHHS used a random number generator of the PDMP data set and the other data sets that DHHS is using to understand patterns. This may run afoul of statutory guidelines.
- Senator Sherman wanted to clarify Dr. Ballard's response to Senator Bradley: DHHS may already have a data set with individual patient data. DHHS would like to use the individualized data from the PDMP to understand that individual's pattern of behavior, which is why a random number generator would not work as DHHS cannot query the PDMP for that specific patient.
 - o Dr. Ballard said Senator Sherman was correct. DHHS funds substance use disorder treatment centers and pays for their treatment. DHHS has an individual's outcome data. However, DHHS does not have access to that individual's prescription data and the factors that led them to a substance use disorder treatment center. Having access to an individual's PDMP data would help uncover statewide trends.
- Senator Sherman asked if DHHS would have access to an individual's data if they were in DHHS's Medicaid database.

- o Dr. Ballard said DHHS would not. DHHS only has access to an individual's data for as long as they are in Medicaid, but many people drop out and reenter. The PDMP can help provide data for those missing gaps.

*Lindsey Courtney - provided written testimony
Executive Director, OPLC*

- The OPLC is supportive of SB 45, specifically Sections 2 and 5, which allow the OPLC to enter into data sharing agreements with DHHS to share PDMP data for public health purposes only. The PDMP has valuable information that would greatly assist the state in its efforts to combat the opioid epidemic.
- SB 45 contains many safeguards to ensure the scope of data sharing is quite limited. The OPLC may only share data with DHHS pursuant to a carefully crafted agreement that is subject to review by the PDMP Advisory Council. DHHS cannot submit a blanket request. DHHS must make a specific request for data, setting forth a detailed explanation as to basis for request. SB 45 strikes the right balance between protecting the public through data sharing and respecting an individual's right to privacy.

*Neal Kurk
Former Representative, Weare, NH*

- Support amendment 2021-0028s and opposes SB 45 as introduced.
- SB 45 as introduced was the product of discussions between different parties, including Representative Kurk. Since that time, Representative Kurk has had second thoughts, especially considering the passage of CACR 16 (2018).
- SB 45 as introduced allows DHHS to have access to individual, identifiable data from the PDMP. This would give DHHS access to anyone who has ever had a controlled drug prescription filled in NH. The PDMP does not just track opioid prescriptions, but many other drugs.
- The intention of the PDMP was to uncover those who engage in doctor shopping to get certain prescriptions. It was not intended to be a source of identifiable data for state agencies. SB 45 as introduced is an example of mission creep - the PDMP has a single purpose for collecting data, but other parties want access for their own purposes.
- Suggested that DHHS could use a random number generator and identify everyone in the PDMP by a number. A random number generator would allow DHHS to track people without knowing who they were.
- SB 45 as introduced states that no individual whose identifiable patient-level data or information was provided by the OPLC to DHHS shall be contacted. There will be come a time when DHHS will want to contact individuals.

Summary of testimony presented in opposition:

*Senator Cindy Rosenwald
NH Senate District 13*

- Supported amendment 2021-0028s as the language was what Senators Giuda, Rosenwald, and Sherman were going to introduce in March 2020 to SB 676-FN (2020). However, the NH General Court suspended all legislative activity due to the COVID-19 pandemic.
- Currently, DHHS has access to the PDMP as DHHS is the payer under HIPAA to the confidential health information for people who are on Medicaid. Therefore, DHHS only has PDMP access for 15% of NH's population. SB 45 as introduced would give DHHS PDMP access to the private information for the other 85% of NH's population.
- DHHS would not only have access to a patient's opioid history of all Granite Staters, but the prescription histories of those who take ADHD medication, men who have low testosterone, and even people who have trouble sleeping. This access is overly intrusive. Such access would make sense if DHHS was paying for all the prescriptions of all Granite Staters, but DHHS is not doing that. Senator Rosenwald would be comfortable if DHHS was requesting de-identified prescription drug information from the PDMP. However, DHHS is seeking identified confidential information of NH's entire population. The State should not have access to identifiable prescription drug information for NH's citizens as it is neither the payer or provider.

*David Strang
Chairman, PDMP Advisory Council*

- Dr. Strang clarified that he is not speaking on behalf of the PDMP Advisory Council as they have not reviewed SB 45.

- Noted two negative experiences with DHHS and felt they have not demonstrated the trust necessary to have access to individual, identifiable information from the PDMP.
- Supported removing Section 2 from SB 45 as introduced but keeping Sections 3 and 4 as they were important housekeeping measures.
- Senator Sherman said it was his understanding that the PDMP oversees three groups - pharmacists, providers, and patients. He asked if the PDMP Advisory Council was permitted to release PDMP to anyone who asked for PDMP data, or is the release of data only permitted under certain statutory provisions?
 - Dr. Strang said PDMP data can only be released to providers and dispensers by virtue of access to the PDMP. Individuals are also allowed to access their own data. Those are the only entities as needing access to this data. Law enforcement was originally denied access to the PDMP, but that has since changed to allow the Office of the Chief Medical Examiner to access PDMP data for completing autopsies. There are no other entities that are allowed access to the PDMP.
- Senator Sherman referenced the creation of the NH Drug Overdose Fatality Review Commission via HB 1639-FN (2020). It was his understanding that the Commission was covered by confidentiality and were not subject to RSA 91-A. Senator Sherman asked if the Commission would have access to the PDMP if a patient had died.
 - Dr. Strang said the PDMP Advisory Council became aware of this and felt that the only way PDMP information could be accessed was via the Office of the Chief Medical Examiner, which has a seat on the Commission.
- Senator Whitley asked if the housekeeping provisions from SB 45 were included in Senator Giuda's amendment 2021-0028s.
 - Dr. Strang said he has not seen amendment 2021-0028s, so he could not comment.
 - Senator Bradley clarified that the housekeeping provisions referenced by Dr. Strang in SB 45 as introduced were included in Sections 1 and 2 in amendment 2021-0028s.

Neutral Information Presented: None.

GJR

Date Hearing Report completed: January 20, 2021.

Speakers

Name	Title	Representing	Position	Testifying
Courtney Lindsey	State Agency Staff	Office of Professional Licensure & Certification	Support	Yes
Giuda Bob	An Elected Official	NH Senate District 2	Support	Yes
Strang David	State Agency Staff	Myself	Oppose	Yes
Williams John	State Agency Staff	DHHS/Legal and Regulatory Services	Support	Yes
rosenwald cindy	An Elected Official	SD 13	Oppose	Yes
kurk neal	A Member of the Public	Myself	Support	Yes
Tilley Patricia	State Agency Staff	DHHS	Support	Yes
Ballard Jonathan	State Agency Staff	DHHS	Support	No
Marsh William	An Elected Official	Myself	Support	No
Carson Sharon	An Elected Official	Myself	Support	No
Harding Joseph Harding	State Agency Staff	Myself	Neutral	No

Testimony

State of New Hampshire

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

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LINDSEY B. COURTNEY
Executive Director



January 20, 2021

Hon. Jeb Bradley
Chair, Health and Human Service Oversight Committee
State House, Room 107
107 North Main Street
Concord, NH 03301

**Re: Testimony in Support of SB 45—Relative to the Controlled Drug
Prescription Health & Safety Program**

Good afternoon, Mr. Chairman, members of the committee:

My name is Lindsey Courtney, Executive Director of the New Hampshire Office of Professional Licensing and Certification, the agency that administers the controlled drug prescription health and safety program, known colloquially as the prescription drug monitoring program, or PDMP.

OPLC is supportive of SB 45. Specifically, sections 2 and 5 of the bill would permit the office to enter into data sharing agreements with the department of health and human services to share PDMP data with the department for public health purposes only. I will defer to the department to explain in greater detail how the department's access to PDMP data is essential for public health research. In short, however, the PDMP has valuable information that would greatly assist the state in its efforts to combat the opioid epidemic. Given the public health crisis currently impacting our state, OPLC supports this legislation, which would permit data sharing in very limited circumstances.

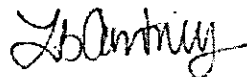
OPLC recognizes that this proposed limited data-sharing represents a change from the original bill's clear prohibition regarding data sharing. Since PDMP's creation, any changes to PDMP's prohibition on data sharing has been made after much conversation, collaboration, and in a calculated manner. OPLC supports such a process, as we need to ensure privacy is adequately protected. I would like to emphasize that SB 45 represents the end result of much collaboration between stakeholders over the course of many months. I wish to thank Senator Giuda for his hard work in bringing this bill to fruition.

Hon. Jeb Bradley
January 20, 2021
Page Two

The bill contains many safeguards to ensure the scope of data sharing is quite limited. The office may only share data with the department pursuant to a carefully crafted agreement that is subject to review by the advisory council to the PDMP. Additionally, data may only be shared for public health purposes only. The department is not permitted to release identifiable data and may only retain data for three years under existing statute. A blanket data sharing agreement will not suffice; rather, the department must make a specific request for data, setting forth a detailed explanation as to basis for request. OPLC supports these limitations on data sharing, as set forth in the bill, and believe it strikes the right balance between protecting the public through data sharing and respecting an individual's right to privacy.

Thank you for the opportunity to provide comments.

Very truly yours,



Lindsey B. Courtney, JD
Executive Director
Office of Professional Licensure and Certification

Good afternoon Senators. I was instructed to sign in as State Agency Staff, as I am the Chair of the Advisory Council for NH's PDMP and have been for the last 7 years, but I want to be clear that I am not speaking on behalf of that entity as this bill has not been reviewed by the Advisory Council, since we last met in October, 2020.

In a related mechanism, there are plans supported by Gov. Sununu to move the PDMP from under the umbrella of OPLC to DHHS. Given that is likely to come to pass, I have grave concerns with this bill allowing DHHS to take PDMP data for its own use. I have an historical perspective that you all must become aware of.

In April of 2019, Sen. Bradley asked me to work with Mr. John Williams, Atty for DHHS in crafting an amendment to a piece of legislation introduced by Rep. Bill Marsh, that would have allowed sharing PDMP data with DHHS for the purpose of producing aggregated, de-identified reports. We had 48 hr. to get this done. I had an immediate problem with the language of this amendment, written by Atty Williams as it stated only "de-identified data" would be shared with DHHS. When I explained to Senators Bradley and Sherman as well as Rep. Marsh that this was at best misleading, that in fact *patient-specific, identifiable* data would be sent out the door to be shared with DHHS to be combined with *their* patient-specific, identifiable data and only then would it be de-identified and aggregated, to a person, these 3 elected officials told me, "that's not what was represented to me, I don't like that idea at all." Mr. Williams was very hesitant to correct this misleading language, to which I replied I would not be part of an effort to mislead the members of the House and Senate in order to make this legislation succeed. To his credit, he did remove this misleading language, but the process was moving too fast, without public comment, in other words, without enough disinfecting sunlight, and thus Sen. Bradley tabled this amendment.

In response to this, at the PDMP Advisory Council, we agreed to form a Data-Sharing Sub-Committee to specifically look at this issue and make recommendations to the Board of Pharmacy on the feasibility of such a mechanism (at the time, the BOP housed the PDMP). Sen. Giuda, who at the time was not, but is now a member of the Advisory Council, was an important element of that effort. These meetings took place over the summer of 2019. Imagine our surprise when we learned that, behind our backs, DHHS had been meeting with the program manager of the PDMP that spring and summer, to make an application to the CDC, that in exchange for their grant money, the PDMP would turn over this patient specific, identifiable data to DHHS and ultimately, the CDC. Despite this being a violation of NH law encoded in the enabling legislation that created the PDMP in 2012, the Program Manager contributed to this grant application. Once this was discovered, she was given a cease and desist letter from the Attorney General. What made this letter more ironic, was that she was being defended by the AG's office, in a suit brought by the DEA that was demanding the PDMP turn over patient specific data to *that* Federal agency. The take home message for those of you listening to this testimony is that there are many entities, both State and Federal that want this private prescription data. Having had two very negative experiences with the NH DHHS, I do not feel

they have demonstrated the trust necessary to share this private, individual data with them, regardless of what private data they already have on these NH citizens. By passing this bill, you will put the fox in charge of the henhouse and we all know the outcome of that age-old analogy.

I urge you to extract any reference to data sharing between the PDMP and DHHS in this bill, but leave intact, IV on page 2, lines 10-32, as this is necessary "house-keeping" changes to the PDMP that I do recommend you support. Thank you for taking the time to listen to my concerns and I'll be happy to take any questions that you may have.

Respectfully submitted,
David E. Strang, MD
Emergency Physician
Member, NH Medical Society
Chairman, NH PDMP Advisory Council

Notes for pdmp bill SB45

Senate Hearing

1/20/21

Good afternoon thank you chairman and members of the committee for accommodating my schedule this afternoon. My name is Patricia Tilley and I am the Deputy Director of Public Health within the Department of Health and Human Services.

First of all-

We wish to thank Sen Giuda and OPLC for working in partnership with DHHS for the past two years and allowing DHHS to participate in rich discussion to develop the proposal that you see in front of you.

Each of us that has been involved is committed to the intent of the bill to improve the health and wellbeing of New Hampshire residents by authorizing meaningful access to PDMP data. This includes identifiable patient-level data – a responsibility that we do not take lightly- and this data is used to create linkages for public health purposes such as targeting of data-driven prevention activities, public health evaluation and for the delivery of critical services to address substance use disorders. We know that you and the people of New Hampshire need to feel comfortable with the Department stewarding such sensitive information, which is why the process to get here has been slow and deliberate.

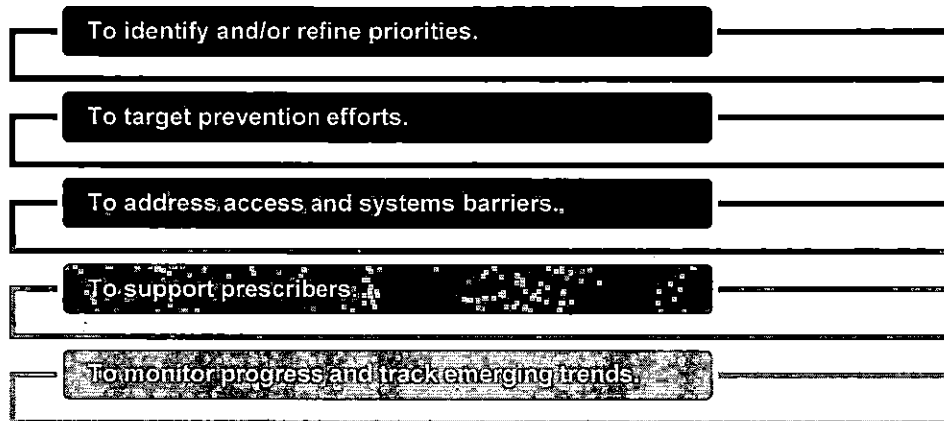
So what are PDMPs ?

- They collect designated data on controlled substances dispensed within the state. When properly used, PDMPs identify and prevent drug misuse or diversion, identify polypharmacy, and offer treatment to patients in need of support, while ensuring the legitimate medical use of painkillers.
- Be used by healthcare providers to better control prescribing practices and make informed decisions for the care of individuals.
- I know that Lindsay Courtney is here from OPLC and she can answer even more questions about NH's PDMP

So what's so important about the PDMP data and why does DHHS seek authorization to use it?

- At the provider and pharmacy level, has the opportunity alert prescribers in primary care and emergency departments about patterns in care. As it is now, we can just manage one patient at a time.
- While individual management is a critically important tool for managing patient pain, this data also has the power and potential to inform health systems and population health approaches. The data collected should be used more broadly to analyze broad prescribing patterns and trends in use, and ultimately inform patient-centered public health initiatives. DHHS currently does not have the authority to do these sorts of analyses. We can't look at patterns. We can't look at health outcomes for different groups of people.

So the full promise of the PDMP cannot be fully realized until we have the opportunity and the authority to link and analyze the data for these prevention purposes. The current law limits what we can learn and how we improve our services. We've made some progress, but there is so much more to be done to improve care for individuals with opioid use disorders.



So why does DHHS need access to such sensitive and identifiable data:

Individuals with opioid use disorders (OUD) often experience a broad array of concurrent medical, behavioral health, and social issues that need to be addressed collectively in order to support recovery. These co-morbid health conditions and social determinants can make their care more complicated and costly. Data analysis with linked data sets that DHHS has the responsibility to steward - can help us improve the delivery of care and develop prevention strategies for things like:

1. Opioid related mortality
 - a. Prescription history combined with DHHS data allows us to drill down to see what groups of people are most at risk by geography, provider types, insurance status, and treatment status. We can't do that now.
2. And even before there is a death, we can better understand Opioid misuse.
 - a. Again, prescription history with DHHS data such as Medicaid, allows us to drill down to see what groups of people are most at risk for use disorders. What types of risk factors lead to groups ending up in treatment or worse, delayed treatment..

But The million dollar question is how do we protect this data?

We know that PDMPs are covered by HIPAA and DHHS is also a HIPAA Covered entity. DHHS is already entrusted with some of the most private and sensitive information in the state. We have rigorous training and policies and hardware to protect confidential information.

Part of what took us so long in getting here was so stakeholders- pharmacists, providers- were comfortable that this bill was in alignment with our strong data stewardship and data governance policies.

Specifically, the bill describes the need for Data Sharing Agreements to establish the terms, conditions and safeguards and procedures that the two agencies –OPLC and DHHS must agree to in order to share information.

Data agreements will cite the legal authority to possess the data and clearly describe responsibilities for security- who has access? Does the specific analysis have merit? What is the methodology? What is the retention and data destruction policy?

Overview of Data Sharing Agreement

The Data Sharing Agreement establishes the terms, conditions, safeguards, and procedures under which two or more entities agree to share data.

Legal Authority



Applicable State and Federal Laws governing the data

Responsibilities & Obligations

- Who will authorize access
- How the data will be used
- Who will have access
- What data is used
- How the data is linked
- Where the data will reside
- Why the data is needed

Data Governance



Security



Sponsorship and Strategy



Duration and Retention



Contacts



Training



Classification

Methods for data/record linkage include de-duplication [matching individuals within the same data source] and linkage of individuals between data sources. This linkage creates a more complete picture about groups of people. Once we link across data sets, the identifying information is eliminated, while we then focus on those cohorts to look for trends and patterns in things like incidence and mortality rates, insurance status, or specific health outcomes and trends unique to areas of the state or particular age groups.



Our DHHS epidemiologists and data analysts are skilled in these algorithms and methodologies to clean, link, standardize and protect the data, but they need that identifiable data as the keystone that brings separate pieces of information together into a meaningful and actionable story.

In wrapping up it's important to note what the bill in front of you actually does.

Line 7 on page one creates the authorization within DHHS statutes, specifically in RSA 126-A to accept the data from OPLC's RSA 318.

Line 13 once again highlights the confidential nature of the data and that it cannot be released through 91A and is not subject to discovery.

Section III on line 18 allows us to create reports- something that we currently do not have the authority to do. Section III emphasizes that any report must not contain identifiable information and must be aggregated or otherwise de-identified.

Section IV on pages one and two provides additional information about how we enter into data sharing agreements. It codifies that we must come to a mutual agreement with OPLC about:

- (1) The specific purpose of sharing data;
- (2) A detailed description of the data sets that will be included;
- (3) The criteria and procedures for the development of data sets;
- (4) The criteria and procedures to ensure data security and destruction; and
- (5) A proposed time frame in which the data will be used

Lines 12 and beyond on pages 2 and 3 create changes in OPLC's authorizing statute and I believe that Lindsay Courtney would be the best to walk you through those sections.

So thank you for your consideration of this important bill and we look forward to future conversations..

Voting Sheets

Senate Health and Human Services Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB 45

Hearing Date: 1/13/21

Executive Session Date: 1/28/21

Motion: Amendment # 2021-0028s Vote: 4-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion: OT PA Vote: 4-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Avard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Sherman

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Thursday, January 28, 2021

THE COMMITTEE ON Health and Human Services

to which was referred SB 45

AN ACT

relative to the controlled drug prescription health
and safety program.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-0

AMENDMENT # 0167s

Senator Tom Sherman
For the Committee

Griffin Roberge 271-3042

HEALTH AND HUMAN SERVICES

SB 45, relative to the controlled drug prescription health and safety program.

Ought to Pass with Amendment, Vote 4-0.

Senator Tom Sherman for the committee.

General Court of New Hampshire - Bill Status System

Docket of SB45

Docket Abbreviations

Bill Title: relative to the controlled drug prescription health and safety program.*Official Docket of SB45.:*

Date	Body	Description
1/13/2021	S	Introduced 01/06/2021 and Referred to Health and Human Services; SJ 3
1/14/2021	S	Remote Hearing: 01/20/2021, 01:15 pm; Links to join the hearing can be found in the Senate Calendar; SC 7
1/29/2021	S	Committee Report: Ought to Pass with Amendment #2021-0167s , 02/11/2021; SC 10
2/11/2021	S	Committee Amendment #2021-0167s , RC 24Y-0N, AA; 02/11/2021; SJ 4
2/11/2021	S	Ought to Pass with Amendment 2021-0167s, RC 24Y-0N, MA; OT3rdg; 02/11/2021; SJ 4
3/10/2021	H	Introduced (in recess of) 02/25/2021 and referred to Health, Human Services and Elderly Affairs HJ 4 P. 48
4/6/2021	H	Public Hearing: 04/13/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/94103091494 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
5/5/2021	H	Committee Report: Ought to Pass with Amendment #2021-1253h (Vote 21-0; CC) HC 26 P. 8
6/3/2021	H	Amendment #2021-1253h : AA VV 06/03/2021 HJ 8 P. 70
6/3/2021	H	Ought to Pass with Amendment 2021-1253h: MA VV 06/03/2021 HJ 8 P. 70
6/10/2021	S	Sen. Bradley Moved to Concur with the House Amendment, MA, VV; 06/10/2021; SJ 19
7/12/2021	H	Enrolled (in recess of) 06/24/2021
7/12/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); SJ 20
7/26/2021	S	Signed by the Governor on 07/23/2021; Chapter 0148
7/26/2021	S	I. Sections 1-10 Effective as provided in Section 11
7/26/2021	S	II. Remainder Effective 07/23/2021

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 45

Senate Committee: HHS

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ - amendment # 2021-00285
 ___ - amendment # ___ - amendment # 2021-01675

- Executive Session Sheet
- Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___
 ___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

- Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- Enrolled Bill Amendment(s)
- Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate as amended by the house
 final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Kirsten Koch
Committee Aide

7/26/21
Date

Senate Clerk's Office AK